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Code of Practice on Freedom of Speech and Academic Freedom

1. INTRODUCTION

- 1.1 The Higher Education (Freedom of Speech) Act 2023 (**the Act**) amends the Higher Education and Research Act 2017 (**HERA**) to strengthen the legal requirements placed on universities relating to freedom of speech and academic freedom.
- 1.2 HERA, as amended by the Act, places a duty on the Board of Governors (**the Board**) of BU to take steps that, having particular regard to the importance of freedom of speech, are reasonably practicable for it to take in order to:
- (a) secure freedom of speech within the law for BU's students, staff, members and visiting speakers; and
 - (b) secure academic freedom for members of academic staff.

This duty is referred to in this Code of Practice as the **Secure Duty**. The Secure Duty applies to BU's activities in England.

- 1.3 **Freedom of speech** means the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the European Convention on Human Rights as it has effect for the purposes of the Human Rights Act 1998) (**the Convention**) by means of speech, writing or images (including in electronic form). This right includes freedom of artistic expression, such as a painting or the production of a play.
- 1.4 Article 10 of the Convention relates to the right to freedom of expression as follows:
- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article

shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

- 1.5 **Academic freedom**, in relation to BU's academic staff, 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 by: (i) loss of their jobs or privileges at BU; or (ii) the likelihood of their securing promotion or different jobs at the provider being reduced.
- 1.6 References to 'freedom of speech' and 'free speech' in the Code include, for academic staff, academic freedom.
- 1.7 The Board has adopted this Code of Practice on Freedom of Speech and Academic Freedom which is referred to as **the Code**.

2. SCOPE

- 2.1 The Code outlines how BU fulfils the Secure Duty and otherwise seeks to secure free speech within the law across all aspects of academic life at BU. This includes, without limitation, BU's policies, procedures, codes and practices relating to:
- 2.1.1 admissions, appointments, reappointments and promotions;
 - 2.1.2 disciplinary matters;
 - 2.1.3 employment contracts;
 - 2.1.4 equality or equity, diversity and inclusion, including the Public Sector Equality Duty;
 - 2.1.5 fitness to practise policies and procedures;
 - 2.1.6 harassment and bullying policies (including sexual misconduct policies);
 - 2.1.7 IT policies, including acceptable use policies and use of social media use;
 - 2.1.8 the Prevent duty;

- 2.1.9 principles of curricular design;
 - 2.1.10 research ethics;
 - 2.1.11 staff and student codes of conduct; and
 - 2.1.12 procedures when organising meetings, events and other activities.
- 2.2 The Code applies to BU staff, members, students and visiting speakers. Staff of the Students' Union at Bournemouth University (**SUBU**) and SUBU groups and societies must also comply with the Code.¹
- 2.3 The Code applies to all activities which take place under the authority of BU or, if applicable, SUBU:
- 2.3.1 on any BU premises;
 - 2.3.2 away from BU's premises but are held in BU's name, affiliated with or funded by BU (in whole or in part); and/or
 - 2.3.3 online events.
- 2.4 Activities might include meetings, events, lectures, seminars and performances. The term **BU premises** means any property of which BU has title or possession by freehold, leasehold, licence or otherwise and also includes online spaces and virtual classrooms or similar provided by BU.
- 3. PUBLICATION AND REVIEW OF THE CODE**
- 3.1 The Code is published on the BU website in a prominent position so that it may be readily accessible to students, members of staff, visiting speakers and prospective students.
- 3.2 The Code is included in training and induction for BU staff. It is brought to the attention of all staff and students at least once a year.
- 3.3 The Code is reviewed annually, or more frequently if regulatory updates are required or issues are identified as part of a complaint. Any recommended amendments or updates to the Code will be subject to the approval of the Board of Governors (having first been reviewed by the Board's Audit, Risk & Governance Committee (**ARG**)).

¹ [Code of Practice for the Students' Union at Bournemouth University](#)

4. VALUES RELATING TO FREEDOM OF SPEECH

- 4.1 BU is committed to promoting freedom of speech and academic freedom within the law. It operates with a very strong presumption in favour of permitting lawful speech.
- 4.2 BU believes that everyone has the right to express lawful views and opinions freely, in speech or in writing, without interference. This means that BU will generally protect speech unless it contravenes some other law. This could include speech which some might find is offensive, shocking or disturbing.
- 4.3 In an academic context, the protection and encouragement of the lawful expression of speech is fundamental to BU's charitable objectives to advance education, research and knowledge. To that end, BU actively creates a culture and atmosphere of mutual respect and tolerance, where a range of lawful views can be explored, considered tested and challenged.
- 4.4 BU recognises that the criminal and civil law places certain restrictions on speech, for example, speech intended or likely to stir up hatred on the grounds of race, religion or sexual orientation or incitement to commit acts of terrorism. Notwithstanding the Secure Duty, the University will not tolerate any type of unlawful speech.

5. STEPS BU TAKES TO FULFIL THE SECURE DUTY

- 5.1 BU will ensure that:-
 - 5.1.1 Its teaching, curriculum, policies and procedures reflect the Secure Duty.
 - 5.1.2 The Code is considered and complied with in all processes relating to programme development, approval and delivery and facilitating research.
 - 5.1.3 Use of its premises is not denied to any individual or body on the grounds of their ideas or opinions; or in relation to a body, its policy or objectives or the ideas or opinions of any of its members (with the exception of proscribed groups or organisations) (see further the procedures for Designated Activities set out at Section 7 below).
 - 5.1.4 The use of non-disclosure agreements in relation to complaints about sexual abuse, sexual harassment or sexual misconduct, or other bullying or harassment are prohibited.
- 5.2 Its processes for accepting overseas funding (whether from endowments, gifts, donations, research grants and contracts and educational and other partnerships) incorporate consideration of the risk presented to compliance with the Code.

- 5.2.1 When applying its policies, procedures and this Code, BU will have particular regard to, and place significant weight on, the importance of freedom of speech within the law.
- 5.2.2 Legal advice is sought where complex or difficult issues arise to ensure that decision-making is well informed.
- 5.2.3 The following persons are aware of and fulfil their key responsibilities under the Code:

The Board is responsible for approving this Code of Practice on the recommendation of ARG and for ensuring that its decision making and that of its sub-committees uphold the Code and BU's statutory and regulatory obligations.

The University Executive Team is responsible for ensuring day to day operational compliance with the Code and for reporting on complaints received to ARG and the Board. The Chief Operating Officer has overall executive responsibility for ensuring BU meets its Secure Duty. The Chief Operating Officer is also responsible for the operation of the procedures relating to Designated Activities (as set out at Section 7) and for reporting on it annually to Senate, ARG and the Board.

6. BU'S APPROACH TO QUESTIONS OF FREE SPEECH

- 6.1 BU will use a three-step framework to ensure compliance with the Secure Duty when considering any measure or decision that might affect speech or types of speech:

Step 1: Is the speech lawful? The presumption will be that the speech is lawful unless it is prohibited by legislation or legal precedent.

Step 2: If the speech is within the law, are there any reasonably practicable steps that BU can take to secure the speech? Steps may include positive steps (doing something) and negative steps (refraining from doing something). If available, BU will take the steps and not restrict the speech.

BU will assess, in the particular circumstances, what impact taking or not taking a step will have on free speech and will consider a range of factors including compliance with any legal/regulatory requirements, BU's ability to maintain learning, teaching, research and the necessary supporting administration / institutional resources and any physical safety or security considerations.

Step 3: If no such reasonably practicable steps are available, BU will consider whether any restriction or regulation of the speech is prescribed by law and proportionate under the Convention (see section 1.4 above).

- 6.2 BU will balance its Secure Duty with any other relevant legal and regulatory obligations (including in respect of the Equality Act 2010 (discrimination,

harassment, victimisation and the PSED), the Prevent duty and Office for Students Condition of Registration E6: harassment and sexual misconduct).

- 6.3 BU will take account of all issued relevant guidance including the Office for Students [Regulatory advice 24: Guidance related to freedom of speech](#). This guidance also includes an illustration of the three-step framework set out above along with worked examples of how BU can meet its Secure Duty.

7. PROCEDURES RELATING TO DESIGNATED ACTIVITIES

- 7.1 This section of the Code applies where any individual or body subject to the Code (see section 2.2) wishes to hold an event on BU premises (see sections 2.3 – 2.4) and the event raises or has the potential to raise freedom of speech issues and therefore engages the Designated Activities procedure.

- 7.2 Designated Activities are those meetings or other events which could possibly:
- Compromise freedom of speech within the law or academic freedom within the law; or
 - Incite others to commit a violent or illegal act or intend to cause a breach of the peace; or
 - Include the denial of the opportunity at the event to express an opposing opinion; or
 - The views likely to be expressed by any speaker and/or the organisation represented are for the promotion of any violent or non-violent extremism or illegal organisation or cause (including organisations listed on the government's list of proscribed terrorist groups or organisations).

An event or meeting may be a Designated Activity even if the speaker is an employee, visiting academic or BU student.

- 7.3 The organisers of a Designated Activity shall ensure that one person, normally a student or employee of BU or a member of the relevant SUBU society, is appointed as principal organiser ("Principal Organiser").
- 7.4 At least 15 working days before the Designated Activity, the Principal Organiser must complete a Designated Activity Request Form as set out in Appendix 1 and send this to the Chief Operating Officer at FoS@bournemouth.ac.uk. The Principal Organiser must not advertise or promote internally or externally the Designated Activity at that point.
- 7.5 The Principal Organiser can be required to provide such other information as may reasonably be required by the Chief Operating Officer.
- 7.6 If a Designated Activity Request Form has not been submitted to the Chief Operating Officer but a member of staff designated to accept room bookings on behalf of BU believes that an event could be a Designated Activity, as defined in section 7.2 above, they can require a Principal Organiser to be appointed and that a Designated Activity Request Form is sent to the Chief Operating Officer at FoS@bournemouth.ac.uk.

- 7.7 The decision to approve a Designated Activity or not and/or whether approval should be granted subject to conditions will be made by the Chief Operating Officer who will, in carrying out its Secure Duty for any Designated Activity, adopt the three-step framework outlined in Section 6 and take account of the following:
- a) the need to promote freedom of speech within the law and academic freedom within the law in accordance with the Code;
 - b) the specific requirements of the Higher Education and Research Act 2017 as amended by the Higher Education (Freedom of Speech) Act 2023;
 - c) the Counter Terrorism and Security Act 2015;
 - d) any other relevant legislation or regulatory guidance; and
 - e) the maximum capacity of the areas available for the event and other safety factors as advised by BU's Head of Health, Safety & Wellbeing.
- 7.8 To ensure that the activity can take place safely within the law, the Chief Operating Officer will communicate openly and transparently with the Principal Organiser and other relevant parties. The Principal Organiser is also required to communicate openly and transparently to support informed decision-making.
- 7.9 The Chief Operating Officer may, after full consideration of possible mitigating actions, decide there are grounds for refusing a request. These may include, but are not limited to:
- a) that the speaker has links to or represents a proscribed terrorist group or organisation or it is reasonably believed that the speaker is intending to invite support for such an organisation or its activities; or
 - b) that, having considered input from BU's Head of Health, Safety & Wellbeing and, where appropriate, other relevant parties (including, but not limited to, the Facilities team, Faith & Reflection Team, Students' Union, police, DfE Prevent Regional HE/FE Co-ordinator, community groups and other Institutions who are known to have previously hosted or refused the speaker) it is believed to be in the interests of public safety, the prevention of disorder or crime or the protection of those lawfully on BU's premises that the event does not go ahead; or
 - c) that following appropriate input from relevant parties, the consideration of available evidence and the requirement to promote freedom of speech within the law, the Chief Operating Officer has concluded that reasonable steps cannot be taken to prevent the speaker from:
 - a. expressing views that are contrary to the law; or
 - b. encouraging, assisting or committing criminal acts; or
 - c. putting forward views or ideas that are likely to unlawfully infringe the rights of others or place BU in breach of its equality obligations.
- 7.10 The lawful expression of offensive, objectionable or controversial ideas or opinions will not, in and of themselves, constitute reasonable grounds for refusing a request to hold a Designated Activity.

- 7.11 If the Chief Operating Officer has approved the Designated Activity, the Principal Organiser and any other organisers shall ensure that any conditions imposed by the Chief Operating Officer are complied with. Such conditions will be reasonable and proportionate and aimed at enabling the event to proceed safely within the law and will be guided by the Office for Students [Regulatory advice 24: Guidance related to freedom of speech](#). Conditions may include, but are not limited to:
- a requirement for a limited number of tickets to be issued;
 - that an adequate number of suitable stewards or security staff are made available;
 - the relocation of the Designated Activity to an alternative venue;
 - the admission (or non-admission) of members of the public;
 - checking the identity of persons attending the Designated Activity;
 - the admission or exclusion of press, television or broadcasting personnel;
 - filming/recording an event to deter the use of unlawful speech;
 - imposing conditions on how the event is advertised;
 - requiring sight of any promotional materials before the event;
 - restricting what materials are available at the event;
 - making a translator available to BU staff attending the event;
 - appointing a named individual as chairperson to facilitate the event and ensure that more than one viewpoint is heard;
 - requiring a speaker with an alternative viewpoint to speak at the event to provide a balanced debate;
 - training staff involved in the event on how to facilitate well-balanced debate;
 - supporting and encouraging SUBU and the student body to host debates;
 - providing any additional information which is requested; and/or
 - postponing the event if necessary to enable one or more of the steps above to be taken.
- 7.12 Security arrangements would normally be at BU's cost and organisers would not be expected to contribute to the costs of security other than in exceptional circumstances. BU considers the following to be exceptional circumstances:
- a) Where event organisers have not followed the procedures set out in the Code and in the Designated Activity Request Form and/or have not given the required notice; and/or
 - b) Where the estimated cost of security exceeds £5,000, this level of provision and cost will be discussed with event organisers in order to determine whether the event can take place safely and how that can be funded. This cost is considered exceptional by reference to the fact that BU has never had an event where security costs have exceeded £5,000.
- 7.13 The decision of the Chief Operating Officer will be made within five working days of their receipt of the Designated Activity Request Form (or, where requested, the receipt of any additional information) and will be notified in writing to the Principal Organiser. The Designated Activity may only be

advertised or promoted internally or externally if permission for it to take place has been granted.

- 7.14 If a Designated Activity is approved, the Principal Organiser must inform the Chief Operating Officer if there is a material change to an event booking. Such changes may include, but are not limited to:
- a different speaker;
 - the intended audience;
 - the number of people expected to attend the event;
 - a different venue;
 - a different sponsor;
 - substantive changes to the speaker's speech;
 - substantive changes to any promotional material.
- 7.15 Details of any material changes to event bookings should be sent by email to the Chief Operating Officer immediately upon the Principal Organiser becoming aware of any such changes.
- 7.16 The Chief Operating Officer may amend any conditions imposed or cancel a Designated Activity in light of changed circumstances or factors not known at the time of reviewing the application.
- 7.17 The Principal Organiser shall be responsible for ensuring the speaker and the Chair of the Designated Activity are aware of the Code and any associated policies together with any conditions imposed by the Chief Operating Officer that they need to know.
- 7.18 The Chair and Principal Organiser of the Designated Activity have a duty to ensure that, as far as possible, the audience and the speaker act in accordance with the law during the course of the Designated Activity. In the case of unlawful or potentially unlawful conduct by members of the audience, the Chair or Principal Organiser is required to give appropriate warnings and, should such conduct continue, require the withdrawal or removal of the persons concerned by stewards or security personnel. If such persons are students or employees of BU, they may be subject to disciplinary proceedings under the BU's regulations. If the speaker infringes the law, the Chair or Principal Organiser may curtail or end the Designated Activity. The Chair or Principal Organiser is responsible for calling for police assistance (via 222) to prevent serious disorder.
- 7.19 If the Chair and Principal Organiser decide that they do not wish to comply with the conditions set by the Chief Operating Officer, they may not hold their event on BU's premises (or online) and they may not hold it away from BU's premises if it references BU, Bournemouth University, SUBU or its Clubs & Societies in any way (including, but not limited to using the name or branding of any of these organisations).
- 7.20 In the event that the Principal Organiser of any event wishes to appeal against a decision of the Chief Operating Officer such appeal is to be made in writing to the Clerk to the University Board, (boardclerk@bournemouth.ac.uk) on

behalf of the University Board, whose decision shall be final. The appeal should be lodged at least five working days prior to the date on which the Designated Activity is due to take place.

- 7.21 Where the Designated Activity raises a complex issue, it may take longer than five working days to make a decision, particularly where external legal advice is required. It may therefore be necessary to postpone the Designated Activity pending a decision being communicated by the Clerk to the Board. The Principal Organiser will be informed if this is the case.

8. COMPLAINTS AND CONCERNS

- 8.1 Staff wishing to raise complaints or concerns about compliance with this Code of Practice should do so following the Staff Grievance Policy and Procedures. Students wishing to raise complaints or concerns about compliance with this Code of Practice should do so following the Student Complaints Policy and Procedures.
- 8.2 Third parties who are not staff or students should raise a complaint or concern about compliance with this Code of Practice in the first instance with the Chief Operating Officer at FoS@bournemouth.ac.uk. Where the complaint or concern relates to a decision made by the Chief Operating Officer it may be raised with the Clerk to the Board on behalf of the Board by email to boardclerk@bournemouth.ac.uk.
- 8.3 Non-compliance with the Code may constitute a disciplinary matter for staff or students.

9. REFERENCES AND FURTHER INFORMATION

- 9.1 The principal legal requirements relating to freedom of speech and academic freedom are placed on universities by the [Higher Education \(Freedom of Speech\) Act 2023](#) which amends the [Higher Education and Research Act 2017](#) (and replaces the duty previously imposed on universities under s.43 of the [Education \(No. 2\) Act 1986](#)).
- 9.2 There are other legislative requirements and/or considerations that may be relevant in particular cases and which must be taken account of when considering issues of free speech and academic freedom. These include, but are not limited to:-
- 9.2.1 [Human Rights Act 1998](#) (which brings the European Convention on Human Rights into direct effect in national law);
- 9.2.2 [Counter-Terrorism and Security Act 2015](#) (including the Prevent duty);
- 9.2.3 [Equality Act 2010](#);
- 9.2.4 the Terrorism Acts ([Terrorism Act 2000](#) and [Terrorism Act 2006](#));

9.2.5 the Public Order Acts ([Public Order Act 1986](#) and [Public Order Act 2023](#));

9.2.6 [Protection from Harassment Act 1997](#);

9.2.7 [Communications Act 2003](#); and

9.3 Other statutory requirements relating to the holding of processions and assemblies.

10. APPENDICES

Appendix 1 [Link to Designated Activity Request Form]