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FREE SPEECH UNION

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Professor Andrea Nollent  
Vice Chancellor & CEO  
University of Law  
2 Bunhill Row  
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By email

3 March 2021

Dear Professor Nollent,

The Free Speech Union is a non-partisan, mass-membership public interest body that stands up for the speech rights of its members.

The purpose of this letter is to raise our concerns regarding recent changes to the University of Law's [Student Discipline Regulations](#). The new version of this document, Q.9.3.4, which was amended in August and approved in October 2020, includes a new section entitled Evidence and Supporting Documentation, comprised of paragraphs 3.10 – 3.16. This section appears to encourage, or will have the effect of encouraging, what is commonly called “sousveillance” – the practice of one student informing on other students, using, as paragraph 3.10 states, “multiple forms such as email threads, or screen shots of SMS messaging or other media”.

Paragraph 3.11 states that the University will go to great lengths to protect the identity of the complainant, ensuring they give the University “their consent to use the evidence with, or without, redaction”. However, it offers no such protection to the student complained of, whose identity may well be made public in cases where the communication in question was made with the expectation of privacy.

The Department for Education recently issued a command paper entitled [Higher Education: free speech and academic freedom](#) which sets out, in addition to proposed changes to the law, the best practice which the Department expects from higher education providers. In a [letter](#) he wrote to vice chancellors shortly after the paper was published, the Secretary of State for Education writes:

To aid this, our document also includes a set of Government expectations, which set out best practices which I believe all registered higher education providers should ideally be ensuring they are in accordance with. In advance of legislation, I would urge you to review your existing internal practices against these expectations and make changes where necessary.

And, of direct relevance here, the command paper itself stipulates:

The HEP should not encourage students to inform upon other students for lawful free speech, nor should they pay, or otherwise reward, students for doing so.

It is this point that paragraphs 3.10 – 3.16 of the *Student Discipline Regulations* appear to contravene. Though they do not offer to pay or reward students, they do promise to remove significant disincentives for any student who wishes to inform on other students for exercising their free speech. While this may protect the person making the complaint – a policy aim we accept is legitimate – it gives rise to a risk that the subject of the complaint will be more easily targeted, bullied, and harassed. This could result in obvious breaches of the University of Law’s [Bullying and Harassment Policy](#).

We know from experience the negative and unfair consequences that are likely to ensue from this new policy. The Free Speech Union regularly deals with cases of university students who have been reported and investigated for private messages, images, videos, group chats, or social media posts, which often consist of jokes, banter, expressions of personal belief or private remarks. In our experience, these communications are always lawful and in the overwhelming majority of cases are not intended to offend, insult or disrespect anyone, yet they become the substance of a complaint and subsequent investigation.

Often, screenshots of these communications will be put into the public domain, having been taken out of context, for the purpose of “doxxing” the authors. This can result in online harassment in the form of social media pile-ons.

If such malicious behaviour successfully leads to investigations and disciplinary actions by the University, it is likely to encourage future campaigns to harass, bully, doxx and cause damage to other students.

Cases brought to our attention by members at other institutions have demonstrated that liberal acceptance of social media evidence in disciplinary proceedings can lead to abuse of conduct rules, often by students with a grievance who wish to cause trouble for a fellow student. This is, as you will surely be aware, an inevitable consequence of any regime of mutual surveillance.

The University should take seriously the harms that its conduct rules are designed to prevent. The recent amendments to the regulations are likely to lead to the abuse and trivialisation of those rules for ulterior purposes, and as such they are incompatible with a serious stance against student misconduct, particularly when it harms marginalised and vulnerable students.

We wish to ensure that in providing protection for complainants, the University of Law does not encourage informing on other students for lawful free speech. On the contrary, we call on the University of Law actively to discourage doxxing, online harassment and bullying, which should never be relied upon by a university in its disciplinary processes.

We also believe that fostering a culture of informing on students in this way interferes with students’ free expression, usually by inhibiting the enjoyment of humour – a key element of student culture and life. While the position in privacy law is uncertain in relation to disclosure of social media messages, we suggest the University is imprudent to encourage conduct which any reasonable person would perceive as an invasion of their privacy.

More importantly, the University should not aspire to make its students miserable. This policy is highly likely to lead to an oppressive and unhealthy atmosphere. Students at the University of Law should not have to look over their shoulders for fear of who may be listening in.

The Free Speech Union takes seriously the new guidance from the Department for Education, and the new legislation proposed by the government. Given the potentially adverse consequences of failing to comply with the proposed new rules, we imagine the University of Law takes them seriously too.

In light of the Secretary of State's expectation that all English universities review their existing internal practices to ensure compliance with best practice, and in light also of the duty under section 43 of the Education (No. 2) Act 1986 to take reasonably practicable steps to secure free speech, we recommend that the University of Law amends paragraphs 3.10 – 3.16 of the Student Discipline Regulations as follows:

1. the University will only grant anonymity to complainants to the extent that is strictly necessary in order to prevent the University being liable for victimisation under section 27 of the Equality Act 2010;
2. where a third party publicly discloses social media messages which, though lawful, might reasonably cause serious harm to the University's reputation, the University shall require the disclosing third party to remove the disclosure from the internet, rather than punish the participants in the original social media exchange; and
3. the University will only rely on social media content in disciplinary proceedings where the content is reasonably likely to cause serious harm to the University's reputation or is likely, on the balance of probabilities, to constitute a criminal offence.

The Free Speech Union stands ready to provide whatever assistance it can in order to help the University of Law comply with best practice ahead of the imminent changes proposed by the Government.

Yours sincerely,

## **THE FREE SPEECH UNION**

cc: The Rt Hon Michelle Donelan, Universities Minister, Department for Education  
Mr Iain Mansfield, Department for Education  
Lord Wharton, Chair, Office for Students  
Ms Nicola Dandridge, CEO, Office for Students  
Mr David Smy, Office for Students