

Alumni for FREE SPEECH

Professor Clare Peddie
Proctor
University of St Andrews
College Gate
St Andrews
KY16 9AJ

proctor@st-andrews.ac.uk

BY EMAIL

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Dear Clare,

Free Speech compliance issues at the University of St Andrews

Thanks for taking the time to reply to my email. No apology is necessary. I appreciate that you will be very busy with both your academic and administrative work.

AFFS doesn't, in fact, believe that there is any potential conflict between equalities and freedom of speech. So long as within the law, freedom of speech is an unfettered right which is protected both by the **Equality Act 2010** and under the **Human Rights Act 1998**. Even though St Andrews (like all other Scottish universities) will not be directly affected by the UK government's **Higher Education (Freedom of Speech) Act** when it is enacted in the next few months, as a senior manager you will remain among those responsible for ensuring compliance with the legal obligations relating to freedom of speech to which the University is already subject. In relation to academic freedom, St Andrews is also, of course, subject to **Section 26** of the **Further and Higher Education (Scotland) Act 2005**.¹

You say that St Andrews has "*an unwavering commitment to academic freedom and freedom of speech*". While AFFS, of course, welcomes that statement, I have seen little evidence of any positive steps to put this commitment into practice. For example, in contrast to the 50 or so pages of EDI related material on the University's website (even ignoring the numerous links to other, generally third-party lobbyist's, sites and pages), I can find little or nothing there about freedom of speech or academic freedom.

I say this on the basis of work being done by AFFS to review university websites as part of our free speech league table project. As far as we can ascertain, St Andrews has: no statement of its legal obligations in relation to freedom of speech or academic freedom (including under

¹ <https://www.legislation.gov.uk/asp/2005/6/section/26>

the legislation referred to above²); no freedom of speech officer (or senior manager specifically responsible for compliance with freedom of speech obligations³); no freedom of speech code or statement of principles; no freedom of speech ordinance; no academic freedom statement, code or ordinance; and no formal process for dealing with freedom of speech or academic freedom complaints. There isn't even mention on St Andrews' website of its endorsement of the best known (and we would hope, uncontroversial) statements of the importance of institutional neutrality in upholding freedom of speech and academic freedom like those in the Kalven Report⁴ or, more recently, the Chicago Principles.⁵ I would be pleased to be told I am wrong but, as we have been unable to find reference to any of the above, I would be grateful if you could direct me to where any of the above information appears on the website or can otherwise be found. If there is, in fact, a free speech officer or a senior manager with specific responsibility for free speech compliance, please could you tell me who it is and provide me with their contact details?

You state your hope that: *"it is not considered controversial or extreme to wish to tackle the deep-rooted inequalities that exist within our society and impact upon members of the University community."* I am not entirely clear which particular *"deep-rooted inequalities"* you are intending to refer to here. The University is, though, not the government and has no responsibility for addressing these sorts of political issues (not least because views about them will inevitably differ among students and staff). In any event, speaking as an alumnus, I should have thought that St Andrews might concentrate on more obviously relevant inequalities affecting young Scots by making more places at the University available for the socially disadvantaged closer to home rather than selling increasing numbers of places to wealthy young Americans.

You also say that: *"Accreditation schemes, such as Advance HE's Athena Swan Charter and Stonewall's Workplace Equality Index, provide a framework within which we can reflect on and assess current policies and practices. It is, however, for us to determine what the key priorities are and what actions, if any, we wish to take to address them."* AFFS certainly agrees that it is the University's obligation to ensure its policies and practices are legally compliant. However, the apparent strong influence on the University's EDI department of external lobby groups and what appears to be a failure by its senior managers to exercise sufficient supervision over what appears on the EDI pages of its website, has, we believe, given rise to serious compliance

² This contrasts, for example, with the position at the University of Edinburgh (<https://www.ed.ac.uk/files/atoms/files/freedomofexpressionstatement.pdf>). Although Edinburgh's Statement of Principles is inaccurate and incomplete in a number of important respects, and its own recent record on freedom of speech is troubling, at least it has one.

³ In marked contrast to the University's employment of eleven members of staff whose focus (in whole or part) is on the University's EDI obligations and commitments (<https://www.st-andrews.ac.uk/about/edi/contact/>), including, most recently, its appointment of a Dr Rebekah Widdowfield as Vice-Principal, People and Diversity. Given her role, Dr Widdowfield is, of course, copied into this letter.

⁴ https://provost.uchicago.edu/sites/default/files/documents/reports/KalvenRprt_0.pdf.

⁵ <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>

issues. These are readily apparent from even a cursory consideration of the materials publicly endorsed by the University in the EDI section of its website.

These sorts of compliance failures are symptomatic of a growing and wider problem at our universities which ADFS will be continuously monitoring and bringing to the attention of alumni, donors and regulators due to its serious impact on universities' existing and future legal obligations relating to freedom of speech and academic freedom.

A common feature and cause of similar compliance failures is universities' involvement with external lobbyists like Stonewall and Advance HE (including Athena Swan). I have already made my detailed concerns in this regard known to the Principal. I provided similarly detailed material with my email to you (including a thoughtful article by Edinburgh academics to which you do not refer in your reply). Unfortunately, the University shows no interest in addressing the specific and detailed points raised: preferring general and, frankly, somewhat platitudinous, replies to any serious engagement with the particular issues raised.

Nonetheless, I will provide a single further and simple example of how the apparent absence of sufficient control over the activities of the University's EDI department combined with that department's uncritical acceptance of contested and legally inaccurate statements made by lobby groups like Stonewall has led the University into a serious misstatement of the law on its website.

In addressing the "protected characteristic" of "gender reassignment" under **Section 7** of the **Equality Act 2010**, the university's website wrongly states:

"Gender Reassignment/Identity is a 'Protected Characteristic' of the Single Equality Act (April 2010). It is an equality strand representing the different types of communities in the UK, and in many cases internationally.

Gender Identity:

- An individual's internal self-perception of their own gender
- A person may identify as a man or as a woman"⁶

In fact, and as a matter of law, "gender identity" is not a "protected characteristic" under **Section 7** of the 2010 Act. This only refers to "Gender Reassignment" in the sense of changing sex. It provides:

"**7 Gender reassignment**

- (1) A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex".

⁶ <https://www.st-andrews.ac.uk/media/human-resources/equalitydiversity/genderidentity/Equality%20Briefing%20on%20Gender%20Identity%202015.pdf>

“Gender Identity” as described by the University’s website is, though, a central feature of transgender ideology as advocated by, among others, Stonewall. It is also, as you are no doubt aware, extremely controversial and the subject of ongoing political and social discussion. While, of course, AFFS advocates the legal rights of all involved in this debate to speak freely in relation to the issues raised (including at universities), the fact remains that “gender identity” is not a “protected characteristic”. It, therefore, attracts none of the legal consequences that flow from that status. By contrast (and as further explained below) the right to hold and express philosophical beliefs (including so-called gender-critical views which dispute and this and other controversial aspects of transgender ideology) is a “protected characteristic” under the 2010 Act.

The mischaracterisation of the law referred to above is one we commonly see on university websites. It is invariably the result of EDI departments being prepared to accept and repeat self-serving, but inaccurate, statements of the law by lobbyists like Stonewall. The same error was also identified in the free speech compliance report prepared for Essex University by Akua Reindorf (a equalities law specialist who is a EHRC Commissioner and has recently also been appointed KC).⁷ As Ms Reindorf said in her Report, the inaccuracy resulted from the University being prepared to state the law as Stonewall would wish it to be rather than as it was, in fact, enacted. Ms Reindorf recommended⁸ that Essex should give consideration to whether to continue any formal association with Stonewall given the impact of such association in its legal obligations relating to freedom of speech and academic freedom.

As I said in my earlier email, the problem with the University permitting its EDI department to continue and pay for formal associations with lobby groups like Stonewall is that it inevitably involves the University taking sides on issues of controversy in relation to which it is legally obliged to uphold the rights of all to speak freely. It involves the opposite of the institutional neutrality required to ensure the University performs its true and legitimate public function of advancing knowledge through free and open research and debate⁹ rather

⁷ The redacted version of the report released by Essex can be found here: https://www.whatdotheyknow.com/request/770790/response/1885639/attach/4/events%20review%20report%20university%20of%20essex%20september%202021%201.PDF.pdf?cookie_passthrough= See: paragraphs 177, 217 to 227 and Recommendations 18 and 19.

⁸ See: Recommendation 28 in her Report.

⁹ Given this public role, the fact that Stonewall insists on a so-called “no debate” approach in respect of the contested aspects of the trans ideology it advocates (<https://www.stonewall.org.uk/node/100426>) is another troubling feature of the University’s formal association with it. The Principal herself was attacked as an ignorant transphobe by reference to the “no debate” policy when she suggested in an email to staff and students of 23 November 2021 that trans ideology should, in fact, be discussed at the University: <https://www.thesaint.scot/post/university-email-addressing-transfest-leads-to-backlash>; <http://stirlingbus.com/map/map-sasp-statement-against-transphobia-and-the-principals-email/>. The fact that one of the groups attacking the Principal was a group of St Andrews philosophy students is almost beyond satire. Assuming that the Principal’s comments reflect the official position of the University’s senior management, there is a possibility of a difference of opinion between senior

than, illegitimately (and potentially unlawfully), taking sides on issues of political or public controversy.

Instead of acknowledging anywhere in its public documents that it is no part of its role to take sides on controversial issues, the University repeatedly asserts the views espoused by Stonewall as its own official position, including by reference to the **Equality Act 2010**. However, the 2010 Act requires the University not to discriminate against people with “protected characteristics”. As noted above, one such characteristic is the right to hold (or not hold) religious or philosophical beliefs (see, **Section 10**). Although the University’s website also refers to this “protected characteristic” in its extensive EDI section¹⁰, it does so almost entirely in terms of religion. The website provides some external sources in that regard, but conspicuously fails to include any reference to the recent, landmark, recognition that the right to hold (or not hold) and to express (or criticise) a wide range of philosophical views (including the right to dispute the sort of transgender ideology advocated by Stonewall and formally endorsed on the University’s website) is within this “protected characteristic”.¹¹

This approach has serious and obvious implications for the University’s compliance with its legal obligations relating to freedom of speech in terms of potential discrimination against (including by creating a hostile environment for) students and staff who hold philosophical views different from those formally endorsed by the University’s EDI department.¹² It also has serious and obvious implications for the University’s compliance with its Public Section Equality Duty (“PSED”).

managers and the University’s EDI Department which publicly and uncritically advocates Stonewall’s position. AFFS would, in any event, be interested to know whether the University’s paid membership of Stonewall’s schemes involves agreement to its “no debate” stance.

¹⁰ <https://www.st-andrews.ac.uk/hr/edi/religionbelief/>

¹¹ See: *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. See also: *Bailey v. Stonewall et al* (2022) (Case No: 2202172/2020): https://assets.publishing.service.gov.uk/media/62e1307c8fa8f5649a40110a/Ms_A_Bailey_vs_Stonewall_Equality_Limited_Reserved.pdf

¹² We have, for example, found some evidence on the internet that some female students who hold the “protected characteristic” of holding gender critical beliefs or disagreeing with the transgender ideology as espoused by Stonewall, and officially endorsed by the University, feel discriminated against and harassed by representatives of the University: <https://m.facebook.com/StARadFems/photos/a.102059601961404/267800978720598/>. By taking sides in this public controversy, the University (like many others) risks discriminating in favour of a tiny, but highly vocal, minority of Trans activists and against a much larger number of students who do not share their views but feel intimidated into not expressing their own. The same is likely true among staff. Like many others, AFFS is extremely concerned about all such forms of self-censorship.

The University's PSED is referred to in the EDI pages on its website¹³, but, again, not in legally accurate or complete terms. Instead of setting out the actual terms of **Section 149** of the 2010 Act, the EDI department claims that compliance with its PSED requires the University:

"To demonstrate **due regard** to the duty, the following 3 areas of compliance relating to the [Equality Act \(2010\)](#) must be met:

1. Eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act
2. Foster good relations between people from different groups - this involves tackling prejudice and promoting understanding between people from different groups
3. Advance equality of opportunity between people from different groups - this involves considering the need to:
 - remove or minimise disadvantages suffered by people due to their 'protected characteristics'
 - meet the needs of people with 'protected characteristics'
 - encourage people with 'protected characteristics' to participate in public life or in other activities where their participation is low"

In fact, however, the obligations are much more specific and apply only to the "protected characteristics" identified by the 2010 Act, and only to discrimination, harassment and victimisation which are unlawful under it.¹⁴ **Section 149(1)**, in fact, states:

"Public sector equality duty

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (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."

The PSED, therefore, also does not apply to the "Gender Identity" aspect of transgender ideology as espoused by Stonewall and others because it is not a "protected characteristic" (see above). It does, though, apply to the rights of students and staff freely to hold (or not hold) and express philosophical beliefs on a wide range of controversial and contested subjects. Given its EDI Department's public advocacy of controversial aspects of transgender ideology (which, as already noted, often includes a so-called "no debate" requirement and often results in a hostile atmosphere for people with divergent viewpoints), it is very difficult to see how the University could comply with its PSED to exercise its functions having due regard to the need both to eliminate unlawful discrimination and harassment against people who have divergent religious or philosophical beliefs and to foster good relations between

¹³ <https://www.st-andrews.ac.uk/hr/edi/equalityduty/>

¹⁴ See: attached BFSP Briefing on the PSED. BFSP is a sister organisation of ADFS. Its work is explained below.

persons who share or do not share the protected characteristics of “Gender Reassignment” on the one hand, and persons holding (or not holding) divergent religious or philosophical beliefs on the other.

In light of the examples of serious inaccuracy identified above, AFFS strongly suggests that the University engages a suitably qualified lawyer to audit the EDI pages on its website to ensure they state the law fully and accurately. In the meantime, because of the legal compliance issues involved, I have included the University’s Chief Legal Officer among those copied into this letter.

No doubt it is because their continued involvement with lobby groups is incompatible with requirements of neutrality and their legal obligations that an increasing number of public authorities have cut their ties with Stonewall. These include: the EHRC, the BBC, Channel 4, ACAS, Ofsted, Ofcom, the Cabinet Office and many government departments. Universities are also increasingly cutting some (e.g. participation in Stonewall’s Workplace Equality Index) or all (including in participation in Stonewall’s Diversity Champions Scheme) of their formal associations with Stonewall. To date, these include: Edinburgh, Glasgow, UCL and, most recently, LSE. All of these public authorities (including the universities which have so far taken action) have, correctly, concluded that continued formal involvement with Stonewall is incompatible with their legal obligations, including in relation to freedom of speech. St Andrews’ delay in taking the same course for the same reasons can only damage its reputation, quite apart from the real risk of causing it to act illegally in relation to its own students and staff.

As part of an AFFS sister project, a group of senior lawyers and academics are drafting an overarching statement of Best Free Speech Practice (“**BSFP**”) for universities. Given what you say about St Andrews’ unwavering commitment to academic freedom and freedom of speech, I assume that it will want to comply with best practice. I will, therefore, ensure a copy of the BSFP Statement is provided to its senior managers once it is finalised and available. In the meantime, I attach the latest version of two BSFP Briefing Papers in relation to the issues raised above.

So far as Mermaids is concerned, I am, of course, aware of the St Andrews student theatre group of that name. It was around even when I was an undergraduate in the 1980s. I am not, though, mistaking the theatre group for the transgender lobby group of the same name. The Mermaids trans lobby group is referred to and endorsed in the University’s EDI pages. It is, for example, identified and recommended (together with other controversial lobbyists like Gendered Intelligence) as a, University approved, “External Resource” on the “LBTQ+ Support and Information” page of the website.¹⁵ There is further reference to Mermaids on the EDI Department’s “Gender Reassignment” page.¹⁶

¹⁵ <https://www.st-andrews.ac.uk/students/advice/lgbtq/>. A link is provided here to Mermaids’ website.

¹⁶ <https://www.st-andrews.ac.uk/hr/edi/genderreassignment/>

I am, nonetheless, relieved to learn that the University is not formally affiliated with this increasingly controversial organisation. In addition to positively seeking to impede organisations which disagree with it¹⁷, Mermaids is now the subject of a formal investigation by the Charity Commission due to safeguarding and management concerns.¹⁸ Although I, of course, accept that it would not have been your intention, your suggestion that the concerns I raised about the University's endorsement of Mermaids might result from a confusion with a student theatre group, risks both coming across as somewhat patronising as well as trivialising the compliance issues potentially involved.

This letter is the latest of a number of attempts to secure some meaningful engagement from the University with the detail of the issues I have raised. While a response of that nature would, of course, be very welcome, please do not feel any need to respond in the sort of general and non-specific terms of previous communications from the University.

In the meantime, AFFS will continue to raise its concerns with St Andrews' graduates and donors who, we suspect, will have a greater appetite for understanding and responding to the details concerns raised. We are, for example, actively investigating the possibility of setting-up in the UK the sort of financial conduit organisations for donations that have already been established by alumni and donors who have concerns about the failure of US universities to take meaningful steps to uphold freedom of speech and academic freedom. This may be of interest to the Development Office, who I have also copied into this letter.

Yours sincerely,

Andrew Neish KC

Alumni for Free Speech

www.affs.uk

info@affs.uk

Registered office: 27 Old Gloucester St, London W1N 3AX.

Cc: **Dame Professor Sally Mapstone**, Principal (principal@st-andrews.ac.uk)
Mr Roy Drummond, Chief Legal Officer (chieflegal@st-andrews.ac.uk)
Dr Rebekah Widdowfield, Vice Principal (People and Diversity)
(vpdiversity@standrews.ac.uk)
Annual Giving Team (annualgiving@st-andrews.ac.uk)
Susan Donald, Development Officer (Operations) (donate@st-andrews.ac.uk)

¹⁷ <https://www.theguardian.com/society/2022/sep/09/trans-charity-mermaids-appeal-lgb-alliance-status>

¹⁸ <https://www.gov.uk/government/news/regulator-announces-statutory-inquiry-into-mermaids>