



**FSU**  
FREE SPEECH UNION

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Professor Sally Mapstone  
Principal and Vice-Chancellor  
University of St Andrews  
St Katharine's West  
The Scores  
St Andrews  
KY16 9AX

21<sup>st</sup> October 2021

Dear Professor Mapstone,

I am writing to you in my capacity as General Secretary of the Free Speech Union, a non-partisan, mass membership public interest body that stands up for the speech rights of its members and campaigns for free speech more widely.

One of our members, a student at the University of St. Andrews, has contacted us following your University's demand that they complete a compulsory training course in order to matriculate. As you will be aware, this training course contains various modules, each of which must be successfully passed by way of a 'quiz' at the end.

I am writing to you because we are particularly concerned with the 'diversity training' module, which demands that 15 out of the 17 questions posed are answered correctly in order to pass, and, thereby, matriculate. We believe this demand may be a breach of the Human Rights Act 1998 (which states that, by virtue of s.6, St. Andrews may not act incompatibly with the European Convention on Human Rights), the Equality Act 2010, and, potentially, charity law.

Relatedly, we are concerned with this 'diversity' training's misrepresentation of the law and the resulting culture this instils within one of the UK's most renowned higher education institutions.

#### HRA – Compelled Speech

As you may be aware, the Human Rights Act 1998 (HRA) protects the right to hold and manifest a belief by virtue of Article 9 of the European Convention on Human Rights (ECHR), including the right not to be obliged to manifest a belief (See: *Buscarini v Marino*, App no. 24645/94 [1999]).

Further, the ECHR protects the right to freedom of expression (Article 10, ECHR), which the UK Supreme Court has ruled includes the right not to express a particular point of view (See: *Lee v Ashers Baking Company* [2018] UKSC 49). We believe it is not enough that students are allowed to disagree with

only two questions on the 'diversity training quiz' as there are more than two questions which students could reasonably disagree with.

For example, we take issue with the following question:

Acknowledging your personal guilt is a useful start point in overcoming unconscious bias. Do you agree or disagree with this question?

The 'correct' answer to be ticked is 'agree'. However, it is a perfectly reasonable position for students to disagree. A student may resist the idea of 'acknowledging personal guilt' as, presumably, this entails agreeing with the premise that you should feel guilty for historical events in which you played no part, a tenet of Critical Race Theory (CRT). Alternatively, a student may disagree with the premise that such an acknowledgment would help to 'overcome unconscious bias'. Indeed, approaches to overcoming unconscious bias are [disputed](#) and CRT is by no means an unassailable theory. In fact, the UK government's Commission on Race and Ethnic Disparities (UKCRED) has recently voiced disagreement with several of its [key facets](#). Hence, it would be completely reasonable for a student to respond to this question with 'disagree'.

Another question to which one could reasonably give the purportedly 'wrong' answer is: 'Does equality mean treating everyone the same?' The correct answer is 'no' and, once this is submitted, students are told that "equality may mean treating people differently, and in a way that is appropriate to their needs, so that they have fair outcomes and equal opportunity". In fact, equality is a [highly contested concept](#), widely understood as it [appears](#) in the Oxford Learner's Dictionary: 'having the same rights or being treated the same as other people, without differences such as race, religion or sex being considered'.

A final 'question' I'd like to draw your attention to is one which forces students to agree with the statement that 'a definition of diversity is recognising people's differences and being positive about them'. While this may, indeed, be 'a' definition of diversity, it is not one students should be compelled to accept. This definition may be posed to students as a matter for debate, but the HRA guarantees that no one should be compelled to 'be positive' about others' differences, as explained above. So long as one does not behave in a way which is outside the law they may choose to 'be' indifferent, or even negative, about another's 'difference' – this is a matter to be decided according to individual conscience.

Forcing students who are aware of nuance within the law, ethics and a diversity of views on topical matters to give an answer the University has deemed 'correct' does not respect their Article 9 and 10 (ECHR) rights. Indeed, it is arguable that your 'quiz' is a set of assertions loosely dressed up as questions, which students are compelled to agree with if they are to commence their studies at St. Andrews. Certainly, many young, first-year students will feel pressured to act against their own intellect and conscience out of fear of the repercussions if they do otherwise. This is an abuse of power on part of the University. Most students will be unwilling to risk their hard-earned place at university, particularly one as prestigious as St Andrews, at the very outset of their studies. Many will have family members counting on them and do not have the means or know-how which might enable them to mount a robust legal defence if/when they are prevented from taking up their studies.

If the University were to go through with its threat of not allowing students to matriculate if they fail this 'diversity' quiz, it is arguable that Article 14 of the ECHR would also be engaged in tandem with Article 9 and 10. Article 14 requires that all ECHR rights be protected and applied without discrimination – not allowing students to begin their studies because they have a belief which clashes with CRT ideology is potentially discriminatory and unlawful.

Let me be clear. The Free Speech Union has no issue with St. Andrews students exploring the ideas embedded in CRT ideology or the contested theoretical beliefs underpinning the concept of unconscious bias. Rather, it is the compulsory nature of the module and the penalisation of students who fail to give the University dictated 'correct' answers to at least 88% of the 'quiz' which concerns us.

### Equality Act – Discrimination, Harassment and Free Speech

Equally, the University may be opening itself up to liability under the Equality Act. If the University does not allow students with beliefs which clash with CRT ideology to begin their studies (i.e. students that have acted according to their own belief and conscience when taking the 'quiz'), it is arguable that this amounts to direct discrimination on the grounds of belief (s.91). It is also important to point out that such an act would wholly contravene St. Andrews' statutory duty to comply with the public sector equality duty (PSED) under s.149(1)(a) of the Equality Act. This duty places your institution under a legal obligation to have regard to the advancement of 'equality of opportunity' for all, including those with controversial/differing philosophical beliefs.

A further point which I am compelled to bring to your attention is the fact that St. Andrews' compulsory diversity module misrepresents the law on harassment and, in this way, along with other assertions, may be creating a culture of fear and self-censorship within the University.

The issue is as follows: your diversity module states that the Equality Act 2010 imposes liability on any relevant person or organisation that intentionally harasses another person with a protected characteristic. It is then highlighted to students that a person or organisation could be liable if conduct, regardless of intent, has the effect of harassing another person. While this is correct, a critical point which your module fails to underscore is that any such finding by a court entails the weighing of the affected person's perception with the other circumstances of the case and whether it is reasonable for the alleged wrongful conduct to have this effect (See: s.26(4)(a-c)).

This omission creates the impression that you could easily be found guilty of harassment purely on the grounds that another person claims to feel harassed by your conduct, and, unfortunately, this misrepresentation of the law is endemic within the 'diversity' module. For example, it also includes a list of 'micro-aggressions' students should avoid (e.g. mis-gendering someone or referring to a professional woman as 'girl') with the warning that while 'micro-aggression' is not a legal term (correct) it may amount to harassment, something which is 'likely to depend on the effect it had on the victim'.

This misrepresentation of the law is then further engrained in students' minds through related statements found within the 'diversity training' module, e.g. that 'common sense attitudes can be discriminatory' and that if a student 'acts with negative attitudes or beliefs' they 'risk breaking rules and laws'.

It is difficult to overstate the importance for a renowned, liberal university to highlight the s.26(4)(a-c) safeguard to its students. This safeguard significantly reduces the risk that innocent conduct, not intended to harass anyone, can be categorised as unlawful and thereby frees students to engage in vigorous argument and robust debate, which traditionally have formed part of the everyday life of university students in the UK. Indeed, Parliament did not intend the Equality Act to interfere with the free speech rights of individuals but rather to allow for a system which balances rights as stated in the Equality Act's explanatory notes, ss. 99:

In determining the effect of the unwanted conduct [the alleged harassment], courts and tribunals will continue to be required to balance competing rights on the facts of a particular case. For example, this could include balancing 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.

### 'Diversity Training' – Unintended Consequences and Charity Law

We are concerned that your 'quiz', coupled with your content, comes dangerously close to indoctrination. Indeed, it unequivocally pushes an ideological and political agenda. When undertaking this compulsory module students are forced to read a long excerpt of 'White Privilege' by Bhopal K (a devotee of CRT) which demonises neoliberalism and states definitively that 'race remains central to the judgements and values made about who is deserving and who is undeserving'. Surely, at the very least, students should be presented with one of the many viewpoints which counter such assertions and asked to evaluate the evidence for themselves.

This is not only a matter of good-practice. In forcing students to adopt a political agenda it is arguable that St. Andrews is not complying with charity law (the Charities and Trustee Investment (Scotland) Act 2005). Indeed, the Scottish Charity Regulator (OSCR) has specified that charities which act with the purpose of advancing education must do so in a way that is 'structured' and 'neutral'.

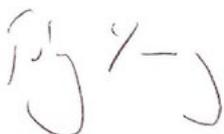
To veer from this neutral position and remain within the law the lack of neutrality must be for the 'public benefit'. However, it is worth noting, as a matter of persuasive English authority, that in the case of *Southwood v Attorney General* [2000] EWCA it was made clear that education cannot be advanced for the public benefit if it promotes one side in a subject of political controversy. An educational charity may promote uncontroversial ethical truths – for instance, 'peace is generally preferable to war', or 'all persons should be treated with dignity regardless of their gender', but it may not promote propositions that are the subject of reasonable disagreement.

Adding to the difficulty of your case is the fact that the UKCRED denounced the concept of 'white privilege' along with the 'bleak new theories about race that insist on accentuating our differences'. Indeed, evidence suggests that 'diversity training' not only 'does not work' (UKCRED), but may indeed be counter-productive. The sociologists Frank Dobbin and Alexandra Kalev looked at the impact of the mass roll-out of diversity training in American corporations for the *Harvard Business Review* and concluded that such programmes are counter-productive, particularly when they're compulsory. In their article 'Why Diversity Programs Fail', Dobbin and Kalev stated:

The positive effects of diversity training rarely last beyond a day or two, and a number of studies suggest that it can activate bias or spark a backlash. Trainers tell us that people often respond to compulsory courses with anger and resistance – and many participants actually report more animosity toward other groups afterward.

In light of these points I encourage you to re-assess the value and purpose of your compulsory 'diversity training', and urge you to address the glaring legal issues it encompasses. If the Free Speech Union can be of any assistance with this process we would be happy to advise on a pro-bono basis.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'J. Y.', written in a cursive style.

Toby Young  
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Cc: Shirley-Anne Somerville MSP, Cabinet Secretary for Education and Skills, Scotland