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FREE SPEECH UNION

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Rt Hon Mark Drakeford
First Minister
Welsh Parliament
Cardiff Bay
Cardiff
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29th April 2021

Dear Mr Drakeford,

The Welsh Government's Race Equality Action Plan

I am writing to you in my capacity as a member of the Free Speech Union's Legal Advisory Council and on behalf of that organisation. The Free Speech Union is a mass-membership public interest body that stands up for the speech rights of its members and campaigns for free speech more generally.

The Free Speech Union would like to respond to the Equality Team on one particular aspect of the Welsh Government's [Race Equality Action Plan for Wales](#). We note that this document, while it does not specifically deal with speech, may have implications for free speech. Can we draw the following matters to your attention and the attention of the Race Equality Team?

(1) Leadership and Representation

(a) Under the policy goals envisaged in "Leadership and Representation", we notice that there are aspirations (see p.39) to "tackle micro-aggressions, encourage allyship and bystander intervention, with mandatory, ongoing team-based learning and development provision for all middle managers and those they manage to develop knowledge, skills and behaviours for working in an anti-racist way".

(b) We entirely accept that community leaders across Wales should be aware of the necessity to treat different races equally, and if necessary receive training in how to do it. However

(i) We notice that "micro-aggressions" can be very widely defined. Almost any question or comment, however friendly in intent, can be seen as a micro-aggression if misread by the person it is addressed to, or for that matter by a bystander, even if it causes no offence to the actual addressee.

(ii) If the plan is to make it clear to anyone in a leadership position anywhere in the public sector in Wales that any such comment may lead to disciplinary action or reporting to a higher authority, it is our view that this may have a chilling effect on ordinary speech and on relations in the workplace and elsewhere.

(c) It is our view that any mandatory training must not inhibit ordinary conversation; and that sanctions should be applied only in cases where insult was intended or the person speaking was guilty of gross negligence; and that any encouragement to report such matters be similarly limited.

(d) In connection with the aspiration to “equip our staff with the skills they need to become anti-racist leaders and team members, understand micro behaviours and what unacceptable behaviour looks like”, we would equally urge that it should be made clear that only in the case of speech that’s intentionally insulting or derogatory, or of gross negligence by the speaker, should matters be taken further.

(2) Education

(a) We note the proposed mandatory – and indeed legally-required – inclusion in schools throughout Wales of “understanding of anti-racism, and the confidence and ability to challenge harmful norms”.

(b) we take the view that any such requirement must take into account two factors:

(i) Matters such as the pervasive existence of structural or systemic racism, the equal validity of ‘lived experience’ when set alongside other forms of knowledge, such as that based on empirical data, and the existence of ‘white privilege’, are extremely controversial and if taught as incontrovertible fact would require teachers to take a side in subjects of ongoing legitimate public debate. No child should be taught any of this as incontrovertible fact, but, rather, they should be introduced to these ideas alongside other points of view – such as the views expressed in the [Commission on Race and Ethnic Disparities Report](#) – in a politically balanced way.

(ii) Equally, in line with the aim of the education system to produce confident and articulate children, no child should be sanctioned, punished or disadvantaged for disagreeing with statements of the existence of such matters. For instance, a child should not be made to feel ignorant or morally blind by their teacher or by their classmates if they challenge the concept of ‘white privilege’.

(c) the aim to “revise and introduce new standardised terminology in Welsh that best reflects Wales’s cultural and racial and ethnic communities, and include in Y Termiadur Addysg” must not be allowed to lead to the sanctioning, punishment or disciplining of any child for using non-standard terminology or for questioning the wisdom of this policy.

(3) Crime, Justice, Hateful Attitudes and Community Cohesion

We do not know the details of the proposal to “identify and propose improvements to hate crime law and processes through the Hate Crime Board Cymru” (p.110). But whatever changes are eventually proposed must take full account of the need to preserve free speech, including the right to express forthright views about a wide range of contentious issues even where this might otherwise cause distress. Such protection must in our view be clear and robust, and not limited by the minimum requirements of Article 10 of the European Convention on Human Rights. We would draw attention to the controversy attracted by the passage of the Hate Crime and Public Order (Scotland) Act 2021 in Edinburgh, and would urge that any action by the Welsh government should avoid any incursion on the right of free speech.

Yours sincerely,



Professor Andrew Tettenborn

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Cc The Equality Team, Welsh Government
Ms Julie James MS, Minister for Local Government, Wales
Mr Andrew Davies MS, Leader, Welsh Conservative Party