

# Alumni for FREE SPEECH

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Cambridge University

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Dear Professor Prentice and Dr Falk

## **Free speech protection failures re cancellation of the screening of the film '*Birthgap – Childless World*'**

Alumni For Free Speech ("**AFFS**") is a non-partisan that represents alumni to work with their universities and colleges to protect free speech better. More information about AFFS can be found at [www.affs.uk](http://www.affs.uk).

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

### **Relevant events**

#### *Relevant actions*

We understand from press and other sources that a screening of Stephen Shaw's film, '*Birthgap – Childless World*', that was due to take place at St John's College on 12<sup>th</sup> May 2023, was subject to a campaign of abuse and threatened severe disruption by activists (from the College and outside) ("**Relevant Actions**"), on the basis that they believed it to be (among other things) "misogynistic", "anti-feminist", "transphobic" and "bigoted".

We are sharing a timeline ("**Timeline**") produced by Ms Bentley-Astor, the organiser, for your reference.

While the event was to be held within St John's' premises, much of the adverse activity and action did not originate from the College and a material part of the threatened disruption would have happened outside its premises, i.e. within University jurisdiction even if it is true that events within colleges are outside its jurisdiction as it asserted (and which we seriously question below).

The College failed in various ways to protect the event. The College then required the event to be “postponed” (i.e. effectively cancelled in the circumstances), on the basis that there would be students revising for finals in the area who must not be disturbed.

We understand that the organiser was in contact with the University with a view to it acting to help her protect the event (and therefore free speech), and was asking for more than an intervention to make the College take firmer action: she specifically raised key aspects of the Relevant Actions, and breaches by students of the University’s free speech requirements, and asked for help. She was effectively brushed off with (a) “the College is independent and we can’t intervene” and (b) as regards the organiser’s request that the University take action in respect of breaches of its rules, a reference to lodging a complaint about individual student behaviour with a separate organisation (OSCCA).

We note that the College’s Student Handbook states (at Section F.4) that “Members of the College are reminded that University disciplinary regulations apply on College premises as elsewhere in the precincts of the University, and their attention is particularly drawn to the following University regulations for discipline...” and that “The College may invite the Proctors to enter its premises and authorise them to act in the discharge of their University duties.” In other words, according to the College’s own handbook, the Proctors could perfectly well have intervened in respect of events within the College.

If the University disputes this background in a material way, please inform us.

### *NatSci Attack*

The organiser informs us that activists were planning to write to the Natural Sciences Dept (“**NatSci Dept**”), attacking it, and individuals concerned, for distributing information on the event, and indeed said in their social media discussions that they sent an email doing this. (We refer to this as the “**NatSci Attack**”). It appears that, in this email, they intended to falsely accuse the NatSci Dept (and it appears deliberately), and those involved in the approval and circulation of the event details, of “promoting eugenics”. The aim of this appears to have been to embarrass the NatSci Dep into contrition/apology and not circulating materials that activists disapprove of in future. We are sharing with this letter copies of social media correspondence by the activists in preparation for the attack which were obtained by Ms Bentley-Astor, although she does not have a copy of the email as actually sent (if it was indeed sent).

If the email was sent, those involved in the NatSci Attack were in breach of the University’s requirements, as we will discuss below. We appreciate that the authorities concerned with free speech protection were probably not informed of this at the relevant time, so do not have any complaints about any action or lack of action at that time in this regard. However, the NatSci Dept may have failed to identify free speech failures and to take action and report the failures to the relevant higher authorities.

## Relevant law and requirements: implications

### *The University's own Statement on Free Speech, rules regarding behaviour, enforcement, discipline*

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...". It also 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."

The Relevant Actions and NatSci Attack appear to be contrary to the FS Statement, and most if not all of them in breach of (or in preparation to breach) the obligations and expectations set out by the University's Ordinances<sup>1</sup>.

The University's 'Advice for students intending to protest' states that student protesters must not "disrupt authorised University or College events; e.g. preventing speakers from talking, others from attending, or doing anything designed to stop the event continuing". The University's Student Disciplinary Framework states that "A registered student must not... interfere in the freedom of speech or lawful assembly of a member of the collegiate University community or visitor to the University." It is clear that University students and possibly staff were in breach of the above requirements.

### Relevant Actions

The University failed to take any action to enforce its own FS Statement and rules in respect of the Relevant Actions.

There is nothing in the majority of the above requirements which indicates that they do not apply to Cambridge staff and students just because the relevant actions or breaches may have occurred on College premises, and the College believes that they do (and contemplates that it will facilitate the Proctors' discharge of their functions), as explained above. In other words, the University's jurisdiction extends to the actions of students and staff within St John's, as St John's handbook contemplates.

We are aware that Cambridge's colleges are in many ways operationally independent from the University, and indeed jealously guard their independence, and this limits what the University can do to require colleges to take action to enforce the University's rules and procedures, so it was probably not realistically in a position to make St John's take any particular actions in respect of this event.

College independence must not be used as a screen for inaction on the University's part when action can be taken. In this case, there was plenty it could have done, as we discuss in this

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<sup>1</sup> In particular, Ordinances 2021, Ch. II, page 195, para 2 ("No member of the University shall intentionally or recklessly disrupt or impede freedom of speech. within the Precincts of the University"), but also potentially paras 1, 3 and 6, depending on the detailed facts.

letter, in part because, to the extent that Relevant Actions took place outside St John's (as it appears they did), the "college independence" limitation would be inapplicable.

If the University really considers that its requirements regarding free speech and student behaviour do not apply in respect of actions and events within a college or that it does not have the ability to enforce those requirements against those who took relevant actions (as contrasted with limitations on its ability to make colleges themselves take particular actions), this results in a major lacuna which would logically mean that the University's requirements regarding free speech protection and student and staff behaviour have very limited effect in many likely scenarios. If a student conducted an extreme online campaign against someone in a different college, in breach of the University's rules, but did this while in his/her room inside a college, is the University seriously saying that it would have no power or ability to enforce its requirements? We would be very surprised if the University would seriously try to assert this.

We ask: why did the University tell the organiser that it couldn't take action, when it actually could have (subject to limitations as to what it could require St John's itself to do) as we point out in this letter? An independent observer would have to conclude that this was to avoid having to take available action – unless the relevant officers did not understand its rules and their own duties or did not engage sufficiently to identify that there was a problem to be addressed. But it may have been a *bona fide* mistake in failing to appreciate the wider considerations.

#### NatSci Attack

The NatSci Attack was clearly contrary to the FS Statement and relevant rules, in that it attacked the NatSci Dept and individuals in it for publicising an event at the University because the perpetrators disliked the subject-matter of the event. This must have been intended to negatively impact the department and its staff, and will have had a cumulative effect – along with other attacks such as the complaints to the Sociology Department re the event which was the subject of the Helen Joyce affair – of creating fear about publicising events in the future which may be unpopular with activists. Even if an email was not actually sent, the activists were planning to commit serious breaches of the University's rules.

While the University may not have failed to enforce its FS Statement and rules as regards the NatSci Attack at the relevant time, it needs to take action now, as discussed below.

#### **Section 43(1) of the Education Act (No.2) Act 1986 (the "Education Act")**

English universities are required under **Section 43(1)** of the Education Act to take such steps as are reasonably practicable to secure freedom of speech for their members, students and employees ("**Participants**") and visiting speakers. This is a demanding requirement: it means all such steps and is limited only by reference to the speech being "within the law" and by what is "reasonably practicable" (which is to be judged objectively and not by reference to the subjective views or preferences of the managers of particular universities). It requires

universities to be proactive<sup>2</sup>, doing a great deal more than pay lip service to their general commitment to free speech.

A wide range of actions is required in practice by this duty, the most relevant of which are the following.

- **Enforcing compliance** with the FS Statement and with its rules and taking disciplinary action where staff and students fail to comply with the relevant rules.
- **Dealing with controversies effectively**: How universities deal with controversies – as in social media storms, demands for meetings not be held and the like – will be the sometimes very public face of how well they are securing free speech in practice. In this case, Section 43(1) required the University to take such action as was reasonably practicable to bring a halt to the Relevant Actions and deal with the NatSci Attack, and it had the weaponry to do this, i.e. its FS Statement and rules. This was or is likely to involve some or all of:
  - Promptly confirming whether the NatSci Attack did in fact take place.
  - promptly publicly stating that: the Relevant Actions were in breach of its rules and requirements, and must stop; and that the NatSci Attack were in breach of its rules and requirements, and must stop;
  - identifying the Participants who were, or may have been, taking the Relevant Actions and NatSci Attack;
  - promptly informing those involved in the Relevant Actions directly that they are or are likely to be in breach of its relevant rules and requirements and requiring them to stop;
  - taking disciplinary action against the relevant Participants, where and to the extent appropriate;
  - if necessary and to the extent reasonably practicable, providing security to ensure that the event went ahead peacefully (if the College did not, and we acknowledge that this would likely have been the College’s primary duty within its premises); and
  - such other action as is likely to help remedy the situation.
- **Not succumb to pressure from Participants** or others (a) to take actions which suppress or restrict free speech or which materially disadvantage another Participant or visiting speaker in connection with their holding or expressing certain opinions, or (b) not to take steps to enforce its rules and requirements regarding free speech protection. Doing so would very likely give rise to a breach of the Section 43 duty by the University, and this pressure would itself be a breach by Participants of the University’s rules and requirements. This aspect is particularly relevant to the NatSci Attack.

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<sup>2</sup> The OfS recently put it thus: “*this is likely to entail a wide range of steps needing to be taken in practice. In our view, it is unlikely to be sufficient for a university only to make public statements in favour of free speech*”. *Insight publication Freedom to question, challenge and debate, December 2022* (the “**December 2022 OfS Statement**”): <https://www.officeforstudents.org.uk/media/8a032d0f-ed24-4a10-b254-c1d9bfcfe8b5/insight-brief-16-freedom-to-question-challenge-and-debate.pdf>

- *Interaction with the College:* The College appears to have failed to take the steps it should have taken to protect the event.

We appreciate that Cambridge's colleges are in many ways independent from the University, and that this creates limits as to the University's ability to require colleges to take actions to protect free speech and ensure that events proceed. However:

- The University's duty under Section 43 is only limited by reference to what is not "reasonably practicable" for it to do, and St John's expressly contemplates that it will facilitate enforcement by the University, so it is reasonably practicable to at least make serious efforts to enforce the University's rules as regard St John's' students and other Participants (and work to ensure that St John's facilitates this).
- Steps that are reasonably practicable for the University to take would include liaison and persuasion in order to ensure that St John's is active in enforcing its own requirements and protecting the event.
- College independence as regards their internal affairs does not prevent such steps as are otherwise available to the University (of which there were plenty in this case) being taken.

More generally, if colleges do not have, and actively enforce, requirements and rules which are comparable to the University ones, college independence creates a very substantial lacuna in protection for free speech. The Section 43 duty, and requirements for good governance (see below), oblige the University to take all reasonably practicable steps to remedy this. At the least, this would require liaison and persuasion to ensure that colleges are aware of the requirements (including University-wide requirements) that are applicable to them and their Participants, and adopt, comply with and enforce their own policies, rules and practices (of and to an appropriate standard) so as to give appropriate effect to those requirements.

The legal position will change shortly, which will alter the above analysis, and this is discussed below.

#### The Relevant Actions

The University was obliged to take active steps to stop the activities associated with the Relevant Actions as described above (including to take disciplinary and other action in respect of activities it heard about after the event), but it effectively ducked its obligations as described above. It therefore appears that the University has failed to enforce its own FS Statement and rules, as required under Section 43(1) of the Education Act, in the ways discussed above.

#### The NatSci Attack

The University's obligations under Section 43(1) require it to take the actions set out below in respect of the NatSci Attack, now it is aware of it.

### *Requirements as to governance*

The University is required by its conditions of registration (E1 and E2) to have governing documents that uphold the public interest governance principles that apply to it, and to have in place adequate and effective management and governance arrangements to deliver those principles in practice. These include principles relating to securing freedom of speech and academic freedom.

The Office for Students (“OfS”) has publicly stated<sup>3</sup> that, in considering whether a university complies with condition of registration E2, it may consider questions such as:

- Does the university have robust decision-making arrangements, which require it to consider the impact of its decisions on free speech and academic freedom as part of the decision-making process?
- Does the university have checks and balances to ensure that its policies and processes do not adversely affect free speech or academic freedom?

From the information we have seen, it appears that the University, through the Proctors having brushed off the organiser with “the College is independent and we can’t intervene” and a reference to lodging a complaint about individual student behaviour, rather than themselves taking action to secure free speech, has failed to take available action which it was required to take to deal with the Relevant Actions, so has failed to comply with registration conditions E1 and E2 as well as its Section 43 duty. Were it correct that the University misrepresented the position to the organiser, that would be a further and significant governance failure.

If it is true that (as discussed above) the operational independence of the colleges creates a major lacuna in the University’s ability to enforce its requirements regarding free speech and behaviour, this is a major governance failure which the University will have been sitting on for decades.

### **What the University should do about these failures regarding the Relevant Actions, and the NatSci attack**

The University has, in this letter, received credible information of compliance and governance failings as regards the Relevant Actions from an external whistle blower. It has also been informed of the NatSci Attack, and is now required to take action about it. The University needs to do the following, promptly and effectively. Its work needs to be done by people who do not have conflicts of interest, for instance because they may be at risk of criticism for having failed to protect free speech as the University’s duties and their role require.

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<sup>3</sup> In the December 2022 OfS statement.

## *Free speech protection*

### Address the issues concerning the Relevant Actions

Announce urgently that the behaviour constituting the Relevant Actions was in breach of Cambridge's rules and requirements, that this is contrary to what it stands for and expects of its community, and that it will be taking appropriate enforcement action; and then take that enforcement action, to the extent practicable, which we acknowledge may be difficult where Relevant Actions were taken anonymously.

Clarify, taking appropriate advice from senior and specialised lawyers, whether the failings we allege are true, what went wrong, and what needs to be done to address those failings and to ensure that its requirements are properly implemented in the future. Take that necessary action. We would be recommending an external review of these failures were the issues and their solution actually quite simple in the case. If it appears that the University is not doing anything to address these issues, we will be recommending to the OfS that it imposes one – see below.

Be sufficiently transparent about this to have discharged its obligations of good governance.

It is worth noting that, with the relatively short lapse of time when we first wrote to it about the relevant events, Cambridge could have done a lot to rectify its failings. Oxford's recent handling of the Oxford Union/Students' Union controversy (in which OUSU announced that it was going to exclude the Oxford Union from Freshers' Fair because it would be having Prof. Kathleen Stock as a speaker), in which, after a slow start, it intervened and made OUSU retract, is an example of how this should be handled, and embarrasses Cambridge by comparison. But Cambridge can still partially redeem itself if it takes this action now.

### Address the issues concerning the NatSci Attack

The University needs to ascertain the facts, including through discussion with the NatSci Dept. Is there action that the NatSci Dept could have taken but did not?

Actions such as the NatSci Attack are clearly fairly regular, as evidenced by the pressure on the Sociology Department as regards the Helen Joyce affair, about which we have previously written to you. They can lead the University into free speech failures such as were committed in that case. The University needs to announce that the NatSci Attack was in breach of Cambridge's rules and requirements, that actions like the NatSci Attack are contrary to the FS Statement and its rules and what it stands for and expects of its community, and that it will be taking appropriate enforcement action; and then take that enforcement action to the extent it is able, and this should be possible if the attack was not made anonymously.

If the NatSci Dept did make mistakes, the University needs to ensure that those mistakes and the relevant requirements are understood for the future.

### Work to improve its free speech protections more generally

Section 43(1) of the Education Act, good governance and best free speech practice more generally require all of the following to be done, urgently.



- A review and revision of the University’s relevant rules, procedures, practices and requirements relating to free speech (“**Relevant Requirements**”) and systems at all levels of relevant management to ensure that they reflect and properly implement the University’s legal and other obligations relating to freedom of speech, and to ensure the understanding, implementation and enforcements of Relevant Requirements promptly, firmly and effectively. This should include its relationship with and procedures for dealing with its colleges regarding free speech matters, as discussed above and below. The failings in this case appear to be more of inaction than its rules and requirements being insufficient, so the focus appears to be most needed on management procedures and practices and any available improvements in structures for dealing with the colleges on these matters.
- Ensuring that both staff and students receive proper training and regular information about the importance of free speech generally and the Relevant Requirements more particularly. This will involve relevant staff understanding how the Relevant Requirements affect their work and responsibilities.
- Appointing a **Free Speech Officer** to be the University's internal advocate for free speech, with responsibility for ensuring that it complies with its legal obligations and follows and enforces its own rules appropriately. The Free Speech Officer should be appropriately senior and qualified, not subject to significant conflicts of interest, appropriately empowered and have the time available to fulfil his/her role diligently and effectively. If it considers that the Proctors are that Officer, it needs to consider carefully why the current arrangements do not appear to work, and what needs to be done to bring them up to date and make them effective. Is this going to be such a demanding role that it needs carving out from the Proctors’ other functions? If not, do their responsibilities need redefining; do they have sufficient authority and powers; are they properly trained; do they have enough time available?

The above 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 under the **Higher Education (Freedom of Speech) Act 2023**.

We are sharing a memorandum produced by our associated campaign, Best Free Speech Practice (<https://bfsp.uk/universities-higher-education>), on what the legal obligations on universities and their colleges will look like once HEFOSA becomes effective. We hope this this is useful.

### *Governance more widely*

Review and improve its governance as regards free speech protection. Relevant questions for the University to ask itself include:

- If relevant management did not appreciate the issues we have identified, why was this? If they did appreciate them, why did they take no action to try to stop this misconduct happening?

- In what ways did the University’s governance, management structures and operations in practice fail, and why? What needs to be done to make them fit for purpose?

*Relationship with colleges; changes to the law and regulatory environment*

We have set out above the problems that colleges’ independence from the University (as asserted by the University to the organiser) can create as regards enforcement of the University’s FS Statement and rules regarding free speech and behaviour, and the lacuna in its free speech protection that this could create. If the colleges’ independence really operates this way, the University is required by its duties under the Education Act (and related governance obligations) to take such steps as are reasonably available to it to address this issue.

We should note that the law relating to free speech protection at universities is about to change, when the main provisions of the Higher Education (Freedom of Speech) Act 2023 become effective. This will require colleges to take all reasonably practicable steps to secure freedom of speech for students and visiting speakers and to secure that use of any premises of a college is not denied to anybody in relation to their ideas, beliefs or views and that, save in exceptional circumstances, the organiser of an event is not required to bear any of the costs of security relating to the event. (With other obligations that put colleges’ position into one quite similar to that of the University.)

The problems and required action that we describe above should be considered and addressed in this light. The colleges’ own direct obligations to secure free speech will fill much of the “operational independence” lacuna we describe above (to the extent that it actually exists), but the University will need to ensure that it is fully closed, eg by doing all it can to ensure that colleges understand and are properly preparing for (and then implement and enforce) these obligations. We will be monitoring Oxbridge and its colleges to ensure that they comply with their new legal obligations.

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We will be staying on this case. 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 OfS just as we have recently reported it for its failures re the Helen Joyce affair. We will submit to them that this is further evidence that the University’s current management and governance, and rules and processes, have failed materially as regard free speech protection, and urge them to take appropriate action, including an external review and report on these failures.

We would, however, much prefer that the University addresses these issues, which it can still take material steps towards, and would be far happier commending good governance action in recognising and working to set a problem right than in creating problems and embarrassment for the University. (We recognise that these issues are not particularly easy and *bona fide* errors can be made, and would see a desire to improve policies and practices this way as a positive.)

Prompt statements (a) as recommended above, and (b) acknowledging that things should have been handled differently within the University, with a resolution to improve policies and procedures regarding free speech protection as we recommend above, would as far as AFFS is concerned constitute a commendable start towards addressing the problems we identify and would have our support.

Yours sincerely

William Mackesy  
Andrew Neish KC

## **Alumni for Free Speech**

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