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Date 8th May 2023

Our Reference: DMCK/LL/

Mike Jones,
Managing Director,
The Stand Comedy Club
5 York Place
Edinburgh
EH1 3EB

By email: mike@thestand.co.uk

Dear Sirs

Joanna Cherry KC MP

We are instructed by Joanna Cherry.

Background

In January 2023, our client was approached to participate in a one-off event at the Fringe (promoted by Fair Pley Limited) called 'In conversation with...' The invitation came from Salt 'n' Sauce Promotions Limited, owners and operators of The Stand. Our client was advised at the time that a number of other public figures had participated in this event including not only named politicians representing different parties and views, but also figures from sport, the arts and other sectors. Our client accepted the invitation and the proposed date was fixed for Thursday 10th August.

In response to what was presumably a reaction to our client's participation in the event, your Board published a statement in April 2023 reinforcing that the event was to proceed in response to concerns which had been expressed.

However, on 1 May, a further statement was issued:

We will not compel our staff to work on this event and *so have concluded that the event is unable to proceed on a properly staffed, safe and legally compliant basis.*

The following day, the promoter wrote to you, seeking to reverse the decision which appeared to be discriminatory. Your decision remains and, unless you can advise to the contrary, our client's participation in the event remains cancelled.

It is evident that the concerns of staff related to our client's views and statements on transgender issues.

Our client has considered her options in light of the cancellation. She has sought advice from us and senior counsel on the legal issues arising.

Legal position

The clear and unequivocal opinion of senior counsel and by us is that your decision is unlawful and discriminatory. There is no defence available to you which would or could justify the decision as a matter of law.

We do not intend to rehearse the opinion. Instead, we attach a copy of the full opinion, which as you will see is a comprehensive analysis of the legal issues arising from the facts of this case.

The key components of the opinion are:

1. Our client's views and statements are protected as a matter of law. This is established both in statute (The Equality Act 2010), and subsequent court decisions across both Scotland and the UK.
2. Our client has been treated less favourably as a direct result of her beliefs (and views). This amounts to unlawful discrimination and is actionable.
3. Our client has a number of remedies open to her including a declarator that the event is discriminatory and unlawful; reinstatement of the event; damages and a public apology.

4. You cannot escape a finding of discrimination on the grounds that your staff objected or refused to work at the event. This has been established and reinforced many times over by the courts.

All of the above is set out in considerable detail in senior counsel's note.

Overview

Our client did not start this or indeed do anything to instigate your change of position. She was invited by you to speak at an event, agreed and has now been prevented from so doing as a result of an unlawful act on your part. It has become a very public issue and has caused her considerable distress and wholly unjustified damage to her reputation which she has had to defend immediately and unexpectedly by your actions. Your statement of 1 May is defamatory of our client, as it clearly suggests that our client represents some form of danger or at least threat to people's safety should the event proceed, as well as the clear implication that it would not be legally compliant.

Our client respects the views of others and believes in freedom of thought and expression. She has no objection to those who disagree with her but does object to being treated unlawfully simply because some people may happen to disagree with her views (or perceive so based on what they may have read about her). She welcomes debate on her beliefs. Our client agreed (and agrees) entirely with your statement on 13th April which said:

As a company we oppose any form of discrimination, including against people on the basis of their gender identity. The Stand does not endorse or support the views expressed by any participant in this series and it is wrong for others to imply that we do.

Whilst we may disagree with a particular viewpoint, we believe that people should have the right to express views that others might find controversial or strongly disagree with, providing this is done within the law and does not violate our code of conduct.

This event is open to all and will include questions from the public on any issues that might be raised. This was not specifically intended to be an event focussed on gender recognition or the rights of trans people.

Next steps

We recommend that you take immediate legal advice on this matter. We have alluded above to the legal remedies, all of which are provided for in the Equality Act.

We have advised our client of her right to seek damages and legal costs on top of the non-pecuniary remedies. Her legal rights extend to an action for defamation under the Defamation and Malicious Publication (Scotland) Act 2021.

You raised the possibility of an alternative to legal action which our client has considered. It is not her wish to litigate this matter, but she will not hesitate to do so to vindicate not only her own rights, but the vital rights of individuals to hold and express legitimate philosophical views and not to be discriminated against for so doing. Instead, she seeks a prompt and amicable resolution.

Accordingly, to resolve this matter immediately our client seeks the following:

- A statement and acknowledgment **in agreed terms** that The Stand has acted unlawfully by discriminating against our client.
- An accompanying apology, the terms of which would require to be agreed in advance.
- Restoration of the event on 10th August (or a date in the Fringe calendar in 2023 at the same venue).

If you agree to these reasonable requests, our client is willing to waive any claim for damages (including for defamation) or legal costs. She wishes to make clear now that should she pursue damages, any damages awarded to her would be paid to a charity of her choice.

If you are not prepared to agree to the above, our client's intention is to pursue all legal remedies open to her in court. She will seek interim orders given the relative proximity of the event and legal costs.

She is prepared to allow you 7 days to respond, failing which she has instructed us to proceed with an action in Edinburgh Sheriff Court without further reference to you.

Given your very public stance on this issue to date, our client is going to release this letter and the opinion of senior counsel.

Yours sincerely,

David McKie