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FREE SPEECH UNION

THE FREE SPEECH UNION
85 GREAT PORTLAND ST.
LONDON W1W 7LT
[FREESPEECHUNION.ORG](https://www.freespeechunion.org)

Mr Matthew Shaw
Chief Executive
Great Ormond Street Hospital for Children NHS Foundation Trust
Great Ormond Street
London
WC1N 3JH

30 March 2022

By email to: matthew.shaw@gosh.nhs.uk

Dear Mr Shaw,

Helen Joyce – Child and Adolescent Mental Health Psychiatrists' Webinar

I am writing to you on behalf of Dr Helen Joyce 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.

Dr Joyce believes that her removal from the panel of speakers at the Child and Adolescent Mental Health Psychiatrists' Conference due to take place on 16 March 2022 was unfair, demeaning and unlawful. She seeks redress from Great Ormond Street Hospital for the way in which she was treated.

Factual background

On 11 January 2022, Dr Joyce was invited to speak at the Child and Adolescent Mental Health Psychiatrists' Conference due to take place on 16 March 2022. She understands that the conference was intended to be one of an annual series run as part of the Higher Training Scheme in Child and Adolescent Psychiatry, by GOSH and the other London teaching hospitals in rotation.

This year, the conference was to be on the topic 'How can child psychiatrists support gender-questioning young people?' Dr Joyce's panel concerned 'Gender identity and gender ideology – the context'. The conference organisers made significant efforts to achieve balance between gender-critical speakers (such as Dr Joyce) and speakers who support gender-identity ideology. These efforts were thwarted by the latter group's consistent rejection of invitations to take part.

On 24 February 2022, a panellist who had been invited to speak on the opposite side of the debate to Dr Joyce expressed concern at the title of the panel session, telling organisers that the very notion of 'gender ideology' is associated with sexist and transphobic transnational conspiracy theories. The panellist worried that this title might signal to attendees that the event would promote harmful practices.

On 28 February, one of the organisers emailed Dr Joyce to tell her of warnings they had received regarding the safety of attendees. The organiser asked Dr Joyce to be sensitive to this issue.

On 6 March, a conference organiser told Dr Joyce by email that a member of the organising committee had circulated defamatory accusations against Dr Joyce to other committee members. Those alleged that Dr Joyce's book *Trans: When Ideology Meets Reality* argued that trans ideology is a myth funded by a Jewish billionaire elite, and repeated an allegation that Dr Joyce promotes hate speech and misinformation.

In her response on the same day, Dr Joyce explained to organisers that the allegations were false (they are indeed wholly false) and protested that attendance at the conference should not require a protestation of innocence of vexatious allegations.

On 9 March Dr Joyce, at the organisers' request, outlined the talk she proposed to give. Her outline confirmed that the proposed talk was entirely lawful and reasonable.

On 11 March, the organisers emailed Dr Joyce to rescind the invitation to speak at the conference on the ground that the supporter of gender-identity ideology on the same panel as her did not wish to face two gender-critical speakers on the same panel. Stephanie Arai-Davies, who was also due to speak and also has gender-critical views, was disinvited at or around the same time.

Internal complaints against the proposed platforming of gender-critical speakers continued, culminating in a complaint made under the GOSH whistle-blowing procedure to Health Education England that the proposed conference would be unlawful. Around the same time, the conference organisers were told that the failure to achieve a balanced panel was the result of a deliberate tactic, frequently adopted by trans activists, to refuse speaking invitations and thereby prevent events featuring speakers with gender-critical views from going ahead due to lack of balance.

On the day before it was due to go ahead, the conference was finally cancelled.

Legal framework

Discrimination

Section 29(6) of the Equality Act 2010 states:

A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.

Section 31(4) states: 'A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.'

The Equality and Human Rights Commission's *Statutory Code of Practice Services, Public Functions and Associations*, which must be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant, states of the s.29(6) duty:

11.26 The Act prohibits discrimination in the exercise of a public function. The provision is a broad one and would cover, for example, refusing to allow someone to benefit from the exercise of a function, or treating someone in a worse manner in the exercise of a function

Direct discrimination is defined at section 13(1) of the Act as follows:

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Philosophical belief (which includes *lack* of belief) is a protected characteristic per section 10 of the Act. In *Forstater v CGD Europe* UKEAT/0105/20/JOJ, the Employment Appeal Tribunal ruled that gender-critical belief is protected under section 10.

Public sector equality duty

The public sector equality duty (PSED) is set out at section 149(1) of the Act:

A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The duty to have regard is mandatory. In complying with the duty, a ‘substantial, rigorous and open-minded approach’ is required (*R (Boyejo) v Barnet LBC* [2009] EWHC 3261 (Admin) [59]). The duty is not a tick-box exercise, but requires a ‘conscious directing of the mind to the obligations’ (*R (Meany) v Harlow DC* [2009] EWHC 559 (Admin) [74]).

The right to freedom of expression

Under section 6 of the Human Rights Act 1998, it is unlawful for a public authority such as GOSH to act in a way which is incompatible with a right set out in the European Convention on Human Rights.

Article 10 of the Convention states:

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are

prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In *R (Miller) v College of Policing* [2020] EWHC 225 (Admin) paras 250 to 252, the High Court held that, in accordance with the Convention and the common law, expression of gender-critical views constitutes speech on a topic of controversy and therefore attracts special protection, with little scope for lawful interference.

The European Court of Human Rights has held that both journalists and academics play the role of ‘public watchdog’ (*Magyar Helsinki Bizottság v. Hungary*, App. no. 18030/11 (2016), [167] and [168]):

The manner in which public watchdogs carry out their activities may have a significant impact on the proper functioning of a democratic society. It is in the interest of democratic society to enable the press to exercise its vital role of ‘public watchdog’ in imparting information on matters of public concern.

As such there is little scope under Article 10 to determine that interference with a journalist’s freedom of expression is necessary and justifiable (*Stoll v. Switzerland*, App. no. 69698/01 (2007, [102])).

Academic freedom warrants a similar level of protection. In the case of *Sorguç v. Turkey*, App. no. 17089/03 (2009) [35], the Court held that ‘academic freedom ... comprises ... freedom to distribute knowledge and truth without restriction’. The Court has also ruled that academic freedom protections apply beyond the confines of teaching and publication of research, and extend to public discussion (*Kula v Turkey*, App. no. 20233/06 (2018) [38]; *Erdoğan v. Turkey*, Apps. nos. 346/04 and 39779/04 (2014) [40]).

The legality of Dr Joyce’s cancellation

Dr Joyce accepts that the conference organisers made significant efforts in good faith to achieve a balanced panel of speakers, and that the organisers did not attempt to prevent *all* gender-critical speakers from participating. Her complaint is that, in revoking her invitation specifically, the organisers:

1. took account of, and/or failed to rebut, defamatory and baseless allegations of hate speech and of promoting conspiracy theories that were circulated to a group of people who were professionally important to Dr Joyce; and
2. gave in to activist tactics to prevent her from speaking, rather than give her a platform to express freely her legally protected philosophical beliefs.

Discrimination

GOSH, which organised and proposed to host the conference as part of its training scheme, is a public authority. In hosting the conference it was performing one of its core public functions of

training medical practitioners. Dr Joyce believes that she was treated less favourably by the organisers of the conference because of her gender-critical beliefs (or, in the alternative, because of her lack of belief in gender-identity ideology), and was thereby unlawfully discriminated against.

It is Dr Joyce's view that, had a speaker with views opposed to hers been defamed by those who agree with her, or had attempts been made to 'tactically cancel' such a speaker, the organisers would not have succumbed to pressure and would have defended that speaker's right to freedom of speech.

The unequal treatment of Dr Joyce is evidenced by the fact that the invited speaker who took a gender-identity ideology position made unfair, untrue and disgraceful accusations of hate speech and of promoting conspiracy theories against Dr Joyce was not disinvited, despite conduct which on any reasonable judgement warranted disinvitation. Whereas Dr Joyce, the target and victim of that unjust conduct, *was* disinvited.

Dr Joyce feels that the malicious mischaracterisation of her beliefs, and the failure to correct that mischaracterisation, had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for her. While under section 29(8) GOSH cannot be liable for harassment relating to belief, this conduct amounted to a detriment to her in accordance with section 212(5). This detriment constituted a further act of discrimination.

Public sector equality duty

There are reasonable grounds to suspect that GOSH, in breach of its statutory duty under section 149 of the Equality Act 2010, failed to consider the elements of the public sector equality duty (PSED).

A decision-maker that had regard to the need to eliminate discrimination, to advance equality of opportunity, and to foster good relations would not have made such an obviously invidious decision. The revocation of Dr Joyce's invitation to speak, and the willingness to acknowledge the malicious insinuation that gender-critical beliefs are hateful (or, alternatively, the lack of willingness to challenge such insinuation), are clearly likely to result in a hostile atmosphere for individuals with gender-critical beliefs.

This consequence was foreseeable. Had GOSH or its employees consciously directed its mind to its obligations and adopted the substantial, rigorous and open-minded approach required by law, it would not have revoked Dr Joyce's invitation to speak.

It follows further from the obligation to adopt a rigorous and open-minded approach that the objections to Dr Joyce's proposed talk did not constitute a lawful ground under the PSED to disinvite her. The PSED does not require, and cannot justify, surrender to any and all complaints related to protected characteristics. Conceding to the heckler's veto is not consistent with a rigorous and open-minded approach.

Right to freedom of expression

Dr Joyce's talk merited the highest level of protection under Article 10 of the Convention, by virtue of the fact that she was a journalist proposing to speak on a matter of intense public controversy,

and/or by virtue of the fact the conference was an academic event for the purpose of training psychiatrists.

The organisers had no lawful justification to prevent Dr Joyce from speaking. They were given an outline of her talk in advance, and were aware that its contents would not cause disorder or crime or harm the reputation or rights of other. As a result of Dr Joyce's widely published writings, it should reasonably have been aware, and almost certainly was aware, that no harm would have resulted in allowing her to speak, and that allegations of hateful speech were lurid and untrue.

Further or alternatively, 'lack of balance' was not a justifiable reason to revoke Dr Joyce's invitation. Although achieving a balance between opposing speakers was a legitimate aim, it was not reasonable for GOSH to pursue this aim by acceding to activist tactics designed to make balance impossible and to suppress free expression. In doing so, GOSH procured an outcome in which there was no balance, no event and no expression of ideas. This outcome was reasonably foreseeable, and GOSH acted unreasonably in procuring it.

Next steps

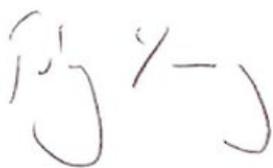
The Free Speech Union will support and, if we deem it reasonably necessary, fund Dr Joyce in bringing any action against GOSH and/or the organisers of the conference, whether that be a claim in the County Court for discrimination, a claim for damages under the Human Rights Act, or judicial review in the High Court.

In order to avoid the expense of time-consuming litigation, Dr Joyce asks that GOSH resolve this dispute by carrying out the following steps:

1. apologise publicly to Dr Joyce, in a jointly agreed statement, for cancelling her invitation to speak at the conference;
2. promptly invite her to deliver her planned talk at an alternative speaking event; and
3. acknowledge clearly and publicly that the allegations of hate and promoting conspiracy theories made against her by an organiser and invitee of the conference were baseless, untrue and hurtful.

Dr Joyce reserves all rights in relation to this matter.

Yours sincerely,



Toby Young
General Secretary, The Free Speech Union
toby@freespeechunion.org

cc. Dr Helen Joyce

Sir Michael Rake, Chair, Great Ormond Street Hospital for Children NHS Foundation Trust
Dr Navina Evans, Chief Executive, Health Education England
The Rt Hon Sajid Javid, Secretary of State for Health
Kemi Badenoch, Parliamentary Under-Secretary of State for Equalities
The Rt Hon Jeremy Hunt, Chair, Health and Social Care Committee