



FSU
FREE SPEECH UNION

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Professor Robin Osborne
Faculty of Classics
Sidgwick Avenue
Cambridge
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26 August
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Dear Professor Osborne,

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.

This letter concerns the Faculty's [response](#) to the open letter on anti-racism, sent in August 2020, and the [Action Plan](#) accompanying the Faculty's response. We are concerned that the Faculty's Action Plan fails to take any account of the University Statement on Freedom of Speech and may, without remedial action, constitute an unlawful inhibition of academic freedom.

The Action Plan

We applaud the Faculty's desire to make sure it is a welcoming environment for students and academics of all races and ethnicities and there is no reason why taking steps to bring this about should be inconsistent with preserving academic freedom. However, conflict can and often does arise between these two aims and we are disappointed that the Faculty has, on the face of it, taken no steps to obviate these foreseeable conflicts.

Increasing diversity of seminar speakers

The Action Plan states:

Increase diversity of seminar speakers and topics by encouraging subject groups to consider diversity in their selection of speakers and topics for seminars.

The desired outcome is that: 'All Caucus seminars have at least some ethnic/cultural diversity annually by 2023.'

We are glad that this outcome is being sought by means of 'encouragement' only. We ask that the Faculty take special care to make sure that this 'encouragement' never tips over into any sort of requirement. In the case of student-run seminars, or seminars convened by early-career researchers, the Faculty should be especially alert to the possibility that

'encouragement' may be taken as a *directive*, taking priority over the convenor's discretion to decide who best should address the seminar group on the chosen topic.

Compliance with academic freedom protections could be safeguarded by saying that convenors should at all times take account of the aim to increase diversity, but the achievement of this goal should always be subject to convenors' discretion to invite speakers best qualified to speak according to their own judgement.

We note that the same principle should apply to point 12 in the Action Plan, which seeks to ensure that 'Bibliographies are more representative'. This requirement should also be tempered by the right of course leaders to determine the content of bibliographies according to their academic expertise.

Implicit bias training

The Action Plan states:

Ensure staff refresh E&D and Implicit Bias training every three years by monitoring within the appraisal process.

We warn the Faculty that the concept of 'implicit bias' is highly controversial and scientifically dubious. Where implicit bias training involves demonising people of particular ethnicities (e.g. white British), it is potentially unlawful.

Any requirement that staff, in completing the training, must answer follow-up questions 'correctly', even though they don't believe those answers to be true, is likely to be a breach of equality and human rights legislation protecting freedom of belief. In addition, any training that relies on concepts like 'whiteness' and 'white privilege' and holds all people of a particular race or ethnicity as in some way responsible for the suffering experienced by people of another race or ethnicity might open the University to claims of harassment and/or discrimination under the Equality Act 2010.

Organisations can mitigate these legal risks by choosing carefully the type of training offered. A body possessing serious intellectual credibility, such as the Faculty, may wish to consider the pitfalls of embracing training that has been shown to be of dubious scientific validity and avoid such training altogether. At the very least, the Faculty should make such training optional rather than mandatory and make it clear that any member of staff opting out will not be penalised by the Faculty in any way.

Harassment and microaggressions

The Action Plan sets out the following action and desired outcome:

Increase awareness of harassment and microaggressions and how to combat them by running 'Where Do You Draw The Line' and 'Race Awareness' sessions.

The Faculty is perceived as having zero-tolerance re. harassment of any kind; people feel comfortable reporting harassment and confident that their complaint will be sensitively handled; surveys report no harassment.

We are disappointed that the Faculty seems to have drawn no lessons from the 'Report+Support' controversy that beset the University in May of this year.

An institution that polices harassment and 'microaggressions' will always inhibit its members' freedom to think, speak and argue. Such inhibition can be lawful, even in an institution that prizes freedom of thought such as a university – the relevant legislation obliges the University only to take such steps as are reasonably practicable to secure free speech *within the law*. There is no basis to believe, however, that microaggressions can ever constitute harassment or speech that is *without the law*. As such, the Faculty may be acting unlawfully if it attempts to inhibit staff and students' right to speak freely in an effort to prevent microaggressions.

We are concerned also that neither the Action Plan nor the response to the open letter makes any reference to the caveats in the legal definition of harassment, as set out in the Equality Act 2010, which preserve the right to freedom of expression.

In light of upcoming new legislation on free speech at English universities, we suggest the Faculty urgently revisit the Action Plan and carry out the necessary balancing exercise between preserving academic freedom and preventing harassment.

Tripes reform

The Action Plan sets out the following action and desired outcome:

Ensure that the Tripes gives due prominence to addressing and engaging with the often uncomfortable place Classics has had and continues to have in the world

Students graduate with an appreciation of the ways Classics has been used and abused and an ability to recognise and critique such uses and abuses today, tackling the role of Classics in the support of racist and imperialist structures and discourse.

We are concerned that the desired outcome is an attempt to steer the Faculty's staff and students to take a particular side in an ongoing academic debate about the role of Classics in the history of the West's colonialism and imperialism. It fetters academic freedom by stipulating a (contentious) conclusion that must ultimately be arrived at.

To dictate the conclusions that students should come to after three years of study is inappropriately didactic and at odds with the purpose of a university, which is to equip students with the ability to think for themselves about a subject, not simply recite whatever happens to be fashionable within the discipline at any given moment. Dictating that students should take a particular side in an ongoing controversy is as irrational as saying that they must graduate with an appreciation that Sophocles was a better dramatist than Euripides. The Faculty would, we suggest, never make such a stipulation,

as it would clearly hinder the proper exploration of – and reflection on – ancient texts, which can only be intellectually profitable if undertaken freely.

To give one example of how this stipulation would inhibit intellectual discussion in the Classics, take Martin Bernal's *Black Athena*. When this was published in 1987, Bernal's allegations that classical scholarship was shot through with racist assumptions stimulated a rigorous debate. Critics reasonably and fairly argued that Bernal's assessment of the texts did not merit the conclusions he came to. It is impossible to see how your Action Plan would allow a similarly rigorous debate to take place now.

We suggest that the Faculty strike out this section of the Action Plan entirely on the grounds that it constitutes an unlawful infringement of academic freedom.

The law

As you will be aware, the University is bound by its 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.

In interpreting the duty set out at section 43, a court would be required to take account of the case law of the European Court of Human Rights, which grants a high level of protection to academic freedom as a form of freedom of expression protected by Article 10 of the European Convention on Human Rights. 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].

We respectfully suggest that the mitigatory steps set out above, or similar steps, are reasonably practicable steps that the Faculty should take for the purpose of securing free speech, and that failure to carry out such steps could constitute a breach of the duty under section 43.

The University must also ensure that the Faculty's Action Plan complies with its duty under section 6 of the Human Rights Act 1998 not to act incompatibly with Article 10 of the European Convention. Any interference with the right to academic freedom requires strict justification. Were any staff member to establish before a court that the Action Plan interferes with the right to academic freedom, by imposing institutional (and ideological) limitations on how teaching and research are to be carried out, we believe that the University would struggle to justify such interference. Inasmuch as the aim of the Action Plan is to safeguard equality and diversity, it is clear that less restrictive measures could be taken, with less detrimental impact on academic freedom, in order to achieve the same goal.

Finally, we remind you that the University's approval of an ambitious Statement on Freedom of Speech on 9 December is likely to have legal, as well as reputational, effect. The Statement promises to staff members:

The University of Cambridge, as a world-leading education and research institution, is fully committed to the principle, and to the promotion, of freedom of speech and expression. The University's core values are

‘freedom of thought and expression’ and ‘freedom from discrimination’. The University fosters an environment in which all of its staff and students can participate fully in University life, and feel able to question and test received wisdom, and to express new ideas and controversial or unpopular opinions within the law, without fear of intolerance or discrimination....

The University will ensure that staff are able to exercise freedom of thought and expression within the law without placing themselves at risk of losing their job or any University privileges and benefits they have....

[The] narrow exceptions to the general principle of freedom of expression [provided in law] are not intended ever to apply in a way that is inconsistent with the University’s commitment to the completely free and open discussion of ideas.

Quite aside from the reputational harm that may be done by reneging on the Statement, we believe that the University should be mindful that the Statement constitutes, in effect, a promise to staff to protect a fundamental human right. That promise gives rise to the legitimate expectation of staff that the University will promote freedom of speech, with only narrow exceptions, and foster an environment in which staff can question and test received wisdom. A failure to meet that legitimate expectation could result in a member of staff asking the High Court to enforce it by way of judicial review.

It may well be that such legal action by staff is unlikely. But we see no good reason why the University would wish to invite the odium of being seen to infringe a fundamental human right, when that outcome could be avoided by revising the proposed Action Plan. We believe that such odium would be, at the very least, unhelpful given the advent of Higher Education (Freedom of Speech) Bill.

Next steps

We would be grateful if you would reply setting out how the Faculty proposes to address the potentially unlawful aspects of the Action Plan as set out above.

In the event that the Faculty fails to amend the Action Plan, the Free Speech Union will consider all options open to it, including taking legal action in its own right or supporting a claimant bringing an action.

Yours sincerely,



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cc: Professor Stephen Toope, Vice-Chancellor