

Alumni for FREE SPEECH

Ms Heather Hancock
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7 July 2023

BY EMAIL: h.j.hancock@joh.cam.ac.uk, master@joh.cam.ac.uk

Dear Ms Hancock

Re: Free Speech Failures re the cancellation of the screening of Stephen Shaw's film 'Birthgap – Childless World'

We are a non-partisan campaign 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.

We are writing about the following free speech protection issues.

Relevant events

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 12th 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, for your reference.

We are informed by Ms Bentley-Astor, the organiser, that she did not specifically inform the College that she was aware that people from the College were part of the group taking Relevant Actions at the time of the relevant events, so we are acting on the assumption that it was not aware that this was the case at that time, consistently with what you say in your letter of 5 June. She informs us that she does not know the names of the people who took the Relevant Actions as a result of online anonymity, but knows that at least one was at St John's because they had access to the booking system. The College should be aware that the protesters were trying to ascertain whether a Fellow had booked the room so that they might mount a complaint against him/her (the organiser knows this because she was on the protesters' social media until ejected), which would, you will appreciate, be an extreme breach of their obligations regarding free speech protection and behaviour, and potentially criminal under the Prevention of Harassment

Act 1997 as it would have been a deliberate but groundless attack on that person, intended to cause them harm. The College is fortunate that this did not proceed.

We note that the proposed protests and disruption would have taken place on both College premises and also in the street outside, over which the College had no jurisdiction, and that this was a significant limitation on the College's ability to deal with all aspects of the issue.

We understand that the College imposed an obscure and (consequently) time-intensive "risk-assessment process". The organiser acknowledges that the initial health, safety and security form appeared to be standard and in general use and she says she had no issue with this or the requirements it outlined. She says that the obscure "risk assessment" referred to was the second request made via email on 4 May asking her to hire security and otherwise mitigate the public protest. She says that there was no guidance as to how intensive or professional this "risk-assessment" should be, nor what it should look like, nor how the College wanted it delivered and that, unlike the first instance, no handbook or worksheet was provided. When she asked to speak to the Head Porter to ascertain what expectations, concerns and priorities St. John's had, no response was given. She ended up walking to the College and asking to speak to someone and got a short phone call with a senior porter who was dismissive of her questions.

The College made inappropriate demands of the organiser (in the context of the need to act appropriately to protect free speech). This included hiring private security at her expense, and requiring her to effectively control any protest herself – an avoidance of a prime responsibility on the part of the College. We note that the College denies that inappropriate demands were made on Ms Bentley-Astor. We regard the above requirements as inappropriate, as these are an inherent aspect of the College's obligations to work to secure free speech on its own premises, and we believe that a reasonable observer would see it thus. The Higher Education (Freedom of Speech) Act will provide thus, once it is implemented.

We get the strong impression that (a) the College staff who dealt with Ms Bentley-Astor were evasive (including not returning emails) and unhelpful (the College has denied this to us, but the Timeline evidences otherwise), and (b) the College's representatives wished to find excuses to prevent the event from happening (indeed, pressurise the organiser to cancel it so it would not be the College that cancelled it) so the problem might go away. We note that the College rejects this, but we believe that this is what a reasonable observer would think.

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 acknowledge that this reason is consistent with what the College has informed us is the College's general policy of active management of potential sources of disturbance during this period.

The College claims that the event was not a "College event" but a "private" one, and that it was therefore not for St John's to take responsibility for ensuring security. This surprises us. Neither the University's nor the College's free speech protection requirements generally draw this distinction. The event was to occur on College premises, so the College and its (and the University's) participants had duties in respect of the event and their behaviour towards it.

The College appears to have failed to take all the steps that it should have taken to protect freedom of speech, as explained below.

University requirements

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 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."

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".

It seems clear that students (and possibly staff), including at least one at your College (although we note that the College was not aware of this at the relevant time), were in breach of most if not all of the above requirements, and very likely in breach of (or in preparation to breach) the obligations and expectations set out in the University's Ordinances¹.

While we acknowledge that the College does not have jurisdiction to enforce the University's requirements, your College was fully aware of these requirements (it specifically draws attention to them at section F.4 of its Student Handbook). The College should have taken a positive and active approach to securing compliance, and therefore, especially given that a significant part of the location of the protests was off College premises, have at the least made contact with the University to ensure that it was aware of relevant events and that it needed to take action.

It therefore appears that the College could have done better in this regard: it appears that it did not look beyond the narrow issues regarding the details of holding the meeting, security and the like (and, it appears, how to find a way of cancelling it without embarrassment) to its wider obligations to take action to protect secure free speech.

The College's requirements

The College has its own free speech rules, as set out at section F.1 of its Student Handbook. (We note that the College does not make information on its rules or governance structures easily

¹ 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.

accessible to outsiders, which we recommend should be remedied.)

It appears clear that one or more people at the College were in breach of the College's own free speech rules – it is known for certain that at least one person from the College was involved in the Relevant Actions that resulted in the event being “postponed”, and was planning to make a complaint if a Fellow had booked the event. We accept that the College was not aware of this at the relevant time, so did not have cause to take action at that time to enforce its own requirements as regards the behaviour of its own participants.

However:

- The College should have done more to secure the happening of the meeting. The evidence points to it having underperformed in this regard, as discussed above.
- The College needs to take active steps where available to stop inappropriate actions by activists (as contemplated at paragraph F.1-1 of the Student Handbook). With the information now available, there is action which the College should now take, and this is discussed below.

We accept that the reason the College gave for the “postponement”, i.e. that noise from the protest could disrupt students revising, was a genuine one and the current requirements on it are imprecise as to whether it suffices in the context of free speech protection. We note, though, that the College would do well to take advice on whether this will suffice under the new regulatory regime which we discuss below.

Governance failures

The College's failures to take appropriate steps to protect free speech (as described above) constitute governance failures, although, compared to some of the horrors we have witnessed elsewhere, these are relatively minor. The College's management and trustees have fiduciary and other duties. They should be working to ensure compliance with its direct and indirect obligations. We make recommendations below.

What the College should do now

The College could have done better in this matter, as discussed above: it appears that it did not look beyond the narrow issues regarding the details of holding the meeting, security and the like to its wider obligations to take action to protect free speech.

We note the College's stated commitment to free speech, and assume that it will welcome recommendations for action to address the failings that occurred, and to improve its processes for the future. These are as follows.

- **Assess what went wrong**, and how it could have done better. We appreciate that the College will try to refute what we say, at least in public, so this is an issue of internal honesty. Assess its inappropriate distinction between a “College event” and a “private” one, which appears to have led it to make mistakes. The College appears to have misunderstood

the nature of the requirements. Look at why its staff were not more positive about protecting the event – is training needed?

- Appreciate, and note to all staff, that its obligations to protect free speech and ensure compliance with its rules **require positive action well beyond a narrow focus on the administration of the event** itself.
- Improve its **processes for meetings/events**: ensure that relevant staff take a positive approach and are properly trained.
- Endeavour to **identify the person(s) within the College who participated in the Relevant Actions**, and at the least privately reprimand them. (We recognize that online anonymity may make this difficult, but an attempt is appropriate.)
- **Promptly issue a statement that** (a) anyone involved with the College who agitated for the event to be cancelled or threatened to disrupt it, that (b) anyone who attacks a person personally, and in particular makes ungrounded complaints against a person, as a tool of attacking people or events for viewpoints or topics to which they object, acted or acts in breach of the University's and College's free speech statements and requirements (and in the latter case that this can quickly become criminal), and that this will not be tolerated in future.
- The College should review and improve its **processes for dealing with free speech problems**: in particular, does it have a process for escalating above Porter level to a senior and knowledgeable administrator when a problem becomes apparent? It also needs to appoint an appropriately senior, empowered, experienced and non-conflicted **free speech officer** to promote and defend free speech and academic freedom, so someone is "on the case" regarding the wider aspects of securing free speech beyond the narrow one of administration of events. It appears that not having such a person (which we assume that the College did not) did not help in this matter.

Much of the above will become more formal obligations once the **Higher Education (Freedom of Speech) Act 2023** ("HEFOSA") becomes effective. The above measures could therefore be usefully taken at the same time as the College revises its policies, practices and rules to reflect HEFOSA.

The future: the College's new free speech obligations and regulatory environment

You will no doubt be aware that the law relating to free speech protection at universities and their colleges is about to change, and indeed HEROSA has just become law. This will require colleges actively to promote free speech and 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**. St John's will take a real risk (of claims and costs, as well as regulatory failure) if it fails to be a lot more proactive in protecting free speech going forward. We will be monitoring Oxbridge colleges to ensure that they comply with their new legal

obligations.

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 that this is useful.

We hope that, while disagreeable to receive, this letter may be seen as useful to the College in the long run.

We urge that the College addresses these issues: we are happy applauding good governance action in recognising and setting a problem right. We welcome the interaction we have had with you about a draft of this letter, which has been useful to clarify issues and enabled us to adjust what we say above, broadly in the College's favour. But we are disappointed not to have any assurances that you will be taking the issues we raise seriously, and acting on them appropriately. Your alumni will expect you to work to set these failures right, and we will be sharing this disappointment with them.

AFFS may choose to report what has happened to the OfS, which has regulatory oversight over the College once HEFOSA becomes effective, for its information. We would not be calling for specific action from them, as we regard the College's failures as less serious than the University's in this matter, and indeed other free speech horrors we have encountered.

Yours sincerely

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Alumni for Free Speech

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