Opposition to aspects of EDI as protected viewpoints under the Equality Act

Overview

A court has found that "anti-woke" and other beliefs are protected under the Equality Act 2010 (the "**Equality Act**"). As such beliefs entail the rejection of aspects of "equality, diversity and inclusion" ("**EDI**"), at least as ordinarily understood and practiced by UK universities and other higher education providers' (we refer to such institutions as "**HEIs'**") EDI functions, the Judgment has significant consequences for UK HEIs.

It is clear that opposition to (and non-belief in) various component agendas and ideas which are advanced under the EDI umbrella are already protected under the Equality Act. It is also likely that opposition to and non-belief in EDI, as a banner under which many controversial viewpoints (opposition to which is protected under the Equality Act) are promoted and enforced, is a protected belief under the Equality Act. There are other significant aspects of this case. This statement relates only to the developments regarding protected viewpoints.

Background

Dr. Nathan Cofnas is an academic philosopher of biology. Between September 2022 and August 2025, he was a Leverhulme Early Career Fellow in the Faculty of Philosophy at the University of Cambridge. In July 2023, Emmanuel College, Cambridge (the "**College**") appointed him to the position of College Research Associate.

Following the publication of a Substack article in February 2024, in which Cofnas argued for "race realism" and made associated assertions, the College terminated his position as College Research Associate. Cofnas subsequently brought a claim against the College in the County Court, in which he argued that his beliefs were protected under the Equality Act and that, by ending his position, the college had discriminated against him with respect to his protected beliefs.

As a free speech campaign, BFSP neither endorses nor opposes Dr Cofnas's views. Its only interest is in securing lawful free speech.

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The Judgment: protected beliefs

The Judgment in *Cofnas v. Emmanuel College*[1] has found that the following beliefs are protected under the Equality Act:[2]

- "The **hereditarianism belief**, namely that it is morally and politically desirable to promote the empirical theory that genes play a non-trivial role in group difference, such as intelligence, and/or that hereditarianism should be researched and discussed even if controversial;
- The '**anti-woke belief'**, namely that it is morally and politically desirable to promote knowledge of hereditarianism because it undermines the premise of '**woke' ideology**, that is to say the dominant philosophical belief in academia which holds white people to be morally accountable for all group disparities favouring whites".[3]

Although the Judgment also referred to Cofnas' ***lack of belief*** in "woke" ideology (defined as above)[4], this was the only viewpoint for which Cofnas claimed protection in respect of which the Judgment did not explicitly rule.[5] This is one of a number of significant omissions in the Judgment. Notwithstanding this lacuna, BFSP considers that, logically, if opposition to "woke" ideology is protected, then non-belief in "woke" ideology must also be protected. Alternatively, it must, we believe, follow that such a lack of belief is necessarily a constitutive part of anti-"woke" beliefs, and thus also be protected if anti-"woke" beliefs are. That this must follow may be the reason why Dr Cofnas' lack of belief in "woke" ideology was not itself explicitly and separately addressed in the Judgment.

It is important to note that "woke ideology" in the context of Dr. Cofnas' case is limited to certain types of views/ideology relating to race. There are, however, other views and ideologies, which are frequently described as "woke". (Note that, as a free speech campaign, BFSP neither endorses nor disagrees with the use of such terminology (or any particular viewpoint or ideological position it may involve or imply). Viewpoints which are in

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1 https://bfsp.uk/wp-content/uploads/2026/04/Cofnas-v-Emmanuel-College-judgment.3.26.pdf. As yet not formally published. It is worth noting that this county court judgment does not create a binding precedent.

2 Judgment, paragraph 132: "with some reservation, it seems to be that both 'hereditarianism' and the 'anti-woke belief' are protected beliefs within the Grainger test." See BFSP's statement ***Protected viewpoints under the Equality Act: Risks and necessary actions for employers and others*** for further information on protected beliefs under the Equality Act.

3 Judgment, paragraph 15.

4 Under Section 10(2) of the Equality Act "a reference to belief includes a reference to a lack of belief".

5 As well as ruling that the hereditarianism belief and the anti-woke beliefs were protected, the Judgment also ruled that other of Dr Cofnas' viewpoints for which he had also claimed protection were not.

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opposition to, or a lack of belief in, certain of such viewpoints or ideologies have already been found to constitute protected beliefs under the Equality Act. Such protected beliefs include: gender-critical beliefs, i.e. the beliefs that biological sex is real, important, immutable and not to be conflated with gender identity[6]; anti-Zionist views,[7] opposition to the critical race theory approach to racism;[8] and views critical of Islam.[9]

HEIs need to assume that opposition to/non-belief in other types of views/ideology associated with the concept of "woke" are likely to be found to be protected. The most notable example of such opposition or non-belief of obvious relevance to the higher education section is opposition towards or lack of belief in "decolonisation" concepts and agendas and, relevant to recent controversies, a belief that, in the appointment of staff, applicants' qualification for the relevant position and suitability to performing the duties it involves should be the dominant factors, and appointment processes should not be affected by candidates' identity or their beliefs or support for particular agendas.

It is worth noting that support for views/ideologies which are associated with the concept of "woke" may well themselves qualify for protection under the Equality Act, even though, to date, no cases arguing that such beliefs are protected have been considered by the courts. HEIs need to maintain a neutral position between these completing beliefs and positions.

The implications for EDI: opposition to or non-belief in aspects of EDI as protected characteristics

Promotion and enforcement of EDI programmes/agendas has resulted in unlawful suppression of free speech: strength of free speech protections

EDI programmes/agendas at HEIs sometimes reflect no more than a commendable desire to create open, fair and welcoming communities for staff and students of any race, sex, sexual orientation, religion or belief and/or other characteristics, and to break down barriers relating to such characteristics. Much that is promoted under the EDI flag is uncontroversial. In a narrow range of cases, particularly those relating to preventing discrimination and

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6 *Forstater v. CGD Europe* : https://www.gov.uk/employment-tribunal-decisions/maya-forstater-v-cgd-europe-and-others-2200909-2019

7 *Miller v University of Bristol*, February 2024 (Case No,1400780/2022).

8 Specifically, belief that: "the 'woke' or 'critical theory' approach to racism is misconceived in that its belief in structural racism is divisive because it sees white people as a problem that can [sic] result in separatism, segregation and ethnocentrism. The better approach is that of Martin Luther King which desires a society where people are judged by the content of their character rather than the colour of their skin, and which emphasises what people of all races have in common." *Corby v. Advisory, Conciliation and Arbitration Service*: https://www.gov.uk/employment-tribunal-decisions/mr-s-corby-v-advisory-conciliation-and-arbitration-service-1805305-slash-2022

9 *Lee v IFoA*, July 2025 (Case No. 6010437/2024).

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harassment, some of the EDI-related work carried out at HEIs is legally required or justifiable.

EDI is, however, a broad and vague set of concepts, and various widely contested ideas and agendas, about which many people have dissenting viewpoints, are also promoted (and, in many cases, effectively enforced) under the EDI banner. These include views that sex is socially constructed rather than biological, and that racism in modern societies is systemic and endemic. The promotion and enforcement of such views goes far beyond the limited scope of what is necessary to secure legal compliance with the Equality Act, and has involved attempts to restrict or suppress the belief (or lack of belief) in and/or the expression of opinions already found to be protected under the Equality Act (such as those identified above), resulting in unlawfulness and liability. It is also likely to be contrary to other legal and regulatory requirements as discussed below.

Consistent with this and with what free speech campaigners have repeatedly warned, sector bodies and higher education experts concerned with EDI have themselves increasingly noted that the way EDI has been implemented has restricted freedom of speech and led to unlawfulness and wider compliance failures.

Advance HE, the sector-wide body which works to promote EDI, has recently recognised that:

> "many of the challenges that [HEIs] have faced in relation to free speech or academic freedom arise in the implementation of policies and initiatives related to equality, diversity and inclusion".[10]

Similar conclusions were expressed in 2024 in the authoritative Dandridge Review, commissioned by the Open University after its legal compliance disaster in the case of Jo Phoenix, in which Dame Nicola Dandridge wrote:

> "I also heard from staff who suggested that this legitimate desire to protect and promote principles of EDI had on occasions translated into excessive caution as to as to what could and could not be said, even when the views in question were legitimate and lawful, albeit contentious...
>
> This approach to EDI had the effect of... precluding legitimate debate and discussion about contentious matters."[11]

More importantly still, the Office for Students, the regulator for English HEIs, has noted, in its *Regulatory advice 24, Guidance related to freedom of speech* (**"OfS Guidance"**), that HEIs should not "require holders of any academic position to commit (or give evidence of commitment) to a particular viewpoint" and that one common EDI practice, that of requiring

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[10] See: Advance HE's publication *Embedding Freedom of Speech and Academic Freedom in Equality, Diversity and Inclusion*, paragraph 3.1.1.

[11] See: Dandridge Review, paragraphs 4.8-4.9.

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applicants for promotion "to submit [...] evidence of commitment to equality (or equity), diversity and inclusion (EDI)" is likely to constitute a compliance failure under the Higher Education and Research Act 2017 ("**HERA**").[12]

Opposition to EDI as an umbrella under which controversial viewpoints are promoted and enforced as a likely protected belief under the Equality Act

Taking into consideration all of the above, BFSP considers that it is now:

- clear that opposition to (and non-belief in) various component agendas and ideas which are advanced under the EDI umbrella are already protected under the Equality Act; and
- likely that opposition to and non-belief in EDI as an umbrella under which many controversial viewpoints (opposition to which is protected under the Equality Act) are promoted and enforced, is a protected belief under the Equality Act. There are two aspects to this: beliefs that:
  - the ways in which many contested views and agendas are promoted, implemented and enforced under the EDI banner in ways that that restrict debate or dissent; and/or
  - the use, promotion, implementation and enforcement of EDI as a banner under which such ideas are advanced in ways that that restrict debate or dissent,

  are profoundly harmful to free speech and academic freedom, and thus to a healthy society, and thus are to be opposed.

  Given that beliefs directly opposed to ideas commonly advanced under the banner of EDI are protected under the Equality Act, it follows (as a small step) by virtue of their close relation, and close similarity in content, that beliefs opposed to EDI as a banner under which such beliefs are advanced are likely to be protected. This was the case prior to the *Cofnas* case.

  > What is notable about the *Cofnas* case is that it makes very clear that some beliefs opposed to ideas necessary to and inherent in any conception of EDI, as it currently exists at UK HEIs, (and indeed, ideas common to very many political viewpoints and worldviews) qualify for protection under the Equality Act – depending on the relevant circumstances, of course.

  A significant wider consequence of the *Cofnas* Judgment is that opposition towards (and lack of belief in) EDI itself, as an umbrella under which various controversial ideas (and indeed *also generally uncontroversial* ones, noting that the vast majority of people do not share Dr Cofnas' beliefs) are promoted and enforced, is more likely to be found to be protected under the Equality Act.

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[12] See OfS Guidance, paragraphs 139, 147 and 151 and Example 32.

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Finally, we note that, although, to qualify as a protected characteristic under the Equality Act, a belief must meet the so-called *Grainger* criteria[13] (as recognised and discussed in the *Cofnas* Judgment itself), what is said above is likely to mean that a sufficiently articulated and genuinely held belief which is contrary or opposed to EDI as an umbrella, under which various (contestable and often highly contested) ideas and agendas are promoted and enforced, is itself likely to meet the *Grainger* criteria and qualify for protection.

We note that the above implications are relevant for HEIs' colleges and other "constituent institutions" ("**CIs**") and students' unions.

Section 109 of the Equality Act

If opposition to/non-belief in EDI is, as appears likely, a protected belief under the Equality Act, Section 109 of that legislation becomes particularly relevant to HEIs and their senior managers. The effect of sub-sections 109(1)-(3)[14] is that, subject to their ability to establish the defence referred to in the next paragraph, employers and principals are legally responsible (vicariously liable) for acts of discrimination, harassment, or victimisation committed by their employees or agents (such as their officers) during the course of employment, regardless of whether the employer approved or knew about these actions.

An HEI has a defence to any claims brought against it for breaches of the Equality Act under Sub-section 109(4) (the "**Section 109(4) Defence**")[15] if it can show that it took all reasonable steps to prevent an employee from doing the alleged act or anything of that description. This is a high standard to meet, requiring a lot of careful thought and action in these circumstances.

Therefore, if a UK HEI promotes, implements or enforces EDI programmes in such a way as to create or encourage a hostile atmosphere or environment towards individuals who have a protected belief of opposing/not believing in EDI, they will:

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[13] As identified in the landmark decision on *Grainger plc v Nicholson* [2010] IRLR 4 (EAT)

[14] "109 Liability of employers and principals

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.
(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
(3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval."

[15] (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—
(a) from doing that thing, or
(b) from doing anything of that description."

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- significantly increase the chances of such a breach of the Equality Act taking place due discrimination, harassment or victimisation of such individuals by its employees or agents for which it is liable under Sub-sections 109(1)-(3); and
- significantly decrease its prospects of being able to qualify for the Section 109(4) Defence, in any case brought against it based on allegations that its EDI (or other) employees harassed, discriminated against or victimised other employees or students at visitors to a HEI.

HEIs will need to take various of the steps outlined below in order to have any prospect of establishing a defence under Sub-section 109(4) to claims based on such actions.

Wider legislative requirements

While these are not the focus of this statement, HEIs and their CIs need to appreciate the following.

- The requirements under the Higher Education and Research Act 2017 ("**HERA**") on colleges and other CIs did not apply at the time of the events in the *Cofnas* case, so were not relevant to that case. However, these requirements are now in force. HEIs and CIs need to remember that HERA will also be extremely relevant to issues of the sort discussed here; and act accordingly. This is reflected in paragraph 147 of the OfS Guidance, which states that HEIs should not "require holders of any academic position to commit (or give evidence of commitment) to a particular viewpoint".
- The Human Rights Act 1998, which gives effect to the European Convention on Human Rights in UK law, will also be hight relevant to such issues, but was little referenced in the *Cofnas* judgement. This is another apparent failure which we anticipate being subject to appeal.

Consequences for HEIs: necessary action

The fact that principled opposition to many of the things which are promoted/enforced under the EDI label – and indeed to EDI itself (as discussed above) – qualifies or is likely to qualify as a protected belief under the Equality Act and other legislation as discussed above means that HEIs need to, and may be legally required, to take (or avoid taking) the following steps.

- **Not to characterise opposition to aspects of EDI, or EDI in general as discussed above, negatively**. Negatively characterising beliefs which are opposed to (or individuals who do not believe in) those ideas/agendas which are promoted under the EDI label, or to EDI as an umbrella under which such ideas are promoted and enforced, or negatively characterising staff and students who hold such beliefs, significantly increases an HEI's likelihood of harassment of or discrimination against people under the Equality Act, including through Section 109 as a result of employee behaviour. Such negative characterisations are likely to create a chilling effect, and to that extent restrict staff and students' free speech. It is therefore also highly likely that not negatively characterising

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such beliefs (and staff and students who hold such beliefs) negatively is likely to be required for compliance with universities' duties under HERA.

- **Work to avoid (or stop) a hostile atmosphere/environment for people who disagree with or do not believe in aspects of EDI, or EDI in general as discussed above:** Research strongly evidences that an environment exists at many HEIs as a result of which staff, students and visiting speakers (collectively "**Participants**") feel intimidated about expressing their opinions.[16] This can arise as a result of the attitude of colleagues or online aggression, or the fear that job prospects may be hindered, or assessments of performance may be downgraded, in connection with their expressing certain opinions. Given that the existence of such an environment carries obvious risks of discrimination and harassment occurring, HEIs which wish to be able to establish the Section 109(4) Defence will need to take all reasonable steps to prevent such an atmosphere developing in the first place or persisting if it already has.[17] This will involve the relevant HEI being vigilant to prevent, identify and stop free speech transgressions; firmly enforcing its code of practice on free speech and related polices/rules; and taking the other steps such as promoting the importance and value of free speech and having appropriate induction and ongoing training. BFSP recognises that this is such a protean problem that it is not easy to address, and there may not be many further steps beyond those stated here which HEIs can realistically take, but they need to give this careful thought and take reasonably practicable action.

- **Not require staff, students, or applicants to jobs or promotion to be committed to EDI.** Requiring staff or applicants to jobs to be committed to EDI, or to provide evidence of that commitment, as a duty of their jobs or as a necessary condition for securing jobs, is likely to be unlawful where staff or applicants have a protected belief opposed to aspects of EDI, or EDI in general as discussed above (or do not believe in EDI) – and indeed whether or not the belief is protected under the Equality Act, as discussed above. Requirements to "accept", "promote", or "support" EDI will be similarly unlawful. What HEIs can lawfully do is to require their staff or applicants to undertake not to discriminate against or harass others within the meaning of the Equality Act, and/or to

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[16] The Dandridge Review identified a culture of consensus at the OU, that there are "right" ways of viewing things, which can lead to dissenting views being suppressed and individuals self-censoring, with fear mentioned by several witnesses: this does not appear to be unusual. See paragraphs 2.5-2.11 and 2.35, and also paragraphs 4.8-4.9.

In July 2025, in an article in the Daily Telegraph, Roger Mosey, Master of Selwyn College, Cambridge for twelve years, gave a particularly lucid description of the problem, stating that academics at Cambridge had told him that in recent years they felt "afraid" and "frightened" of expressing their views, for fear of persecution or social ostracism. He quoted, in particular, Professor Mary Beard "I did take some nasty hits. Interestingly, a lot of those came from the political Left rather than the Right… all it took was saying something mildly off-message and suddenly I was being treated like a traitor… The idea that we all have to sign up to one monolithic cultural view is stifling."

[17] Such actions are also highly likely required under HERA.

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comply with internal policies, provided that these policies are written carefully and in such a way that they do not cause detriment to staff or applicants for their protected beliefs.

- **Not require training which requires staff or students to support EDI or requires them not to dissent.** Requiring staff and students to undertake training which compels them to state support for the ideas and values of EDI, or not to dissent from EDI, where such people have a protected belief opposed to aspects of EDI, or EDI in general as discussed above (or non-belief in EDI), is likely to be unlawful.

- **Train staff and students about free speech in this context**: HEIs need to ensure that all staff have adequate induction and training about protection of free speech and academic freedom, and that they understand the nature of the requirements to protect free speech. Training specifically tailored to their roles will be necessary for staff with responsibilities for complaints, discipline, and EDI. This training should describe those beliefs which are protected under the Equality Act, noting that multiple beliefs opposing ideas which have been promoted under the EDI banner are protected, and the resulting legal obligations of the HEI and its staff. Staff need to understand these obligations sufficiently to ensure that they do not cause or continue compliance failures.

  Students need to have sufficient induction and/or training to ensure that they understand the requirements on them regarding free speech and mutual tolerance, that they need to comply with them and that there can be disciplinary consequences for non-compliance.

- **Have appropriate policies/requirements re behaviour:** HEIs may lawfully require their staff and students not to discriminate and harass contrary to the Equality Act, and to comply with their free speech code and other internal policies, as above. HEIs also need to have requirements (themselves carefully drafted so as to be free speech compliant) which expressly prohibit certain material actions by staff and students against people in respect of their viewpoints, such as harassment, bullying and very severe personal attacks, online pile-ons, and making inappropriate complaints and allegations. The Dandridge Review noted that HEIs' managers ought to intervene proactively to manage disputes where they arise.[18]

- **Not allow its complaints and disciplinary functions to become instruments of free speech suppression.** Every complaints process should include a fair, objective and rapid triage process during its initial stage, to the extent (at least) that complaints relate to a Participant's lawful speech or viewpoints. This process should ensure rejection of vexatious, frivolous or obviously unmeritorious complaints at an early stage. An HEI should not permit the pursuit of obviously vexatious or trivial complaints or instigate formal investigations into a Participant following complaints which relate to their lawful expression of a protected belief. HEIs should not encourage students or staff to report

[18] See: Dandridge Review, paragraphs 4.27 – 4.29.

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other Participants over opinions or speech that would (or might) involve the lawful expression of a particular viewpoint.

- **Not discipline or otherwise subject staff or students to any detriment on the basis of their opposition to aspects of EDI, or EDI in general as discussed above.** Disciplinary action against staff on the basis of their opposition to EDI will be unlawful where staff or students have a protected belief which is opposed to aspects of EDI, or EDI ((or their non-belief in EDI).

- **Take action to protect staff and students from harassment and discrimination; enforce their free speech code**. Failing to take all reasonable steps to prevent harassment of and discrimination against staff with a protected belief opposed to aspects of EDI, or EDI in general as discussed above (or their non-belief in EDI), by employees of the HEI, will mean that the HEI is able to rely on the Section 109(4) Defence when such discrimination or harassment occurs. HEIs must be ready to intervene promptly and proactively when a risk of such harassment and discrimination occurring arises. This will involve (at the very least) having adequate systems in place to anticipate and respond to problems which may arise, and staff adequately trained in using them. The above is also required by HERA, which further requires HEI to take all reasonably practicable steps to enforce their free speech code and other internal policies, including where appropriate, the initiation of disciplinary measures.

- **Review EDI functions**. HEIs need to review all their EDI related functions, to ensure that they are not at risk of compliance failures under the Equality Act in respect of protected viewpoints, and also under other legislation. Where they encounter non-compliance or risks of non-compliance they will need to make adjustments accordingly. Special care will be required to ensure that they do enough to satisfy the requirements for the Section 109(4) Defence.

- **Have a free speech advocate/officer who is independent of EDI function**. How can an HEI ensure that its EDI function does not create free speech problems (as is now widely recognised happens, as discussed above) unless it has an internal officer with responsibility for ensuring that the HEI complies with its legal and regulatory obligations, follows and enforces its own policies/rules appropriately, and advocating for free speech and academic freedom? That officer should be appropriately senior (sufficiently so to participate in governing body meetings where relevant to their role), empowered and resourced, available (although this does not necessarily have to be a fulltime position, particularly if they have other staff to help them fulfil their role), experienced and trained, and non-conflicted.

Objectionable manifestations

There can, however, be "inappropriate (sometimes expressed as "objectionable") manifestations" of protected beliefs which do not qualify for protection. Indeed, in the case of Dr. Cofnas, the county court found that although his beliefs expressed in his Substack article were protected, the particular manner in which the article was written constituted an

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objectionable manifestation. This appears, as a matter of law, to be very troublesome in context, and likely to be appealed.

HEIs should note that the mere fact that a belief is shocking or offensive to some is seldom, if ever adequate, in itself, to ensure that a manifestation of it is objectionable. The reasoned or principled expression of protected beliefs is highly unlikely to constitute an inappropriate manifestation.

Best Free Speech Practice

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- *does not seek to prescribe detailed specific policies, practices and requirements for particular HEIs, will have to be developed by HEIs themselves, in the context of their own particular circumstances;*
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