



## Denise Fahmy v Arts Council England

*Public body found liable for unlawful harassment*

**Jurisdiction:** Employment Tribunal 2023

**Sectors:** Charity, Public

**Causes of action:** Belief discrimination, Harassment, Victimisation

**Legal representation:** Liz McGlone at Didlaw (solicitor), Anya Palmer (counsel)

**Decisions:** [Ms D Fahmy v Arts Council England: 6000042/2022](#)

### Summary of events

Denise Fahmy was an employee of Arts Council England (ACE) who holds gender-critical beliefs, specifically that sex is real, important, immutable and not to be conflated with “gender identity”.

On 11th April 2022 it was announced that LGB Alliance, a registered charity, had been awarded a grant to make a film, *Queens – 70 years of queer history*, by the London Community Foundation (LCF) under the Arts Council’s Let’s Create Jubilee Fund. But after a critical reaction on social media, LCF suspended this grant.

On 14th April 2022, Fahmy participated in an online all-staff drop-in meeting, hosted by ACE’s deputy chief executive Simon Mellor and attended by more than 400 staff, in which the grant to LGB Alliance was discussed, and disparaging comments were made about the charity and about people with gender-critical beliefs. Mellor called it “a divisive organisation that has a history of anti trans-exclusionary activity”. When Fahmy defended LGB Alliance, many of those attending expressed strong disagreement with her.

A month later, on 11th May 2022, a member of ACE’s LGBTQiA+ group sent an email to all staff with a link to an online spreadsheet containing a petition which read:

“We the undersigned are concerned members of Arts Council England staff who, as proud allies of the LGBTQi+ Working Group as well as every trans person in our workforce, support the formal grievance regarding the LGB Alliance and associated issues.”

Staff were encouraged to add their names and write comments.

Comments added included calling gender-critical individuals “openly discriminatory transphobic staff”. Another said:

“It is clear that there are members of our own organisation who are happy to be vocally anti-trans and ‘gender critical’. We shouldn’t have to put up with this any more than we would racist or sexist behaviour. It’s time to stamp out bigotry in the Arts Council in general and that change is to come from the top down and filtered through all departments.”

Another called LGB Alliance “a cultural parasite and a glorified hate group and supporters that also happen to be neo-nazis, homophobes and Islamophobes”.

The person who sent the email was quickly suspended, but the ACE did not take down the petition for more than 24 hours, as managers wanted to demonstrate that they were **“listening to the concerns rather than immediately closing them down” [106]** – despite Fahmy’s manager having emailed the chief executive early on 12th May 2022 expressing grave concern at the effect the petition was having on Fahmy.

Fahmy made a Dignity at Work complaint as she felt the petition was targeted at her as the one person who had defended LGB Alliance at the all-staff meeting. ACE’s response was that while the content and tone of the email and petition were capable of causing offence to people with gender-critical views, there was insufficient evidence to show that she was the specific target.

Fahmy then filed claims with the Employment Tribunal for harassment and victimisation based on her gender-critical beliefs. Feeling that her work environment was intolerable, she resigned before the final tribunal hearing.

## **Findings by the tribunal**

The tribunal found that Simon Mellor’s comments during the meeting had “opened the door” for the creation of the petition and the derogatory remarks it contained. His decision to express his personal views and align with one side of the debate was deemed inappropriate. However, this alone did not amount to creating an environment that was intimidating, hostile, degrading, humiliating, or offensive for the claimant.

But the subsequent email and comments associated with the petition went beyond reasonable personal expression and became derogatory, crossing the line into unlawful harassment. Importantly, the tribunal determined that it was irrelevant whether the remarks were directly aimed at Fahmy, as they still had the effect of unlawfully harassing her.

ACE tried to use the statutory defence under section 109(4) of the Equality Act that it “took all reasonable steps” to prevent the harassment. It did eventually take the petition down and it took disciplinary action against some of the employees. But its Dignity at Work policy failed to make reference to belief discrimination, and when Fahmy had raised the issue of training on trans-activist and gender-critical beliefs, ACE had said it could not find anyone suitable to deliver such training. The Arts Council was therefore found liable for the actions of its employees.

## **Remedy**

Arts Council England (ACE) and Fahmy reached an agreement including an undisclosed financial award.

An ACE spokesperson said:

*“We respect the findings of the judgment and are sorry that despite the actions we took at the time, a member of our team experienced harassment at work. We are committed to making sure that similar instances do not happen again.”*

**Further reading:** see [sex-matters.org/case-briefings](https://sex-matters.org/case-briefings)