

In an increasingly complex world, in which employees may have sharply contrasting views on moral, social and political issues, when can an employer justify dismissal or disciplinary action in response to the expression of controversial beliefs?

Higgs -v- Farmor's School



Dear Mr Evans,

I've noticed that a member of your staff who works directly with children has been posting homophobic and prejudiced views against the lgbt community on Facebook. I'm concerned that this individual may exert influence over the vulnerable pupils that may end up in isolation for whatever reason. I find these views offensive and I am sure that when you look into it, you will understand my concern. I'd rather remain anonymous... I've attached a couple of screen shots so you can see what I'm referring to...



Kristie

****PLEASE READ THIS! THEY ARE BRAINWASHING OUR CHILDREN!**** On November 7th the Government Consultation into making Relationships Education mandatory in primary schools, and Relationships and Sex Education mandatory in secondary schools closes. Which means, for example, that children will be taught that all relationships are equally valid and 'normal', so that same sex marriage is exactly the same as traditional marriage, and that gender is a matter of choice, not biology, so that it's up to them what sex they are.

At the same time it means that expressing and teaching fundamental Christian beliefs, relating to the creation of men and women and marriage will in practice become forbidden – because they conflict with the new morality and are seen as indoctrination into unacceptable religious bigotry. Which means that freedom of belief will be destroyed, with freedom of speech permitted only for those who toe the party line!

We say again, this is a vicious form of totalitarianism aimed at suppressing Christianity and removing it from the public arena.

*****Please sign this petition, they have already started to brainwash our innocent wonderfully created children and its happening in our local primary school now*****

CITIZENGO.ORG

Petition

Open Link



25

8 Comments




Like



Comment



Share



... I'm aware that not everyone has liberal views like myself but I do feel that people working directly with children should refrain from posting this type of view on social media. I know of several children at the school who might fit into the category of person your staff member seems to find so obnoxious, friends of my children even...



Kristie

While normal Americans are busy at work trying to provide for their families, liberal school systems are busy **indoctrinating their children**. Kindergarten and first grade children are being primed for a gender fluid society. Of course, the schools are introducing the propaganda in the name of anti-bullying campaigns, but we know better.



12

2 Comments



Like



Comment



Share



Kristie

... **They are stealing the innocence of our children with a devious scheme to** supplant traditional gender roles by differentiating a child's gender assignment at birth with his perceived gender.



10

1 Comments



Like



Comment



Share



Kristie

They are busy recruiting children for the transgender roster. Their agenda is not about bullying. They are using our children to promote their gender free society of madness.



10

1 Comments



Like



Comment



Share



Kristie

Lying to children and convincing them that they can be anything they want to be when in reality they can't is a form of child abuse, especially when it entails the changing of one's genitalia or ingesting hormones.



21

5 Comments



Like



Comment



Share



Kristie

The LGBT crowd with the assistance of the progressive school systems are destroying the minds of normal children by promoting mental illness. Delusional thinking is a form of psychotic thinking, and we have professionals promoting it to our young kids.



18

3 Comments



Like



Comment



Share

On 31 October 2018, Mr Evans spoke to Ms Higgs about the screenshots that had been forwarded to him, and she confirmed she had made these posts on her personal Facebook account. She accepted it was possible they might have been seen by parents of pupils at the school, albeit she had not said anything about the school itself.

Asked whether the posts might be considered “*offensive or prejudiced by other people*”, Ms Higgs responded:

“Yes. I am not against gay, lesbian or transgender people. It’s about making sure people are aware of what’s going on in the primary school. It’s not about the schools, they are just following government policy, it’s about the government.”

“I don’t regret making the posts, it’s about the children in the primary school. I don’t have any issues with gay, lesbian or transgender people, I love all people.”

The reference to “the primary school”, is a reference to a Church of England primary school attended by Ms Higgs younger child.

The investigation report:

On the completion of her investigation, the investigator recommended that the matter should proceed to a disciplinary hearing, explaining:

“... by choosing to make the posts, and stating that she believes in God’s Law and not Man’s Law, I believe that, on the balance of probability, this means that she holds views that are discriminatory against groups of people with protected characteristics.”

“Whilst not making any direct discriminatory comments about students at Farmor’s School, the posts use discriminatory language and are endorsed by [the claimant] which would indicate that she shares these views. On the balance of probability this would be interpreted that she holds illegal discriminatory views that are not in line with the Equality Act 2010 and therefore has breached the Conduct policy.”

$X \vee Y$

X v Y

01

X is a lawyer by profession. He works for a large financial regulator, handling a caseload and proceedings that can fundamentally impact individuals and businesses operating in regulated markets throughout the UK.

02

The regulator itself plays a vital public role, with the power to prosecute, and it publicly commits to equality, diversity, and inclusion. It also presents itself as a progressive, anti-racist organisation.

03

In recent years, Y has faced public criticism over its prosecution decisions - with allegations of disproportionate action against businesses and professionals from certain communities. The controversy has been fuelled further by internal complaints of systemic race discrimination.

X v Y

04

Outside work, X is very active online - blogging, writing articles, posting on social media. His output is right-wing.

05

The volume of content is significant, and much of it is highly controversial.

06

Themes include: (1) linking criminality to ethnic origin and nationality, (2) advocating stripping citizenship and mass deportation of certain groups, (3) describing demographic change and diversity as a “*corruption of our heritage and way of life*”.

07

None of X’s online content refers to his employer, the regulator - these two worlds are kept entirely separate. His belief system, however, is genuine and deeply rooted. He has studied immigration, geopolitics, and national identity at postgraduate level and he is adept at expressing his views in a way that appear to correspond with some mainstream nationalist view points.

Questions:

01

Are X's views acceptable - and who gets to decide.

02

Even if his views are extreme, is it the employer's business if he keeps them separate from work?

03

If the employer did decide to dismiss him, would it be on solid legal ground?

Circling back to Higgs -v- Farmor's School

The disciplinary outcome:

Following a disciplinary hearing, Ms Higgs was dismissed for gross misconduct.

“... your position was that you were simply reposting existing articles and had only added a few words; they were not your posts. However, you confirmed that you had read the articles you re-posted and agreed with the content of them. Indeed, you wanted these articles to be circulated more widely as you felt it important for people to be aware of the content.

We discussed at length whether the language used within these posts could be deemed as offensive or discriminatory and highlighted the specific words brainwashing, transgender roster, madness, devious scheme, child abuse and mental illness’ amongst others ... We were keen to understand whether, upon reflection, you understood that the use of such language could be deemed as offensive and that it has the ability to cause damage to the reputation of the school.

You stressed that whilst you may not have chosen to use the same language as used in the articles, you agreed with the content and upon reflection you would not have acted differently.

”

.

Ms Higgs' Beliefs

The language in the Facebook posts is provocative and hyperbolic – but in essence two core beliefs are expressed:

Firstly, Ms Higgs did not believe in gender fluidity - i.e. that a person can change their biological sex or gender.

(A view often labelled “gender-critical”)

Secondly, Ms Higgs did not believe that same-sex marriage could be equated with marriage between a man and a woman – and accordingly that it is wrong to teach anything different to children (particularly primary school children).

Religion or belief

01

The belief must be genuinely held

02

The belief must not simply be an opinion or viewpoint

03

The belief must concern a weighty and substantial aspect of human life and behaviour

04

The belief must attain a certain level of cogency, seriousness, cohesion and importance

05

The belief must be worthy of respect in a democratic society, not be incompatible with human dignity and not be in conflict with the fundamental rights of others

Religion or belief

01

Ethical veganism

02

The beliefs of major organised religions – and less prominent belief systems (e.g. paganism)

03

Atheistic beliefs (and the absence of a belief)

04

A belief in climate change

05

Gender critical beliefs

Forstater -v- CGD

The Claimant holds the belief that biological sex is real, important, immutable and not to be conflated with gender identity. She considers that statements such as “woman means adult human female” or “trans women are male” are statements of neutral fact and are not expressions of antipathy towards trans people or “transphobic”.



J.K. Rowling ✓

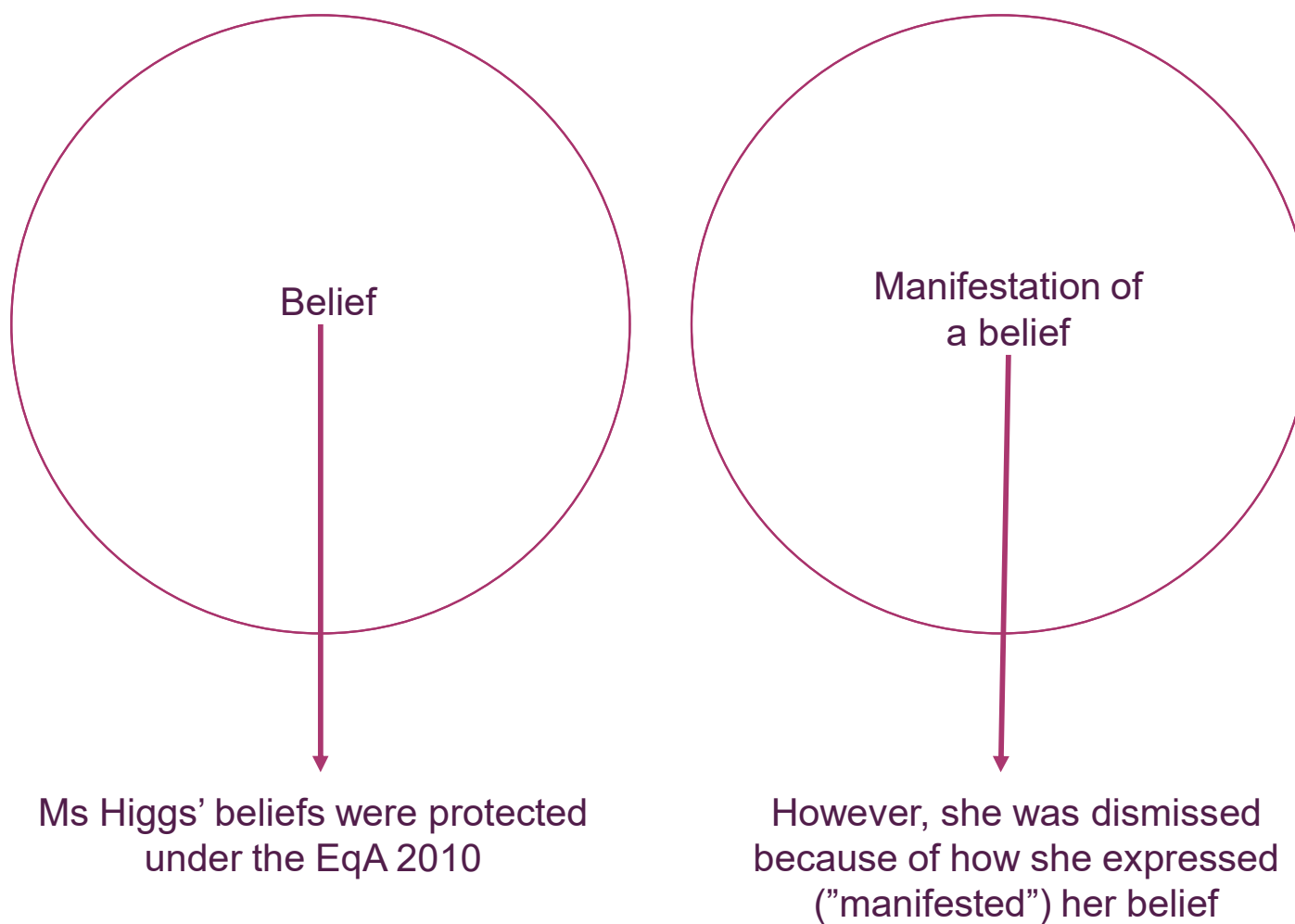
@jk_rowling



Dress however you please.
Call yourself whatever you like.
Sleep with any consenting adult who'll have you.
Live your best life in peace and security.
But force women out of their jobs for stating that sex is
real?

[#IStandWithMaya](#) [#ThisIsNotADrill](#)

The Tribunal's Decision



Employment Appeal Tribunal (EAT)

Mrs Higgs appealed to the EAT, which upheld her appeal. It found that there was **a sufficiently close and direct connection between her protected beliefs and her conduct**, such that the posts constituted clear manifestation of her protected beliefs. In light of this, a further assessment should have been undertaken, to determine whether the school's actions in dismissing Mrs Higgs were either:

- (a) because of the manifestation of her protected beliefs, in which case they would be discriminatory, or
- (b) because she *“had manifested her beliefs in a way to which objection could justifiably be taken”*, in which case the school's actions may be lawful, but only **if objectively justifiable and proportionate** in the circumstances.

The EAT consequently overturned the ET's original decision and **ordered that the case be remitted and considered afresh**. However, Mrs Higgs appealed to the Court of Appeal, arguing that, rather than remitting the case back to the ET, the EAT should have upheld her claim.

Court of Appeal's decision

01

The school had been entitled to take objection to Mrs Higgs' Facebook posts.

02

Nonetheless, Mrs Higgs' dismissal was a disproportionate response in the circumstances, for a number of reasons.

03

While the language used in the posts was objectionable, it was in fact not "grossly offensive". It did not appear to be primarily intended to incite hatred or disgust.

04

The language which had been used in the posts was not Mrs Higgs' own.

Court of Appeal's decision

05

There was no evidence that the reputation of the school had actually been damaged. The school had accepted that there was no possibility that readers of the posts would believe that they represented the views of the school.

02

There was no Evidence that Mrs Higgs' beliefs or their manifestation influenced her work – she had worked for the school for 6 years and there had never been any complaint about her work.

03

Though the school believed that Mrs Higgs had an apparent lack of “insight” into the consequences of her actions, there was “no universal rule” that a lack of insight will justify an employer choosing dismissal rather than a less severe sanction.

04

Mrs Higgs' dismissal was consequently “not...even arguably a proportionate sanction for her conduct” in the circumstances, and was therefore discriminatory.

Key points

Key Points

01

A broad range of beliefs will be protected. To be protected, a belief must meet the 5 criteria set out in Granger plc v Nicholson [2010] IRLR 4. This is, in practice, a **low threshold**.

02

Even beliefs which may be offensive or shocking to some can be protected. In the case of Forstater v CGD Europe UKEAT/0105/20, the EAT held that **only beliefs that promote violence and hatred will not be protected**.

03

Both **holding a belief and expressing (or manifesting) that belief are protected**, unless the manifestation is clearly objectionable or inappropriate.

04

Any disciplinary action taken in response to an objectionable or inappropriate manifestation of a protected belief must be **objectively justifiable and proportionate** in the circumstances.

05

Fear of reputational risk alone is not enough. Employers should therefore make sure that the actual reputational risk is assessed, rather than simply taking a view that it is likely.

Key Points

06

Context, and the specific circumstances of each case, will be key. Considerations to be borne in mind when assessing proportionality will include (1) **the subject matter and content** of the beliefs expressed (and **their relevance to the employer's business**), (2) **the way the beliefs are expressed** (their tone and extent) and (3) in what **forum** (including the reach of the likely audience), (4) **whether the expression of beliefs can be linked to the employer** (and the extent of any reputational risk associated with this), (5) **the nature of the role of the individual** involved (both their level of seniority and whether their views are likely to influence their work), and (6) **the nature of the organisation and its clients or service users** (and whether there is evidence of the individual demonstrating concerning behaviour towards third parties).

07

Knee-jerk reactions should be avoided. The organisation's response should be measured, objective and proportionate. Time should be taken, to reflect, before any action is taken. If disciplinary action is contemplated, consideration should be given to whether that action is (a) necessary to achieve a legitimate aim (and what that aim is), and (b) proportionate in the circumstances (i.e. whether there is any less punitive action which could be taken instead).

Key Points

08

Dismissing someone who has expressed a protected belief, because of pressure from third parties who have taken offense, may be discriminatory. The Court commented that employers do not have carte blanche to interfere with an employee's right to express their beliefs simply because third parties find those beliefs offensive and think worse of the employer for employing them.

09

Care should be taken when contemplating disciplinary action in relation social media posts on personal accounts. In order for disciplinary action to be reasonable in such circumstances, there will have to be a **sufficient link between the posts and the individual's role**, and a direct impact on the organisation and its reputation. As ever, context will be key. As the Judge in Higgs acknowledged "something that might be unproblematic on a private Facebook page could justify different treatment if communicated in a work setting", and visa versa.

10

Clear policies are crucial. Employers should have cogent social media, conduct and inclusion and diversity policies in place, that fairly balance freedom of belief and expression with the rights of others and workplace expectations. These should be clearly communicated to staff and regularly reviewed and updated.



THANK YOU



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