

# Case law overview: previous and incoming (May 2025 update)

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 and beyond 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.

## **5. 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 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.

## **6. Professor Jo Phoenix v. The Open University**

Prof. 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.

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

## **7. James Esses v. Metanoia Institute**

In 2021, James Esses, a trainee psychotherapist, was expelled from the Metanoia Institute's master's program 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, her 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.

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 February 12, 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 to carefully balance 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 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 final tribunal is scheduled for February 2025 and is expected to last ten days.

In addition to the tribunal, NHS Fife has initiated a separate disciplinary hearing against Peggie, examining allegations of misconduct, including misgendering Dr. Upton.

The tribunal commenced on February 3, 2025, but due to numerous developments during the tribunal, which included NHS Fife of withholding documents related to the case and NHS Fife raised additional allegations against Ms. Peggie, suggesting she compromised patient safety by refusing to work effectively with Dr. Upton.

In April 2025, the UK Supreme Court clarified that the terms "woman" and "sex" in the Equality Act 2010 refer to biological sex. This ruling has significant implications for Peggie's case, as it supports her argument for single-sex spaces based on biological sex.

Following the ruling, Peggie called on NHS Fife to revise its policies, stating that allowing individuals who identify as women but are biologically male to access female-only spaces is unlawful.

NHS Fife has indicated it is awaiting further guidance from the Scottish Government and the Equality and Human Rights Commission.

The tribunal is set to reconvene in July 2025.

The outcome may have broader implications for workplace policies regarding gender identity and the interpretation of single-sex spaces under UK law.

## **4. 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 transgender women to use female facilities, which the claimant argues effectively renders single-sex facilities as mixed-sex.

The claimant contends that this policy is discriminatory, especially in locations where facilities like showers are open plan.

## **5. Darlington Nurse's v. County Durham and Darlington NHS Foundation Trust**

A group of nurses from Darlington Memorial Hospital 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 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.

## **6. Denise Fahmy v Arts Council England (ACE)**

Denise Fahmy served as a visual arts relationship manager at ACE for over 15 years.

In April 2022, during an internal Microsoft Teams meeting attended by approximately 400 staff members, ACE's deputy chief executive, Simon Mellor, criticized the LGB Alliance – a charity known for its gender-critical stance – as having a "history of anti-trans activity" and deemed it a mistake to fund them.

Fahmy defended the LGB Alliance, asserting it was not anti-trans. Subsequently, a colleague circulated an "allies support sheet" via email, which included a link to a petition. The petition contained comments referring to "openly discriminatory transphobic staff" and likened gender-critical views to racism and other forms of bigotry. This petition remained accessible on the ACE staff intranet for about 26 hours, garnering over 100 signatures. Fahmy filed a Dignity at Work complaint, which was not upheld, and she was denied the right to appeal the decision. Feeling that her work environment had become untenable, she resigned in 2022.

The tribunal found that ACE failed to protect Fahmy from harassment, particularly concerning the petition and its contents. The judgment stated that the email and comments constituted unwanted conduct that violated Fahmy's dignity and created an intimidating, hostile, degrading, humiliating, or offensive environment. The tribunal also noted that ACE was aware of the contentious nature of the issue and had not taken all reasonable steps to prevent harassment.

In September 2023, ACE reached a settlement with Fahmy, providing an undisclosed amount in compensation and issuing an apology. ACE acknowledged the tribunal's findings and expressed regret that a team member experienced harassment at work.

## **What does it all mean**

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.