

**SENATE**

**Title of paper:** Code of Conduct for Freedom of Speech

**Main purpose of the paper:** For information and discussion

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**Date of paper:** 26 June 2024.

The paper provides an updated code of practice (so far as we are able pending consultation outcome from the OfS) for freedom of speech which will be promoted to colleagues and students in the new academic year.

In addition to the Code of Practice there are a number of existing University policies that will require an update to reflect the new act. These policies should be clear that in case of any conflict, the Code of Practice for Freedom of Speech will take precedence.

**Relation to strategy and values**

Academic freedom is one of our core values and is distinct from, but also linked to, freedom of speech. It is the principle that academic colleagues are free, within the law, to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs, rights or privileges. The new act introduced a requirement to ensure the likelihood of an academic colleague securing promotion or different jobs is not reduced because they hold a particular viewpoint.

**Recommendations:**

To request support for:

- The updated Code of Practice.

**Consultation to date (including any previous committee consideration and its outcome):**

- The updated Code of Practice was approved by University Executive Board on 7 June 2024.

## Code of Conduct for Freedom of Speech Newcastle University June 2024

### **Background**

The Higher Education (Freedom of Speech) Act received royal assent on 11<sup>th</sup> May 2023. The new legislation introduces a new statutory requirement to “promote the importance of” both freedom of speech within the law, and academic freedom for academic colleagues.

The Office for Students (OfS) has been consulting with providers regarding their role in monitoring compliance and the introduction of a new complaints scheme. These consultations are complete, however, providers are awaiting the outcome of the consultations which will now be delayed until after the general election.

### **Code of Practice**

The paper provides an updated code of practice (so far as we are able pending consultation outcome from the OfS) for freedom of speech which will be promoted to colleagues and students in the new academic year.

In addition to the Code of Practice there are a number of existing University policies that will require an update to reflect the new act. These policies should be clear that in case of any conflict, the Code of Practice for Freedom of Speech will take precedence.

### **Academic Freedom and Freedom of Speech**

Academic freedom is one of our core values and is distinct from, but also linked to, freedom of speech. It is the principle that academic colleagues are free, within the law, to question and test received wisdom, and put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs, rights or privileges. The new act introduced a requirement to ensure the likelihood of an academic colleague securing promotion or different jobs is not reduced because they hold a particular viewpoint.

Colin Campbell, Kelly Oliver, Darrin Beattie  
June 2024

**Newcastle University & Newcastle University Students' Union**  
**Code of Practice for Freedom of Speech**  
**Academic Year 2024/25**

## 1. Principles

- a. Newcastle University (the University) and Newcastle University Students' Union (NUSU) as co-authors of this code of practice encourage students and colleagues to share, debate and challenge views and positions on various topics. As part of our legal obligations, we uphold freedom of speech within the law, including allowing individuals or groups to host events or speakers that others don't agree with or wish to demonstrate against. Our commitment to freedom of speech and academic freedom is enshrined in the University's statute 3(4) and the University is signatory of the Magna Charta Universitatum.
- b. Freedom of speech is an important part of academic life, the University and NUSU are committed to upholding and promoting free speech within the law for all colleagues, students, members and visiting speakers.

## 2. Introduction

- a. Council as trustees of the University, and NUSU Board, recognise that the legal duty of UK universities to protect freedom of speech is enshrined in legislation, including the [Higher Education \(Freedom of Speech\) Act 2023](#), Education (No. 2) Act 1986, the Human Rights Act 1998 and the Higher Education and Research Act 2017. Academic freedom is also protected by the Education Reform Act 1988.
- b. The 2023 Higher Education (Freedom of Speech) Act requires the governing bodies of the University and NUSU to undertake a number of steps including the promotion of the importance of freedom of speech within the law, and promotion of academic freedom for academic colleagues of registered higher education providers and their constituent institutions, in the provision of higher education.
- c. Freedom of speech throughout this code applies to the freedom of all students, members, colleagues and visiting speakers to impart ideas, opinions or information by means of speech, writing or images (including in electronic form).
- d. Academic freedom throughout this code allows those colleagues on an academic contract to 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 at risk of being adversely affected by loss of their jobs, rights or privileges or the likelihood of their securing promotion or different jobs being reduced.
- e. This Code of Practice sets out how the University and NUSU discharge their responsibilities in respect of taking steps to secure freedom of speech, the promotion of freedom of speech and academic freedom.

## 3. Scope

- a. Newcastle University and NUSU must take "reasonably practicable" steps to secure freedom of speech within the law. There is no expectation to take steps that are not reasonably practicable.
- b. The requirement to take reasonably practicable steps includes refraining from taking steps that would have an adverse impact on freedom of speech without compelling lawful justification.
- c. Factors that are relevant to the assessment of whether steps are reasonably practicable may include, among other things, the following:
  - i. The extent to which taking a step, or not taking it, would secure or restrict freedom of speech
  - ii. The practical costs (time, money, personnel, resources) of taking a step, or not taking it
  - iii. Financial constraints - Newcastle University and NUSU will take reasonably practicable steps not to pass on security costs for outside events except in exceptional circumstances.
- d. The Code shall be construed and applied for the purpose of upholding freedom of speech within the law and the statutory duty.

- e. The Code applies to all colleagues (academic and non-academic) of the University and NUSU; Students, members and all visiting speakers invited to speak in respect of:
  - i. all meetings, events demonstrations and protests, virtual or in person, to be held on University or NUSU premises including those organised by third parties; and
  - ii. all meetings and other events that are organised or funded under the name of the University or NUSU wherever they may take place, including those online.
  - iii. Communications associated with the activity (see also section 5).
- f. This legislation applies to English higher education providers and students' unions. The code does not apply to events organised on premises that the University leases to other organisations or events not organised by or in collaboration with the University. It is also not anticipated that prior approval of meetings will be required for normal teaching, other academic or administrative/operational meetings.
- g. Higher Education and Research Act 2017 requires Codes of Practice for Freedom of Speech to set out procedures to be followed by colleagues and students of the University and NUSU when organising activities that relate to academic life either on or off campus. Such activities relate to:
  - i. Admission, appointment, reappointment and promotion
  - ii. Disciplinary matters
  - iii. Employment contracts (that may include conditions on speech)
  - iv. Equality or equity, diversity and inclusion, including the Public Sector Equality Duty
  - v. Harassment and bullying
  - vi. IT, including acceptable use policies and surveillance of social media use
  - vii. Prevent duty
  - viii. Principles of curricular design
  - ix. Research ethics
  - x. [Visiting] Speaker events
  - xi. Colleagues and student codes of conduct
- h. When engaged in such activities, colleagues and students of the University and NUSU must be mindful that nothing in other documentation related to these activities should be read as undermining or conflicting with the Code of Practice for Freedom of Speech and that in case of any conflict, the Code of Practice for Freedom of Speech will take precedence.
- i. The Council of the University and NUSU Trustee Board authorises the Registrar or the Registrar's nominee to act as the 'Designated Officer' to ensure that all members, students and employees of the University, NUSU and visitors comply with the provisions of this Code.
- j. Where colleagues and students are unable to resolve perceived conflict between their activities and free speech duties, they should contact the Designated Officer in the first instance.

#### 4. Key Principles

- a. The University shall take such steps as are reasonably practicable to ensure that freedom of speech within the law and academic freedom must be protected (even if the speech is controversial or offensive)
- b. The University has a legal obligation to secure freedom of speech within the law and is committed to create an inclusive culture that promotes equality, values diversity and maintains a working, learning and social environment where everyone can feel respected. Incitement to public disorder, insurrection, racial hatred, religious hatred, harassment and unlawful discrimination are not within the law. Freedom of speech does not include threatening, abusive or insulting words or behaviour that causes, or is likely to cause, another person harassment, alarm or distress.
- c. The University shall ensure, so far as is reasonably practicable, that the use of University premises is not denied to any individual or body of persons seeking to express freedom of speech within the law on any grounds connected with:
  - i. those characteristics protected under the Equality Act 2010; or
  - ii. the policy or objectives of such body.

- d. Every person to whom this Code applies shall refrain from organising or engaging in or otherwise being associated with any conduct (other than by lawful, reasonable and peaceful persuasion) intended to prevent the enjoyment of rights under this Code of Practice.
- e. The University and NUSU shall take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to ensure that the obligations under this Code of Practice are complied with.

## 5. General Procedures

- a. All colleagues, students, members of the University and NUSU, and visiting speakers must adhere to the provisions outlined in this code. When implementing policies and procedures related to the activities specified in section 3g, University and NUCU colleagues and students must ensure that these documents do not undermine or conflict with this code. In cases of perceived conflict, this code will take precedence. If colleagues, students, or members encounter difficulties in reconciling their activities with this code, they should promptly contact the Designated Officer for assistance.
- b. Policies that regulate protests and demonstrations or the posting or distributing of written materials (such as flyers), should not restrict these activities because they express or support a particular legally expressible viewpoint.

## 6. Additional procedures for visiting speaker events

- a. A visiting speaker is a person who is not a current colleague or student and is invited to speak at a registered higher education provider, constituent institution or relevant students' union. Newcastle University and NUSU will not deny use of any of its premises to any individual or body on the following grounds:
  - i. In relation to an individual, their ideas or opinions
  - ii. In relation to a body, its policy or objectives or the ideas or opinions of any of its members.
- b. It may occasionally be consistent with the free speech duty for Newcastle University and NUSU to regulate which premises may be used for a particular event and at what time they may be used on grounds related (for example) to the policy or objectives of the body which it is making its premises available. Such mitigation should be coordinated and communicated to event organisers by the Designated Officer and be no more than is necessary to ensure that the event can proceed.
- c. An event involving a visiting speaker must clearly identify a student or colleague who will act as "Principal Organiser" (PO) for the event. The PO will be responsible for liaising with Newcastle University or NUSU before, during and after the event and as required. The University reserves the right to only consider requests to host events where a PO has been clearly identified. The Principal Organiser will:

## 7. Before the event

- a. Complete and submit a visiting speaker notification/risk assessment form (link) a minimum of 10 working days before the date of the planned event.
- b. Respond to any requests from Newcastle University or NUSU for information in addition to that provided in the notification/risk assessment form regarding the event and/or visiting speaker
- c. Events should not be promoted until risk assessment has been concluded.
- d. NOTE: Should event organisers decide to rescind an invitation to speak for any reason including as a result of pressure exerted by a third party, then they must gain approval to rescind the invitation prior to notifying the affected individual(s). To gain such approval, event organisers must contact the Designated Officer in the first instance.

## 8. During the event

- a. Adhere to all steps established by Newcastle University or NUSU as being reasonably practicable for the event to proceed.

- b. Ensuring good order at the event and that both the audience and any speaker act in accordance with the law during the meeting or other activity and that this code is observed.

#### 9. After the event

- a. Ensure premises are left in clean and tidy condition, in default of which the organisers may be charged for the cost of any additional cleaning and repairs that are subsequently required. Organisers may make reasonable admission charges to cover the cost of stewards or liabilities to the University or Union Society
- b. Report any disruption or potential breach of Newcastle University or NUSU free speech duties that occurred during the event to the Designated Officer via [governanceoffice@newcastle.ac.uk](mailto:governanceoffice@newcastle.ac.uk) and support any investigation into the reported matters.
- c. In cases in which it is reasonable to assume that there is a possibility of disruption at an event, the University or NUSU may consult with the police. If the event is a public event the police may be prepared to be present throughout the event to minimise any disruption.
- d. The organisers of the event will as described above be responsible for any costs involved in organising and holding such events and for ensuring, as far as possible, that nothing in the organisation and holding of such events infringes the law in any way.

#### 10. Appeals

- a. Appeals against decisions or conditions issued by the Designated Officer may be made to the Pro-Vice-Chancellor appointed by the Vice-Chancellor to consider any appeal. The decision of the Pro-Vice-Chancellor shall be final.
- b. Where a breach of this Code of Practice takes place at an event, the University may take steps to assist the police to secure identification of the persons committing offences with a view to appropriate action being taken against them.

#### 11. Promotion and Amendment of the Code

- a. The University and NUSU acknowledge the duty to keep up to date a Code of Practice on Freedom of Speech. As part of the commitment to promote freedom of speech and academic freedom, colleagues and students will be reminded of this code at the start of each academic year.

#### 12. Outside organisations and individuals

- a. The University and NUSU have discretion about accepting any booking requested by an outside organisation and from time to time may permit their premises to be hired. The booking of the premises by, or on behalf of an outside organisation or individual shall be made through the Conference Office who will act as PO in line with this Code for the duration of the booked event.
- b. Any external hire will subject the organisation or individual to the regulations of the University and NUSU including the application of this Code.

#### 13. Complaints

The Office for Students (OfS) operates a free speech complaints scheme. Under that scheme, the OfS can review complaints about free speech from members, students, staff, applicants for academic posts and (actual or invited) visiting speakers. Information about the complaints that the OfS can review is available on its website.

<https://www.officeforstudents.org.uk/consultations-on-free-speech/consultation-on-the-ofs-s-new-free-speech-complaints-scheme/>

Office for Students: Glossary of terms  
June 2024

**Academic freedom**

Academic freedom is defined at Part A1 of HERA (as amended by the Act):

'A1 (6) In this Part, "academic freedom", in relation to academic staff at a registered higher education provider, means their freedom within the law—

- (a) to question and test received wisdom, and
- (b) to put forward new ideas and controversial or unpopular opinions, without placing themselves at risk of being adversely affected in any of the ways described in subsection (7).

A1 (7) Those ways are—

- (a) loss of their jobs or privileges at the provider;
- (b) the likelihood of their securing promotion or different jobs at the provider being reduced.'

**Academic staff**

A member of staff who is employed, or otherwise engaged, for the purpose of teaching or conducting research.

**Constituent institutions**

Constituent institution is defined at Part A1 Section A4 of HERA:

'Any constituent college, school, hall or other institution of a registered higher education provider.'

Governing body

As defined at section 85 of HERA.

**Member**

Whether a person is a 'member', in relation to a registered higher education provider or constituent institution, is a product of the legal constitutional arrangements of the provider (for example, the membership provisions in a Royal Charter or legislation for a higher education corporation) and/or contractual arrangement.

A member does not include a person who is a member of the provider or constituent institution solely because of having been a student of the institution.

'Member', in relation to a students' union which is a representative body and not an association (see section 20(1)(b) of the Education Act 1994), means those whom it is the purpose of the union to represent, excluding any student who has signified that they do not wish to be represented by it.

**Premises**

Includes all land, buildings, facilities, and other property in the possession of, or owned, leased, used, supervised or controlled by the university, college or students' union.

**Prevent duty**

Defined at section 26 of the Counter-Terrorism and Security Act 2015:

'A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism.'

Section 31 of the Counter-Terrorism and Security Act 2015:

'(1) When carrying out the duty imposed by section 26(1), a specified authority to which this section applies—  
(a) must have particular regard to the duty to ensure freedom of speech, if it is subject to that duty;  
(b) must have particular regard to the importance of academic freedom, if it is the proprietor or governing body of a qualifying institution.'

#### **Registered higher education provider and governing body in relation to such a provider**

These terms have the same meanings as at Part 1 of HERA (see section 85). The OfS publishes a Register of registered higher education providers on its website.

#### **Registered higher education provider that is eligible for financial support**

A registered higher education provider that is an eligible higher education provider for the purposes of section 39 of HERA. These providers are registered in the OfS's 'Approved (fee cap)' registration category.

#### **Relevant students' union**

Relevant students' union is defined at Part A1 section A5 of HERA (as amended by the Act):

'A students' union at a registered higher education provider that is eligible for financial support. This does not include a students' union for students at a constituent institution of such a provider.'

#### **Staff**

(of an organisation): an employee of that organisation or other person working for that organisation under a contract of employment, including, without limitation, a fixed-term contract, a zero-hours contract, an hourly-paid contract or other type of casual or atypical contract of employment.

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#### **Students**

A person undertaking, or with a binding offer to undertake, a course of study or a programme of research (i) at the institution in question or (ii) that leads to an award granted by the institution in question, and in either case this may include a trainee or apprentice.

#### **Students' union**

This has the same meaning as it has in Part 2 of the Education Act 1994 in relation to establishments to which that Part applies (see section 20 of that Act).

#### **Visiting speakers**

A person who was invited to speak at a registered higher education provider, constituent institution or relevant students' union. It does not include a person who wanted or requested an invitation to speak but was not invited. It may include a person whose invitation has not been approved through an internal approvals process.



## Visiting Speaker decision tree

