

Elizabeth School of London

5th Floor, Exchange Tower, 1 Harbour Exchange Square, London E14 9GE

P: +44 (0) 7999371100 | **E:** quality@esl.ac.uk **W:** www.esl.ac.uk

Code of Practice on Freedom of Speech



Approval Control

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1. Introduction

1.1 ESL is committed to upholding academic freedom of inquiry in its teaching and research and ensuring that free and open discussion can occur in an atmosphere of tolerance. ESL policies focus on creating an environment that permits freedom of speech and expression and actively fosters a culture of respect for the rights of others. This culture is not just a goal but a shared responsibility that we all uphold.

1.2 ESL is committed to protecting and promoting academic freedom and free speech. We are committed to taking reasonably practicable steps to secure these freedoms within the law and to advance an environment that encourages questioning and debating within the legal framework.

1.3 ESL has adopted this Code of Practice to ensure that freedom of speech within the law is promoted and secured for:

- a) Staff of ESL
- b) Members of ESL
- c) Students of ESL, and
- d) Visiting Speakers
- e) Board of Governors

1.4 Section 43 of the Education (No 2) Act 1986, as updated by the Higher Education and Research Act 2017 and the Higher Education (Freedom of Speech) Act 2023, set out a positive and proactive legal obligation on HEIs to promote and protect freedom of speech.

1.5 This duty includes a responsibility to ensure that the use of ESL premises is not denied to any individual or group on the grounds of that individual's or any group member's beliefs or views or on the grounds of the group's policy or objectives.

1.6 Other legal obligations, however, may limit certain freedoms to protect the rights and freedoms of others. Still, the governing bodies of ESL must have particular regard for securing free speech and academic freedoms.

1.7 The Academic Board Chaired by the Provost will be responsible for policy issues connected with the interpretation of this Code and will consider matters relevant to it as circumstances require. The Academic Board will review the Code and recommend any significant changes if needed. BOG will approve the Code and ensure its obligation of oversight.

1.8 BOG will ensure that ESL does not enter into a non-disclosure agreement with a person in relation to a relevant complaint made to the provider by the person.

- "non-disclosure agreement" means an agreement which purports to any extent to preclude the person from:
 - (a) publishing information about the relevant complaint or
 - (b) disclosing information about the relevant complaint to any one or more other persons;
- "relevant complaint" means a complaint relating to misconduct or alleged misconduct by any person;
- "misconduct" means:
 - (a) sexual abuse, sexual harassment or sexual misconduct, and
 - (b) bullying or harassment not falling within paragraph (a).

2. Scope

2.1 This Code of Practice applies to all staff, students, and visitors to ESL and any other person in attendance at any meeting or other function duly authorised to take place on ESL premises, or ESL's formal online platforms, wherever situated, of which the ESL has title or possession, by freehold, leasehold, licence or otherwise. The Code also applies as appropriate to outside organisations hiring ESL premises and to public meetings held on the premises.

2.2 This Code of Practice applies to all meetings and events (including lectures, seminars, committee meetings, conferences and musical and theatrical performances, whether live-streamed or recorded) and any other activities (referred to as "events"), including online events proposed, planned or due to take place on any ESL premises wherever situated, of which the ESL has title or possession, by freehold, leasehold, licence or otherwise.

2.3 The general principles set out in this Code of Practice apply to all demonstrations, events, and meetings held on campus, whether including an external speaker or not. They also apply to all events held off the ESL campus or premises organised by ESL, funded, or branded, including events organised by individuals, groups, or societies using the ESL name or resources.

3. Principles

3.1 ESL is obligated by its statutory duties through the Objects in Part 2 of its Articles of Association to preserve freedom of speech and academic freedom as:

2.3 To safeguard academic freedom and promote research, scholarship, and teaching excellence. Academic staff shall have freedom within the law to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions without placing them in jeopardy of losing their jobs or privileges.

2.7 To secure the freedom of speech subject in compliance with the ESL's equality, diversity and inclusion policy and any other institutional policies and legislative or regulatory requirements.

3.2 ESL through its Governance Framework, enshrines and promotes, through primary responsibilities of the Board of Governors, the Academic Freedom and Freedom of Speech as:

- Protect academic freedom and ensure the integrity and quality of teaching, learning, and research.
- Ensure that freedom of speech within the law is secured throughout ESL by implementing and upholding policies that promote open dialogue, respect diverse perspectives, comply with legal requirements, and promote the importance of freedom of speech and academic freedom.

3.3 Freedom of thought and expression, academic enquiry, thought and speech are the values underpinning ESL culture. These values are fundamental to our purpose of fostering an environment of intellectual curiosity, open dialogue and continuous learning.

3.4 The entitlement to freedom of expression and freedom of assembly is enshrined in Articles 9, 10, and 11 of the European Convention on Human Rights, and is further reinforced by Schedule 1 of the Human Rights Act 1998. These articles also delineate the obligations and duties necessary for the exercise of these freedoms as:

"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"

Consequently, while the law does protect freedom of expression, speech, and assembly, it is important to note that these rights are not absolute and may be subject to certain limitations or responsibilities as outlined in the relevant legal provisions.

3.5 In considering whether or not to allow a particular event to take place on its premises or elsewhere under its authority, ESL will have regard for legislative provisions that explicitly define unlawful activity.

3.6 The following activities may be considered unlawful under various legislative provisions, including, but not limited to, the Equality Act 2010 (incorporating protected belief, harassment, and the public sector equality duty), the Public Order Act 1986, and the Counterterrorism and Security Act 2015. Examples of unlawful activity include:

- Expression of racial or religious hatred or incitement to such hatred or violence or other criminal acts.
- Direct support of an organization that is proscribed in the UK.
- Contravention of counter-terrorism legislation.
- Contravention of health and safety legislation.
- Breach of the peace.
- Other Public order offences.

3.7 Protests against an event should be carried out peacefully, respecting the rights of others, including the right to Freedom of Speech. It is imperative that protests do not impede the scheduled progress of an event. Protests should not prevent an event from taking place as expected.

3.8 ESL must take decisive action to manage and mitigate potential risks concerning an event or protest.

3.9 ESL is committed to establishing and implementing necessary protocols to enable all individuals involved to report any suspected hate crimes, harassment, threats, or intimidation. All reports will be promptly and comprehensively investigated, and appropriate actions will be taken in response, including involving law enforcement and other relevant external organisations when necessary. This commitment is supported by the ESL's policy on preventing bullying, harassment, and sexual misconduct and Dignity Policy.

3.10 The articulation of unpopular, contentious, or thought-provoking opinions that cause offence does not, if legal, provide a basis for rejecting or revoking an event or a guest speaker.

3.11 Any concerns regarding adherence to this Code of Practice or general procedures related to freedom of speech will be addressed through the appropriate channels. The conduct of individuals on campus is governed by the Student Code of Conduct or the Staff Disciplinary Procedure.

3.12 ESL will collaborate with staff, the Student Experience Advisory Group (SEAG), students, and law enforcement agencies to fulfil its legal obligations and ensure campus safety and security. Additionally, as defined by law, ESL will guarantee that staff and students can work without being hindered by hostility, offensive behaviour, or intimidation.

3.13 When legally obligated, ESL may share data with third-party organisations only to uphold this Code of Conduct.

4. Roles and Responsibilities

4.1 The Provost of ESL, as Chair of the Academic Board, is ultimately responsible for overseeing, interpreting, and implementing this Code under delegated authority by the Board of Governors.

4.2 The Provost must provide the Board of Governors with a report on any substantial infringements of, and deviations from, the provisions outlined in this Code.

4.3 The implementation of the operations of the Code shall be the responsibility of the Head of Campus Operations.

4.4 The ESL Procedure for the Management of Events outlines roles and responsibilities regarding considering events that include external speakers.

5. Procedures

5.1 When booking an event, all staff members shall follow the "**Procedures for the management of events that include an external speaker**".

5.2 SEAG shall follow the procedure described in "**Guidelines to organise an event with external speaker**".

6. Decision-Making to Postpone, Withhold and Revoke the Authorisation for an Event.

6.1 The Code of Practice ensures that ESL complies with its legal obligations to uphold freedom of speech while fulfilling other legal requirements and statutory duties.

6.2 ESL has the authority to determine that logistical factors, such as expenses, insufficient time to prepare, or challenges in ensuring the required level of security, may necessitate alterations, limitations, delays, or, in rare cases, cancellation of an Event.

6.3 Permission for withholding or withdrawing will only be granted in exceptional circumstances where it is unfeasible to ensure freedom of speech within the bounds of the law. This action will be preceded by consultations, whenever possible, with the Principal Contact and relevant internal and external parties as determined suitable by the Head of Campus Operations. The Head of Campus Operations retains sole discretion in making this determination.

6.4 Appeals against the decision of the Head of Campus Operations could be made in writing to the Provost, who is the final authority in deciding the appeals.

6.5 The Provost's decision on appeals will be reported at the Academic Board meeting and the next Board of Governors meeting.

7. Review, Amendments, Monitoring

7.1 ESL acknowledges its duty under subsection 3 of section 43 of the Education (No. 2) Act 1986 to issue and keep a Code of Practice on Freedom of Speech up to date. The Board of Governors shall, therefore, receive a report on the operation of the Code and recommendations for revision. This report shall be consulted with the Academic Board before consideration by the Board of Governors.

8. Advice and Guidance

8.1 For assistance regarding the application of Code to an event or speaker, ESL staff, students, and other Members of the ESL should consult Bookings, Timetabling and Conferences Manager. The security manager at ESL can provide additional assistance in hosting the event.

9. Legal context and ESL Statutes, Policies and Procedures.

The code is supported by external legal requirements and an internal framework consisting of statutes, policies, and procedures. Appendix 1 details the main legal elements, while Appendix 2 outlines the relevant statutes, policies, and internal procedures.

10. Appendix 1.

1. Section 43 of the Education (No 2) Act 1986, updated by the Higher Education and Research Act 2017 and the Higher Education (Freedom of Speech) Act 2023.
2. The Equality Act 2010.
3. The Public Order Act 1986.
4. The Counterterrorism and Security Act 2015.
5. Human Rights Act 1998.

11. Appendix 2

1. Procedure for the Management of Events that include External Speakers
2. Guidelines to organise an event with an external speaker ESL.
3. Articles of Association.
4. Governance Framework
5. Student Disciplinary Code and Procedure.
6. Safeguarding Policy

7. Prevention of Bullying, Harassment and Sexual Misconduct Policy.
8. Staff Disciplinary procedure
9. Equality, Diversity and Inclusion Policy
10. Dignity Policy
11. Health and Safety Policy