

## Gender-critical belief discrimination

This briefing explains what “gender critical” beliefs are; how employees and others are protected from belief discrimination; and how employers should deal with conflicts of beliefs like this in the workplace.

### The Equality Act 2010: religion or belief

The Equality Act applies to all aspects of employment, the provision of goods, services and education, the use or the disposal of premises, the exercise of public functions, and treatment by formal associations (including trade unions). It protects people from discrimination based on nine protected characteristics, including religion or belief. This includes:

- **direct discrimination**, where an individual is treated less favourably because of their religion or belief
- **indirect discrimination**, where a provision, criterion or practice puts those of a particular religion or belief at a particular disadvantage and is not objectively justified
- **victimisation**, when someone is treated less favourably as a result of being involved with a discrimination or harassment complaint.

Protection against belief discrimination does not depend on a belief being popular or mainstream, or even inoffensive. Both religious and non-religious beliefs are covered, and so is lack of belief. Employees are also protected against harassment on the basis of beliefs:

- **harassment**, where unwanted conduct related to religion or belief has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

The leading case defining the criteria for a protected belief is *Grainger plc v Nicholson*, which involved a claim by a climate-change activist who lost his job for his beliefs. The employment appeal tribunal set out five key criteria for the type of philosophical belief to which discrimination protections apply. The belief must be:

- genuinely held
- a belief, not an opinion or viewpoint based on the present state of information
- about a weighty and substantial aspect of human life and behaviour
- of a certain level of cogency, seriousness, cohesion and importance
- worthy of respect in a democratic society.

## Do you have to keep your beliefs to yourself?

**No. This is a common myth.** Belief discrimination includes discrimination based on “manifestation” of belief. Employers and service providers can place reasonable general restrictions and requirements on the behaviour of employees and other rights holders, which may constrain the expression of their beliefs in particular circumstances (such as conduct at work policies). The scope of these restrictions are limited by law.

People can be required to be polite at work to those with different beliefs. But people cannot be required not to express their own beliefs in any situation, nor be compelled to state that they hold beliefs that they do not hold.

## What beliefs about sex and gender are protected?

The UK courts have found that the ordinary belief that there are two sexes and that sex matters is protected (*Forstater v CGD Europe EAT [2021]*). The belief that sex is real, important, immutable and should not be conflated with gender identity, and that this is important in life, is sometimes termed “gender critical”.

Lack of belief in gender identity (or disagreement with the belief that “trans women are women”) is also protected. Lack of belief may arise from not having any view on the issue at all, either because of indifference or indecision, or having a partially formed view.

## What are gender-critical beliefs?

In the Forstater case, the claimant’s particular gender-critical beliefs were characterised by the employment tribunal as:

“She considers there are two sexes, male and female, there is no spectrum in sex and there are no circumstances whatsoever in which a person can change from one sex to another, or to being of neither sex. She would generally seek to be polite to trans persons and would usually seek to respect their choice of pronoun but would not feel bound to.”

Statements that were accepted as describing “gender critical” belief included:

- There are only two sexes in human beings: male and female.
- The human sexes are fundamentally linked to reproductive biology. Males are people with the type of body which, if all things are working, are 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 of a working copy of a piece of genetic code which comes from the father (generally, except 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.
- A person may declare that they identify as (or even are) a member of the opposite sex (or both, or neither) and ask others to go along with this. This does not change their actual sex.
- There is no general legal compulsion for people not to believe their own eyes or to forget, or pretend to forget, something they already know, or something that is already in the public domain.
- it may be polite or kind to pretend not to notice, or to go along with someone's wish to be referred to in a particular way. But there is no fundamental right to compel people to be polite or kind in every situation.
- In particular, while it may be disappointing or upsetting to some male people who identify as women to be told that it is not appropriate for them to share female-only services and spaces, avoiding upsetting males is not a reason to compromise women's safety, dignity and ability to control their own boundaries as to who gets to see and touch their bodies.

In general the principle is that people are only denied protection against belief discrimination if their belief is incompatible with human dignity or in conflict with the fundamental rights of others.

As the judgment in Forstater states:

“In our judgment, it is important that in applying *Grainger V, Tribunals* bear in mind that it is only those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms, that should be capable of being not worthy of respect in a democratic society. Beliefs that are offensive, shocking or even disturbing to others, and which fall into the less grave forms of hate speech would not be excluded from the protection.”

## People who express gender-critical beliefs are vulnerable to discrimination

In many sectors, particularly universities, charities, the NHS and large corporations, ordinary beliefs about the two sexes and the importance of single-sex services and spaces have become viewed by some people as “offensive”, “anti-trans”, “transphobic”, “hateful”, “bigoted” or “harmful”.

Some influential lobby groups do not accept that these beliefs are legitimate. They argue that those who hold or express gender-critical views should not be protected from discrimination. Many organisations have invited such organisations in to provide training, with the idea that it will be “inclusive”.

People who express beliefs about gender identity that do not conform with the view of these lobby groups are liable to be wrongly stereotyped and stigmatised as bigoted and offensive. This vulnerability to stigmatisation has been noted by the courts (*Forstater v CGD Europe EAT [2021]* and *R (Miller) v College of Policing [2020] and [2021]*).

When a staff member expresses gender-critical views publicly, in conversations or in an internal forum, they and the organisation they work for can find themselves in an unexpected social-media “pile-on” or subject to coordinated complaints, open letters and petitions demanding that the organisation censure the “bigot”.

### Complaints

“Just thought you should know that one of your staff is spreading bigoted remarks about trans women... While Allison says her views are not your own, she clearly indicates that she is part of your organisation. Can your clients trust a person who doesn't respect the identities of others?”<sup>1</sup>

#### Complaint received by Garden Court Chambers about Allison Bailey

“Personally, I felt shocked and outraged that someone affiliated with CGD would be espousing such disrespectful and frankly ignorant views. After reading through Maya's twitter feed, I was aghast. Maya's dismissal of trans identity and trans rights stands in direct contrast to values I hold of equity and inclusion.”

#### Internal email concerning Maya Forstater<sup>2</sup>

<sup>1</sup> *Ms A Bailey v Stonewall Equality Ltd and others: 2202172/2020 – Reserved Judgment.*

<sup>2</sup> *Forstater v CGDE evidence bundle: email of Friday 14th December 2018 (“confidential feedback request”).*

“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.”<sup>3</sup>

**Arts Council Staff member comment cited in Denise Fahmy case**

“Jo Phoenix is a transphobe who should not be invited to this university. You don’t call yourself a feminist if you don’t respect trans women!... Along with other bigoted academics, Jo Phoenix signed a letter to the Guardian claiming that ‘research into transgender issues’ is being silenced. It isn’t but it should be!”<sup>4</sup>

**Flyer about Jo Phoenix, Essex University Students**

All these organisations acted on these complaints and were later found to have discriminated against the target of the complaint.

It is easy for organisations to overreact to complaints about gender-critical beliefs – out of fear of attracting criticism themselves, or because they do not know about belief-discrimination protection.

When facing a social-media storm or internal complaints, there is significant danger of accepting too quickly that someone’s statement of offence or concern about actual or potential damage to reputation justifies putting out a statement condemning the target of the complaints, or taking disciplinary action. This opens the door to prejudice and allowing the preferences of one group to dictate which beliefs are acceptable and which are not.

## Conflicts of belief in the workplace: forging a path

Monica Kurnatowska, senior counsel at Baker McKenzie (and a member of Sex Matters’ advisory group) sets out helpful guidance for employers:<sup>5</sup>

- **There is no right not to be offended.** The fact that some people may be offended by a statement does not make it objectionable. Some robust debate and language is to be expected. That is particularly the case on social media but also, to a degree, in the workplace.

<sup>3</sup> *Ms D Fahmy v Arts Council England: 6000042/2022.*

<sup>4</sup> Sex Matters (2021). *Leadership starts with the law – briefing for universities on the Reindorf Review.*

<sup>5</sup> Monica Kurnatowska (2023). ‘Conflicts of belief in the workplace: forging a path’. *Practical Law UK.*

- **Context is everything.** Determining whether some speech is inappropriate will be context-specific. Relevant factors include what was said, who by and who to, what the individual understood about the audience for their comments, and the nature of the business or the specific role including whether it involves vulnerable service users.
- **Avoid assumptions.** Employers must not make assumptions about an employee's views or about what an individual might do. Employers looking to avoid claims and to rely on the "reasonable steps" defence against claims under the Equality Act will need to have made clear in policies and regular training that all beliefs are treated equally and senior leadership must have acted accordingly.
- **Even-handed leadership.** Senior individuals need to be even-handed. In the face of controversy, it is not uncommon for employers to make statements that are supportive of a particular group. Employers should recognise that those with gender-critical beliefs are just as protected as those with other beliefs and protected characteristics.
- **Handle complaints with care.** Care will also be needed in handling complaints by third parties; the employer must consider them independently and, as noted above, without making assumptions about what the employee might do.
- **The need for balance.** Employers should be watchful of the possible risk that the activities of affinity groups can potentially create a hostile work environment for others. It may be appropriate to consult affinity groups on policies relating to their members but, in doing so, the employer cannot abdicate its responsibility to consider independently the interests and needs of all protected groups.

## Gender-critical belief discrimination cases

Key cases where claimants have won.

- **Forstater v CGD Europe and Others** [2022] employment tribunal
- **Bailey v Stonewall and Garden Court Chambers** [2022] employment tribunal
- **Fahmy v Arts Council England** [2023] employment tribunal
- **Meade v Westminster Council and Social Work England** [2024] employment tribunal
- **Jo Phoenix v Open University** [2024] employment tribunal
- **Adams v Edinburgh Rape Crisis Centre** [2024] employment tribunal
- **Higgs v Farmor's School** [2025] Court of Appeal

See [sex-matters.org/case-briefings](https://sex-matters.org/case-briefings)