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FREE SPEECH UNION

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FreeSpeechUnion.org

Dr Michael Spence
Gower Street
London WC1E 6BT

17 December 2021

Dear Dr Spence,

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.

We have become aware of a concerning 'core' expectation placed on staff who do a 'grade 8' level job at University College London (UCL). As specified in your [Academic Careers Framework](#), these members of staff must not only "engage" with UCL's 'Liberating the Curriculum' initiative but in fact "demonstrate impact" of this engagement. Indicators are offered to help gauge what the term 'impact' means, including: "introduction of new or substantial revision of old modules in response to student feedback".

As explained below, it is our understanding that complying with this policy requires members of your staff to affirm certain political views. This has worrying implications for the staff's right to freedom of expression, of conscience, as well as their academic freedom and their right to equal opportunity and not to be discriminated against. We contend that this policy is not only harmful to the idea of the university (set out by you in a recent [statement](#)) as a "theatre" for the "ethical individualism" which is at the "core of liberal societies". but also potentially unlawful.

The 'Liberating the Curriculum' initiative

As defined on [UCL's website](#), 'Liberating the Curriculum' means: "Challenging traditional Eurocentric, male dominated curricula and ensuring the work of marginalised scholars on race, sexuality, gender and disability are fairly represented in curricula."

Further elaboration on the purpose and goals of 'Liberating the Curriculum' can be found on a [separate UCL web page](#). On this page it explains that the reason for "challenging" traditional "Eurocentric, male dominated curricula" is because they are both a cause and a consequence of unjust "structures" whereby "men tend to appoint men" and "whites appoint whites". It is stated that "radical" change is needed because, for example, "in 2015, there were 85 black professors out of 18,510 in the UK (0.4%) and the figure has not improved for many years". (Incidentally, this figure is misleading if it is intended to illustrate the claim that "whites appoint whites". According to Advance HE's 2018 [Staff statistical report](#), between 2003/04 and 2016/17 "the proportion of all staff

who were UK white steadily decreased (from 83.1% to 73.0%), while all other groups increased...” During this period “the proportion of all staff who were UK BME [black and minority ethnic] increased from 4.8% to 7.6%, and the proportion of non-UK BME staff from 3.8% to 5.5%”.)

It is obvious, despite a lack of straightforward acknowledgment, that the ‘Liberating the Curriculum’ initiative is an offshoot of broader political and ideological movements which maintain that recruitment systems in Britain’s universities were set up to perpetuate racial and sexual inequality, are inherently racist and/or patriarchal, and are largely responsible for a broad array of social ills. According to the UCL website, a key way to fight this system is to build a curriculum with less “dead white (able-bodied European) men” at its centre and ensure educators “check their privilege” and “acknowledge the prejudices baked into [their] field”.

Freedom of expression and academic freedom

You will be aware that, by virtue of section 43 of the Education (No 2) Act 1986, UCL is under an obligation to take reasonably practicable steps to secure freedom of speech within the law for academics, students and staff. This duty is embedded in UCL’s [Code of Practice on Free Speech](#) which states:

The Education Act (No 2) 1986 enshrines a positive and proactive legal duty on universities (Section 43) to promote and protect freedom of speech on campus, and states that the only constraints on the duty to secure freedom of speech are those imposed by the law. It is therefore for the law, not for institutions, to set limitations.

The extent of free speech within the law is determined by, *inter alia*, the Human Rights Act 1998, the European Convention on Human Rights (ECHR) 1950 and its associated case law. Notable for your purposes are Articles 9 and 10 of the (ECHR). The former protects the right to hold and manifest a belief, including the right not to be obliged to manifest a belief (*Buscarini v Marino*, App no. 24645/94 (1999)). The latter protects the right to freedom of expression, which the UK Supreme Court has ruled includes the right not to express a particular point of view (*Lee v Ashers Baking Company* [2018] UKSC 49).

The ‘Liberate the Curriculum’ policy indirectly curtails these rights of UCL staff members. Many academics will feel pressured to proclaim and demonstrate their allegiance with the ideology embedded in ‘Liberating the Curriculum’, either to secure a promotion to a grade 8 level job or to ensure they will be judged fit to remain at their current (grade 8) level. The policy is problematic in that it demands obeisance to a highly contentious political agenda. In some circumstances, this will require UCL staff to set aside their own best knowledge and conscience when debating, designing or engaging in the teaching of a relevant curriculum within UCL.

This ideological constraint is particularly chilling given the high importance placed on both academic freedom and political speech within the law. Indeed, Lord Nicholls in *R v BBC, ex parte ProLife Alliance* [2003] UKHL 23 stated that:

Freedom of political speech is a freedom of the highest importance in any country which lays claim to being a democracy. Restriction of this speech need to be examined rigorously by all concerned. (Echoed at European level: *Vajnai v Hungary*, App. no. 33629/06 (2010))

Equally, academic freedom, holds a prized place within European and domestic law. (On the former, see: 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].)

As you are aware, in accordance with section 13 of the Higher Education and Research Act 2017 and the [Office for Students regulatory framework](#), it is a condition for University registration that the provider commit to the principle that its staff will:

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 the jobs or privileges they may have at the provider.

We note that this principle is reflected, word for word, in UCL's [Charter and Statutes](#) (at 18.1(a)). However, it is evident that the policy in question contravenes this commitment and legal obligation, as explained above.

Discrimination and Equality of Opportunity

Finally, I would like to remind you that philosophical belief is a 'protected characteristic' for the purposes of the Equality Act 2010. As such, forcing academics to embrace beliefs they may fundamentally disagree with lest they be penalised by way of stagnation in their career or potentially even dismissal infringes the University's Public Sector Equality Duty (s.149(1)) which mandates that:

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

- a) eliminate discrimination...
- 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;

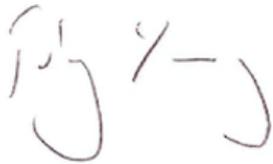
Higher Education (Freedom of Speech) Bill

As you will be aware, the Higher Education (Freedom of Speech) Bill is currently going through Parliament and is on course to pass into law next year. The 'Liberating the Curriculum' policy would, if enforced, directly contravene academics' right to exercise their academic freedom without adversely affecting "the likelihood of securing promotion or different jobs". There is no reason to suppose that this provision will not form part of the final Bill; and, in turn, there is every reason to believe that enforcing this policy could lead to UCL being sued under the Bill's new statutory tort.

Next Steps

Your own recent pronouncements in support of academic freedom were an encouraging sign that UCL will fight for the survival of academic freedom at UK universities. I trust that you remain willing to keep up that good work, and that this requirement for grade 8 level staff at UCL was passed in good faith and, potentially, without your knowledge. I trust also that you will take into account our concerns and take appropriate action at your earliest convenience. The Free Speech Union stands, as ever, ready to help pro bono to address any issues which may contravene free speech legislation. We recommend action be taken sooner rather than later given the advent of the Higher Education (Freedom of Speech) Bill.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Toby Young'.

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

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