

FOR IMMEDIATE RELEASE (10 June 2021 10:30 am)

Gender-Critical Beliefs are Worthy of Respect in a Democratic Society

In a landmark judgment handed down at the Employment Appeal Tribunal in London at 10:30 am, Mr Justice Choudhury overturned an earlier judgment of the Employment Tribunal, which had declared that gender-critical beliefs are “not worthy of respect in a democratic society”, and were therefore not protected against discrimination. The Employment Appeal Tribunal substituted a finding that gender-critical beliefs are a protected characteristic under the Equality Act 2010. **Those who hold such beliefs are now legally protected from discrimination.**

The ruling was handed down by Mr Justice Choudhury, the President and most senior judge of the Employment Appeal Tribunal. He found that in 2019 the Employment Tribunal had erred in the case of *Maya Forstater v CGD Europe and Others*, in its application of the legal test for whether a philosophical belief is protected by the Equality Act 2010.

Sitting with two lay members, Judge Choudhury ruled that under the European Convention on Human Rights, only extreme views akin to Nazism or totalitarianism are excluded from protection on the basis that they are not worthy of respect in a democratic society. The Appeal Tribunal held:

“The Claimant’s gender-critical beliefs, which were widely shared, and which did not seek to destroy the rights of trans persons, clearly did not fall into that category.”

Mr Justice Choudhury said:

“It is clear from Convention case law that...a person is free in a democratic society to hold any belief they wish, subject only to ‘some modest, objective minimum requirements’.”

The judgment directly contradicts the views of Stonewall, the lobby group that advises over 850 major employers in the UK, including many government departments, universities, police forces and schools, covering 25% of the UK workforce.

Stonewall argues that the only acceptable view that can be publicly expressed is that “trans women are women, trans men are men and non binary people are non binary”. Any belief to the contrary – such as that now protected as a result of this Judgment – has been denigrated as bigoted and hateful. Nancy Kelley, Stonewall CEO, recently compared gender-critical beliefs to antisemitism.

The Equality and Human Rights Commission (EHRC) and the Index on Censorship both intervened in support of the view that gender-critical beliefs are protected by the Equality Act.

Mr Justice Choudhury noted:

“The Claimant’s gender critical belief is not unique to her; it is a belief shared by others who consider that it is important to have an open debate about issues concerning sex and gender identity.”

The case came to worldwide attention in December 2019 when J.K. Rowling tweeted in support of Ms Forstater. In her tweet, Rowling said:

“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](#)”

Others who have publicly supported Ms Forstater include MP Rosie Duffield, Baroness Tanni Grey-Thompson, Lord Philip Hunt, athletes Martina Navratilova and Sharron Davies, actor Joe McGann, writers Joan Smith and Trevor Phillips, and broadcasters Jenni Murray and Jonathan Ross.

Ms Forstater, a researcher and co-founder of the new human-rights campaign group Sex Matters, said:

“I am delighted to have been vindicated. I lost my job simply for expressing a view that is true and important, and held by the great majority of people in this country: sex matters.

Being a woman is a material reality. It is not a costume or a feeling. Institutions that pretend sex doesn’t matter become hostile places for women, in particular. After this judgment, employers and service-providers that ignore sex and silence women who object, need to consider whether they are acting unlawfully, and the substantial legal risks they face if they do not change their approach.

Forstater’s beliefs, now recognised as protected philosophical beliefs by the Appeal Tribunal, include that:

“There are only two sexes in human beings: male and female. This is fundamentally linked to reproductive biology.

“Males are people with the type of body which, if all things are working, is able to produce male gametes (sperm). Females have the type of body which, if all things are working, is able to produce female gametes (ova), and gestate a pregnancy.

“Women are adult human females. Men are adult human males.

“Sex is determined at conception, through the inheritance (or not) of a working copy of a piece of genetic code which comes from the father (generally, apart from in very rare cases, carried on the Y chromosome).

“It is impossible to change sex or to lose your sex. Girls grow up to be women. Boys grow up to be men. No change of clothes or hairstyle, no plastic surgery, no accident or illness, no course of hormones, no force of will or social conditioning, no declaration can turn a female person into a male, or a male person into a female.”

“Under the Gender Recognition Act 2004, a person may change their legal sex. However this does not give them the right to access services and spaces intended for members of the opposite sex.”

After the original six-day hearing in 2019, Judge James Tayler had concluded that Ms Forstater’s belief was “absolutist” and would result in her “violating the dignity” of, or

“creating an intimidating, hostile, degrading or offensive environment” for, transgender people. Although Ms Forstater had told her employer that she would “respect anyone’s self-definition of their gender identity in any social and professional context” and had “no desire or intention to be rude to people”, the Center for Global Development claimed that her beliefs meant that she would indiscriminately “misgender” people at work, and that her presence in any workplace would make it unsafe.

Mr Justice Choudhury rejected this entirely.

He stressed that his judgment does not mean that “those with gender-critical beliefs can indiscriminately and gratuitously refer to trans persons in terms other than they would wish. Such conduct could, depending on the circumstances, amount to harassment or discrimination.”

On the question of pronouns, he found that while Ms Forstater would usually use preferred pronouns out of politeness, she would not do this “whenever she considered it appropriate not to do so”, for example in relation to single-sex services, and that this was not necessarily harassment.

Ms Forstater was represented by Ben Cooper QC and Anya Palmer of Old Square Chambers, and Peter Daly, a partner at Doyle Clayton Solicitors. Mr Daly said:

“This is a landmark judgment, holding great significance. It is one of the most important appellate free speech judgments handed down by a UK court in many years. As well as the extensive legal implications for equality and discrimination law, it is a recognition of the unlawfulness of discriminating against people – in practice, overwhelmingly women – who hold gender-critical beliefs.

“The implications of this Judgment are vast. It is not only of major significance to the employment sphere, but to goods and services, education, associations and political parties, and to the way in which we interact and are treated by the state that governs us. By rejecting the practice of people illegitimately labelling as hateful statements with which they merely disagree, and by clarifying the process for recognising which philosophical beliefs are protected from discrimination, it will hugely improve the way in which social and political discussion is conducted in the UK. By virtue of the centrality of the European Convention on Human Rights to its reasoning, the Judgment will also have this effect internationally.

“The judgment is testament to the ability of counsel, Ben Cooper QC and Anya Palmer of Old Square Chambers. They marshalled complex arguments and evidence with the utmost skill and persuasiveness, and they are due every accolade.

“Primarily, however, this judgment is testament to the fortitude and determination of Maya Forstater. She has endured two years of unspeakable vitriol, simply for pursuing her legal rights from which society will now benefit. The judgment she has now received reaffirms the legal protections of everyone engaged in the discussion of sex and gender, regardless of whether or not they agree with her, and indeed strengthens protections for everyone who holds a philosophical belief of any kind. This is Maya’s achievement.”

Maya Forstater said:

"My judgment comes after a two-year battle that has been supported by thousands of people. It is a win for millions of people, and for democracy. No one should be bullied in their workplaces, universities or schools, or removed from social media or political parties, for stating the basic truth about the sexes and believing their own eyes. I am proud to have been the person who got these legal rights recognised, and grateful to everyone who spoke up and supported me."

ENDS

Editors Notes:

1. The hearing on this matter took place on 26 and 27 April 2021, following an earlier hearing in the lower Tribunal in November and December 2019.
2. Employment Appeal Tribunal judgments have the same value in precedent as judgments of the High Court. They are binding authority on all Employment Tribunals and County Courts, and are persuasive authority in the Court of Appeal and Supreme Court. The leading case which determines whether a belief is protected – Grainger plc v Nicholson – was an EAT case from 2010, and is followed in philosophical belief cases at all levels, including the Supreme Court.
3. The Respondents may now seek permission to appeal to the Court of Appeal. They can get permission to do so either from the Employment Appeal Tribunal that reached this decision (they have seven days to apply for permission) or directly to the Court of Appeal (they have 21 days to apply for this permission, running from the date that the EAT provides its sealed order, which is expected in the next few days). The test that the Court of Appeal will apply in determining whether to grant permission to appeal is whether such an appeal (a) has a real prospect of success; (b) raises an important point of principle or legal practice; and (c) has some other compelling reason why the Court of Appeal should hear it. Exceptionally, an unsuccessful party in the EAT may appeal directly to the Supreme Court, but it is not thought likely that this case would fall under the category of cases for which permission for such a "leapfrog" appeal is granted.
4. In the absence of an appeal, the matter will now return to the Employment Tribunal, which will determine whether Maya Forstater was unlawfully discriminated against by the Respondent as a result of her protected belief.
5. Interviews with can be arranged via Laura Berrill laura@lauraberrill.co.uk 07944555238
Peter Daly, Solicitor, Doyle Clayton pdaly@doyleclayton.co.uk

10 key legal implications of the judgment

1. **Gender critical beliefs are a protected characteristic under the Equality Act** – that is the belief that sex is important, immutable and binary. People who hold gender critical beliefs are protected from discrimination.
2. **This means people are protected against both discrimination and harassment for holding or expressing the belief** - it is unlawful to create an intimidating, hostile, degrading, humiliating or offensive environment for gender critical staff or customers.
3. **Gender identity beliefs are also protected.** A person may not be discriminated against because they believe in gender identity theory, or because they do not share that belief.
4. **Sex is binary and immutable – male and female - as a matter of UK law** (subject to certain specified exceptions).
5. **The phrase “for all purposes” at s.9 of the Gender Recognition Act 2004 means “for all legal purposes”.** It does not compel people to believe something they do not, disregard what she considers to be a material reality, namely that sex is immutable.
6. **Holding and expressing gender critical beliefs does not by necessity constitute harassment.** This includes referring to an individual’s sex (so called “misgendering”) where it is necessary and relevant to do so. A person cannot harass another simply by holding a belief, without doing something more.
7. **A person with a protected philosophical belief is not exempt from the law of harassment** – where they commit unlawful harassment against an individual, the harasser’s belief is not a defence to any legal sanction they may face.
8. **There is a low bar for the protection of beliefs under the Equality Act** - The process for determining whether a belief is protected under s.10 Equality Act 2010 is clarified and ought now to be simplified.
9. **This judgment reaches across society** - It is not a judgment restricted to work relationships: it applies to all situations covered by the Equality Act, including Education and the provisions of goods and services.
10. **This judgment reaches across borders** - Although the judgment is not binding authority across all European Convention states, the reliance on the Convention provides persuasive authority.