Case law overview: previous and incoming

In recent years, several employment tribunal cases in the UK have addressed the protection of gender-critical beliefs under the Equality Act 2010.

These cases highlight ongoing legal debates within the NHS regarding the balance between accommodating transgender individuals and respecting the rights of those with gender-critical beliefs.

The outcomes of these tribunals are anticipated to have significant implications for workplace policies and the interpretation of equality and discrimination laws within healthcare settings.

Notable cases

1. Forstater v Centre for Global Development Europe

Maya Forstater, a researcher, had her contract terminated after expressing views that biological sex is immutable.

In 2021, the Employment Appeal Tribunal ruled that gender-critical beliefs are protected under the Equality Act 2010. Subsequently, in 2022, it was determined that Forstater had been directly discriminated against based on her beliefs. She was

awarded £91,500 in compensation for loss of earnings and injury to feelings, with an additional £14,900 in interest.

2. Bailey v Stonewall, Garden Court Chambers and Others

Allison Bailey, a barrister, claimed she faced discrimination from her chambers due to her gender-critical views and involvement in founding the LGB Alliance.

In 2022, the Employment Tribunal found that Garden Court Chambers had discriminated against her by upholding complaints about her tweets, awarding her £22,000 in damages. However, all claims against Stonewall were dismissed. Bailey's subsequent appeal against Stonewall was dismissed in 2024, but she has been granted permission to further appeal to the Court of Appeal.

3. Eleanor Frances v UK Government Departments

Eleanor Frances, a civil servant, raised concerns about her department's adoption of policies favouring gender identity over biological sex. She felt marginalised and resigned in 2023.

After an 18-month legal battle, she reached a settlement of £116,749, with the departments agreeing to revise their guidelines to accommodate gender-critical beliefs without labelling them as transphobic.

4. Roz Adams v Edinburgh Rape Crisis Centre

Roz Adams, a trauma specialist, resigned after advocating for female-only counsellors for rape victims. She won a constructive dismissal case, with the tribunal awarding her £35,000 in compensation.

The tribunal found that Adams was victimised for her 'sex realist' beliefs, leading to calls for clearer definitions of 'woman' in such services.

Recent employment tribunal cases

Recent employment tribunal cases in the UK have addressed issues related to gender-critical beliefs and their expression in professional settings.

These cases underscore the legal recognition of gender-critical beliefs as protected under the Equality Act 2010 and highlight the challenges individuals may face when expressing such beliefs in professional environments

1. Rachel Meade v. Westminster City Council and Social Work England

Rachel Meade, a social worker with two decades of experience, was suspended after sharing gender-critical views on her personal social media.

Following a complaint, Social Work England initiated an investigation, deeming her posts “discriminatory in nature.” Westminster City Council subsequently suspended her on charges of gross misconduct, citing concerns that her posts could be perceived as transphobic.

The employment tribunal concluded that Meade’s posts were protected under the Equality Act 2010, affirming her right to freedom of thought and expression. The tribunal found that both the council and the regulatory body had discriminated against her based on her protected beliefs. In response, Westminster City Council apologised for their actions.

2. Professor Jo Phoenix v. The Open University

Professor Jo Phoenix, a criminologist at the Open University, faced significant opposition after establishing the Gender Critical Research Network. She was likened to “a racist uncle at the Christmas table” by a colleague, and an open letter signed by over 360 colleagues labelled the network as transphobic.

The employment tribunal determined that Phoenix had been subjected to harassment, victimisation, and direct discrimination due to her gender-critical beliefs. The tribunal

concluded that the university failed to protect her from demeaning treatment and did not uphold her right to express her beliefs.

Professor Phoenix resigned in December 2021, and the tribunal later ruled that she had been constructively unfairly dismissed.

3. James Esses v. Metanoia Institute

In 2021, James Esses, a trainee psychotherapist, was expelled from the Metanoia Institute's master's programme after expressing concerns about proposed legislation that he believed would criminalise therapists who did not affirm all children in their identified gender.

Following his expulsion, Esses initiated legal action against the Metanoia Institute, alleging discrimination, harassment, and victimisation based on his gender-critical beliefs. In August 2024, the Metanoia Institute settled the case, acknowledging that gender-critical beliefs are protected under the Equality Act 2010 and apologising for their handling of the situation.

Esses expressed satisfaction with the settlement, emphasising its significance for free speech and cautioning educational institutions against penalising students for holding differing views.

Notable developments

As of January 2025, there are several notable developments concerning employment tribunal cases related to gender-critical beliefs

1. Appeal in Bailey v Stonewall, Garden Court Chambers and Others

Allison Bailey, a barrister, previously won a discrimination claim against Garden Court Chambers in 2022, where she was awarded £22,000 in damages. However, all claims

against Stonewall, who were alleged to have encouraged Garden Court Chambers to discriminate against Allison, were dismissed.

Bailey's subsequent appeal against Stonewall was dismissed in 2024, but she has been granted permission to further appeal to the Court of Appeal.

The legal community is closely monitoring this case, anticipating further developments in 2025.

2. Higgs V. Farmor's School

In 2019, Kristie Higgs, a pastoral administrator at a school in Gloucestershire, was dismissed for gross misconduct after sharing social media posts critical of LGBTQ+ inclusive education in primary schools. She contended that her dismissal constituted discrimination based on her Christian beliefs.

An initial employment tribunal ruled against her, stating that the school's actions were based on the manner in which she expressed her beliefs, rather than the beliefs themselves.

Higgs appealed this decision, and in June 2023, the Employment Appeal Tribunal (EAT) found that the original tribunal had erred by not adequately considering whether her Facebook posts were a manifestation of her beliefs. The EAT remitted the case to the same employment tribunal for reconsideration, providing guidance on assessing cases involving the manifestation of religious or philosophical beliefs.

The case has garnered significant attention due to its implications for the balance between freedom of expression and anti-discrimination protections. The Equality and Human Rights Commission and the Free Speech Union have intervened, highlighting the case's importance in clarifying how courts should approach belief-discrimination cases.

On 12 February 2025, the Court of Appeal ruled in favour of Kristie Higgs in her case against Farmor's School. The Court of Appeal concluded that dismissing an employee solely for expressing a protected belief constitutes unlawful direct discrimination. However, if the dismissal is based on the manner in which the belief is expressed, it

must be objectively justified as a proportionate response. In Mrs. Higgs' case, the court found that her posts, while provocative, did not express hatred or disgust towards any group, and there was no evidence that her beliefs affected her professional conduct. Therefore, her dismissal was deemed disproportionate and unlawful.

This ruling underscores the importance for employers of carefully balancing employees' rights to express their beliefs with concerns about reputational risk. Employers should ensure that any disciplinary actions related to the expression of personal beliefs are proportionate and objectively justified.

3. Sandie Peggie v. NHS Fife and Dr Beth Upton

Sandie Peggie, a nurse, has initiated legal action against NHS Fife and Dr Beth Upton, alleging harassment after being required to share a female changing room with Dr Upton, a male who identifies as a transgender woman.

Both NHS Fife and Dr Upton sought to have the case heard privately and to keep their identities confidential, citing privacy concerns. However, Judge Antoine Tinnion ruled that the case should be public due to significant public interest and the principle of open justice.

The second respondent's barrister also asked for the claimant's team to use Dr Upton's preferred pronouns during the tribunal, the Judge stated that "the misgendering of Dr Upton is likely to be painful but was not itself unlawful harassment".

The final tribunal was scheduled for February 2025 and was expected to last ten days. However, due to non-compliance from NHS Fife in delivering all of the relevant evidence until compelled to by the court, along with Dr Upton's alleged confusion over all evidence needing to be handed over, the tribunal has only been 'part heard' and will now be continued 16 July 2025.

Employment Tribunal Case Against NHS England's Facilities Policy

An NHS employee has filed a complaint against NHS England, alleging indirect discrimination based on sex, religion, philosophical belief (gender-critical), and disability.

The complaint centres on NHS England's policy that allows males who identify as women to use female facilities, which the claimant argues effectively renders single-sex facilities mixed-sex. The claimant contends that this policy is discriminatory, especially in locations where facilities, like showers, are open plan.

1. Darlington Nurse's v. County Durham and Darlington NHS Foundation Trust

A group of nurses from Darlington Memorial Hospital has initiated legal action against the County Durham and Darlington NHS Foundation Trust.

Their lawsuit alleges sex discrimination and harassment after being required to share female changing facilities with a male transgender colleague. The nurses reported feeling uncomfortable and cited instances of inappropriate behaviour, including unsolicited comments and actions that led to distress among staff members. One nurse, a survivor of sexual abuse, experienced panic attacks due to these interactions.

Upon raising their concerns, the nurses were advised by the trust's HR department to "broaden their mindset" and "be more inclusive". Feeling that their grievances were dismissed, they formed the Darlington Nursing Union to advocate for the protection of single-sex spaces within the NHS. Their legal case, supported by the Christian Legal Centre, seeks to establish clear policies that uphold the rights of female staff to access single-sex facilities.

The case has garnered significant attention, with Health Secretary Wes Streeting meeting the nurses to discuss their concerns. He acknowledged the importance of single-sex spaces and expressed a commitment to addressing the issue within the NHS.

As of January 2025, the legal proceedings are ongoing, and the outcome is anticipated to have substantial implications for NHS policies regarding single-sex facilities and the accommodation of transgender staff members.

Relevant employment tribunal losses

Along with these successes, there are two cases that have been lost. It is important to note on what grounds they were lost and what can be learned from them.

1. Orwin v East Riding of Yorkshire Council (2022)

Situation

East Riding of Yorkshire Council employee Jim Orwin protested against his employer's invitation to staff to consider adding pronouns to their email signature by adding 'XYchromosomeGuy/AdultHumanMale' to his email footer. The council asked Mr. Orwin to remove his email footer on four separate occasions and made it clear that if he continued to ignore its management instructions, it would take disciplinary action against him. Mr. Orwin refused and was suspended and dismissed for gross misconduct due to insubordination.

Claim

Mr. Orwin claimed he had discriminated against for his gender critical beliefs and that he had been unfairly dismissed.

Decision

Orwin was ordered to pay £12,000 in costs after his claim of unfair dismissal was dismissed and deemed 'vexatious' by the Tribunal. Employment Judge Miller concluded: "The claimant [failed] to follow a reasonable management instruction. The instruction was reasonable because the email footer was inappropriate. It was mocking and derisory of people who self-identify their gender, and its continued use would have

made the respondent look like they condoned the claimant's actions which were divisive and exclusionary and in direct opposition to the respondent's adopted position that gender self-identification is acceptable…. Had the claimant been willing to moderate the footer or engage with the respondent the claimant's actions might not have amounted to gross misconduct. However, the fact that the claimant stated very clearly that the claimant would not remove the footer and would not comply with a management instruction indicated that the claimant had decided to no longer consider himself bound by the contract of employment."

Access the full employment tribunal decision on the GOV.UK website.

Key learning

It was noted the claimant had made no attempt to utilise relevant processes available (i.e. They could have raised a grievance or whistleblowing policy). Mr Orwin's repeated failure to follow the management instruction was deemed unreasonable, leaving his employer no choice but to dismiss the claimant in the light of a deliberate refusal to comply with a reasonable (and lawful) management instruction and the claimant's clear statement that he would continue to do so. This decision in these circumstances was well within the band of reasonable responses of a reasonable employer.

2. Lister v New College Swindon

Situation

Mr Lister was employed as a full time lecturer at New College Swindon. Student A, a female who began identifying as male, emailed him asking for a new name and preferred pronouns to be used in class and on relevant materials. The College's Gender Reassignment Policy advised employees to do so in such situations, but Mr. Lister found this difficult so adopted a gender neutral communication style by gesturing rather than using the student's given birth name or preferred name. He accepted in cross examination that was upsetting for the student and it was shown the student's attendance at Mr. Lister's lectures significantly reduced (in contrast to those led by another member of staff). Student B complained to the Respondent's Student Services

Department about Mr. Lister's treatment of Student A. Mr. Lister was subject to disciplinary proceedings, and in turn he raised a grievance, and also launched a complaint under the Whistleblowing Policy, complained to the Department for Education, the Swindon Multi Agency Safeguarding Hub, the Education Schools Funding Authority and Ofsted.

Claim

Mr. Lister claimed he had discriminated against for his gender critical beliefs and that he had been unfairly dismissed.

Decision

The Tribunal ruled there was no evidence that those who shared the Claimant's protected characteristics were put at a disadvantage by the College's Gender Reassignment Policy, as the Policy did not require an employee to accept that the biological sex of an individual had changed if they had transitioned. The Tribunal was satisfied that the Claimant was dismissed for a reason which related to his conduct (his behaviour had amounted to discrimination which was an example of gross misconduct under the Disciplinary Policy).

Access the full employment tribunal decision on the GOV.UK website.

Key learning

Employees must clearly demonstrate they are willing to engage with their employer at every possible stage to find a remedy or workaround acceptable to both parties as far as possible. Employees are expected to be reasonable in doing so and adhere to the terms of their employment contract (e.g. adhere to workplace policies or attempt to agree reasonable alternatives with their employer if unable to do so). Refusal to attempt to engage reasonably or seek a reasonable agreement makes it much more likely that employers will be within their rights to enact disciplinary policies.