



**FSU**  
FREE SPEECH UNION

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Professor Lisa Roberts  
Vice-Chancellor  
University of Exeter  
Northcote House  
The Queen's Drive  
Exeter EX4 4QJ

15 June 2021

Dear Professor Roberts,

### **Accreditation of courses in the College of Social Sciences and International Studies**

I am writing to you in my capacity as General Secretary of the Free Speech Union, a non-partisan, mass membership public interest body that stands up for the speech rights of its members and campaigns for free speech more widely.

I was concerned to read in the [Telegraph](#) on 15 May 2021 that the College of Social Sciences and International Studies (SSIS) requires academics who propose new or revised courses to integrate content that moves away from a 'white, Eurocentric curriculum'.

This requirement is, in our view, vulnerable to legal challenge under employment law and/or public law. We believe the College should avoid the unwelcome possibility of litigation by doing the right thing, which is to respect the academic freedom of its members.

### **The SSIS coversheet**

At or around the start of 2021, the College introduced a new coversheet to be completed by academic staff seeking to design new modules or withdraw or amend existing ones. We understand academic staff were not consulted on this change.

The final section of the coversheet reads as follows:

#### ***For new modules and amendments to existing modules only***

Our students are diverse in terms of gender, ethnicity, religion, nationality, age, sexuality, type of disability (or none), previous family tradition of education or learning, caring responsibilities, social 'class', and/or many other aspects.

Please reflect on how you have considered and integrated the following in your module design:

- Supporting equality and diversity through your choice of content, learning/teaching activities and resources, and assessment
- Promoting participation, retention, and achievement of all students, including those who are in a minority or otherwise marginalised group
- Providing a welcoming and safe learning environment
- Broadening epistemological and ontological horizons by moving away from a white, Eurocentric curriculum

We take no issue with the College's aim to ensure teaching is delivered in a fair and inclusive way. This letter concerns only the first and last items in the list, which we believe impermissibly dictate how academic freedom is to be exercised.

### **The Agreement on academic freedom**

On 31 July 2009, the University of Exeter agreed with the Exeter branch of the University and College Union the '[Agreement on academic freedom](#)'.

This document, which does great credit to the University, sets out various safeguards for its staff's academic freedom. Clause 5 reads:

The University will maintain the right of staff undertaking academic activities, as appropriate to their terms and conditions of employment ... to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching. They should not be forced to instruct against their own best knowledge and conscience or be forced to use curricula and methods contrary to national and international human rights standards. They should play a significant role in determining the curriculum.

The SSIS coversheet is plainly in breach of this Agreement.

The requirement that staff 'reflect' on and 'consider' the specified content is uncontroversial – an academic may reflect and then conclude that they think Eurocentrism and whiteness is irrelevant when it comes to the knowledge and understanding they seek to promote. However, the instruction goes further than this and asks that staff 'reflect on how you have ... integrated the following in your module design', which directs academics not only to reflect, but to do so after having reached a specific conclusion. The question of *whether* they have included the specified content is elided – it is presumed that they *have*, and all that remains to reflect on is *how* they have achieved the stipulated outcome.

This is no mere question of semantics, for in law (as in academia) context is everything. The politics of faculty life matter here. An early-career academic – indeed any academic eager to gain approval for a proposed module – will be well aware that this closed question instructs as much as it asks. To respond that they have decided not to move away from a 'white, Eurocentric curriculum' would be ill-advised and churlish.

Crucially, the veiled directive goes to the heart of academic freedom. Why should academics accept the presupposition that moving away from eurocentrism and whiteness will broaden epistemological and ontological horizons? This is a contestable proposition. It may be integral to an academic's

research, and the teaching she wishes to impart, that such a move may have the *opposite* effect – for instance, because she specialises in European area studies, or because she rejects the notion that the colour of person’s skin or their genetic ancestry fundamentally shapes how we know the world. That academic, despite being granted equal rights under the Agreement on academic freedom, is put on the back foot in the competition with colleagues to get modules accredited. She will either have to propose a module that goes against her ‘own best knowledge’, or will have to attack the foregone conclusion contained in the coversheet (and thereby the College authorities) before even putting forward her proposal.

This is, quite simply, unfair. The freedom to question contentious propositions should not be fettered in this way, not least at one of Britain’s leading universities.

It is for the College’s academics to determine, by free individual conscience or by collective deliberation, what broadens the horizons of our knowledge and what should be in the curriculum. The coversheet is likely to infringe the right to teach without interference, to force some of your academics to embrace ideas that they fundamentally disagree with, and to diminish significantly their role in determining the content of the curriculum.

### **The legal consequences of the coversheet**

We believe the University acted laudably in adopting the Agreement on academic freedom. The College’s backsliding on it is imprudent and exposes it to needless legal challenge.

### **The position in employment law**

The University, once again to its credit, has taken steps to embed the Agreement on academic freedom within its Ordinances. Section 18(1)(i) of the University’s [Statutes](#) provides that:

staff in the academic job families 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 privileges.

Ordinance 34, made under the Statutes, ensures that any grievance or disciplinary procedure concerning academic freedom must have regard to the Agreement. In turn, the employment contracts of individual academics are subject to the Statutes and Ordinances.

As such, the demands set out in the coversheet are unenforceable. That being the case, the College should take the necessary steps to ensure that it does not abuse its power over staff by making demands which are in excess of its actual contractual and institutional powers, and which give staff a misleading idea of how circumscribed their academic freedom is.

We believe the University should also seek legal advice on whether the coversheet, and any similar procedures in place across the University, constitute a breach of its contracts with individual academics.

The Agreement on academic freedom was a collective agreement made by the University with the UCU. We believe there are two ways in which the terms of the Agreement may be enforceable under the employment contracts of individual academics.

First, the University's [terms of employment](#) provide that: 'The University may from time to time amend the conditions of service through the Joint Committee for Consultation and Negotiation.' The Joint Committee is held between the University and recognised trade unions. If – and we do not have the full information before us – the Agreement was made through the Joint Committee, or its predecessor, its terms may form part of individual academics' employment contracts.

Second and alternatively, the terms of the Agreement may be incorporated into employees' contracts if it is customary practice between the University and recognised unions to incorporate collectively agreed terms into employees' contracts (see *Howman & Son v Blyth* [1983] IRLR 139).

In either case, the University has through its Ordinance 34, which governs employment contracts, held out that the Agreement is to play an integral role in disciplinary and grievance procedures between itself and employees. This demonstrates clear intent to embrace the Agreement as an element of the employment relationship (see *Alexander and Wall v Standard Telephones and Cables* (No. 2) [1991] IRLR 286, [49]).

Furthermore, clause 5 is indisputably apt for incorporation into an academic employment contract. It sets out clear, non-vague entitlements for employees that go to the heart of the relationship between the individual and the institution. Such a clause would clearly have been apt for incorporation as a contractual term. Indeed, it is clearly of a piece with the commitment to academic freedom already set out in the University's Statutes and incorporated into academic contracts.

We therefore respectfully suggest that the requirements of the coversheet have created a hostage to fortune for the University and may invite a claim, or several claims, for breach of contract. By far the most prudent way to avoid such an unwelcome outcome is for the College to accept that the Agreement is a binding commitment to honour principles that go to the core of its academic integrity.

### The position in public law

Although the relationship between the University and its academics is governed by employment contracts, as a public body it also has concurrent duties in public law regarding the lawful, fair and reasonable treatment of its office holders (see *R (Shoosmith) v OFSTED* [2011] EWCA Civ 642 [77] and following).

The Agreement is a clear and unequivocal promise that, in accordance with international standards set down by UNESCO, the University will protect substantive rights that are integral to its function as a public body. That promise must, we believe, be viewed in light of the University's binding statutory duty under section 43 of the Education (No 2) Act 1986 to take reasonably practicable steps to secure freedom of speech for its academic staff.

The promise made in the Agreement must also be viewed in light of the University's duty under section 6 of the Human Rights Act 1998. It provides that the University must not act incompatibly with rights set out in the European Convention on Human Rights. The jurisprudence on Article 10 of the Convention attaches particular importance to the protection of academic freedom. See: *Aksu v Turkey*, App nos. 4149/04 & 41029/04 (15 March 2012) [71]; *Erdoğan v Turkey*, App. nos. 346/04 & 39779/04 (27 August 2014) [40].

This was, in short, a promise to fulfil a statutory duty, and to protect the fundamental right to academic freedom, to the extent set out in the Agreement.

The promise gave rise to the legitimate expectation that this promise would be kept. The breach of that promise by the College – by interfering with the freedom to teach, forcing academics to teach against their own best knowledge and denying them a significant role in determining the curriculum – gives rise to two undesirable possible outcomes.

An academic in the College could seek judicial review on the ground that beneficiaries of the promise must be consulted before the promise is withdrawn. More seriously, an academic in the College could argue that the withdrawal of the promised substantive benefit was unfair and arbitrary, such that the High Court should, in the absence of any interest that overrides the legitimate expectation, enforce the original promise (*R v North and East Devon Health Authority, ex p. Coughlan* [2000] 3 All ER 850, [57]).

We respectfully suggest that the legal position, whether from an employment law or a public law perspective, should lead the College to what is anyway the obvious moral conclusion – the Agreement was a solemn promise, and it should be kept.

#### The position under the Equality Act 2010

As you will be well aware, as a public authority the University is subject to the public sector equality duty (PSED), which is ultimately enforced by the High Court. Section 149(1) of the Equality Act 2010 reads:

A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

We know that the University takes its equality duties as seriously as it does its freedom of speech duties – indeed, possibly even more so. It is therefore surprising that it seems to have disregarded the PSED in devising the SSIS coversheet.

The strong inference is that the University has failed to have due regard to the outcomes specified in the PSED. The policy disregards the possibility that academics of European descent will typically tend to be more likely to teach ‘Eurocentric’ subject matters. Those academics will be at a particular disadvantage – they will, compared to academics of non-European descent, be more likely to have module proposals rejected, or feel compelled to teach against their own best knowledge and understanding.

Moreover, there is an established history at Exeter of what seems to be casual anti-white racism. For example, this [open letter](#), signed by numerous senior academics, openly endorses theories of ‘white privilege’ and ‘whiteness as a position of structural advantage’. Worryingly, these theories of

collective 'white privilege' are not only espoused by senior academics, but leaders at the very top of your institution. Your own Senior Management Group ran a 'book club' on 'Me and White Supremacy: How to Recognise Your Privilege'. As you must know, Exeter continues to rank poorly in its Access and Participation rates amongst young people from white working class backgrounds who are the most disadvantaged across the University sector, and in an area of the South West characterised by extreme deprivation, and its casual anti-white racism could arguably have contributed to this.

Whether or not a claim for indirect discrimination is imminent or even likely is beside the point. What matters is that no decision-maker having due regard to the need to eliminate indirect discrimination would have imposed such a racialised policy. As such, we suggest the University take advice on whether the coversheet, and the wider trend of anti-white racism described above, are consistent with the duty at s.149(1)(a).

More pressingly, we suggest that no one who had due regard to the need to foster good relations between different groups would propose and maintain such inflammatory and racially divisive policies. It is wrong to anathematised any race. Your white colleagues may, entirely reasonably, feel slighted and put down, as well as embarrassed by their employer. As such, we suggest the University take urgent advice on whether the coversheet and other policies are consistent with the duty at s.149(1)(c).

### The future position

Should the University dispute the above analyses, it should consider that the new obligations proposed in the Higher Education (Freedom of Speech) Bill are also highly likely, once they become law, to result in regulatory intervention unless there is a change of course.

In particular, it is likely that the requirements of the coversheet, and other decolonisation initiatives, would be in breach of the proposed obligation to 'promote the importance of academic freedom for academic staff.' In particular, we wish to draw your attention to the very clear [guidance](#) issued by Gavin Williamson, the Secretary of State for Education, which was sent to all UK universities, including yours. It states that:

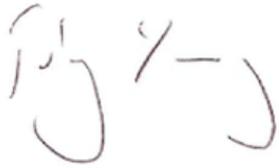
HEPs should not interfere with academic freedom by imposing, or seeking to impose, a political or ideological viewpoint upon the teaching, research or other activities of individual academics, either across the whole HEP or at department, faculty or other level. For example, a head of faculty should not force or pressure academics to teach from a their own ideological viewpoint, or to only use set texts that comply with their own viewpoint. This applies equally to contested political ideologies that are not associated with a particular political party or view, such as 'decolonising the curriculum'.

### Next steps

The Free Speech Union will support any academic at Exeter who challenges this College policy, or any other policy at the University that similarly interferes with academic freedom.

However, an adversarial approach is not the only way forward. We are willing to work with you in any way we can, without cost, to enable you to get ready for the new legal regime that will soon be in place.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Toby Young', written in a cursive style.

Toby Young  
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cc: Professor Wendy Robinson, Pro-Vice-Chancellor, University of Exeter  
The Rt Hon Michelle Donelan, Universities Minister, Department for Education  
The Rt Hon Kemi Badenoch, Parliamentary Under-Secretary of State for Equalities  
Mr Iain Mansfield, Special Advisor, Department for Education  
Lord Wharton, Chair, Office for Students  
Ms Nicola Dandridge, CEO, Office for Students  
Mr David Smy, Office for Students