



Open letter sent by email to:
The Council of Gonville & Caius College

8 November 2023

Dear Council Members

Harassment by the College in connection with the Helen Joyce affair: the *Fahmy* case

We have previously written about your College's free speech protection failures in connection with the Helen Joyce affair.

We are now writing to highlight the apparent harassment by the Master and Senior Tutor of your College of various people within your College in connection with their protected viewpoints.

The relevant facts are well known. The key event was that (inter alia) they described Dr Helen Joyce's views, which question aspects of trans ideology (known as "gender-critical"), as "hateful to members of our community" in an email to "all Caians".

This appears to be very likely to have constituted harassment under the Equality Act 2010 ("**Equality Act**") for the following reasons. A recent legal decision throws a spotlight on this.

1. Dr Joyce holds viewpoints which constitute a "protected characteristic" under the Equality Act. We have explained this in previous correspondence, but link here to a [detailed statement](#) explaining this in greater detail. Judging by general polling, similar views seem likely to be held by at the least a significant minority of the College.
2. Section 109 of the Equality Act provides that anything done by an employee in the course of their employment must be treated as also being done by their employer; it does not matter whether that thing is done with the employer's knowledge or approval. An employer has a defence (the "**Section 109(4) Defence**") if it can show that it took all reasonable steps to prevent the employee from doing the alleged act, or anything of that description.

3. Harassment is defined in Section 26 of the Equality Act as follows:

"(1) A person (A) harasses another (B) if:

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B

[...]

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect."

4. The Master's and Senior Tutor's email was deliberately sent to communicate a carefully drafted message to all "Caians". It was the College's leaders deliberately taking sides in a matter of passionate debate, to give the clear message that the leaders of the institution considered that gender-critical views were "hateful" and thus, inevitably, unacceptable within the institution.

5. We ask: in what way did these actions not constitute harassment by virtue of creating an "intimidating, hostile [...] or offensive environment" for people holding gender-critical views, who constitute at the least a significant minority of the College?

6. The recent *Fahmy*¹ case illustrates the perils for an employer of harassment committed by an employee. We attach a statement prepared by our associated project, Best Free Speech Practice ("BFSP"), explaining the *Fahmy* case and its implications. You will see that, in that case, a senior employee of Arts Council England was criticised by the Employment Tribunal for expressing personal views in a meeting in solidarity with one side of the debate, although it concluded that, in that case, his actions did not cross the threshold for creating an intimidating etc environment. The Tribunal stated that his taking sides provided "the basis, or opened the door" for the subsequent actions by other employees which constituted harassment by Arts Council England. His statement was a lot more carefully worded, and less aggressively contemptuous of a widely held viewpoint, than the Master's and Senior Tutor's statement. It therefore appears that their email crossed the threshold for harassment.

¹ *Ms D Fahmy v Arts Council England* (2023) ET case no 6000042/2022.

It is worth noting that, in the *Fahmy* case, the following were stated as (together) constituting harassment: describing gender-critical views as “bigotry”, a “cancer that needs to be removed”, “should not be tolerated” and “discriminatory, transphobic”, and likening them to racism and sexism.

It is also worth noting that the comments at the *Fahmy* online meeting were held not to constitute harassment. They included the convenor of the meeting stating that the LBG Alliance was, in his personal opinion, “a divisive organisation that has a history of anti anti trans-exclusionary [sic] activity”, and another saying that it was “extremely disappointing to see people trying to defend [the LBG Alliance] here of all places.”

We ask: which of the above sets of comments would you view the Master’s and Senior Tutor’s describing gender-critical views as being “hateful to members of our community” as being more akin to? We believe that a reasonable observer would think it the former.

7. We note that Master’s and Senior Tutor’s email purported to be in their personal capacity. We have noted in previous correspondence why this probably does not stand scrutiny in the circumstances, but the *Fahmy* case illustrates that “personal” viewpoints expressed through an employer’s channels of communication can constitute harassment by the employer.
8. When one considers the steps that your College would need to take in order to qualify for the Section 109(4) Defence, as explained in BFSP’s statement about the *Fahmy* case, we very much doubt that your College will have done enough to qualify for the Section 109(4) Defence, although we are willing to be persuaded otherwise.

Your College clearly needs to investigate whether the Master and Senior Tutor caused it to have committed unlawful harassment of its participants, as appears to be the case. If it did, it needs to take appropriate action, including acknowledging that this occurred, apologising for it and stating that it will ensure that it will work to ensure that harassment of this nature does not happen again, as it is required to do to qualify for the Section 109(4) Defence.

We should mention two recent public scandals which are very relevant to this case.

- The British Museum failed to heed the warnings of an external whistleblower about thefts from its stores. This led to resignations.
- NatWest bank lied and made inappropriate disclosures about the closure of the account of Nigel Farage. This led to resignations.

We are external whistleblowers. Your College has so far apparently ignored our previous letters in respect of the Helen Joyce affair. You need to handle this well.

Finally, we should remind you that AFFS is non-partisan and non-political. We do not have a position on the underlying issues: our sole concern is free speech and securing open, tolerant debate.

Yours faithfully

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