

In this document, the Steering Committee of the LSE Academic Freedom network sets out our reply to the paper circulated by some colleagues at LSE in March. Our responses are interspersed (as blue text) in the original text of the paper.

Concerning Academic Freedom at the LSE

Paper for discussion at Academic Board, 13 March 2024

Background

Academic freedom, which is essential to a vibrant academic environment, is being threatened by a range of internal and external pressures that are creating a chilling effect on scholarly thinking and intellectual debate at the LSE and in the UK more broadly. As established in the Education Reform Act 1988 (202:2), academic freedom refers to the legal right of academics in the UK 'to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or the privileges they may have' according to 'principles of justice and fairness'.

LSEAF Steering Cttee: This misstates the law. Section 202(2) of the 1998 Act does not qualify academic freedom by reference to 'principles of justice and fairness' as stated here. If LSE were to act on the basis of this definition, it would risk acting unlawfully.

Section 202(2) sets out three needs that University Commissioners must have with regard to their exercise of various specific functions assigned to them by Section 203, functions concerning grievance, dismissal and redundancy procedures. One of those needs is 'to apply the principles of justice and fairness', another of those needs is 'to ensure academic staff have freedom within the law to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or the privileges they may have'. But these are separately enumerated as needs that qualify the Commissioners' exercise of certain specific functions. The requirement on the Commissioners to apply 'principles of justice and fairness' in the exercise of their functions does not qualify the meaning of the other requirements imposed on them. The definition of academic freedom proposed here is legally incorrect. (See <https://www.legislation.gov.uk/ukpga/1988/40/section/202>)

Despite nominal affirmation in the circulation of recent codes of practice by various School bodies, recent School initiatives fail to address contemporary threats to academic freedom. The purpose of this paper is to lay out the sources of these threats and to propose further protective measures to safeguard academic freedom at the LSE.

Contemporary Threats to Academic Freedom

In addition to long-standing concerns about the damaging effects on academic freedom of growing reliance on private sources of research funding, new threats have emerged. Contemporary threats to academic freedom at the LSE stem from three sources: the recent practice of conflating academic freedom and freedom of speech; intensifying external

intrusion by the state and civil society into the parameters of academic debate; and internal threats stemming from a growing administrative tendency to treat academic freedom as more of a risk than a fundamental right.

Conflation of Academic Freedom with Freedom of Speech, both in the recent *Higher Education (Freedom of Speech) Act 2023* and in recent LSE codes of practice on the issue, risk undermining both the meaning and the practice of academic freedom. The protection of personal beliefs and expression associated with freedom of speech is being elided with the very distinct requirement of reasoned argument, objectivity and methodological integrity which are central to the practice of academic freedom. Academic freedom is not about the protection of beliefs, but about protecting the ability of members of academic institutions to articulate positions or challenge those of others through argument and debate guided by disciplinary principles of methodological rigour, scholarly ethics and objectivity.

LSEAF Steering Cttee: The implied counterposition of freedom of expression and academic freedom nullifies academic freedom. Freedom of belief and expression are not the same as academic freedom, but they are component parts of it.

The academic nature of LSE's endeavour means that disciplinary standards at any one time will control decisions concerning hiring, promotion, publication and curriculum (this is articulated in LSEAF's *Draft Code of Practice*, 3.3 and 3.5-3.9.) See here:

<https://info.lse.ac.uk/staff/divisions/equity-diversity-and-inclusion/Assets/Documents/PDFs/Academic-Freedom-Code-of-Practice.pdf>

In other words, academic freedom includes the capacity of the academic community to rely on its own standards of judgement and to discount external standards, political or religious.

However, whether or not a particular belief or theory or interpretation of evidence meets disciplinary standards cannot be assessed according to any rigorous standard if those who espouse those beliefs, theories or interpretations of evidence or who are interested in them are not permitted to express them or argue them with other academics and students in any setting within the university.

Moreover, academic freedom must include the freedom of those within the academy to challenge disciplinary principles, the meaning and standards of methodological rigour, the content and appropriate application of scholarly ethics.

For these reasons, there can be no academic freedom if what is allowed to be said and argued in academic lectures, seminar rooms, or public events is policed by the current gatekeepers of academic standards. Academic freedom, therefore, must include the freedom of those within the academy to challenge the consensus beliefs that are held by the current gatekeepers of academic standards, including the freedom to listen to opinions from outside the academy.

The conflation of these two freedoms distorts procedures for assessing scholarly merit and addressing intellectual disputes.

LSE AF Steering Cttee: To reiterate the point above, freedom of expression is not in this way 'conflated' with academic freedom but is recognised as one of its components. Without

freedom of expression within the academy, there can be no fair and effective procedures for the assessment of scholarly merit.

Challenges to positions that are addressed in terms of freedom of speech steer resolution down the path of grievance procedures and litigation, while academic freedom requires assessment of scholarly merit, and resolves disputes through debate and critical scrutiny of argument and evidence.

- 1. External Threats** have arisen from the growing tendency of the government, media and external complaints procedures to intervene in the intellectual life of universities. Government threats include broad political threats to tighten the legal boundaries of what can and cannot be said without risk of arrest, and directive communication by government officials to academic institutions indicating views that are deemed acceptable within the university system. Academic Freedom is also being threatened by media-led targeting of academics, and by groups within civil society instrumentalizing the complaints process. A rising incidence of such practices at the LSE has tended to target relatively junior staff, often women with protected ethnic or religious characteristics, violating the School's EDI obligations in the process of attacking academic freedom .

LSEAF Steering Cttee: We agree. LSEAF's Draft Code of Practice would require LSE management to uphold the rights of all staff and students within the LSE to express their opinions and to listen to those of others.

- 2. Internal threats** relate to the impact of financialization and political pressures in Higher Education on administrative priorities, which increasingly treat academic freedom as a political or financial risk rather than a necessary condition of academic excellence. Treatment of academic freedom as a risk includes the administrative suppression of academically rigorous but politically inconvenient blog posts written by senior specialists in the field, and responding to intellectual disputes by channelling academic staff toward individual grievance or disciplinary procedures, rather than by ensuring institutional protection and public debate.

LSE AF Steering Cttee: We agree but this account is partial. It omits to mention other significant internal threats to academic freedom.

It neglects to mention the hostility towards the academic freedom of academics and students who wish to research ideas, or hear the views of those who support ideas, that are asserted by some *within* LSE to be 'harmful' or offensive.

It also neglects to consider the close connection between the marketisation of higher education and the potential power of complaints by students against the discussion of ideas they find unacceptable.

Again, LSEAF's Draft Code of Practice would require LSE management to uphold the rights of all staff and students within the LSE to express their opinions and listen to those of others.

3. The growing number of academics affected by threats to academic freedom at the LSE is worrying. Failure to address these threats robustly in the face of ongoing pressures will lead to a growing tendency to silence particular viewpoints and particular academics, and to channel academic disputes or politically inconvenient positions into grievance or disciplinary procedures – a chilling prospect for academic staff and for the future of academic excellence at the LSE.

LSE AF Steering Cttee: We agree this is a danger. This problem is explicitly addressed in LSEAF's Draft Code of Practice 4.2 See here: <https://info.lse.ac.uk/staff/divisions/equity-diversity-and-inclusion/Assets/Documents/PDFs/Academic-Freedom-Code-of-Practice.pdf>.

Neither the School's draft 'Code of Conduct on Freedom of Speech', nor the LSEAF's draft 'Code of Practice on Academic Freedom' adequately address these issues.

LSE AF Steering Cttee: On the contrary, as indicated above, the Draft Code of Practice addresses these issues directly and without sacrificing academic freedom to the intellectual preferences of, or the consensus among, those who are currently dominant within a discipline (ie, to the approach that appears to be recommended by this document).

Statement of Commitment to Academic Freedom

To better safeguard academic freedom within the LSE, we propose the following statement to re-energize and shore up the protection of academic freedom within the School:

1. Upholding academic freedom is critical to research and teaching excellence within the LSE, and defending it is a task of all university staff. We affirm a vigorous commitment to an environment of debate and scholarly refutation as the primary means of addressing disagreement on substantive matters. Where positions are respectfully, even if robustly, expressed, the School and its staff defend the right of members of the academic community to engage in research and debate on salient issues, backed by rigorous argument and evidence and by principles of justice, objectivity and methodological rigour according to the various disciplines, even where the position is controversial.

LSE AF Steering Cttee: The clear implication is that the standards of 'rigour', evidence and the 'principles of justice' that will apply to police the boundaries of the ideas that may be debated at LSE should be in the hands of the existing gatekeepers in the various disciplines. This is intellectually conservative and contrary to academic freedom because it will have an obvious tendency to censor discussion of ideas that

fall outside the consensus of acceptability among the gatekeepers.

We also recognize the right of scholars to question the law where reasoned arguments are given to show that a law, or a legal change, is contrary to fundamental rights. We affirm a right to peaceful protest conducted within the law in response to positions taken by speakers.

LSE AF Steering Ctte: Does this include a right to prevent other students or staff from hearing views that the protesters disagree with? If it does then that is contrary to the academic freedom of those students and staff. See LSEAF Draft Code of Practice 4.3. See <https://info.lse.ac.uk/staff/divisions/equity-diversity-and-inclusion/Assets/Documents/PDFs/Academic-Freedom-Code-of-Practice.pdf>

2. The effective defence of academic freedom depends on a clear definition that disentangles academic freedom from freedom of speech in all the relevant governance regulations within the School, particularly those regarding freedom of speech, academic freedom, bullying and harassment, and EDI. A review of the relevant codes of practice and regulatory environment which address such entanglement should be undertaken as a matter of urgency.

LSE AF Steering Ctte: We agree. LSEAF's Draft Code of Practice on Academic Freedom is explicitly framed to recognise both the distinction between freedom of speech and academic freedom, and the dependence of the latter on the protection of the former.

3. The School's responsibility to defend academic freedom includes insulating it from calculations of political or financial risk, and upholding EDI obligations. It also includes defending members of staff, legally where necessary, from suppression, complaints, disciplinary procedures or litigation that seek to silence a position with demonstrable academic merit, especially, but not exclusively where it is within the proponents' area of academic specialization. Effective defence of academic freedom requires a structural rather than individual response to complaints targeting a particular viewpoint or category of staff, especially where staff with protected characteristics are systematically targeted.

We request that this statement be adopted by Academic Board, that the review of the regulatory environment be undertaken by HR and relevant committees within the current academic year, and that the SMC strengthen its procedures for protecting academic freedom and report back to Academic Board on the improvements made.

Signed: Concerned Members of Academic Board