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FREE SPEECH UNION

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The Provost and Fellows
Eton College
Windsor
SL4 6DW

5th December 2020

To the Provost and Fellows of the Kynges' College of Our Ladye of Eton Besyde Windesore

Re: Dismissal of William Knowland

We are writing on behalf of Mr William Knowland, who is a member of the Free Speech Union.

The Free Speech Union is concerned about the implications of Mr Knowland's dismissal for freedom of thought and expression, and intends to intervene in this matter to the fullest extent that is proper.

We do not propose to intervene in the ongoing appeal process, which we trust will be carried out fairly and lawfully. We ask instead: in relation to Mr Knowland's dismissal, were the Trustees of Eton College ("the College") consulted, and once aware of the Head Master's decision, did they act with reasonable care and skill in furthering the College's charitable purpose of advancing education for the public benefit, and in protecting the reputation of the College?

We believe that Mr Knowland's dismissal cannot possibly be consistent with the College's charitable objects. However, we are keen to hear the Trustees' side, and would therefore be most grateful if the Trustees would provide answers to the questions set out at the end of this letter. In the event that Mr Knowland's dismissal is affirmed on appeal, we intend to write to the Charity Commission setting out our concerns in detail, and requesting that it open a statutory inquiry into the College under s.46 of the Charities Act 2011.

Please note also that the Free Speech Union intends to write to the Attorney General, Suella Braverman QC MP, urging her to make a reference to the Charity Tribunal, under s.326 of the Charities Act 2011, regarding the meaning of the advancement of education for the public benefit in relation to matters of political and cultural controversy.

We respectfully suggest that, in light of the [speech](#) of the Equalities Minister to the House of Commons on 20th October 2020, the recent actions of the College are likely to invite unwanted controversy, and might jeopardise its charitable status – a perennially controversial matter for the College, as for all independent schools.

For those reasons, we hope you agree that it is in the College's and Trustees' interests to provide answers to the questions at the end of this letter.

The advancement of education for the public benefit

The relevant charitable object of the College is as follows:

The advancement of education by the provision, support and conduct of a school known as Eton College and by ancillary or incidental educational activities and other associated activities (including the conduct of services in its chapel or chapels) for the benefit of students.

The Trustees are obliged in law to ensure the College's assets are used only for the furtherance of this object.

We accept that the decision to dismiss Mr Knowland may, conceivably, fall within the range of reasonable decisions that an employer could make, though we would disagree with any such finding. It would not follow, however, that dismissal was therefore the *only* possible reasonable decision, nor that a decision *not* to dismiss would have been unreasonable. Further, and crucially, such a finding would not demonstrate that the College's decision was also consistent with its charitable obligation to advance education in the public benefit.

The range of reasonable decisions open to the College as an employer was necessarily limited by the College's additional duties as a charity. We see no evidence that, since this story "broke" on 26th November 2020, the Trustees have considered these charitable duties.

The Provost wrote in his statement that the school "had no option" but to dismiss Mr Knowland having received legal advice from a barrister. This statement is a matter of grave concern. The Trustees *did* have options, as trustees of a charity. They may not fetter or abjure their discretion as decision-makers. We are concerned that the Trustees disregarded their independent duty to decide how the College should advance education as a charity, and instead allowed legal advice, on a different legal issue, to override their duty to consider and decide.

We accept that any legal liability poses a financial and reputational risk that all charity trustees must take seriously. Our concern, however, is that the College and/or its Trustees *chose*, for irrelevant reasons, to overstate a liability risk that was in fact remote, and did so without due regard to charitable obligations.

We suggest, with respect, that the likelihood of any liability was fanciful. The College is, as the Provost noted in his statement, an educational community famed for its embrace of free intellectual challenge. Mr Knowland's video was explicitly stated to be an exercise in such challenge. It formed part of a series dedicated to such exercises.

As such, all teachers at the College must be presumed to have accepted and embraced (and probably participated in) its robust approach to intellectual exploration. Therefore, no teacher could reasonably claim that they perceived the video as harassment. Such an argument – "robust intellectual exploration is legitimate when it suits my taste; harassment when it does not" – would be arbitrary and therefore unreasonable. A teacher may, of course, have found the video disagreeable or distasteful, but that is something else entirely.

We suggest that a reasonable and careful trustee would have:

1. investigated the likelihood, in the circumstances, of any finding of liability against the College;
2. weighed up the (in our view, remote) risk of liability against the impact that removal of the video, and dismissal of Mr Knowland, would have on the College's pursuit of the advancement of education; and
3. considered whether the detriment of any potential damages, in light of the substantial College's income (over £76 million as of year ending August 2019), outweighed the harm to the College's charitable objects and reputation.

In addition, we are extremely concerned that the College allowed either an overblown and fanciful notion of liability risk, or an irrelevant wish to prevent emotional harm, to override the interests of its beneficiaries – its students. They are entitled to receive a broad, open-minded, challenging education. We question what consideration, if any, was given in this matter to the students’ countervailing interests as beneficiaries. We suggest that no reasonable balancing exercise between the competing interests could possibly have led to the decisions made by the College.

In relation to Mr Knowland’s video itself, we are keen to learn what assessment, if any, the Trustees carried out of its educational content, and of the implications its removal would have on the public benefit duty. As established in *R (Independent Schools Council) v Charity Commission* [2012] Ch 214, paragraph 195, it is not enough for the College simply to name the advancement of education as its charitable object in its statutes. It must further that object, and benefit the public in doing so.

The Free Speech Union therefore respectfully enquires whether the Trustees have satisfied themselves that Mr Knowland’s video is so lacking in educational value that insistence on its removal, and Mr Knowland’s dismissal following his refusal to do so, does not contravene the obligation to advance education, and is not likely to create a chilling atmosphere among College staff.

We also remind the Trustees that the College cannot advance education for the public benefit if the effect is to advance one side of a political controversy (*Southwood v AG* [2000] All ER (D) 886). The exemption of universal, uncontroversial statements from this rule – e.g., “peace is better than war” – has no application in this case.

If the outcome of the decisions against Mr Knowland, and the ensuing chill effect, will be to skew the College’s teaching decisively in favour of one side of the controversy that Mr Knowland asked his pupils to address in his video, then the Trustees will fail in their duty to benefit the public. In the clear words of the 2011 Charity Commission guidance on the advancement of education for the public benefit:

Promoting a specific point of view may be a way of furthering another charitable aim, but it would not be education.

Teaching the College’s boys only one side of a political and moral controversy would, quite simply, not be education. To learn about a controversy is to learn about a conflict of views. The College could not teach the boys about the Corn Laws by telling them only of the voices in favour of free trade. Such “teaching” would be a mere schooling in ignorance, unworthy of the College or any educational charity.

For those reasons, we ask the Trustees to set out what steps the College has taken, or will take, to ensure balance in the College’s teaching about gender differences and “patriarchy”.

Reputation

As you will be aware, the Trustees also have a duty to preserve the College’s assets, including its reputation. The College is, with the possible exception of JK Rowling’s Hogwarts, the most famous school in the world. Its international prestige is unequalled. The Trustees must act with the skill and care reasonably required to preserve such an enormously valuable asset.

For the reasons set out above, we suggest that on the current evidence the College, under the Trustees’ oversight, has imprudently prioritised a remote risk without due regard to the foreseeable damage to its reputation. A glance at the past week’s newspapers will show the Trustees the real and regrettable reputational damage that has ensued.

In addition to question 10 at the end of this letter, we ask the Trustees to consider how Old Etonians have contributed to the College's reputation for fearlessness (intellectual and otherwise), and to consider whether upholding the decisions against Mr Knowland would gratuitously harm that reputation, such that the Trustees could not claim to be acting in the best interests of the College.

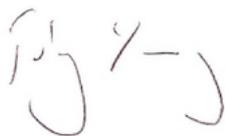
Indeed, we ask whether the only decent response this episode could possibly elicit from the alma mater of George Orwell, Michael Foot, Aldous Huxley, Douglas Murray, Percy Bysshe Shelley, Ludovic Kennedy, Ranulph Fiennes and John Maynard Keynes is one of embarrassment.

We also ask the Trustees whether upholding the decisions against Mr Knowland would constitute prudent management of the College's finances, given the evident potential that donations will be lost due to the disrepute brought upon the College.

Finally, in light of the above and the evident reputational damage that the College has suffered, we would be grateful if the Trustees could confirm whether they have reported this matter as a serious incident to the Charity Commission?

Specific questions related to all of the above follow at the end of this letter.

Yours sincerely,



Toby Young
General Secretary
The Free Speech Union
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Questions

1. Can the Trustees provide evidence that they considered the impact of the decisions against Mr Knowland on their charitable duties? If so, the Free Speech Union would be grateful if the Trustees could provide such evidence, with any adaptations that are necessary for data protection or confidentiality purposes (this caveat applies to all further requests for evidence).
2. Did the Trustees carry out any separate risk analysis from a charity law perspective regarding the potential liability of the College under the Equality Act 2010 and the Education (Independent Schools Standards) Regulations 2014? If so, the Free Speech Union would be grateful if the Trustees could provide evidence of such analysis.
3. Have the Trustees sought, or will they seek, separate legal advice on whether the decisions made against Mr Knowland would be consistent with their charitable duties?
4. Did the Trustees, in accordance with paragraph 99 of the Explanatory Notes to the Equality Act 2010, balance "the rights of freedom of expression (as set out in Article 10 of the European Convention on Human Rights) and of academic freedom against the right not to be offended in deciding whether a

person has been harassed”? Did it ensure the College carried out such a balancing exercise? If yes, the Free Speech Union would be grateful if the Trustees could provide the relevant evidence.

5. Did the Trustees weigh up the interests of the College’s students as charitable beneficiaries against the right of the College’s staff not to be offended? If yes, the Free Speech Union would be grateful if the Trustees could provide the relevant evidence.
6. Did the Trustees assess, or require the College to assess, the educational content of Mr Knowland’s video, by following up the citations contained in it, by considering the merit of the arguments made in light of the scholarly literature, or by any other means? If yes, the Free Speech Union would be grateful if the Trustees could provide the relevant evidence.
7. Are the Trustees satisfied that Mr Knowland’s video is so lacking in educational value that the decisions against Mr Knowland do not contravene the obligation to advance education, and are not likely to create a chilling atmosphere among College staff?
8. Do the Trustees agree that Mr Knowland’s video concerned a controversial matter of public interest? If the Trustees believe that the doctrines challenged by Mr Knowland are uncontroversial and trivially true, on what grounds does it so believe?
9. Have the Trustees assessed or required the College to assess, whether:
 - a. other College teaching materials on matters relating to gender and patriarchy, and which take the opposite position to the one explored by Mr Knowland, are not divisive, controversial or potentially offensive?
 - b. there is, generally, sufficient balance of views across the College’s teaching materials on matters relating to gender and patriarchy?
 - c. the decisions against Mr Knowland might harm any sufficient balance of views across the College’s teaching materials on matters relating to gender and patriarchy?

If yes, the Free Speech Union would be grateful if the Trustees could provide the relevant evidence.

10. Regarding the College’s reputation:
 - a. In the event that the removal of the video and dismissal of Mr Knowland are upheld, will the 580-year reputation entrusted to the Trustees’ care be in the same state of repair as when they initially took the duties of trustee?
 - b. If the College’s reputation has been harmed as a result, is that harm justified by the need to protect some other interest of the College as a charity?
 - c. Is the need to avert a remote possibility of emotional harm among a community of intellectually robust teachers, thereby leading to legal liability, such an interest in the Trustees’ reasonable opinion?
 - d. Have the Trustees reported the matter of Mr Knowland’s dismissal to the Charity Commission as a serious incident? If not, do they intend to do so imminently or within their annual return? If not, the Free Speech Union would be grateful if the Trustees could provide their reasoning for this decision.