



To:

The Chief Executive, Office for Students (OfS)

The Chair and Chief Executive, Equality and Human Rights Commission (EHRC)

Cc CEO, Charity Commission

2 June, 2023

Dear Ms Lapworth and Baroness Falkner

Free speech protection and governance failures at the University of Bristol re Professor Steven Greer

We are a non-partisan organisation which is representing alumni of UK universities 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 about the free speech and governance failures at the University of Bristol in relation to Professor Steven Greer.

What happened and the legal and governance implications

Original failures

The relevant events and the legal and governance failures which have arisen are set out in our letter of 11 April 2023 to the Vice-Chancellor of the University (the **AFFS Letter**) provided with this letter. A reply received from the Deputy Vice-Chancellor and Provost, and our reply to her, are also provided.

What the University and its management should have done when these issues were raised – further governance failures

The AFFS Letter sets out what we consider the initial free speech protection and governance failures have been.

We consider that the reply from the Deputy Vice-Chancellor is a less than satisfactory response to the AFFS Letter, which fails to engage in any significant manner with the serious failings we identify. Nor are we aware of any public statement about action having been taken to remedy these failings. It thus appears that, despite having received a credible complaint of

unlawfulness from an external whistle-blower (AFFS), the University is defaulting on its governance obligations, which a responsible university would treat as meriting careful investigation with input from suitably expert and independent lawyers. We submitted a Freedom of Information Request on 16 May 2023 as to whether such advice has been sought, but have not as yet received a response.

We have asked the University to forward letters about these issues to members of its Executive Board and its Trustees, as they should be aware of the issue we have raised. Extraordinarily, the relevant officers have not even responded to our requests for an acknowledgement of receipt of these communications, let alone confirmed that they will indeed share them as requested. The logical implication has to be that they do not intend to comply (presumably to avoid those bodies being aware of the extent of our concerns), so we will be writing to them directly, to the extent we can.

It may be that the University has actually taken appropriate steps to address the issues raised. But, if so, it has not seen fit not to share this publicly. If this is the case, it would itself constitute a further governance failure because the principles of transparency and accountability require that, if a public institution becomes aware that mistakes have been made, it should own up and make clear that it intends to remedy them. This is vital in order to reassure the public, and its staff and students in particular, that it is serious about protecting free speech and academic freedom.

Our strong impression is that the University of Bristol sets a much higher premium upon avoiding adverse publicity, including by seeking to suppress evidence of its own wrongdoing, than it does upon good governance and good free speech practice. It also seems to assume that it will not be held to account. As a result, its policy for dealing with the awkward issues we have raised is not to engage meaningfully or to respond publicly to them – particularly regarding what, if anything, it is doing to change its current, manifestly deficient practices. This is wholly inappropriate for a public education institution with charitable status.

Registration Conditions and governance

The failure of the University of Bristol to institute and to abide by adequate management and governance arrangements constitutes a clear failure to comply with Registration Condition E2 (management and governance), as contemplated in paragraph 451 of the OfS publication *Securing student success: Regulatory framework for higher education in England*. The fact that Bristol appears not to have done anything about these failures, and certainly has not briefed the public about them if it has, indicates that it has also not acted openly, accountably or with integrity as contemplated by Condition E3 (Accountability).

Paragraph 442g of *Securing student success* states that the OfS will, in judging whether a university's arrangements are effective, take into account whether appropriate action has been taken to mitigate increased risk of a breach. Given the issues which appear to have arisen, it could reasonably have been expected that Bristol would have taken various actions to prevent such failures from recurring. This does not appear to have happened.

Finally, we ask whether Bristol has, as required, notified the OfS of a reportable event, namely unlawful actions (and omissions) and the other failings which we report.

Recommendations for regulatory action

The evidence is that the University and its officers have committed or allowed management and governance failures with respect to free speech and academic freedom, and appear to have done nothing about them even when these have been drawn to its attention. We submit that Bristol's current management and governance, and its rules and processes, are not fit for purpose in this regard, and require significant improvement.

The OfS

In the light of the case that has been made, we believe that it would be appropriate for the OfS to require the University to do the following, at the least.

- (Unless the OfS itself carries such an investigation) appoint an independent lawyer of appropriate seniority and expertise – appointed by and answerable to those members of the Council who do not have conflicts of interest in this matter – in order to establish the facts and the compliance and governance implications we have raised. The investigator should issue a full report of his/her findings, conclusions, and recommendations to the University and to the OfS, and that report should be made public. It is worth mentioning the recent investigation and report by Dominic Grieve KC into governance failures at Christ Church College, Oxford, and by Akua Reindorf (now KC) into free speech protection failings at the University of Essex, as a good examples of the value of such a process.
- If there have been failures, work urgently to set them right, and revise relevant rules, policies and procedures to ensure that similar mistakes are not made again.
- Ensure that the independent members of Council have appropriate levels and types of skill and experience to bring to its deliberations, including with respect to regulatory and financial matters, and have sufficient seniority to challenge management and to be properly heard and taken seriously.
- Step that are reasonably practicable for Bristol to take for securing free speech in accordance with Section 43 of the Education (No 2) Act 1986 are (a) to have a senior, appropriately empowered and non-conflicted free speech officer, who can give sufficient time and commitment to the task, to promote and work to secure free speech and academic freedom; and (b) have a designated committee of its governing body with such responsibilities, plus an effective process for dealing with problems relating to free speech and academic freedom. Relevant officers should take legal advice on any technical aspects.
- Implement in practice the requirements imposed by the applicable legal obligations, including those outlined in the Appendix below.

EHRC

While the EHRC is the regulatory body responsible for supervision of compliance with the Equality Act 2010, prior to the landmark *Forstater* case it did not have a regular role in regulating free speech issues at universities. It now does, however, as events which involve free speech issues and which are now known to be potentially unlawful under the Equality Act or relevant to its Public Sector Equality Duty are now regularly occurring at English universities – as they have in this case.

Further, the AFFS Letter indicates that it is highly likely that the University failed to protect Professor Greer’s human rights, by censoring a course taught by him because of pressure received from activists.

We therefore respectfully recommend that the EHRC investigates these free speech and governance failures, to the extent that they involve actions which may contravene or may otherwise be inappropriate in the context of the Equality Act and the Human Rights Act. We also urge it to require the University to set right its past errors, including by making appropriate apologies and reparations to Professor Greer, and to take concrete, transparent steps to improve its governance as regards the Equality Act and the Human Rights Act going forward. We recommend that these steps should include those outlined under “The OfS” above.

Regulatory overlap

It is unclear to us what (if any) the relationship/demarcation between the responsibilities of the EHRC and the OfS currently is as regards complex free speech cases. (We would, therefore, welcome public guidance about this matter in due course.) So, if the EHRC is not currently taking an active role in cases such as this, we ask it to treat this letter as for information only.

This letter is also being copied to the Charity Commission, primarily for information. We understand that, since the University of Bristol is an exempt charity, the Charity Commission does not take a leading regulatory role.

Yours sincerely

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For

Alumni for Free Speech

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Alumni For Free Speech is part of DAFSC Ltd, company number 14189200. Registered office: 27 Old Gloucester St, London W1N 3AX.

Appendix: required steps to improve free speech enforcement and governance

The University's duty under **Section 43(1)** of the **Education (No 2) Act 1986**, as re-enacted and extended by the **Higher Education (Freedom of Speech) Act 2023**, is wide and onerous and requires various steps to be taken in practice, including:

1. not having policies, practices or requirements which prevent or restrict free speech;
2. taking a positive approach in relation to the creation, promotion and enforcement of policies, practices and requirements relating to securing free speech;
3. creating rules to ensure compliance with free speech obligations, including prohibiting certain actions and securing compliance with those rules by having a disciplinary process; and taking appropriate enforcement and disciplinary action where necessary;
4. having adequate governance arrangements, including a committee of its governing body to oversee the implementation and enforcement of obligations regarding free speech; and appointing a senior, appropriately empowered and non-conflicted free speech officer, who can give sufficient time and commitment to the task, to promote and work to secure free speech;
5. ensuring that relevant staff are properly trained and understand the nature of the requirements to protect free speech;
6. making compliance with free speech related requirements express duties of relevant staff and in particular those in its HR, diversity, equality and related complaints functions;
7. where a person is under attack for having expressed lawful points of view, taking such steps as are reasonably practicable to stop such hostile actions, to the extent that they are, or are likely to be, contrary to the HEP's free speech obligations and other rules and requirements which it has, or should have, in place;
8. dealing with crises and controversies appropriately and not succumbing to pressure to take inappropriate action;
9. taking all reasonably practicable steps to avoid or reduce an atmosphere which prevents or intimidates staff, members and students from expressing lawful views;
10. adopting a position of institutional neutrality, avoiding taking sides on lawfully contested issues, and avoiding any association or relationship with any organisation which requires or encourages it to suppress the expression of lawfully expressed views; and
11. taking all reasonably practicable steps to ensure that the use of premises is not denied to anybody because of their lawful viewpoint; and taking various specified steps to ensure

that meetings are conducted appropriately (including in relation to the costs and requirements imposed in relation to hiring and using venues).