

Alumni for **FREE SPEECH**

Sent by email to:

Professor Sir Peter Mathieson, Principal & Vice Chancellor
Ms Janet Legrand KC (Hon), Senior Lay Member of Court

cc. Professor Kim Graham, Provost
Joanna Cherry KC, MP

The University of Edinburgh
Old School
South Bridge
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6 November 2023

Dear Sir Peter and Ms Legrand KC

Harassment by the University in connection with the *Sex and Gender: A Contemporary Reader* book launch: the *Fahmy* case

We have previously written to both of you about Edinburgh University's continuing failure to ensure that members of its community can lawfully screen the documentary film *Adult Human Female*.¹ Although we continue to be concerned about, and are monitoring the lack of progress in relation to this issue, this letter is about a related matter, namely the events surrounding the launch of the book *Sex and Gender: A Contemporary Reader* at the University on 11 October 2023.

The book is a multidisciplinary collection of academic essays on topics of sex and gender edited by Professor Selina Todd of Oxford University and Professor Alice Sullivan of University College London. It is published by Routledge,² is well reviewed and includes essays by Edinburgh University academics including Dr Shereen Benjamin.

¹ See: our letter to Sir Peter dated 21 December 2022 and our letters to Ms Legrand dated 27 February, 2 and 16 May and 13 June 2023.

² https://www.routledge.com/Sex-and-Gender-A-Contemporary-Reader/Sullivan-Todd/p/book/9781032261195?gclid=Cj0KCCQjw-pyqBhDmARIsAKd9XIOKONv7zAHb9s61U50Y4xHfH-SCWN7amxC7OtoowGj6ict0KFz9ewOaAqwhEALw_wcB

The Edinburgh University branch of the University and College Union (“UCUE”), including its committee, obviously consists of employees of the University. UCUE emailed a letter (the “UCUE Letter”) to Sir Peter demanding that the book launch be cancelled on the basis that it is “transphobic”. The UCUE Letter was copied to the entire UCUE branch membership which, we understand, includes over 2000 people. It contained obviously untrue and defamatory statements misrepresenting the contents of the book and the views of contributors including, relevantly to this letter, Dr Benjamin. Like others, AFFS thinks it is disturbing that some Edinburgh academics should seek to take steps to shut down lawful academic debate. We assume that such conduct was a breach of the employment contracts of those involved and a breach of Codes of Conduct which apply to them.

AFFS acknowledges and applauds the fact that, consistent with its duty under **Section 23** of the **Higher Education Governance (Scotland) Act 2016**, the University refused the demands of UCUE and ensured, including by providing the sort of sufficient security measure sadly twice lacking in relation to the attempts to screen *Adult Human Female*, that the event took place despite unlawful, intimidatory and violent attempts to prevent it (which must also surely have been breaches of the employment contracts of any University staff involved and the Codes of Conduct which apply to them).

We are writing, however, to highlight the fact that the UCUE Letter was plainly harassment of Dr Benjamin by other employees of the University in connection with their protected viewpoints under the **Equality Act 2010** (the “2010 Act”), and that, pursuant to the 2010 Act, it constitutes unlawful harassment by the University of Dr Benjamin for the following reasons.

1. Dr Benjamin holds viewpoints which constitute a “protected characteristic” under the 2010 Act. We have explained this in previous correspondence, but link here to a [detailed statement](#) explaining this in greater detail. Judging by general polling, similar views seem likely to be held, by at the least a significant minority of the University’s participants just as among the general public at large.
2. **Section 109** of the 2010 Act provides that anything done by an employee in the course of their employment must be treated as also being done by their employer; it does not matter whether that thing is done with the employer's knowledge or approval. An employer has a defence (the “**Section 109(4) Defence**”) if it can show that it took all reasonable steps to prevent the employee from doing the alleged act, or anything of that description.
3. Harassment is defined in **Section 26** of the 2010 Act as follows:

"(1) A person (A) harasses another (B) if:
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

[...]

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.”

4. The UCUE Letter, sent to Sir Peter and copied to over 2000 other University employees, was deliberately sent to communicate an intolerant, unlawful and defamatory message. Among those whose views were singled out for falsification and condemnation were those of Dr Benjamin. The letter wrongly claimed that Dr Benjamin: “...continually uses the strategy of framing trans people and their rights as ‘gender ideology’, with the *fait accompli* that trans people’s existence – like any ideology or theory – can be ‘debunked’”. Dr Benjamin has made clear that she regards the idea of debunking someone’s existence as nonsense and impossibility. She has repeated her true views in the following terms: “I think people who identify as transgender should and do have the right to live and work and study free from harassment and discrimination ...universities are both morally and legally obliged to uphold these rights”.
5. In the above circumstances, we ask: in what way did the contents of the UCUE Letter not constitute harassment by virtue of creating an “intimidating, hostile [...] or offensive environment” for Dr Benjamin and other people holding gender-critical views, who constitute at the least a significant minority of the University’s participants?
6. The recent *Fahmy*³ case illustrates the perils for an employer, like Edinburgh University, of harassment committed by an employee, like the members of the UCUE responsible for the letter and for inciting and participating in attempts to suppress the lawful and protected views of other employees, like Dr Benjamin. We attach a statement prepared by our associated project, Best Free Speech Practice (“BFSP”), explaining the *Fahmy* case and its implications.
7. Further, you will see that, in that case, a senior employee of Arts Council England was criticised by the Employment Tribunal for expressing personal views in a meeting in solidarity with one side of the debate, although it concluded that, in that case, his actions did not cross the threshold for creating an intimidating etc environment. The Tribunal stated that his taking sides provided “the basis, or opened the door” for the subsequent actions by employees which constituted harassment by Arts Council England. The *Fahmy* case is strong evidence of the need for universities to maintain institutional neutrality about matters of public controversy, or risk compliance failures under the 2010 Act. It looks clear to AFFS that one of the reasons why Edinburgh is repeatedly failing to protect its participants’ free speech is that it has lost sight of this bedrock assumption which until recently underlay our universities’ approaches to their purpose and functions.
8. When one considers the steps that universities need to take in order to qualify for the Section 109(4) Defence, as explained in BFSP’s statement about the *Fahmy* case, we very much doubt that Edinburgh University will have done enough to qualify for the Section 109(4) Defence. In particular, in the absence of it taking immediate and effective

³ Ms D Fahmy v Arts Council England (2023) ET case no 6000042/2022.

(including, if appropriate, disciplinary) steps against the Edinburgh University employees responsible for the continuing harassment of other employees with gender critical views, we cannot see how Edinburgh University will have done enough to qualify for the Section 109(4) Defence as regards the recent events we write about. It also needs to take appropriate steps now to prevent further unlawful harassment in order to qualify for the Section 109(4) Defence in respect of events which will undoubtedly happen in the future; it has by this letter been reminded of its obligations and been brought up to date with recent legal developments.

We conclude with a summary: Edinburgh University clearly needs to investigate whether the sending of the UCUE Letter amounted to unlawful harassment of its participants, as appears to be the case. If it did, Edinburgh University needs to take appropriate action, including acknowledging that this occurred, apologising for it and taking appropriate action in respect of those whose actions have caused its compliance failures. It will also need to state that it will ensure that it will work to ensure that harassment of this nature does not happen again (and actually do that work), as is required if it is to qualify for the Section 109(4) Defence as regards future events.

We should mention two recent public scandals which are very relevant to this case.

- The British Museum failed to heed the warnings of an external whistleblower about thefts from its stores. This led to resignations.
- NatWest bank lied and made inappropriate disclosures about the closure of the account of Nigel Farage. This led to resignations.

We are external whistleblowers and must reserve our right to bring this letter to the attention of other external trustees and regulators. Given the legal and regulatory compliance implications involved, we are copying this letter to the University's Provost, Professor Kim Graham. We would again ask Ms Legrand KC to make a copy of this letter available to other members of the University's Court (and to confirm she has done so). As with earlier correspondence, we are also copying in, Edinburgh alumna, Joanna Cherry KC, MP who, as you will know, has herself experienced unlawful conduct in relation to her own gender critical views.

Finally, we should remind you that AFFS is non-partisan and non-political. We do not have a position on the underlying issues: our sole concern is free speech and securing open, tolerant debate.

Yours sincerely

Andrew Neish KC

Alumni for Free Speech

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