



Open letter to the Master and Governing Body of Emmauel College
Doug Chalmers - Master
Dr Mike Gross – Secretary to Governing Body
Dr Anna Osipova – College Registrar
Dr Sarah Bendell – Development Director

30 April 2024

Dear Officers

Free speech protection and governance failures re Nathan Cofnas

Alumni For Free Speech (“AFFS”) is a non-partisan organisation which represents alumni of UK universities to encourage high standards of compliance with institutions’ obligations to protect freedom of speech. More information about AFFS can be found at www.affs.uk.

We are writing about the free speech and governance issues arising from the treatment of Dr Nathan Cofnas. This letter will be made public including via AFFS’s website and its communications with your College’s alumni.

Relevant events

Our understanding from the public information surrounding this case is that Dr Cofnas’ position has been terminated by your College because of his research and stated views. (We should state that, as a campaign for free speech, we neither approve nor disapprove of Dr Cofnas’ viewpoints.)

The stated reason for the dismissal is because “[it] concluded that [Dr Cofnas’ blog post] amounted to, or could reasonably be construed as amounting to, a rejection of Diversity, Equality, and Inclusion (DEI and EDI) policies [...] The Committee concluded that the core mission of the College was to achieve educational excellence and that diversity and inclusion were inseparable from that. The ideas promoted by the blog therefore represented a challenge to the College’s core values and mission.”

As you will appreciate, there is no suggestion in your statement that Dr Cofnas acted unlawfully: you base your termination on not liking his viewpoint. You will, if you consider briefly, appreciate that “DEI” includes highly contested ideological viewpoints and agendas which operate to suppress dissent and can result in horrors such as those made all too clear by the recent Cass Report. It is not a “value” the College should be endorsing: aspects of DEI

have led to unlawful discrimination and harassment of people with dissenting viewpoints, as the recent case under the Equality Act described below explains.

Legal and regulatory contraventions

Equality Act: Your College appears to be likely to have breached the Equality Act 2010 (“Equality Act”). In this connection, we attach:

- A statement by our associated project Best Free Speech Practice (“BFSP”) - <https://bfsp.uk/universities-and-free-speech> - about the sorts of viewpoints that are protected under the Equality Act.
- A statement by BFSP about the implications of the recent *Meade* case, which found that inappropriate use of disciplinary processes to penalise a person for expressing their viewpoint constituted unlawful discrimination under the Equality Act.
- A statement by BFSP about the implications of the recent *Phoenix/Open University* case, which will make uncomfortable reading.

An institution like your College expressing through official channels disapproval of dissenting viewpoints from aspects of “DEI” can itself constitute unlawful action where those dissenting viewpoints are protected under the Equality Act. This point extends far more widely than just in respect of Dr Cofnas.

It is clear that, provided that Dr Cofnas’ views are such as will count as 'protected' under the Equality Act, which it would appear is likely, there is a significant risk that your College will have discriminated against him by terminating him for his viewpoints.

Human Rights Act: The free thought and speech rights of academics and students at most higher education institutions (as they are deemed to be “public authorities” for these purposes) are protected under the European Convention on Human Rights, as enacted in the UK by the Human Rights Act 1998 (the “HRA”). These freedoms include the freedom to offend, shock and disturb. Political expression (in a wide sense rather than a narrow party-political one) attracts the highest degree of protection, as does academic free expression. Any interference by such a college with the expression of opinions and academic freedom of its academics and students will require exceptional justification. Dissent from something as vague and controversial as “DEI” will be no such justification. Is your College subject to the HRA? Have you confirmed either way based on legal advice? If it is subject to it, it is highly likely that it has contravened the HRA.

HERA: Finally, we note that, from 1 August 2024, your College will be subject to the new free speech protection requirements of the Higher Education and Research Act. It is clear that the termination will have been contrary to the obligations under that Act to secure Dr Cofnas’ free speech. We attach the Office for Students’ (“OfS”) draft guidelines in this respect, and refer you to paragraphs 50, 52, 53 and 54 in particular. Your College has been lucky that these provisions are not yet in effect, and needs to be preparing urgently to ensure that future

actions will be compliant. We also note that the OfS will have regulatory powers in respect of your College. You will be accountable.

We will be sending you a statement by BFSP about the regulatory regime for colleges after 1 August.

Questions for the College's management and Governing Body

Your management and Governing Body need to give urgent thought to the following questions.

- Have any legal failures occurred?
- What were the steps that should have been taken, and when, to prevent any failures which occurred? Why did it not occur to your College that it was at risk of acting contrary to its duties under the Equality Act and HRA?
- Is this a symptom of lack of understanding of and/or care about its duties, and a lack of a senior person with designated responsibilities for ensuring free speech protection? Who should have been responsible for dealing with this aspect?
- To what extent were any free speech protection and governance failures a result of a failure of active institutional neutrality on contested issues? What to do to set this right?
- Did the College's Governing Body/senior management operate as they should, proactively with competence and care for good governance and compliance? If not, why not?
 - Did they get inside the issues, and question/examine the staff who were reporting to them?
 - If not, what were the failings, who was responsible and what should be done to ensure such failures never happen again?
 - To what extent did fear of disputes and aggression play a part, and a failure of neutrality? What should be done to address that?
- What steps are needed to ensure that its governance, processes, practices and requirements are such as to ensure that free speech protection failures not happen in the future? This must surely include having a senior person with designated responsibilities and sufficient powers for ensuring free speech protection, who does not have other responsibilities or agendas which could conflict materially with their ability or willingness to work proactively to secure free speech and avoid future disasters.

Action required

The College needs to be taking quality specialised independent legal advice about whether it has contravened its legal obligations. If it has done so, then:

- Because the College's management and Governing Body should not be marking their own homework as regards any errors made, we urge that the College appoints an independent inspector of suitable qualifications and experience, probably a senior lawyer, to review what has happened and formally report on any action that should be taken, both in respect of past breaches and also to ensure that is never a repetition of them.
- It needs to publicly acknowledge that errors have been made; state what steps it will take to reinstate Dr Cofnas and/or compensate him for his loss from its decision; and confirm that an independent inspector will be appointed.

If it is asserted that your College did take appropriate legal advice and acted on it, you should confirm what that legal advice was, and make a copy of that advice public.

Your College is at risk of both legal failures and a reputational disaster. We will be observing developments with interest.

It would be useful if you could confirm receipt.

Yours faithfully

William Mackesy and Andrew Neish KC

Alumni for Free Speech

www.affs.uk / info@affs.uk

Alumni For Free Speech is part of DAFSC Ltd, company number 14189200. Registered office: 27 Old Gloucester St, London W1N 3AX.