



FSU
FREE SPEECH UNION

THE FREE SPEECH UNION
85 GREAT PORTLAND ST.
LONDON W1W 7LT

FREESPEECHUNION.ORG

Matthew Dean
Authorised Officer
De Montfort University
Leicester LE1 9BH

30th March 2020

Discipline Investigation of [REDACTED]

Dear Mr Dean,

I am writing to you in my capacity as General Secretary of the Free Speech Union because it has come to my attention that you have investigated and disciplined one of our members – [REDACTED] – over an alleged breach of University regulations.

I am concerned that in this case the University's enforcement of its disciplinary code is contrary to the law protecting freedom of speech, and to DMU's own codes of practice.

The University is obliged to act in a way that is compatible with [REDACTED] right to freedom of speech under Article 10 of the European Convention on Human Rights. This extends to protecting his right to voice "controversial or unpopular opinions", in the language of the University's code on freedom of expression and academic freedom. The tweets [REDACTED] was disciplined for concerned an issue – contempt of court – which is relevant to the subject that he studies, i.e. journalism. As such, this matter falls within academic freedom of speech, which the European Court of Human Rights recognises as an enhanced form of the Article 10 freedom. The University's power to infringe the Article 10 right is therefore even narrower in this instance than it otherwise would be.

On what basis does the University consider that subjecting [REDACTED] to a formal and intimidating process of investigation, and then disciplining him, which is an infringement of his free speech, is justifiable on this occasion? The University must by law take account of relevant considerations in making decisions. Its own policies oblige it to take account of freedom of expression in policing students' use of social media. I can see no evidence that the University made any attempt to balance [REDACTED] free speech rights with other relevant concerns. If in fact it did, I invite you to disclose that consideration.

[REDACTED] tweets may have been disagreeable to some. That is the nature of opinions expressed on social media – of course some people will disagree. However, their content was not unlawful. His tweets did not fall foul of Twitter's Terms of Service, which not only prohibit unlawful speech but also restrict some forms of lawful speech. Does the University accept that its policies on free speech are therefore more restrictive than Twitter's Terms of Service? On what legal basis does the University seek to restrict speech still further?

Any objection the University, or anyone else, has to those tweets falls well within the scope of reasonable disagreement. DMU's application of its policy of preventing disrepute goes far beyond what such a policy reasonably needs to do in order to fulfil that legitimate aim. The reputation of a university cannot reasonably be said to be imperilled by its students engaging in robust debate. On the contrary, the suppression of such debate is much more likely to incur disrepute and opprobrium. DMU's formal investigation and disciplining of [REDACTED] is a disproportionate and unlawful infringement on his right to freedom of speech.

In addition, I do not accept that DMU can reasonably protect its reputation by preventing its students from voicing opinions which may be less well-formed or well-considered than the University would like. It may well be the case that [REDACTED] could have made his points more elegantly or thoughtfully. However, a university cannot legitimately pursue the aim of censoring its students to prevent them from making wrong or infelicitous statements concerning their discipline. Making mistakes and learning from them is an integral part of education. DMU's attempt to suppress them deprives academic freedom of speech of one its key purposes.

Your policy entitled "[Freedom of Expression and Academic Freedom](#)" states that it takes account of [section 43\(1\)](#) of the Education (N° 2) Act 1986. This section imposes on the University's governors a general obligation to take reasonably practicable steps to secure freedom of speech for its students. It is of no account that [REDACTED] made the statements he was investigated and disciplined for off campus on social media. Opening a formal investigation against a first-year student for comments which were well within the margin of lawful freedom of speech, and then disciplining them with the threat of further disciplinary action if he continues to engage in similarly robust debate, is overwhelmingly likely to threaten, rather than secure, freedom of speech and to foster a culture of self-censorship. To secure [REDACTED] freedom of speech in this instance, DMU need do no more than make a reasonable assessment of his comments and their likely impact on the reputation of the University, and weigh them against his freedom of speech. There was no need or justification for a formal investigation, and no need for any sanctions.

In addition, under section 43(4) of the Act, DMU is required to take "such steps as are reasonably practicable" to ensure compliance with its own freedom of speech code. The University is therefore, according to the terms of its own code, obliged to "work to widen debate and challenge, rather than narrow it". The University's "[Student Social Media Policy](#)" should be clear so that students such as [REDACTED] can know in advance what limitations apply to their freedom of speech. It is consistent with the law's protection of freedom of speech, and with the University's stated respect for it, that any ambiguity in the freedom of speech code should be construed in favour of a student seeking to rely on the rights protected by the code.

DMU's social media policy applies to the use of social media "when connected, or linked in some way, to [a student's] status as a student of the university, or when directly or indirectly referencing the university in any way". This should be construed narrowly, in favour of the free speech rights of your students. It imposes an excessively onerous burden on students to hold that merely naming the University in their social media biographies makes them ambassadors or representatives of the institution, with an obligation to regulate their speech in order to protect its reputation. I suggest that it would be reasonable and proportionate to request that [REDACTED] either remove the reference to DMU, or to clarify that all views expressed are his alone. Taking disciplinary action against him is unreasonable and disproportionate.

I remind you that freedom of expression is a human right. By infringing [REDACTED] right to freedom of expression, the University does a grave wrong to [REDACTED], and to its own reputation.

I have reviewed your policies and taken legal advice on them. I consider that they are unclear and uncertain – they make it difficult and at times impossible for a student to understand whether particular speech is lawful or

not, something of particular concern to [REDACTED] given that you have threatened him with dismissal from the University should he breach these policies. I invite you to clarify your position on the following sections of your "Student Social Media Policy".

At 2.3, the policy states that: "This policy applies to social media communications made both on public and private forums by students including those communications which directly or indirectly reference the University." What is the difference between a direct and an indirect reference to the University? Can you provide a definition that distinguishes between the two types of reference? Are there examples of direct and indirect references? Where in the policy should a student find these matters explained?

At 4.5, the policy provides a "non-exhaustive" list of matters that are "unacceptable and should never be posted". Why is this list non-exhaustive? Given that the University considers these matters should never be posted, presumably it is able to define what they are. Where is that definition?

The 5th example of speech that "should never be posted" reads as follows: "Inappropriate material, including but not limited to images, that is, or may be perceived to be threatening, harassing, discriminatory, illegal, obscene, indecent, defamatory, or hostile towards any individual, group or entity."

We invite you to clarify the following: what is the definition of "inappropriate" and where is [REDACTED] to find it? Is it different for images? What is the difference between material that is inappropriate and material that is perceived to be inappropriate? Whose perception is relevant here? Is that perception subject to a requirement of objective reasonableness? For example, if a person subjectively perceives material to be inappropriate, but there is no objective basis for that perception, is the material therefore contrary to the policy? Who should decide on that question?

The policy forbids material that is "...hostile towards any individual, group or entity". Does the policy define the term "hostile"? Is that definition based in law? If so, what is its legal basis?

I consider the following statement to be contrary to the policy: "I feel hostile towards people who vote Liberal Democrat, the supporters of and players for Bournemouth Football Club, and vegetarians. I feel very hostile towards people who are in all three categories." Do you agree that this statement breaches the policy's requirement not to express hostility? Please explain why. Is it the University's position that a student who used Twitter to express this or a similar opinion should be subject to disciplinary action?

The 6th example of speech that "should never be posted" states as follows: "Any other posting that constitutes, or may constitute, a criminal offence." What is the definition of something that "may constitute a criminal offence"? Is there a legal basis for that definition, and if so what is it? Is there a legal process to determine whether or not a particular form of speech "...may constitute a criminal offence"? For example, does the University consider that that question should be determined by the Crown Court, or perhaps by a declaration of the High Court? Or should the question be determined by the University? If so, what person or body at the University determines it, and by what process? Alternatively, is this issue to be determined by whether someone perceives the speech in question as something that "may constitute a criminal offence"?

At 4.7, the policy states "Students should also be aware that communications on social media are also subject to legislation, which aim to prevent interference with legal proceedings regardless of intent to do so." The University's position appears to be that students should know about this legislation, and I assume therefore that the University is fully aware of it and is able to define it. What is that legislation? Please answer this by reference to the specific provisions of specific sources of law, including UK acts of parliament and their schedules, statutory instruments, and guidance issued under statutory powers. Does the legislation include international law, for

example treaty law, legislation of the European Union, and law deriving from the judgment of the European Court of Justice?

At 4.9 of the policy, it states that: "Students, and student groups, e.g. DSU societies, must take particular care not to state or imply that their views are those of DMU when using social media, nor use the University logo at any time." Has a student complied with this if he or she does not use the University logo in their social media posts, and states that the views expressed are personal and do not represent anyone else? If not, what more must a student do in order to comply?

At 7.4, under the heading "Breach of the Policy", it states: "Any breach of this policy must be reported in line with DMU's Student Complaints Procedure." Who is subject to this duty to report? What should a person subject to the duty do if he or she is uncertain about whether the policy has been breached? For example, is there a University officer or employee who can explain this to students? What would amount to sufficient steps to discharge this duty?

At 8.1, under the heading "Monitoring", the policy states that the University will: "On occasion, provide guidance for students on how to stay safe online when using social media." Has the University done this since the policy was first created in June 2018? When in future does it expect to do so?

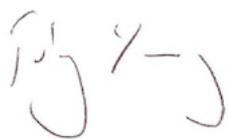
Does the University accept that it has a duty to enforce this policy? Does it accept that it is legally liable for breaches of its policy?

On a personal note, as someone who has earned a living from journalism for more than 30 years, I was disappointed to learn that you are seeking to curtail a journalism student's speech rights. Surely, one of the things you should be teaching your students is a respect for free speech and to not be afraid to express their own views robustly, and provide others with an opportunity to do so, even if those views are not what some people want to hear. As CP Snow, who edited the *Guardian* for 57 years, said: "The voice of opponents no less than that of friends has a right to be heard."

I was minded to legally challenge your decision to investigate and discipline [REDACTED], which I have been advised is contrary to the law protecting freedom of speech, but I have been dissuaded from doing so by him. However, you should be aware that if [REDACTED] receives any further sanctions for exercising his lawful right to free speech – by a journalism school, no less – the Free Speech Union will use all the resources at its disposal to legally challenge your actions.

I am copying this letter to Dr Andy Collop, the acting Vice-Chancellor of DMU, as well as the Secretary of State for Education and the Chair of the Office for Students.

Yours sincerely,



Toby Young
General Secretary
The Free Speech Union
toby@freespeechunion.org