



Sent by email to:

Professor Irene Tracey, Vice-Chancellor, University of Oxford

Professor Anne Trefethen, Pro-Vice-Chancellor (People and Digital)

Mr Andrew Mackie, Director of Legal Service and General Counsel

Mrs Gill Aitken, Registrar

Cc: Members of the University's Council

26 February 2025

Dear officers,

Legal and compliance problems at the University of Oxford (the “University”) with requiring commitment to contested agendas and ideological positions in job applications

As you may be aware, Alumni For Free Speech (“AFFS”) is a non-partisan organisation which aims to encourage high standards of compliance with universities and other organisations to protect freedom of speech.¹

It has come to our attention that the University is likely to be in breach of its legal and regulatory obligations as a result of the requirements it places on applicants for jobs (the “**Application Requirements**”) as described below.

This open letter serves to notify you of our concerns, stating the relevant facts, then an outline of the applicable legal requirements, and concluding with our analysis of how the Application Requirements at your institution are unlawful and in breach of freedom of speech. It follows a draft shared with the University in January.

We share here a link to an article by the Committee For Academic Freedom about our project focusing on these issues at our universities: <https://afcomm.org.uk/2025/01/21/new-campaign-to-remove-edi-statements-from-academic-job-applications/>

¹ More information about AFFS can be found at: <http://www.affs.uk>

Relevant facts

Specifically, our concerns are with advertisements which require candidates to demonstrate their commitment to equality, diversity and inclusion (“EDI”), and with the indication that the University will assess a candidate’s applications based on their demonstrated commitment to EDI. While this was not the case across the board, such requirements are present in a consistent format within many different faculties, appearing variously in:

- The “essential criteria” against which applicants are judged (as per the advertisement), which includes “a commitment to equality, diversity, and inclusion in research, teaching and/or the broader community”.
- The “general duties”, which include a duty that successful applicants will “embed the principles of mutual respect, equality, diversity and inclusion within all aspects of your work and interactions with colleagues; undertake training as and when asked to do so”.
- The “selection criteria” which includes asking for “evidence of interest and effectiveness in promoting a culture of equality and diversity in the workplace”.
- The “essential criteria” which includes a “commitment to promoting awareness and understanding of equality, diversity and inclusion”.
- “The Person” specification which includes a “commitment to promoting awareness and understanding of equality, diversity and inclusion and embedding these principles among staff and students”.

This is not meant to be an exhaustive list of the potentially unlawful requirements in Oxford University’s recruitment process, rather a demonstration of the widespread nature of this issue and the seriousness of our concerns. All of the above requirements were found in advertisements for academic positions, but this is not to say that similar requirements may not be imposed for other roles.

Finally, nearly all job advertisements seen by AFFS also include a section detailing the University’s commitment to the Athena Swan Charter, as well stating that the University holds an Athena Swan Silver Award and often include that faculty’s own Athena Swan Award. The implication of this must be that Athena Swan’s agenda is an integral part of the University’s EDI programmes and expectations.

The University’s response to AFFS’ earlier letter

As you know, AFFS wrote to you informally on this matter on the 24th of January, expressing our concerns and giving the University an opportunity to ensure that its policies are lawful. We note that your response, of the 12th of February, set out the University’s position that “freedom of speech and academic freedom are central tenets of university life and must be robustly protected”. However, the response did not acknowledge the unlawfulness of the Application Requirements (or indicate that this would be set right), despite the evidence set

out in AFFS' earlier letter. It instead stated that "The University is equally committed to fostering an inclusive culture which promotes equality, values diversity and maintains a working, learning and social environment in which the rights and dignity of all members of the University community are respected. These commitments are not in opposition with each other, but rather support each other."

We discuss the implications of this below.

Legal and compliance problems with HEPs requiring commitment to contested agendas and ideological positions

Relevant legal requirements

Section 43 of the Education (No 2) Act 1986 ("**Section 43**"), the anti-discrimination and harassment provisions of the Equality Act 2010 ("**Equality Act**") and the Human Rights Act 1997 ("**HRA**") all contain provisions requiring the protection of free speech and/or prohibiting actions which are contrary to people's free speech rights.

It is important to keep in mind that, while much that is promoted under the "EDI" flag may be uncontroversial, and in a narrow range of cases legally required, various highly controversial beliefs and agendas are also promoted (and indeed effectively enforced) under it, such as are associated with extreme trans and "critical race theory" ideologies (opposition to both of which has been held to be a "protected viewpoint" for the purposes of the Equality Act). As discussed below, the Dandridge Review cited numerous ways in which EDI requirements and agendas cause problems for free speech at the Open University. Many people have similar concerns regarding EDI. To the extent that requiring support for "EDI" therefore requires support for such ideologies, and indeed for any agendas or programmes which are not required to be promoted by law, this creates severe compliance risks:

- there may well be reasoned and principled objections to aspects of them which will turn out to meet the test for protection under the Equality Act; and
- more widely, suppressing dissent from such agendas and programmes, except those which are in that narrow range of being legally required (and "proportionate" for the purposes of the HRA), is an obvious potential failure under Section 43 and the HRA.

We attach:

- A Statement by our associated campaign Best Free Speech Practice ("**BFSP**") titled *Free speech protection at English universities: The law and requirements in practice*, which sets out details of the relevant legal and regulatory requirements and their implications.
- BFSP's Statement *EDI considerations and inquiries in the recruitment and research approval process at English universities: Free speech compliance issues* (the "**EDI Information in Recruitment Statement**"). Note that this statement is written with reference to the key requirements of the Higher Education (Freedom of Speech) Act 2023 ("**HEFSA**"), which are yet to come into effect at time of writing. However, as the Principal

BFSP Statement explains, the relevant requirements in that Act and of Section 43 are very similar. The EDI Information in Recruitment Statement should therefore be taken as an accurate statement of the law and its implications in all material respects for the purposes of the issues at hand.

- BFSP's Statement *Protected viewpoints under the Equality Act: Risks and necessary actions for employers and others*.

Draft OfS Guidance

In relation to the requirements under Section 43 and recommended best practice, parts of the draft guidance *Regulatory advice 24: Guidance related to freedom of speech* of March 2024 ("**Draft OfS Guidance**") issued by the Office for Students ("**OfS**") in connection with HEFSA are relevant to the issues in hand, even though that Act has yet to come into effect. This is on the basis that such guidance in various critical ways reflects both the requirements under Section 43 (because those obligations and equivalent obligations in HEFSA are very similar) and what appears to be the OfS' own expectations of HEP actions for compliance. The Draft OfS Guidance explicitly states that:

"Providers [...] should not require applicants to any academic position to commit (or give evidence of commitment) to values, beliefs or ideas, if that may disadvantage any candidate for exercising their academic freedom within the law."²

Reindorf Opinion

A very relevant example of the potential legal issues that the University may face by continuing to impose the Application Requirements can be found in the detailed opinion by Akua Reindorf KC³, which was commissioned by the Sex Matters campaign in response to King's College London's ("**KCL**") requirement that applicants for promotion demonstrate

² Paragraph 46. Paragraph 45 also states that "Each provider [...] must take reasonably practicable steps to achieve the objective of securing that, where a person applies to become a member of academic staff, the person is not adversely affected in relation to the application because they have exercised their freedom within the law to question and test received wisdom, or to put forward new ideas and controversial or unpopular opinions." and paragraph 57 states that "Each provider [...] must take reasonably practicable steps to achieve the objective of securing that, where a person applies for academic promotion, the person is not adversely affected in relation to the application because they have exercised their freedom within the law to question and test received wisdom, or to put forward new ideas and controversial or unpopular opinions."

Indeed, the Draft OfS Guidance even illustrates this exact scenario in Example 5, stating that: "this requirement may penalise candidates for opinions or speech that have no bearing on disciplinary competence. In these circumstances, removing this requirement before advertising is likely to have been a reasonably practicable step that University A should have taken. Withdrawing the advertisement, and re-advertising without this requirement, is likely to be a reasonably practicable step that University A should now take."

³ <https://sex-matters.org/wp-content/uploads/2024/04/KCL-advice-for-publication.pdf>

their support of that university's "equality, diversity and inclusion ambitions". She found that this requirement was likely to amount to indirect philosophical belief discrimination in violation of the Equality Act and would also violate Section 43 of the Education Act.⁴ The Application Requirements are also likely to be unlawful for the same reasons.

Further, like KCL and as outlined in the Relevant Facts, the University specifically cites its affiliation with Athena Swan in every job advertisement, an organisation which was found to be problematic in the KCL case⁵ and is likely to be so in the University's case as well. As in the case of KCL, the importance inferred from that affiliation, given its place in the job advertisements, may well have the consequence of putting people with dissenting views from aspects of Athena Swan's agenda which would at protected beliefs "at a particular disadvantage when compared to others."⁶

Dandridge review: EDI as a source of free speech problems: institutional neutrality

The Dandridge Review⁷ (the "**Dandridge Review**") is report, published in September 2024, of an independent investigation which was commissioned by the Open University ("OU") following its failure to manage disputes and prevent unlawful harassment of Professor Jo Phoenix over her views. Dame Nicola Dandridge is a former Chief Executive of the OfS, Universities UK and the Equality Challenge Unit.⁸

Some key relevant findings of the Dandridge Review were that there is a culture at the OU that there are "right" ways of viewing things, which can lead to dissenting views being suppressed and individuals self-censoring (fear was referred to by several witnesses) and an imbalance between EDI and free speech requirements and agendas. The Dandridge Review cited numerous ways in which EDI requirements and agendas cause problems for free speech. This is, in AFFS' experience, widespread – and clearly applies in respect of the University, given the Application Requirements. All universities need to work to ensure that the promotion and implementation of EDI agendas does not unlawfully affect free speech. The Dandridge Review also recommended an "underpinning principle" of institutional neutrality

⁴ In her words, it is "likely to be unlawful for KCL to place a requirement upon applicants for promotion that they demonstrate their support of the university's "equality, diversity and inclusion ambitions". Also: "[...] this requirement, when analysed in its context, amounts to indirect philosophical belief discrimination contrary to ss.10 and 19 of the [Equality Act] against potential applicants who hold gender critical beliefs. [...] the requirement may amount to a breach of [Section 43]." (From paragraphs 3.1 and 3.2, *Ibid.*)

⁵ Paragraphs 71.2.C and 75-77, *Ibid.*

⁶ Paragraph 71.3, *Ibid.*

⁷ See: <https://www.open.ac.uk/blogs/news/wp-content/uploads/2024/10/Independent-Review-N-Dandridge-09.09.24.pdf>.

⁸ See BFSP's detailed analysis of the Review at <https://bfsp.uk/universities-and-free-speech>

in relation to contentious issues This is consistent with AFFS having urged for some time that institutional neutrality is the only effective way to avoid legal and compliance failures such as discrimination and harassment as a result of taking sides in contested issues. We urge the University to introduce this.

The University's own free speech code

AFFS notes that the University produced an updated Code of Practice on Freedom of Speech⁹ ahead of the expected coming into effect of the Higher Education (Freedom of Speech) Act 2023, and agrees wholeheartedly with its statement that freedom of speech and academic freedom are central tenets of university life and must be robustly protected. However, the Relevant Facts would suggest that the University is likely in breach of its own Code of Practice, specifically Section 1.3, in respect of the subject-matter of this letter if it does not allow – or effectively suppresses – dissent from contested agendas and viewpoints.¹⁰

How these requirements apply in this context

The Application Requirements ask applicants to provide evidence of their support for certain values, beliefs or ideas. They also make clear that the University applies considerations relating to compliance with EDI expectations in the selection process. This raises freedom of speech concerns, and is, or is highly likely to be, unlawful and contrary to statutory and regulatory requirements as well as the University's own free speech code, for the following reasons (which are derived from the EDI Information in Recruitment Statement).

Discrimination in the selection process prohibited: treating an applicant negatively in a job application/assessment process because that person holds particular viewpoints, or lawfully dissents from or does not demonstrate support for aspects of the EDI agendas or programmes or values, beliefs or ideas being promoted by the University will likely be:

- unlawful under the primary free speech protection obligations under Section 43;
- discrimination (and possibly harassment, depending on the circumstances and the nature of the consequences) under the Equality Act, if the relevant applicant's dissent or non-compliance is as a result of a viewpoint which count as "protected" under the Equality Act; and a potential breach, depending on the relevant detailed context, of its Public Sector Equality Duty ("PSED") in respect of such person; and/or
- contrary to the HRA.

⁹ <https://compliance.web.ox.ac.uk/freedom-of-speech/code-of-practice>

¹⁰ Section 1.3 of the University's Code of Practice on Freedom of Speech: "Academic freedom, in relation to academic staff at the University, means their freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, including their opinions about the University, without institutional censorship and without placing themselves in jeopardy of losing their jobs or privileges ..."

Seeking relevant information is prohibited, and is likely preparation to discriminate: the only purpose of seeking information (“**EDI Information**”) about compliance with EDI expectations or commitment (or otherwise) to EDI related programmes, agendas and causes or particular values, beliefs or ideas (“**Relevant Agendas and Values**”), and demonstrated active commitment to Relevant Agendas and Values, would be to provide information for an assessment process in order to put the University or its relevant staff in a position to discriminate – whether deliberately or unconsciously – against applicants with the “wrong” views. Further, the practical effect of requiring the EDI Information as part of the Application Requirements will, in many cases, be either to compel applicants to profess their agreement with the Relevant Agendas and Values (as to which, see further below) or face being treated less favourably than other candidates. Requiring EDI Information as part of a job application or promotion process must therefore be highly likely to be contrary to:

- the university’s primary obligations under Section 43;
- the university’s duty or need to secure compliance with the Equality Act and its PSED in respect of applicants with viewpoints which count as “protected” under the Equality Act, depending on the relevant detailed context and unless there are other overriding factors; and
- the HRA,

even though it is not known whether there is or is not a such a person among the likely applicants. A relevant factor is that the knowledge that the Application Requirements would be likely to put off people with such viewpoints from applying for the relevant position.

The above also applies in respect of conducting investigations, e.g. online searches, about a potential applicant’s viewpoints and past expressions of them (although this can be validly done in limited circumstances described in the EDI Information in Recruitment Statement).

Compelled thinking and chilling effect: further, creating a situation where people who seek (or are likely to seek) jobs or promotions at the University think they need to visibly not dissent from, or even demonstrate adherence to and actively promote, Relevant Agendas and Values which contain aspects they do not necessarily agree with, is:

- contrary to the primary requirements under Section 43;
- unlawful under the Equality Act to the extent that this counts as suppressing (as in discriminating against, or harassing (i.e. creating a hostile environment for) people with) viewpoints which count as protected characteristics; and likely, depending on the detailed context, to be contrary to its PSED in respect of people with such viewpoints¹¹; and
- potentially contrary to the HRA as a result of it reducing applicants’ willingness (or perceived ability without having their career prospects blighted) to hold or express certain viewpoints; i.e., its “chilling effect” on people’s freedom of thought and speech.

¹¹ See recent cases under the Equality Act discussed at Appendix 2 to the Principal Statement, the *Meade* case in particular.

Contrary to the Draft OfS Guidance: given that the Draft OfS Guidance specifically addresses this, this is strong evidence that the Application Requirements would be in breach of Section 43, and is likely to be contrary to the OfS' regulatory expectations.

What HEPs can legitimately do, and thus is a safe alternative to applying considerations and seeking information such as Application Requirements, is to seek confirmation that an applicant understands the University's obligations under the Equality Act and that, irrespective of their personal views on relevant issues, the applicant will take care to avoid behaviour which would cause the University to be in contravention of the Equality Act. This should be accompanied with clear policies and appropriate training on Equality Act compliance. This must not, though, be done in a way to intimidate or create a hostile environment for the applicant.

Involvement of EDI personnel in the review and selection process

We are aware that, at some universities, people are involved in the information gathering, review and selection process who have primary responsibilities relating to EDI or are from the relevant academic department but are involved wearing an EDI "hat" (and would not be there were academic purposes the sole criterion for participation in those processes). We ask: what, save as contemplated below, can the purpose of the involvement of such people be, except to enable or ensure discrimination between candidates depending on their conformity and/or demonstrated support (or otherwise) with or for whatever agendas or viewpoints are being promoted under that university's EDI banner? This discrimination and the information seeking processes around it are unlawful, as explained elsewhere. The involvement of such people is therefore wholly inappropriate. We should make clear that the presence of personnel from the HR or EDI functions to observe and ensure that the promotions process is regulatory compliant (for instance, non-discriminatory) does not create such problems.

What the University needs to do

For all of the above reasons, it appears that the Application Requirements are highly likely to be unlawful, a regulatory failure and contrary to the University's own free speech code; and represent a serious free speech failure.

This is a serious letter from an external whistle-blower, which we consider provides you with enough information to immediately and comprehensively address the likely legal and regulatory failures that it describes, in respect of the Application Requirements and all relevant policies and requirements more generally, to both bring itself into legal and regulatory compliance and uphold freedom of speech.

This is likely to involve:

- ensuring that its recruitment processes are reviewed and revised to make it absolutely clear that applicants' views on political and societal matters, Relevant Agendas and Values, and

especially matters of current controversy, are not to be taken into account in the recruitment process, and in assessing candidates' merits or in interviews;

- ensuring that no requirements are imposed for applicants to give any EDI Information in the application process;
- taking all reasonably practicable steps to avoid a situation where people who seek (or are likely to seek) jobs or promotion at the University do not think that they need to visibly not dissent from, or even demonstrate adherence to and actively promote, any a Relevant Agendas and Values which contain aspects they do not necessarily agree with; and
- making it clear to relevant staff that they are required to ensure that the above requirements are complied with.

Universities need to avoid taking sides on contested issues, in order to minimize the risks of compliance failures, such as are described in BFSP's statements. We therefore strongly recommend that the University formally introduces institutional neutrality as recommended by the Dandridge Review. It is worth asking itself: had the University such a policy, would it have incurred the legal and regulatory failures we have described? Reducing such risks, generally, is one of the reasons why institutional neutrality is essential.

We strongly urge that the University, through you as the relevant officers, immediately consults specialist external lawyers in order to advise it on addressing and correcting these likely failures and help it ensure that it avoids unlawfulness and its consequences in the future.

There are various potential sources of liability for individuals involved with free speech protection failures. Officers of organisations who, through default or negligence, cause or allow their organisations to breach the law and thereby suffer loss can be at risk of personal liability for that loss. Further, under Section 111 of the Equality Act, a personal claim may be brought against anyone who has instructed, caused or induced a contravention of relevant parts of the Equality Act, as it appears the University may be committing in this instance. Failure to set matters right as indicated above, when these problems have been brought to their attention, must create risk for relevant officers.

Implications of the University's response to AFFS' earlier letter

The University's response to AFFS' earlier letter managed to appear simultaneously disingenuous, complacent and potentially negligent. It is very likely that the Applications Requirements are unlawful, and they are clearly contrary to its regulator's expectations. The University appears to be deliberately prioritising commitment to EDI agendas over freedom of speech rights. The fact that the University appears to be ignoring our reporting of this matter points to a possible systemic problem within the University and with its governance and compliance, and presents a clear danger to the free speech rights of students and staff.

The University needs to review its management and governance in this regard. It appears to have serious questions to answer. These include:

- What work did it do to assess the correctness (or otherwise) of the matters raised in AFFS' initial letter? Did it consult specialist lawyers about it? What advice was received? Was it implemented?
- Who within the University's management was involved in any such assessment? Did they include the appropriate people, including an advocate for free speech?
- Who was responsible for the decision to respond to AFFS' earlier letter as the University did? Did the University comply with its public sector equality duty in respect of the free speech of those with protected viewpoints under the Equality Act?

Given the University's performance so far, and the personal interest of its relevant officers in the outcome of such a review, a reasonable person would have little faith that it would itself perform this review appropriately. We therefore call for the University to appoint an independent expert to review its decisions and processes and report on whether mistakes or defaults occurred, and who was responsible for them, to include the questions we raise above; and to make recommendations for improvements in the University's management, governance, processes and policies.

We do, however, hope to see the necessary changes enacted as soon as possible at the University and that the University will avoid unlawfulness and better protect free speech rights going forward.

Yours faithfully,

Alumni For Free Speech

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