



## Vice-Chancellor's Office

Professor Stuart N. McCutcheon PhD  
Vice-Chancellor

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Dr Sandra Grey  
Secretary  
Tertiary Education Union (TEU)  
Po Box 52066  
Kingsland  
AUCKLAND

*By email: Sandra.Grey@teu.ac.nz*

Dear Dr Grey

I write in response to your letter dated 22 June 2018. I must say that I was disappointed not to be given the courtesy of replying to you before a copy of your letter found its way to the media. That does not strike me as an act of good faith on your part.

Your allegation that we are seeking to silence debate at the University is simply not correct. In matters relating to employment, the obligations of both the employer and the employee are defined by the Employment Relations Act 2000, case law, the relevant employment agreement and the University's policies, which staff agree to abide by as part of accepting employment at the University. Your letter ignores the fact that the statement in our change management proposals to which you object applies only to staffing reviews. I also do not consider the wider references in your letter to be relevant to the employment context within which this issue has arisen.

During staffing reviews in particular, the employer requires staff to raise any concerns and provide feedback using the process of consultation specified in the University's collective agreements and in the Review and Restructure Policies and Procedures. We do not accept that the concept of academic freedom in section 161 of the Education Act automatically entitles any academic employee to comment publicly on matters that relate to either their employment or the employment of other staff. Section 161 clearly states that academic freedom must be exercised *within the law*. The use of the phrase "within the law" indicates that academic freedom is a right which has to be balanced against other interests and other legal obligations. This is particularly the case here when there is significant potential for impacted staff to have their privacy breached.

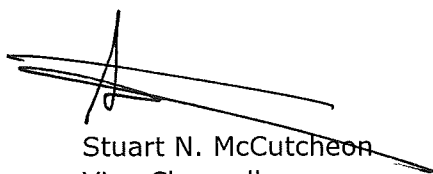
As the employer, I consider that both parties have legal obligations to each other in an employment context, which within the law limit the application of academic freedom. This is because the context of the engagement during a staffing review, for example, is the employer/employee relationship, and not a staff member's particular academic status or expertise. Information such as restructuring proposals are also provided as required by law and the University's policies. During any review, we treat staff equally and consult with them in accordance with the obligations stipulated by the law and by our policies, irrespective of their academic expertise and regardless of their classification as an academic or as a professional staff member (to whom the right of academic freedom is not extended by law).

For these reasons, I consider adverse public comment during restructuring to be contrary to accepted legal consultation practices, to breach an employee's statutory obligations of good faith to participate in employment actively and constructively, and to amount to behaviour that is contrary to the established obligations of loyalty and fidelity that an employee owes the employer. In this regard, I note that such obligations are not merely implied, but expressly set out in clause 2 of the Academic Staff Collective Agreement, titled "*Mutual Responsibilities*" which obliges staff to diligently and faithfully serve the employer.

Your letter indicates a view that any staffing reviews at the University ought to be the subject to wide-ranging public consultation. Such an approach would require changes to our policies and we would have to weigh up the benefits of greater openness against the consequences of public exposure for affected staff, increased uncertainty and the extended timeframes for consultation. No such changes to policy have been proposed and until there are any changes both staff and I as employer are required to adhere to policies as they currently exist.

For the reasons set out above, I do not accept that the University's expectation that staff abide by their statutory and employment obligations is contrary to law.

Yours sincerely



Stuart N. McCutcheon  
Vice-Chancellor

Cc: *Andrew Phipps, Director of Human Resources*  
*Ronni Cabraal, Legal Counsel & Employment Relations Manager*  
*John Morrow, Deputy Vice-Chancellor (Academic)*  
*Lisa Finucane, Media & Communications Manager*  
*Phillipa Muir, Partner, Simpson Grierson*