

Open letter to the Council of Cambridge University

17.11.2022

Dear Council members

Free speech protection failures

We are a newly-formed, non-partisan organisation whose goal is to mobilise alumni of UK universities and other Higher Education Providers to encourage high standards of compliance with institutions' obligations to protect the freedom of speech of their students, staff and visiting speakers. More information about AFFS can be found at www.affs.uk.

We are writing to all universities and their colleges to begin what we hope will be a cooperative and positive engagement about free speech. Our alumni love their universities (that is why we exist), so we do not want to cause difficulties for the sake of it. However, events at Cambridge have overtaken our plans to introduce ourselves in this way.

We are writing about the free speech and governance aspects of the Helen Joyce affair, with which you will be familiar.

What happened and legal implications

Events

Dr Helen Joyce was due to speak at an event at Gonville and Caius on 25 October, 2022. Dr Joyce holds what are often labelled as gender-critical views and is a respected author on related subjects. These are very unpopular with trans and other activists.

Professor Manali Desai, Head of Sociology, sent an email (the text of which is in the Appendix) on 25 October to students in the Sociology Department in which she described information which had been circulated by the Department about the event as "potentially harmful material" and apologised for circulating it; and stated a resolve not to share similar material again. She also indicated an intention to "raise concerns" with Caius "regarding events they are putting on".

Professor Desai's views were circulated in her capacity as Head of Sociology and carry weight as such. The University is legally responsible for her email as one sent by one of its senior academics in her official capacity.

From Professor Desai's email, AFFS understands that the Department regularly emails its students (and presumably others, such as staff) about upcoming events and the like.

The clear import of Professor Desai's email is that:

- a. She (or the management of the Sociology Department) regards certain viewpoints as unacceptable and not appropriate to be put in front of her recipients or indeed to be the subject of events organised by Colleges ("censored viewpoints") and that, by implication, holding these views is disapproved of within the Sociology Department. By describing these views in the way that she did, Professor Desai might well have contributed to the very hostile and intimidating environment experienced by a visiting speaker with a protected characteristic (see below), i.e. Dr Joyce.
- b. She (or the management of the Sociology Department) intends not to share information on upcoming events of certain natures which offend some students in her Department ("censored events"), whilst sharing information about other events, which may include events promoting views opposed to the censored viewpoints. This clearly discriminates against people who have censored viewpoints or want to put on what would be censored events.

If a university takes sides, in an area of passionate and severely polarised debate, with one contested position (here trans activists), it necessarily formally sets itself against the other position (here gender critical feminists). This state of affairs gives rise to a very obvious risk of disadvantaging (discriminating against) people who hold that other viewpoint, with consequences which we will discuss below. Professor Desai's email was inappropriate for a person in a senior management position within the University to have sent. Senior management need to stay above the fray and act as a calming, not a divisive, figures. As we explain below, they are also legally required to take action to secure freedom of speech, and taking one side of an impassioned debate puts them at risk in this regard.

Relevant law and requirements: implications

Education Act

English universities are obliged under **Section 43** of the **Education (No.2) Act 1986** (the "**Education Act**") to take such steps as are reasonably practicable to secure freedom of speech for its members, students and visiting speakers. This is a demanding requirement, limited only by reference to the speech being "within the law" and by what is reasonably practicable. It gives no discretion to universities as to the steps it takes. If a step is reasonably practicable, it must be taken.

Professor Desai's communication appears to be a clear breach of this duty, and therefore unlawful, by reason of its:

a. Treating certain viewpoints/events as not worthy of including/appropriate to include in a system designed for sharing information about upcoming events, thus meaning that the viewpoints she (or the Department) disapproves of receive no publicity through the Department whereas the events she does approve of (which would

include ones promoting viewpoints which are contrary to the censored viewpoint) do receive publicity.

b. Contributing to the creation of a hostile atmosphere for people who hold this viewpoint, not only making the event harder to hold and less attractive to attend but with the clear likely effect of deterring such people from holding (and even more expressing) this viewpoint, and deterring others who sympathise with them from expressing that support.

Public Sector Equality Duty

As a result of the landmark *Forstater*¹ case, it is now clear that Dr Joyce's views come within one of the various categories of "protected characteristics" for the purposes of the **Equality Act 2010** ("**Equality Act**"). (We attach a detailed memorandum explaining this and its implications further.) Whether or not Professor Desai's hostile comments about, and stated intention to relatively disadvantage, this protected viewpoint caused the University to contravene the more general provisions of the Equality Act, her actions are clearly contrary to the University's **Public Sector Equality Duty** under **section 149** of the Equality Act.

In particular, we ask: in what way do her public statements, made in her official capacity, comply with **Subsections 149(1) (b)** and **(c)**, which require that the University has due regard to the need to "advance equality of opportunity between persons who share a relevant protected characteristic [ie, Dr Joyce's views] and persons who do not share it" and "foster good relations between persons who share a relevant protected characteristic [ie, Dr Joyce's views] and persons who do not share it". To the contrary, Professor Desai's statements appear calculated to relatively disadvantage people with this protected characteristic (by inducing unpopularity for them and not sharing information about their events) and to create or inflame bad relations, implicitly describing them in a negative light and contributing to an atmosphere which is hostile to people with this protected characteristic.

Statement on Free Speech

The University's Statement on Freedom of Speech ("FS Statement") includes requirements that it expects its staff, students and visitors to be "tolerant of the differing opinions of others, in line with the University's core value freedom of expression" and expects all staff and students to "engage with intellectual and ideological challenges in a constructive ... and peaceful way, even if they find the viewpoints expressed to be disagreeable..." and states that "An active speaker programme is fundamental to the academic and other activities of the University and staff and students are encouraged to invite a wide range of speakers and to engage critically but courteously with them."

Professor Desai's statements and planned actions appear to be contrary to the FS Statement, and potentially in breach of her obligations under the University's Ordinances². Any pressure

¹ Forstater v. CGD Europe et al. (Appeal No. UKEAT/0105/20/JOJ): https://assets.publishing.service.gov.uk/media/60c1cce1d3bf7f4bd9814e39/Maya Forstater v CGD Europe and others UKEAT0105 20 JOJ.pdf

² Ordinances 2021, Ch. II, page 195, para 2.

from activists against Dr Joyce and the event with a view to forcing Professor Desai to make the statements she made also appears to be contrary to the FS Statement and (in the case of students) potentially in breach of their obligations under the University's Ordinances³.

The University's obligation under the Education Act to take such steps as are reasonably practicable to secure freedom of speech must include:

- a. having rules and requirements, including disciplinary procedures, to promote and require compliance with the FS Statement; and
- b. enforcing compliance with the FS Statement and with its rules and to take disciplinary action where staff and students fail to comply with the relevant rules.

Failure to resist activist pressure

It is clear from Professor Desai's email that the Department came under pressure from activists as a result of circulating information on the event, and sent the email to address issues raised or take steps requested by those activists. These activists, by demanding an apology and/or that the Department not circulate information on future censored events, acted contrary to the FS Statement and were pressurising the University to act unlawfully, as described above. If the Department had understood and complied with its (and the activists') free speech obligations, it would have explained these obligations to the activists and told them that they were in breach of the FS Statement and that they risked disciplinary action. See more on this below.

What Cambridge should do about this

We have written to Professor Desai and the Vice-Chancellor about this. We attach:

- Our letter to Prof Desai of 27 October, and
- Our emails with the Vice-Chancellor of 28 October and 14 November.

Neither we nor (so far as we are aware) the public have heard anything from Cambridge on this matter.

Assuming that the University is taking professional PR/media advice, it will already know that resolving a PR problem involves the following:

<u>Prompt action is vital</u>, especially where long-term damage is likely and could increase. The sooner this is got on top of, the better.

<u>Check your facts</u> – e.g., in this case, were mistakes made as alleged? If there have been mistakes, accept that honestly: "take ownership". The best solution cannot be achieved without that.

³ Ordinances 2021, Ch. II, page 196, para 2(c).

The cover-up is always more damaging than the original issue.

<u>Fix your objectives</u> – in this case, they must be to try to stop the problem from running on/spiralling, and in as undamaging a way as possible. This requires accepting that it will need to acknowledge that things could have been done better and state that any mistakes will be got right going forward and that it will raise its game regarding free speech protection.

The University has dug itself into an unnecessary hole: by not promptly addressing the issues raised and recognising that that it needs to admit errors and improve its performance as regards free speech protection and communicating the recognition, it is making what could have been a moderate embarrassment into something significantly more damaging, including the raising of governance concerns. It should stop digging.

We consider that the following needs to be done to address the problems which have arisen or been shown to exist.

- a. A careful review of recent events, if necessary with the benefit of quality legal advice if there are doubts about whether what we say is correct.
- b. Recognition that there have been failings to achieve the standards the University would want to achieve as regards free speech protection.
- c. Commitment to work to improve free speech protection in the University. This will involve:
 - a review and revision of the University's rules, procedures, practices and requirements regarding free speech protection ("Relevant Requirements") to ensure that they reflect and properly implement the University's legal and other obligations regarding free speech: it is our view that this is not currently the case;
 - ensuring that the revised Relevant Requirements include the specific recommendations we make below; and
 - ensuring that the University provides appropriate information and training regarding free speech protection and the Relevant Requirements. (The relevant issues seem to have arisen in large part because the Sociology Department did not appreciate what was required of it. This looks likely to be widespread.)

This review should be based on appropriate legal advice and could be done in conjunction with the work that is in any event going to be required to implement the enhancements of universities' legal obligations to protect free speech when the **Higher Education (Freedom of Speech) Bill** currently completing its passage through Parliament becomes law.

- d. The appointment of a Free Speech Officer to be the University's internal advocate for free speech protection. This is a reasonably practicable step, so is required pursuant to the obligation in the Education Act to secure free speech (see the detailed memorandum on this subject attached). The lack of such a person is perhaps one of the reasons why recent issues occurred as they did. This officer should be appropriately qualified and not subject to significant conflicts of interest. They will be appropriately empowered.
- e. Issuing a statement reflecting the above and retracting of Professor Desai's statement and apologising for it.

In order to comply with the requirements in the Education Act, the FS Statement and (where applicable) the Public Sector Equality Duty, the University needs to do the following in relation to behaviour by staff, students and other activists.

- a. Make compliance with the FS Statement and relevant law a clear requirement on all staff and students.
- b. Implement appropriate rules to prevent staff and students from contravening the law and the FS Statement, or pressurising the University or any of its staff to do so. This includes:
 - Rules against behaviour which is itself contrary to the Relevant Requirements or would be likely to result in the University or its staff acting in a way which is contrary to the Relevant Requirements. (We attach a memorandum giving examples of what minimum requirements in this regard should look like.)
 - In particular, rules against taking inappropriate steps to prevent or hinder, or exert pressure on others to prevent or hinder, viewpoints being expressed, events held or the like (legitimate disagreement, argument and peaceful protest being excluded).
- c. Itself comply with and enforce its Relevant Requirements properly. This means:
 - Ensuring that its staff and students understand the Relevant Requirements. It appears that the problems at hand were substantially caused by ignorance of their obligations by all relevant parties.
 - Not giving in to pressure to take steps which would involve it acting contrary to its own Relevant Requirements, including its FS Statement.
 - Not allowing activists to exert pressure on it to take inappropriate steps. This will involve telling activists who attempt to exert such pressure that they have contravened the FS Statement (see above) and may be subject to disciplinary action.

- Taking steps to enforce the Relevant Requirements when breaches occur, including the bringing of disciplinary proceedings where appropriate.

It is worth stating for clarity that the above requirements apply to all universities, and we will be advocating for them to be generally complied with: failure to do so will mean continuing failure to comply with their legal obligations, and an enhanced risk for those which do not, especially once their obligations have been pointed out to them.

What the Council should be doing

We are writing to the Council reluctantly, because the University's management have shown no sign of engaging with or addressing the issues we have raised.

We consider that, as Council members and officers with fiduciary or other duties regarding performance of your functions, you are obliged properly to ascertain the relevant facts and form a view on whether inappropriate and unlawful actions have been taken in relation this affair. If you conclude that this is the case, you need to work urgently to ensure that the University sets this right as we have explained. Not doing so will constitute a failure of governance. Any member of the Council who has strong views which could cause them not to view these issues dispassionately should recuse themselves from discussions of this matter.

We should say that we will be staying on this case. The current free speech bill in Parliament will amend the **Higher Education and Research Act 2017** so as to extend the responsibilities and powers of the Office for Students to free speech protection. While, obviously, those provisions will not apply in respect of past events, those events will be relevant to the University's future regulation.

Assuming that there is no change in the University's approach, AFFS will report what has happened, and the University's unwillingness to address real failings, to the appropriate authorities once the bill has become law. We will submit to them that University's current governance, rules and processes are defective in this regard and urge them to take appropriate action. It will also report these governance failures to the Charity Commission.

Having said all the above, we should state that our desire is to see the University to reach a sensible solution. We are happy to work with it to help it achieve this.

Yours

Alumni for Free Speech

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Appendix – text of Professor Desai's Email

Dear Students

We are very sorry for the distress caused to you by the circulated of an email promoting the Helen Joyce event. We have looked at our processes and realised we need an authorisation route for circulation of events to ensure that administrative staff do not inadvertently promote potentially harmful material, as happened in this case.

The event is being held by one of the Colleges and as they are independent charities the most we can do is raise concerns with them regarding events they are putting on. The University's LGBT network and LGBTQ+@Cam have written to the Master of Gonville and Caius expressing dismay at the event promoting this speaker.

The department is firmly committed to ensuring that we actively promote events that contribute to increasing awareness of

The department is firmly committed to ensuring that we actively promote events that contribute to increasing awareness of LGBTQ+ inclusion and I would like to reaffirm that the inadvertent circulation of this event via email was not intended to promote it. We will continue to learn from such incidents and ensure our processes are made more secure.

We understand that there is a welfare event within Gonville and Caius tonight as well as a gathering outside Great St Mary's at 6.30pm.

With best wishes

Manali Desai Head of Sociology