



EMPLOYMENT TRIBUNALS

Claimant Respondent

v University and College Union

(1) Dr D O'Neill; (2) Prof. M Wayne

Heard at: Bury St Edmunds

On: 31 March 2025

1 – 4 April 2025

In Chambers: 14, 17 April & 28 May 2025

Before: Employment Judge Laidler

Members: Ms S Limerick and Ms J Nicholas

Appearances

For the Claimant: Miss N Cunningham and Miss S Elves, Counsel **For the Respondent:** Mr T Brown, Counsel

RESERVED JUDGMENT

1. The claimants were not treated detrimentally contrary to section 57 Equality Act 2010
2. The claimants were not subjected to harassment contrary to section 57 Equality Act 2010.
3. All claims fail and are dismissed.

REASONS

Background

1. The claim in this matter was received on 11 August 2023 following a period of ACAS Early Conciliation between 6 and 23 June 2023. The Claimants are long standing members of the Respondent Union which is a trade union within the meaning of s.57 of the Equality Act 2010.('EA')

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2. The claims are of direct discrimination and harassment on the grounds of the Claimants' gender critical beliefs and their lack of belief in gender identity theory within the meaning of s.10 of the Equality Act 2010.
3. In its Response, the Respondent accepts a number of events occurred. Some it states it can neither accept nor deny as it alleges it was not in control of them, but it denies that it discriminated in the way alleged or at all.
4. There was a case management hearing on the 26 March 2024 when the issues were clarified. It was agreed at the outset of this Hearing that they were the issues to be determined. The following represents the issues set out in the case management summary sent to the parties after that hearing:

Time Limits

1. Were the discrimination complaints made within the time limit in s.123 of the Equality Act 2010? The Tribunal will decide:
 - 1.1 Was the claim made to the Tribunal within 3 months (allowing for any Early Conciliation extension) of the act to which the complaint relates?
 - 1.2 If not, was there conduct extending over a period?
 - 1.3 If so, was the claim made to the Tribunal within 3 months (allowing for any Early Conciliation extension) of the end of that period?
 - 1.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:
 - (a) Why were the complaints not made to the Tribunal in time?
 - (b) In any event, is it just and equitable in all the circumstances to extend time?

Protected belief (Equality Act 2010, s.10)

2. The Respondent accepts the gender critical beliefs held by the Claimants amount to a protected belief.

Direct discrimination (Equality Act 2010, s.57(2)(d))

3. Did the Respondent do the following as alleged by the Claimants:
 - 3.1 Email of 7 December 2022 to the Principal of the University in the terms set out at paragraph 9 of the Grounds of Claim;
 - 3.2 Publish the tweets referred to at:

3.2.1 Paragraph 10: on 7 December 2022 the Branch tweeted stating it had written to the Principal;

3.2.2 Paragraph 13: on 9 December 2022, tweeted a screenshot;

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3.2.3 Paragraph 14: on 12 December 2022, the Branch tweeted a link to its statement about the screening published on its website;

3.2.4 Paragraph 20: on 29 March 2023, the Branch re-tweeted EAAF tweet announcing the screening”;

3.2.5 Paragraph 22: on 14 and 21 April 2023, the Branch re-tweeted a tweet by Cabaret Against The Hate Speech (“CATHS”) and on 21 April 2023 re-tweeted a similar tweet from the University’s Staff Pride Network (“SPN”);

3.2.6 Paragraph 23: on 26 April 2023, tweet by Lena Wanggren the then President of UCU Scotland;

3.2.7 Paragraph 25: on 26 April 2023, the Branch tweeted two photographs of the protest against the Film; and

3.2.8 Paragraph 29: on 4 May 2023, the Branch tweeted about a letter from Professor Lauren Hall-Lew to Professor Graham.

3.3 Send the letter referred to at paragraph 31 of the Grounds of Claim, namely a reply by Jo Grady on 26 May 2023; and

3.4 Make the report referred to at paragraph 32 of the Grounds of Claim, namely the Branch Equalities Officer report to the AGM on 30 June 2023?

The Respondent admits all of the above treatment, except:

- With respect to paragraph 14 it admits the allegation: *“insofar as it relates the Respondent’s tweet dated 12 December 2022. The Respondent neither admits nor denies that it re-tweeted a tweet from the Staff Pride Network (SPN) on 12 December 2022”*; and
- With respect to paragraph 22 the Respondent says it: *“is unable to admit or deny the assertion in respect of SPN “inviting the protest group” and the Claimants are put to proof on respect of the factual allegation made and its relevance to the Claimant’s’ claim. It is neither admitted nor denied on 14 April 2023 the UCU Edinburgh Branch re-tweeted a tweet by CATHS and on 21 April 2023 it re-tweeted a tweet by SPN regarding the screening of the Film.”*

4. If so, were the matters found to have occurred less favourable treatment?

Following the wording of section 57 EA this should strictly have read as to whether the Respondent subjected the claimants 'to any other detriment'.

5. If so, was it because of protected belief?

Harassment Equality Act 2010, s.57(3)(a))

6. The Claimants rely on the same acts as identified in paragraph 3 above.

7. If so, was that unwanted conduct?

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8. Was it related to the Claimants' protected belief?

9. Did the conduct have the purpose of violating the Claimants' dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimants?

10. If not, did it have that effect?

Remedy

11. What financial losses has the discrimination caused the Claimants?

12. What injury to feelings has the discrimination caused the Claimants and how much compensation should be awarded for that?

13. Should the Tribunal made a declaration?

14. What recommendations (if any) should the Tribunal make?

Evidence

5. The Tribunal heard from the Claimants and from Dr Shereen Benjamin on their behalf and from Grant Buttars and Dr Lena Wanggren on behalf of the Respondent.

6. The Tribunal had an electronic bundle of documents running to 371 pages and some clips of video evidence submitted. It was also provided with a YouTube link to the Film that the Claimants directed called "Adult Human Female". The tribunal watched that video.

7. In addition to the bundle the tribunal received the following additional documents during the Hearing:

7.1. 4 video clips:

7.1.1. Jo Edge talking about trans rights;

7.1.2. Tom Harlow;

7.1.3. Speaker thanks UCU and CATHS; and

7.1.4. STV newsclip;

7.2 Stonewall document 'A Vision for Change' but only the glossary added to the bundle as page 418;

7.3 Transgender Umbrella document (as seen in the Film):

7.4 The University of Edinburgh Dignity and Respect Policy (added to the bundle as pages 359 – 366); and

7.5 Tweets of Kellie – Jay Keen on 3 April 2025

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8. On the 2 April 2025 the Claimant's solicitors sent to the tribunal a WhatsApp video being a compilation of clips of protests. Having heard submissions from both parties the tribunal refused permission to include this in the documentation for this Hearing. It was submitted late in the Hearing, was not sent firstly to the Respondent and the tribunal did not consider it would be assisted by it in its determination of the issues before it.
9. A copy of the bundle and witness statements were made available to members of the public by the Claimants solicitors in a non-downloadable format. They also hosted access to downloadable copies of the pleadings, list of issues and written submissions.
10. There was an application by @tribunaltweets to live tweet during the Hearing. The tribunal heard from Kate Souper that this was a collective of citizen journalists who attend hearings usually in the employment tribunal but also other tribunals and who try as best they can to transcribe what is said without commentary which is then stored on a website for public access. There were no submissions in opposition and the application was granted.
11. A number of members of the press and public attended the on line hearing by obtaining a link to do so from the administration.
12. The following abbreviations have been used:
 - SPN Student Pride Network
 - UoE Edinburgh University
 - The Branch UCU Edinburgh.
 - CAHS Cabaret Against the Hate Speech.

EAAF Edinburgh Academics for Academic Freedom. From the evidence heard the Tribunal finds the following facts. **The Facts**

13. On 11 November 2022, the Claimants as directors released the Film “Adult Human Female” (‘the Film’). They have made several documentary films together previously.
14. Dr O’Neill is a Senior Lecturer in Film Theory and Practice at the University of Hertfordshire. She accepted in cross examination that she is not a philosopher, does not specialise in gender studies and is not a scholar of feminist theory. She has been a member of the Respondent Union on and off for about 25 years and continuously for about the last 12 years. She does not teach at the UoE and is not a member of the Branch.

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15. Dr O’Neill describes herself as a Marxist and that materialism is fundamental to her beliefs. As she sets out at paragraph 4 of her witness statement:

“...I also subscribe to what are now commonly described as gender critical beliefs, namely that sex is a matter of biology, there are only two sexes, male and female, it is impossible for a human to change sex and sex is important in a range of different political contexts...”

16. Professor Wayne is a Professor in Media and Film Studies at Brunel University. He accepted that he does not work on gender studies as a research area but felt there was a ‘line of continuity’ between some of his previous research in Marxist cultural theory and the Film. He has been a member of the Respondent for over 30 years and was a committee member for its Brunel University Branch until stepping away in January 2025. He does not teach at UoE and neither is he a member of the Branch. He holds the same Marxist and materialism views as Dr O’Neill and that includes what is now known as gender critical beliefs.
17. Both claimants accepted that the Film is not listed as part of their research work.
18. As set out in the list of issues it is not disputed that both Claimants hold ‘gender critical’ beliefs which are accepted as protected beliefs within the meaning of section 10 of the Equality Act 2010.
19. On 6 December 2022, Grant Buttars, then Communications Officer for the Respondent and Acting President saw an Eventbrite invitation to the screening of the Film (page 130a – 130c), entitled ‘Adult Human Female: A documentary in defence of women's rights.’ This described the event as

follows:

"Everything that matters should be up for debate. "Dr Louise Irvine MD

Is it really harmless when men identify into the female sex? Is it progressive for doctors to modify the bodies of young people in the name of changing their 'gender'?

There has been a manufactured confusion around sex and gender. At the same time we are told that 'there is no debate'. Dissenters are cast as 'haters' and cancelled. This is not only a struggle to defend women's rights. At risk is safeguarding for children and young people, biological reality, reason and even democracy.

Adult Human Female is directed by independent film-makers Deirdre O'Neill and Mike Wayne. They say: "The film is a 92-minute explainer about the issues, how far things have already changed for the worse for women and how difficult it has been to be heard, to be listened to. We hope it makes an intervention into the struggle and contributes to

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understanding, provokes discussion and eventually transforms the situation we find ourselves in.

A planned public screening and discussion of the film was cancelled in November 2022 following claims (by people who had not seen the film) that the intentions of the film-makers and event organisers were to broadcast hate. Edinburgh Academics for Academic Freedom are proud to host a screening in Edinburgh, so that people can watch the film, discuss it, and decide for themselves.

The screening will be followed by questions and discussion. We will be joined by three of the contributors to the film: Shereen Benjamin (founder member of Edinburgh Academics for Academic Freedom, speaking in the film as a member of the Labour Women's Declaration working group); Lisa Mackenzie of Policy Analysis Collective 'Murray Blackburn Mackenzie'; and Susan Smith, co-director of For Women Scotland.

As with all EAFAF events, we welcome robust discussion and a range of views. We ask that all attendees familiarise themselves with the University of Edinburgh's Dignity and Respect Policy and comply with it."

20. Dr O'Neill could not recall how the Eventbrite page was put together although

she accepted that the claimants would have approved it. The tribunal did not see any further documentation showing how it had been drafted.

21. In an anonymous article written by a member of staff of UoE the title of the Film is described as follows:

‘...Ignoring the fact that the philosophical thesis of ‘Adult Human Female’ as the only definition of ‘woman’ has itself already been thoroughly dissected and disproven, the name of the film itself is a well known dog whistle, (a seemingly innocuous phrase designed to communicate hidden meanings to those “in the know” and to stoke outrage when criticised by those aware of its true significance); it directly references a publicity campaign by prominent anti-trans activist Kellie-Jay Keen-Minshull, AKA Posie Parker which was roundly condemned as transphobic.

(page 322 of the Bundle)

22. The tribunal on the last day before hearing oral submissions received from the Respondent a tweet from Kellie – Jay Keen @ThePosieParker of 3 May 2025 in which she said:

“Adult human female is not and was not the regular dictionary definition

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Adult female human is.

It was one online.

I made it popular, my campaign made it globally recognised as the rallying cry for this fight...”

23. With regard to the title of the Film both Claimants stated that it was the ‘dictionary definition of a woman’. That is clearly not universally accepted.
24. Counsel for the Claimants summarised the meaning of ‘dog whistles’ at paragraph 50 of her written submissions as ‘seemingly reasonable or innocuous sentiments which were, actually, carefully coded messages, concealing something beyond protected gender critical beliefs. It was put to the Claimants in cross examination that the name of the Film and the two questions posed in the Eventbrite advert were dog whistles ‘known, used and shared by ‘known transphobes’
25. Dr O’Neill when asked about the title stated they had considered other titles but needed something ‘very explicit’ which is why they chose the title they did ‘so there was no confusion concerning what the film was about’. When

pressed about it being a 'dog whistle' her evidence was that she had not thought about it in that way.

26. Professor Wayne thought that someone (possibly after they had chosen the title but before the Film was released) had mentioned to them that Kellie Jay Keen-Minshull, used the expression but he did not think it was exclusively her.

27. In Katy Montgomery's talk (referred to further below) she said:

"And it's using these things called dog whistles or dog whistle politics. And it's basically where you say what... you don't say what you think, you don't say what you're trying to communicate directly. You come up with some other phrase which everyone who's on your side knows. They know what it means. And everyone who you're targeting knows what it means too. So for example, if you went into the toilet here and you saw a sticker that said 'Sex Matters' on there. If you were a trans person, you would know that's a gender critical person who's gone in there and stuck it up to intimidate you. You know about it. If you're a gender critical person, you're like, oh, someone else has been here already. I know this, you know, I know what this phrase means. But most people will be like, 'Sex Matters? I guess I like having sex. I mean, I don't really care'. They probably won't even clock what this means. And that's what these dog whistles are about. And the key things are this, is you always have plausible deniability. You can always back off when you think that it

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looks bad for you. And you can always frame your opponents as hyperbolic and hysterical."

(page 228 and 229)

28. The tribunal does not find it credible that Dr O'Neill would be unaware that some of the questions posed in the advert and the name of the Film could be described as 'dog whistles' in this way.

29. At 22:03 on 6 December 2022, Grant Buttars sent a message on the Respondent's "Discord" messaging service (of committee members),

"Transphobic event being held on Campus next week [with a link to the Film and the Eventbrite link]. Can we maybe work with SPN to oppose?"

(page 131)

30. Grant Buttars evidence was that he would take the view of SPN as authoritative. At page 130 was seen a message from them to their members expressing their concerns about the Film. It is not dated but clearly is sent before the 14 December 2022 as it refers to the date of the initial showing. It expressed the following views:

“This film contains transphobic rhetoric designed to spread misinformation about trans people, pressing an overall narrative that affording trans people equal rights and respecting their autonomy is contributing to the [perceived] erosion of women's rights. Many of us in the SPN will be aware that this is not the first event of its kind to take place on our campus. Those holding these out-dated, harmful and hateful attitudes have been permitted to exercise their views under the guise of freedom of speech and academic freedom on a number of occasions on university premises. The Staff Pride Network does not support the screening of this film and recognises that it creates an unsafe environment for our trans staff and students. We support UCU Edinburgh's call to cancel the film screening.”

31. Grant Buttars explained at paragraph 16 of his witness statement that there were discussions across University communities in response to the news of the screening of the Film. He described it as being a ‘fast moving situation’ as a result of which it was now difficult for him to distinguish who was saying what but views were coming from other trade unions, the SPN and student representatives. Much of it was oral or over video leaving little record of it.
32. The tribunal accepts Grant Buttars evidence that he was not the one receiving the detailed emails but people were expressing a general sense of alarm about the environment on campus. When someone contacted the union to say that they felt worried, threatened and at risk he did not think it was incumbent on him to ask why they felt that way.

33. It was the decision of the Branch committee together with other stakeholders that the Film appeared transphobic. It was not solely his decision. Grant Buttars acknowledged he had not seen the Film at that time but was relying on those who had. He was also influenced by the promotional material for the Film, namely the Eventbrite document.
34. On 7 December 2022, Grant Buttars sent an email to Peter Mathieson, the Principal of the University of Edinburgh, headed “Problematic Event” and stating as follows,

"I am contacting you regarding an event which is taking place on campus next Wednesday. Edinburgh Academics for Academic Freedom are holding a film screen.

UCU's position on trans inclusion is clear:

https://www.ucu.org.uk/media/10564/UCU's-position-on-Trans-inclusion/pdf/Trans_inclusion_November_2019.pdf

and our Branch policy is to,

"Call on the University of Edinburgh (UoE) to ensure that all events held in the name of UoE and on UoE premises are in line with the Dignity and Respect Policy and that the UoE neither host nor facilitate meetings which contain content which is transphobic, biphobic, homophobic or otherwise detrimental to the safety and wellbeing of LGBT+ staff"

The description of this event, as given at

<https://www.eventbrite.com/e/adult-human-female-a-documentary-in-defence-of-womens-rights-tickets-479169598167>

begins with,

"Is it really harmless when men identify into the female sex? Is it progressive for doctors to modify the bodies of young people in the name of changing their 'gender'?"

This is a clear attack on trans people's identities and not in line with Dignity and Respect Policy. It is specifically not, "expression within a framework of mutual respect". In addition, the three speakers in the Q&A session are all prominent anti-trans rights campaigners.

We therefore call for the University to decline the use of a University of Edinburgh venue for this event and do so as a matter of urgency.

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We also note that the organisers, Edinburgh Academics for Academic Freedom, have a blog that is clearly branded with the University of Edinburgh logo and, as such, the University has some responsibility for their conduct under that branding.

We would welcome your quick response."

Relevant Policies

35. On 20 June 2019 the Branch had issued a statement entitled 'Trans and Non – Binary Equality University of Edinburgh' in which it stated:

“UCU Edinburgh resolves to:

Work with the student union LGBT+ liberation officers and the Staff Pride Network on creating a trans inclusive university.

Create a LGBT+ sub-committee within the branch.

Employ good practice, such as that created by STUC and UCU, to provide guidance for members on gender identity and trans inclusion in the workplace.

Host a workshop on gender identity and trans rights (e.g. by Scottish Trans Alliance or Trans.Edu) for interested UCU members, to counteract lack of information around trans and non-binary equality.

Call on the University of Edinburgh (UoE) to ensure that all events held in the name of UoE and on UoE premises are in line with the Dignity and Respect Policy and that the UoE neither host nor facilitate meetings which contain content which is transphobic, biphobic, homophobic or otherwise detrimental to the safety and wellbeing of LGBT+ staff.”

(page 65)

36. In 2019 the Respondent issued a statement on its position on trans inclusion. This included the NEC Statement reaffirming UCU's commitment to trans inclusion:

“UCU supports trans workers' rights and, as champions of equality, we welcome the increased visibility and empowerment of transgendered and non-binary people in our society. It is our responsibility to promote equality and ensure the provisions of the Equality Act are implemented and adhered to by our members and in the sectors where we organise. This is also written into our rules. Our rules commit us to ending all forms of discrimination, bigotry and stereotyping.

UCU has a long history of enabling members to self-identify whether that is being black, disabled, LGBT+ or women. At UCU's annual

gender identity has been developed over many years.

UCU supports the right of all women (including trans women) to safe spaces and the continuation of monitoring that can help identify discrimination against women, men and those who identify as non binary. UCU also supports a social, rather than a medical, model of gender recognition that will help challenge repressive gender stereotypes in the workplace and in society.

The fight for women's rights is far from won. For too many women, sexual harassment and domestic violence is a daily reality, alongside unequal pay and other forms of discrimination at work, including maternity pay and leave. UCU will continue to campaign hard to protect the rights of working women.

UCU is aware that the debate around gender identity has in some quarters become bitterly divisive. Our strength is to bring members together and to build bridges rooted in our values of equality. UCU opposes any violence, intimidation, bullying or disrespect towards any group that faces discrimination, and from whichever quarter. Trans people, including students and staff in tertiary education, face physical and verbal abuse, prejudice and discrimination, marginalisation and misrepresentation. UCU is fully committed to providing practical support and policy guidance for reps and trans members in challenging discrimination and harassment.”

(page 82)

37. UoE Dignity and Respect Policy:

“1. Policy Statement

The University has a strong and long-standing commitment to equality, diversity and inclusion and to promoting a positive culture which celebrates difference, challenges prejudice and ensures fairness. Our staff and students are our greatest assets and all members of the University community should expect to be able to excel, and to be respected and valued for their unique perspectives and contributions.

Integrity, collegiality and inclusivity are central to the University's values. In accordance with these values the University is committed to providing an environment in which all members of the University community treat each other with dignity and respect, and where bullying, harassment and discrimination are known to be unacceptable. This Policy sets out the expectations placed on all members of the University.

The University has a zero tolerance approach to bullying, harassment or discrimination and will respond promptly and sensitively to formal complaints, and where appropriate take disciplinary action.

2. Scope and Purpose

This policy applies to all staff and students of the University in relation to both individual and collective activities and dealings with others in the University.

The purpose of the policy is to:

Foster a positive culture for working and studying which supports freedom of thought and expression within the law, and within a framework of respect for the rights of other people.

Promote an enabling and inclusive environment where all individuals are treated with dignity and respect, free from bullying, harassment and discrimination.

Ensure that occurrences of bullying, harassment and discrimination are taken seriously, and dealt with promptly and with due sensitivity.

Set out the framework for raising, addressing and resolving concerns about individual and/or organisational behaviour.”

(page 359)

38. The UoE also has a Trans Equality Policy the opening to which states the following as its Policy Statement:

“As part of its wider Equality and Diversity strategy the University is committed to providing an inclusive and welcoming community where staff and students are enabled to meet their full potential and are treated as individuals. This includes providing support and understanding to those individuals who wish to take, or have taken, steps to present themselves in a gender different to their birth gender.

The University recognises that this can be a very difficult and complex time for an individual and would wish to act in a sensitive and supportive way by having helpful policies and practices in place to ease any transitional period. We fully recognise our legal responsibility to protect the rights of transgender people and to ensure that no individual is subject to discrimination or victimisation as a result of the gender in which they present themselves.

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This statement should be read as part of the wider set of policies including Dignity and Respect.”

(page 67)

39. On 7 December 2022, the Branch Twitter account (@UCUEdinburgh) tweeted,

“It is our Branch Policy to demand that @EdinburghUni neither host nor facilitate meetings which contain content which is transphobic, biphobic, homophobic or otherwise detrimental to the safety and wellbeing of LGBT+ staff.”

40. And also,

“As such we have written to the University to ask them to withdraw the use of a UoE venue for what we believe to be a transphobic event timetabled for next week.”

41. The tweets were referred to in an article in The National (Scotland) on 8 December 2022 (page 142).

42. On 8 December 2022, the Edinburgh University Student Association announced on Instagram a “Trans Solidarity Community Event” for 14 December 2022. The Instagram post stated as follows,

“Next Wednesday, 14 December, we are proud to be hosting a trans solidarity space, in partnership with the Staff Pride Network, where trans students and allies can come together, celebrate and show their support for the trans community we have at the University of Edinburgh.

Also on the 14 December, Edinburgh Academics For Academic Freedom (EAFAF) will be hosting a screening of the film ‘Adult Human Female’ and related discussion. We believe this event will contribute to an unsafe and unwelcoming environment on campus for our trans members. None of our students should be subjected to academic discussions arguing that they pose a risk simply by existing. As always, our goal is to ensure that our University is a safe and caring environment for the trans community, something we believe the vast majority of students and staff support.

If you have any concerns about the event the University is allowing, we’d encourage you to reach out to Leigh Chalmers, University

Secretary (leigh.chalmers@ed.ac.uk) or to email Lauren, your VP Welfare (vpwelfare@eusa.ed.ac.uk), to make your voice heard and demonstrate the harm this ongoing discourse around trans lives causes to our students.”

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43. On 8 December 2022, Peter Mathieson replied to Grant Buttars stating,

“Thank you for your email about the Academics for Academic Freedom event. This is an emotive issue and I understand your strength of feeling.

I wish to reiterate the University’s commitment to fostering an inclusive, supportive and safe environment for our whole community. Our Trans Equality Policy outlines the support and advice that the University offers students and staff who are undergoing any form of gender reassignment, and how other people can support them.

Regarding this specific event, as I’ve mentioned before about previous events, as part of our commitment to freedom of expression and academic freedom, it is our duty to make sure staff and students feel able to discuss controversial topics and each event allows for debate. Given the size of our community, it is inevitable that the ideas of different members will conflict, but we always encourage respectful debate and discussion whenever there are differences of view or opinion. The event Chair will ensure that all attendees are aware of, and comply with, the University’s Dignity and Respect Policy, so that those wanting to attend feel able to contribute in this context.

If you feel able to, please consider joining the event on the day and to engage in these frank but respectful discussions...”

44. On 9 December 2022, the Branch re-posted on its Twitter account a ‘PrideSoc’ Instagram statement about the Film:

“We have been informed that the network “Academics for Academic Freedom” will be hosting a film screening of the Film “Adult Human Female” next Wednesday. We are appalled by the University of Edinburgh’s decision to allow this film screening to happen, calling this “freedom of speech”. The Film contains transphobic language and spreads misinformation about trans* people, all under the narrative of protecting ‘women, children and biological reality’. The University of Edinburgh should be an environment where every individual, student or staff member, can feel safe and appreciated.

The allowance of this screening to happen has nothing to do with a freedom of speech, as it endangers trans* people on campus and beyond, erasing their identities and encouraging the spread of hateful portrayals. Therefore, we support the call of the UCU to cancel this Film screening. Furthermore, we will collaborate with LGBTQ+ societies and feminist societies of the University to host a stall outside the Film venue to show solidarity to the trans* community. We will provide non-harmful information about the lived realities of trans* people and how to support them, taking a stance against hate and misinformation, as well as the University's neglect of their trans* student and staff population."

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(page 147)

45. On 12 December 2022, the Branch made a statement about the Film screening which appeared on its website and tweeted a link to the statement. The statement stated as follows:

"At our AGM in June 2019, UCU Edinburgh members passed a motion on Trans and Non-Binary Equality at the University of Edinburgh. This formed part of our wider work to embed UCU's multiple strands of equality work and representation (BAME, disabled, LGBT+, migrant and women members) within the Branch.

In the motion, we also committed ourselves to:

Call on the University of Edinburgh (UoE) to ensure that all events held in the name of UoE and on UoE premises are in line with the Dignity and Respect Policy and that the UoE neither host nor facilitate meetings which contain content which is transphobic, biphobic, homophobic or otherwise detrimental to the safety and wellbeing of LGBT+ staff.

Having learned of Edinburgh AFAF's planned screening of the Film Adult Human Female, we therefore wrote to the Principal to ask UoE to withdraw support for this event. We are supported by the Staff Pride Network in making this call.

Specifically, we asked for permission for this to be held in a University building to be revoked. We pointed out that the Film description (then on Eventbrite but now taken down) contained content that was, "a clear attack on trans people's identities and not in line with Dignity and Respect policy. It is specifically not, 'expression within a framework of mutual respect'".

The Principal's response, declined our request, was generalised and did not engage with the specific points raised. He also

suggested we engage with the Film by attending the screening. This demonstrates a complete lack of understanding and sends a message to staff and students of a huge gulf between the University's Trans Equality policy, with its commitment to provide, "support and understanding to those individuals who wish to take, or have taken, steps to present themselves in a gender different to their birth gender", and what is being followed in practice. We are also aware that ours is also not the only complaint that has been dismissed in such a cavalier manner.

UCU policy is clear in that we support:

a social, rather than a medical, model of gender recognition that will help challenge repressive gender stereotypes in the

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workplace and in society. UCU supports trans rights and, as champions of equality, we welcome the increased visibility and empowerment of trans and non-binary people in our society.

With the University not conceding to ours and others' demands that this screening not take place on our campus, we encourage members and others to support the two alternative events below which have been organised by the Staff Pride Network, the Students' Association and PrideSoc and which take place at the same time as the screening."

46. On 14 December 2022, (the date on which the Film was due to be shown) Lucy Jackson, editor of The Student newspaper, tweeted urging readers to read the Branch statement and stating,

"It is abhorrent that Union Members have faced racial abuse for speaking out against this and The Student stands in solidarity with all UCU Members on this matter".

47. They stated they would instead be focusing on the Trans Solidarity Community event held at the same time and had taken the editorial decision not to cover the screening of the Film,

"... as we do not believe in platforming a harmful rhetoric that will undoubtedly affect many of our student readership."

48. The screening on 14 December 2022 did not go ahead as planned in view of protests. Dr O'Neill stated at paragraph 18 of her witness statement that 'protestors, including students at the University, prevented the screening from going ahead by blocking the entrance to the venue. Around 100 – 150

people arrived to watch the Film but were prevented from doing so'. Neither she nor Professor Wayne attended.

49. After the Film screening was cancelled Grant Buttars wrote a blog on RS21: 'Revolutionary Socialism in the 21st century' titled 'Edinburgh fights transphobia' describing the events of 14 December 2022 and how he felt that the University had failed in its duty of care to staff and students (page 206).
50. On 17 January 2023, the Branch retweeted an SPN tweet advertising an event to take place on 27 January 2023 at which 'YouTube star' Katy Montgomerie was to speak "On combatting online hate and the gender critical movement" It was very explicit in saying it would be her own personal account of on line hate and would discuss ways of coping with its impact. A transcript of the talk was seen at page 216. In his witness statement at paragraph 35 Grant Buttars confirmed that the Branch supported the event which was coordinated by the LGBT+ Standing Subcommittee of the Branch. His evidence was that he is not a part of that committee but would have put out tweets on its behalf. Organising of the event began in early November 2022, before there was any knowledge of

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the Film screening so was not in response to it. For those who could not attend the event live, it was recorded and re-tweeted by the Branch's Twitter account. He recalled that financial support from the Branch was limited to the equipment so it could be live streamed.

51. Grant Buttars was taken to parts of the transcript of Katy Montgomerie's talk where she discusses what have been referred to during this Hearing as 'dog whistles', apparently innocuous words or phrases but that also have another meaning. She considered the title of the Film to be one, in her view meaning 'trans women don't have rights'. (page 231) The claimants and those with gender critical views stating it is the dictionary definition. Lena Wanggren's evidence was that 'the name of the film signals what it entails. I note that the name of the film is a phrase adopted by what I would describe as anti-trans or trans-exclusionary individuals'. She could not find the questions posed to be harmless or reasonable. Grant Buttars recognised some but not all of the words or phrases referred to by Katy Montgomerie. It was his view that those with gender critical beliefs know such phrases and how to use them.
52. In cross examination Mr Buttars was asked what would have happened if someone with gender critical views had come to him and said they felt threatened by Katy Montgomerie's talk. He stated that the content of the talk was not known until after it happened. If however they had information as they had for the Film they would have 'acted accordingly.' When asked how he would have reacted if he had had a complete script of her talk he

might have taken the same stance in writing to the Principal relying on the Dignity and Respect policy. However, save for in these proceedings, no one had complained about that talk to the Union.

53. The tribunal does not accept that Katy Montgomerie's talk is an appropriate comparator under the EA. It was a talk and not a film which could be viewed before the screening. It was not advertised by Eventbrite with the same questions in the promotional literature which some could find to be provocative and contrary to trans rights.

54. The screening was rearranged for 26 April 2023. The Claimants planned to travel from London to Edinburgh to attend the screening and participate in the post screening Q & A session. Professor Wayne explained in his witness statement how some other screenings did go ahead and others were also cancelled (paragraph 15)

55. On 29 March 2023, the Branch retweeted an EAAF tweet announcing the rescreening with the words,

"In line with our democratically agreed Policy we opposed this transphobic event last time they tried it and will do so again."

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56. On 6 April 2023, SPN emailed its members encouraging them to support a peaceful protest outside the Gordon Aikman Lecture Theatre and referring to Edinburgh UCU's and Unison's support of its position.

57. On the same date the Branch's Twitter account re-tweeted the SPN tweet about the April screening, describing the Film as transphobic (page 254).

58. On 14 April 2023, @UCUEdinburgh re-tweeted a CAHS tweet in which it stated it would be protesting against the April screening of the 'transphobic film' in collaboration with SPN (page 255). On 21 April 2023, the Branch re-tweeted reminding followers of the protest against the April screening (page 256).

59. On 21 April 2023, the Branch re-tweeted a link to an SPN blog which questioned whether the screening of the Film is an opportunity for respectful debate and discussion. (page 257)

60. On 26 April 2023, the then President of the Branch, Lena Wanggren tweeted,

"Today! Solidarity to trans and non-binary staff and students today and every day.

#TransRightsAreHumanRights @ucuedinburgh

@EdinburghUni.” (page 258)

61. On the same day the Branch tweeted “It’s big and we have only just started. No to hate on campus.” With pictures of the protests. (page 259)
62. The screening on 26 April 2023 was cancelled. The Claimants had travelled to Edinburgh to participate in the Q & A session after the screening. They found out just as they arrived in the city that protestors had again blocked the entrance to the lecture theatre causing the event to be cancelled.
63. On 4 May 2023, the Branch tweeted about a letter from Professor Lauren Hall-Lew to Professor Graham about the University’s decision to convene ‘An Academic Freedom’ and ‘Freedom of Expression’ working group. The tweet stated:
- “Academic Freedom’ and ‘Freedom of Expression’ have taken on multiple and often conflicting meanings in recent years.....such that they now connote political stances that are further associated with the mental and physical harm of certain minority groups.”
- (page 269)

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64. The tribunal has no note of any witness being taken to this letter nor any explanation as to how the tweeting of it could be said to amount to a detriment or harassment of the claimants. They are not even mentioned by Professor Hall – Lew.
65. The Claimants wrote to Dr Jo Grady the General Secretary of the Respondent, on 28 April 2023 describing the attempt to screen the Film and alleging the Respondent’s thwarting of it. In that letter they made the following requests of her:
- “As head of the Union you have a responsibility to ensure that UCU policy and messaging is clear. We therefore ask you to confirm in writing to us that:
- a) the Union recognises that gender critical views which some members hold are in principle legitimate expressions of belief;
 - b) that they are not equivalent to noxious creeds that advocate

hatred or genocide to others; and

- c) that members expressing these beliefs in any format (written, verbally or in any other medium) and for any purposes should not be subject to attacks by other members that undermine their right to be treated equally as members of UCU.

We would further ask you to specifically state, as evidence of a, b and c above:

- d) that the UCU does *not* support the prevention of screenings of *Adult Human Female* on University campuses or anywhere else in civic life. This would go some way to asking members to re evaluate their responses to our Film and recognise, that however much they might disagree with it, it constitutes 'speech' that falls within acceptable parameters in a democratic society.

We ask that we receive a reply within 28 days, if no reply or no satisfactory reply is forthcoming, we will look to explore the legal options available."

66. Dr Grady replied on 26 May 2023 (page 283). She acknowledged that gender critical beliefs were protected under the Equality Act 2010 but refused to make the other statements requested by the Claimants or express any views on the Branch's conduct (page 296).

67. The Film was eventually shown at the UoE on 22 November 2023 (as confirmed by Professor Wayne, paragraph 24 of his witness statement).

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The Branch Equalities Officer report

68. The last matter relied upon by the Claimants is a paragraph in this report where it was stated:

"This year there have been persistent attempts by a small group of colleagues to organise transphobic events, which were cancelled every time as a result of successful protest organised by staff and student groups."

(page 291 and paragraph 32 of Grounds of Claim)

69. The report was authored by the Branch Equalities Officer and is dated 18

June 2023. This section is headed 'Equality, Diversity and Inclusion matters in 2022 – 23'. The context of the paragraph relied on by the Claimants above is the introduction to this section of the report:

'The core message in this area is that the rights of minoritised people are currently under threat due to the conservative turn in global politics and more specifically the rise of the far right at all levels: local, national and international. An example of this at UK level was the Gender Recognition Reform Bill, which was passed by the Scottish Parliament and then blocked by the UK Parliament. The problem of conservative politics worldwide was the focal point of discussion in a number of national and regional meetings about equality this year...'

70. Various events and initiatives are set out before stating:

One of the core aims of the STUC LGBT+ Workers Committee for this year will be to de-commercialise the Edinburgh Pride. Unfortunately, this situation is reflected internally at the University of Edinburgh...

Which immediately precedes the section relied upon by the Claimants.

71. The Report then sets out other issues faced during the year before setting out achievements.

72. The Film is not mentioned and neither are the Claimants. It is not clear when the Claimants became aware of what was said in this report.

The Film

73. The Film is ninety minutes long and was viewed by the tribunal. At the end the Claimants are credited as the directors. Their evidence that they were also identified on publicity material on the website created for the Film and on the internet movie database website: www.imdb.com was not challenged. The following is taken from Dr O'Neill witness statement as a description of the Film:

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"7. Mike and I made documentary film "Adult Human Female" to critically examine one of the core claims made by trans rights activists namely that, "trans women are women". This claim is susceptible to different interpretations but is most commonly used as a shorthand for the claim that trans women should be treated as women in all legal and social contexts. Through interviews with academics, journalists, healthcare

professionals and feminist campaigners, the film argues against that claim and highlights the detrimental treatment of women who dared to voice their opposition to it”.

74. She describes how they interviewed more than a dozen people for the Film. Both the Claimants were clear that they could not say they agreed with every word that was spoken but broadly speaking the Film was an expression of their beliefs.
75. The Tribunal heard from Dr Shereen Benjamin from the University of Edinburgh. She is part of an organisation called Edinburgh Academics for Academic Freedom (EAFAF) that was formed in March 2022. The Claimants were therefore “delighted” when EAFAF asked if they could screen the Film at the University.
76. Prior to that the Film had premiered at Conway Hall on 12 November 2022. Professor Wayne describes this as being “without incident” because the publicity was kept “fairly low key”. The next scheduled screening was at Sherwood Methodist Church in Nottingham on 27 November 2022. Protestors did gather outside the Church to protest and one actually went to the Minister’s house causing him to go to the Church and say that the Film could not be screened.
77. As set out above, the first attempted showing at the University of Edinburgh was 14 December 2022.
78. There was a transcript of the Film at pages 102 – 129 and the Claimants were taken to various aspects of it. The following represents some of the sections they were taken to.

Judith Green

79. Dr O’Neill confirmed that Judith Green is not an academic but is a midwife and is basing what she says on her own experience. She is quoted in the transcript as saying that in relation to sex,

“It’s observed again and confirmed at birth. Or if someone hasn’t had an ultrasound, observed for the first time at birth.”

(page 104)

80. This comes after Dr Louise Irvine GP states that sex is not assigned at birth but when you are conceived,

“You are conceived as a male or female embryo.”

81. Dr O'Neill's position was that Judith Green was basing her opinion on her own experience.
82. Judith Green also refers to the use of pro-nouns, "he, she, they" and the transcript notes that she chuckles. It was put to Dr O'Neill that this indicates that she finds it absurd and Dr O'Neill's position was that yes Judith Green found the idea of pronouns amusing but she did not think that was disrespectful. She felt it was quite a new idea that some do find a bit funny. Not everyone she said was up to speed on the "whole pronoun thing". She would not accept it was being disrespectful (Page 107)

Aja

83. Aja was described by Dr O'Neill as a poet and activist and not an academic.
84. Her poem appears in the bundle at page 108 as follows:

"Who told you, you could redefine the line between your sex
 and mine?
 Who told you, you could have my rights
 And that I had to play nice
 Since you guys got in my face
 And told me I had no place?
 I'm from the streets. We don't play nice.
 We tell it to your face when you ain't right.
 I ain't got no time for this beef about biology.
 I gotta worry about me and my family, how we're gonna eat.
 Bruv, you ain't like me. You're from the world above.
 But don't get me wrong, I will show you love
 If you know your place.
 And your place is far, far from my single-sex space."

85. And later in the film it is recorded as saying:-

"So very dangerous. They're predatory. And the risk that they pose is, well, it's unthinkable and it has become a reality. We've seen, again, with the Karen White situation, within two weeks of being moved to a woman's prison, he sexually assaulted four inmates. They will, as soon as they get in there, as soon as they are given the opportunity to access these victims, these vulnerable women they will do so."

86. Dr O'Neill did not think this was ambiguous as the entry clearly linked to what she had said previously. She is saying that trans women sex offenders pose specific danger to women. She did not agree that it was a general

comment about trans women but was about sex offenders in that they pose a danger to women who have no choice but to share facilities with men who claim to be women.

87. Dr O'Neill agreed that the expression "you guys" was referring to trans women. That when she used the expression "bruv" she was referring to brother and that was how she was addressing trans women. Dr O'Neill accepted that the allegation could be made this was mis-gendering. She accepted that the last line of the poem was Aja stating that trans women should be excluded from single sex spaces.

Rebekah Wershvale

88. Rebekah Wershvale is described as a woman's rights campaigner (page 108). It was accepted she is not an academic. The Film made it clear that she was an ex-inmate. She states in the Film,

"Almost half of men in prison at the moment identifying, claiming to be women are guilty of things like rape, bestiality, paedophilia, crimes that are not female crimes. There is no criteria to determine how dangerous they are going to be in a women's prison because those sets of questions don't exist to ask them on the way in."

Professor Jo Phoenix – School of Law Reading University

89. Professor Phoenix states in the Film,

"We know that of those who declare themselves to be trans gender, with or without a GRC, that they have a hugely disproportionate rate of sex offending."

90. She states she is relying on the Ministry of Justice's own statistics.
91. Dr O'Neill gave evidence that this was in the context of trans women in prison and that there is a disproportionate rate of sex offending amongst that group. In the context of the Film she felt it was quite clear what was being spoken about. Dr O'Neill accepted there was no discussion in the Film as to how trans women came to be in prison, nor an analysis of the statistics as that, she said, was not what the Film was about.
92. In the Respondent's written submissions there was detailed analysis of a High Court case in which Professor Phoenix had given evidence. This tribunal did not hear evidence from Professor Phoenix, did not hear evidence about that case and was not provided with a copy of the judgment in it. An evaluation of that case and statistics referred to was not a matter for this tribunal.

Simon Edge

93. Dr O'Neill confirmed that Simon Edge is not an academic. He is acknowledged in the transcript as the author of a book entitled 'The End of the World is Flat'.

94. His entry on page 104 follows Dr Irvine expressing the view that,

"Our sexed bodies are linked to particular healthcare issues, which means that when I see a set of results from a patient, I need to know what sex they are."

95. Simon Edge then states,

"It's amazing, isn't it, how the rapidity of all this. I look back to five or six years ago when this was all quite new and people hadn't really heard of any of it, and you could have open conversations, saying, *"this is all a bit daft isn't it?"* If you could see it coming. And we fast forward to now. The world is captured by the crazy."

96. Dr O'Neill's evidence was that she believed in saying, "all a bit daft" he was referring to the idea that those with gender critical beliefs could not talk openly without being shut down or being reported in their workplaces. It had become very prominent in the public sphere that they could not discuss the issues. He was saying that they could have had an open conversation which is the point he is trying to make and the idea that such cannot now be held was quite daft.

Joan Smith

97. Joan Smith is stated in the transcript to be an author and women's rights campaigner and Dr O'Neill confirmed she was not an academic.

98. In the Film Joan Smith talks about the phrase "cis women" alleging it to be a,

"...linguistic trick because the word woman, has had a very stable meaning for centuries and it means an adult human female. So, adding a pre-fix to it is a way of saying, "oh, well, it's not so stable, and it actually has to be split up into different categories, so we need to explain it further. And that allows other people into that category. So instead of being a woman being an adult human female, suddenly it includes men who identify as women. It includes trans women. ... It's also wrong just in a linguistic sense because the word woman is adequate for its job and it still means the same it always has."

(page 105)

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99. Dr O'Neill was taken to two entries on Page 106 of the transcript. In the first Joan Smith talks about there being liberation movements in the past, "like gay liberation", she states that women like her were incredibly supportive of gay men and lesbians,

"Because we thought rightly that they didn't have their full rights. This is very different because this is a movement which is asking to take rights away from other women."

100. Dr O'Neill stated in evidence that the context of this within the Film was clear in that Joan Smith was referring to the trans right movement where men were identifying as women.

101. In her next entry, Joan Smith says there is,

"...a very, very clear clash of rights. The trans ideology completely denies that. But I think it is actually dishonest to say anything other than this is an attempt at a wholesale taking over of women's rights".

Dr Shonagh Dillon

102. Dr O'Neill believed that Dr Dillon as an academic with a PhD. With regard to gender identity, she stated that "the reality is an absolute mess."

Dr Jane Clare Jones (page 106)

103. Dr O'Neill confirmed that Dr Jones is an academic and philosopher. She talks on the Film about the trans rights movement, "asking for the rights of another class of people" who are the oppressed. She calls this unprecedented. She states that:

"It turns out that the rights of the people they are asking for are themselves an oppressed class. And the members of the group that are demanding those rights are members of the dominant class. So, what we have is male people demanding female people's rights."

104. In cross examination Dr O'Neill acknowledged that the suggestion being made is that trans women are members of that dominant class.

Trans Gender Umbrella

105. This was seen in the Film and the Tribunal was given a separate copy of it as a PDF document. It sets out approximately twenty descriptions of those

who in the Claimants' view could come within the "trans gender umbrella". It included cross dressers, predators, 'two spirit', 'anyone who doesn't fit it', 'opportunists' and 'a million niche gender identities'. Dr O'Neill's evidence was that they asked someone to prepare the "umbrella" for them. She could not remember the brief given but that they were given a "free reign". The Claimants agreed with the Umbrella as produced.

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106. Dr Clare Jones said in the Film:-

"The number of people who have a cross dressing fetish for erotic reasons is far, far, far, far, far, far, far greater than people who actually want to go through an entire process of medical and social transition. Once you put all of that under a label of trans genderism, what you are effectively doing is saying that very large numbers of men who cross dress for erotic purposes have the possibility of being legally considered as women and have access to female people spaces. And the numbers, the estimates are not clear, but somewhere between two and four per cent of the male population cross dress. So that's a lot, that's a lot of men."

And then went on to say:

"As soon as you change the definition of transsexualism to transgenderism, what you're doing is you're placing large numbers of heterosexual men with an erotic cross-dressing fetish under the banner of trans. Those males are still sexually attracted to women after they transition, but they now think that they're women and they want female sexual partners to validate them, but they want female sexual partners who are attracted to women. That is, their target is lesbian women."

107. Dr O'Neill accepted in cross examination that some trans women would not want to be put under the same label as those with a cross dressing fetish. She did acknowledge that Dr Jones did seem to conflate the two.

Simon Edge (page 112)

108. In this entry that Dr O'Neill was taken to, Simon Edge spoke about Stonewall which he initially described as "an incredible organisation". To start with, he is noted in the Film as praising all the steps taken by Stonewall, describing a

"massive array of anti-gay laws, anti-homosexual laws in this country." He then moved on to say:-

“But the other way to go of course would be to let’s find a whole new load of stuff that we can agitate for, we can lobby over, and press for legal reform. We have done all the lesbian and gay stuff, so why don’t we bolt the trans bit on the end as well as a whole number of invented other oppressions, like being aromantic and asexual, and furry, and all of God knows what else is in that plus at the end of the alphabet means. And I think Stonewall saw an opportunity there and they took it because, really, if you are an organisation with a staff of not quite sure how many now, certainly 100 plus, it’s quite hard to wind that down, I think, and to say our work here is done.”

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109. Dr O’Neill accepted in cross examination that this was his view and that he was describing how he believes Stonewall had invented other oppressions. Simon Edge referred further to Stonewall in an entry on page 114 where he describes people who are not interested in the issues personally but understand there is an issue so they get a diversity consultant (and Dr O’Neill believed he was still referring to Stonewall) to protect the business. He continued:-

“And isn’t it lucky that the lobby group which is promoting all of this bullshit is also effectively a diversity consultant? And if you’re a CEO of a blue chip company or something, you don’t know that. Why would you? I mean, you don’t know that. Maybe you know it now because it’s been in the papers enough. But at the time you wouldn’t have known that. And so, you’re inviting people in, and Stonewall was of course a lovely, fluffy organisation. And it makes you sound nice, makes you sound kind and caring. You get Stonewall in to tell you what to do. And hey, presto, you’ve got a massive takeover.”

110. Dr O’Neill believed that Mr Edge was not suggesting that trans people should be treated other than equally but that the “bullshit” that he was referring to was around the idea of trans gender inclusivity, for example pronoun workshops. She believed that Mr Edge was saying that the trans community was being used by corporations so they could say they had fulfilled their equality duties.

Dr Jane Clare Jones (page 116)

111. In this entry that Dr O’Neill was taken to, Dr Jones refers to “they” and Dr O’Neill believed she was referring to trans gender activists. She states:-

“They’re doing the whole kind of *“We’re so vulnerable. We just want to be. We are a terribly marginalised minority.”*”

112. And then describes how,

“...*they*” are running around threatening to rape those who take a different view and use the expression “*enjoy your erasure*”.

113. Dr O'Neill explained that the type of language quoted by Dr Jones was quite common on social media for those expressing the views she has described as gender critical. The term “enjoy your erasure” was said by a quite high profile person (and had been a potential title for the Film by the Claimants). She accepted that it was not everyone that used such terms but that within the group of trans gender activists there are people that exhibit that type of behaviour.

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Joan Smith (page 116)

114. Joan Smith explains in the Film how she had been the independent Chair of the Mayor of London's Violence Against Women and Girls Board, appointed initially by Boris Johnson and then continued under Sadiq Khan. It was an unpaid position. She makes reference to the Mayor repeatedly tweeting that trans women are women and trans men are men and that all gender identities are valid and she describes this as “the usual word salad”. It is her view that this had a chilling effect on women's organisations because they were coming under pressure from outside organisations and groups to say that they will admit men who still have functioning genitalia into spaces for very vulnerable women. She explains that she raised this in a letter to the Deputy Mayor and then the Mayor but got nowhere. She asserts she was sacked on a Friday afternoon at 4 o'clock by email, although that is something that is disputed. Dr O'Neill accepted that that was disputed and that they had not interviewed the Mayor for the Film but were just showing her perspective.

Lucy Masoud (page 117)

115. Dr O'Neill accepted that Lucy Masoud is not an academic. She was a firewoman and trained to be a solicitor and was an active trade union representative and is now a barrister. She is noted as stating that this is a,

“Totally a luxury belief”,

when she looks at the kinds of people who are transitioning and the children as well and suggests if you looked at a school in Hampstead,

“...there's gonna be a good chunk of those children [12 and 13 year olds] who are non-binary or trans or gender fluid or pan-fry sexual or

whatever it is. Whereas if you went to a school in Tottenham and you went into the same age group class, it's not gonna be there because they are working class families, working class parents. ... It's a total luxury belief (chuckles) mostly by, I hate to bring race into it but mostly middle class white parents who think their children are special."

116. Dr O'Neill felt that the use of the expression "pan-fry" was made in jest but was just a "little joke" and that under the umbrella of trans there are lots of different ways of identifying oneself. She did not think that Lucy Masoud was mocking anyone. She did not believe there was any malice in it.

Julie Bindel (page 125)

117. Dr O'Neill accepted that Julie Bindel was not an academic but is a journalist writing about these issues. In this extract from the Film, she talks about young women presenting at gender clinics stating they are non-binary or that they wish to be trans men. She refers to how things are very hard for young women at present and suggests they can identify how they like,

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"but men will still prey upon them if they are abusive, violent men". In her view:-

"... what we need to be doing is equipping young women, women everywhere, to deal with girlhood, to deal with womanhood. And rather than congratulating or lording a surgeon for removing the healthy breast tissue of young women because they wish to opt out of womanhood, we should be asking why we don't call that a form of secondary self harming. It is to do with self-harming, in my view."

Simon Edge (page 127)

118. At this point in the Film Simon Edge stated:-

"There is a sense that if you can brand yourself as part of this alphabet – oppressed group, then you get points for it. It's socially desirable. And so, there's an awful lot of young people who are identifying as bits of that alphabet where they might not actually be lesbian and gay, but they're calling themselves queer. And then the poor old gay kids, the poor old lesbians and gay kids, particularly if you're an effeminate boy or you're a butch girl, you're under immense pressure to not to come out as attracted to the same sex, but to transition, to say that you're trans. And everyone loves that. The rest of the school love it because it's trendy, and we can get

excited and we can defend you.”

119. Dr O'Neil accepted that it was his view that this was very trendy at the moment.

120. Simon Edge went on at page 128 to suggest that the culture war and

“the craziness over pronouns, I don't think that will last very long”. He suggested,

“... a reckoning will come as it did with thalidomide, as with lobotomies which were seen as good things, then people realised they are bad things and then they do something about it. In this case, there is a cultural and political argument about whether or not they are good things and suppressing the evidence.”

121. Dr O'Neill explained in evidence that he was arguing that altering the bodies of young people is something that may be regretted later on. More time needs to be taken before saying teenagers should have surgery or interventions that affect them for life.

Dr Kate Davison – letter to the Principal 13 December 2022 and 31 March 2023 (pages 188 & 244)

122. Even though Grant Buttars acknowledged that he could not have seen this before writing to the Principal it is relevant to record what an academic who had viewed the Film was writing at the time. Dr Kate Davison wrote to Professor Mathieson on 13 December 2022 and again on the 31 March 2023 to complain about the showing of the Film. She explained that she was a new staff member at the University of Edinburgh who took up the newly created Lectureship in the History of Sexuality on 1 August 2022. She is a specialist in the history of sexology or “sexual science”, the history of social movements for LGBTQ and other sexual / gender minority rights and the history of medical and psychiatric approaches to gender and sexual diversity. She notes in her letter that she had seen the Film. It is her view that the Film is not,

“a product of scholarly enquiry deserving of protection under the mantle of academic freedom”.

123. She suggests,

“It is propaganda promoting hatred of trans women, the destabilisation of support for trans human rights”,

And that the conspiracy theory that,

“gender ideology”

Is having,

“negative consequences for women”.

124. She suggests there is nothing academic about the Film. She goes on to state:-

“Numerous statements made by the sixteen people interviewed for the Film (all of whom agree with one another) are false, untrue, based on hearsay or anecdotal evidence, or use shoddy methodology that would fail a first year assignment. No evidence is provided to support their opinions. Occasionally statistical data are cited, yet no references are provided for these. Numerous statements amount to nothing more than expressions of pure disgust that promotes suspicion, stigmatisation and hatred of trans individuals and smear the trans community as a whole.”

125. Dr O'Neill explained that it is not the practice to have a Film peer reviewed. It is not the same as a journal or a book. She had no way of knowing whether all those interviewed shared her views but accepted they all held gender critical beliefs.

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126. Dr Davison took issue with the “trans gender umbrella” as it included the words “opportunists” and “predators” alongside “two spirit people”. She suggested that it was not only racist and culturally violent but also made an explicit claim that trans gender people are “predators and opportunists”. Dr O'Neill found such suggestion to be ‘appalling’. The trans umbrella, she explained, had been used to show how broad it had become. She accepted that if Dr Davison did not agree with the scope of it she had the right to point that out, but not to accuse them of being racially and culturally violent.

127. Dr Davison refers to some of the entries in the Film and then suggests it has,

“... no academic merit. It is not peer reviewed. It is self-published. All interviewees shared the opinion of the film makers. None of their

claims is contextualised or challenged. No evidence is provided to back them up. No references are provided for the cited statistics. ... The Film is a hate piece with one purpose. To undermine support for trans human rights.”

128. All of these aspects were put to Dr O'Neill who took issue with them and did not accept they were fair comment.

129. Dr Davison refers to the University of Edinburgh's policies, namely the Freedom of Expression Policy, the LGBT+ Equality Statement and the Trans Equality Policy and Research Ethics and Integrity Framework. She suggested that the screening, the invited speaker and the actions of the organising group,

“...contravenes every single one of these policies. On the contrary the event promotes lies and conspiracy theories about a discriminated minority”.

130. She requested that the University withdraw its provision of a venue for the screening of the Film and its agreement to host a guest speaker who is one of the interviewees (Professor Benjamin) and whose views aligned with those of the film makers.

Anonymous email to the Principal – 14 December 2022 (page 159)

131. The identity of the person who sent this email was redacted in the tribunal bundle but the tribunal was advised that the person's identity had been disclosed to the Claimant's representatives and the writer is an academic.

132. The writer describes themselves as “an ally to our LGBTQ+ and trans community” stating that they wanted to raise concerns about the showing of the Film that evening, 14 December 2022. They wanted to ensure that students and staff had a fair, safe and inclusive environment “in line with our own EDI Policies”.

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133. The writer suggested that in describing a group of people as,

“... predatory, dangerous and a risk to others without basic fact checking nor challenge, should be treated as hate speech and not grounded in discussion of academic freedom of speech.”

134. It was asserted the Film was not based on academic studies, research or critical debate. With regard to any statistics mentioned they remain,

“ungrounded allegations without signposting to relevant data or information”.

135. It was suggested that the Film was a,

“propaganda piece that perpetuates trans exclusionary feminist

views”. 136. Allowing the Film to go ahead would make,

“an entire community of staff and students feel unwelcome, unsafe and even more at risk than they already are.”

137. Dr O'Neill was taken to this email but considered that words had been taken out of context, asserting that some who were trying to have the Film banned had not even seen the Film, although she did not know if this writer had seen it or not. With regard to statistics and academic studies, although they do not quote any she made it clear that Professor Phoenix does. She considered that the email was a mis-representation of the Film designed to mislead the Principal.

138. The Principal acknowledged the email on the same day that it was sent and appreciated that there were strong feelings about the showing of the Film. As part of the University's commitment to freedom of expression and academic freedom, they tried to ensure that staff and students felt able to discuss controversial topics and that events held at the University facilitate debate. They had therefore asked for a senior member of staff to chair the event and for the Dignity and Respect Policy to be clearly highlighted. Whilst appreciating this may not be the response the writer was looking for, he hoped that the assurances given in the email provide some context around the event taking place.

139. Both Claimants allege that by the Respondent describing the Film as transphobic they were by extension describing them and everyone else involved in it in the same way. They both though state that it is difficult to know the effects of the alleged treatment they rely upon. In paragraph 26 of Professor Wayne's witness statement he refers to one doctoral student who suddenly stopped communicating with him and he was told they had moved to another supervisor because of his involvement with the Film. Another student who had been interviewed for a funded doctorate emailed him after the interview to say that they could not accept. He later found out that they had made enquiries about his gender critical beliefs. He

acknowledges however that he cannot say for sure whether either of these students was influenced by what the Respondent said about them and the Film.

140. Dr O'Neill stated that the Respondent had encouraged a 'hostile environment' for the Claimants and those who share their beliefs but acknowledged that it is difficult to know the extent to which the

Respondent's alleged treatment of them had influenced the perception of other academics and students. She makes reference to co-editing a book and someone whose abstract had been accepted emailed her co-editor to say they could not possibly be associated with her describing her as a 'terf'. Again she cannot state that was because of alleged actions by the Respondent.

Relevant Law

Equality Act 2010 provisions:

141. S.57 Trade organisations

- (1) A trade organisation (A) must not discriminate against a person (B)—
 - (a) in the arrangements A makes for deciding to whom to offer membership of the organisation;
 - (b) as to the terms on which it is prepared to admit B as a member; (c) by not accepting B's application for membership.
- (2) A trade organisation (A) must not discriminate against a member (B) —
 - (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;
 - (b) by depriving B of membership;
 - (c) by varying the terms on which B is a member;
 - (d) by subjecting B to any other detriment.
- (3) A trade organisation must not, in relation to membership of it, harass— (a) a member, or
(b) an applicant for membership.
- (4) A trade organisation (A) must not victimise a person (B)—
 - (a) in the arrangements A makes for deciding to whom to offer membership of the organisation;
 - (b) as to the terms on which it is prepared to admit B as a member; (c) by not accepting B's application for membership.
- (5) A trade organisation (A) must not victimise a member (B)—

- (a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;

- (b) by depriving B of membership;
- (c) by varying the terms on which B is a member;
- (d) by subjecting B to any other detriment.

(6) A duty to make reasonable adjustments applies to a trade organisation. (7)

A trade organisation is—

- (a) an organisation of workers,
- (b) an organisation of employers, or
- (c) any other organisation whose members carry on a particular trade or profession for the purposes of which the organisation exists.

142. S.2 is clear in including that the union must not subject the member ‘to any other detriment’. S.3 in relation to detriment specifically states that the trade organisation must not ‘in relation to membership of it’ harass a member.

143. S.13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

144. S.26 Harassment

- (1) A person (A) harasses another (B) if—
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
 - (a) the perception of B;
 - (b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- race;
- religion or belief;
- sex; and
- sexual orientation.

145. S.23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of sections 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case.

146. S.212(1)

... ‘Detriment does not subject to s.(5) include conduct which amounts to harassment.’

147. Code of Practice on Employment (2011)

Chapter 2 – Protected characteristics

Manifestation of religion or belief

2.60 While people have an absolute right to hold a particular religion or belief under Article 9 of the European Convention on Human Rights, manifestation of that religion or belief is a qualified right which may in certain circumstances be limited. For example, it may need to be balanced against other Convention rights such as the right to respect for private and family life (Article 8) or the right to freedom of expression (Article 10).

Chapter 3 – Direct Discrimination

What is ‘less favourable’ treatment?

3.4 To decide whether an employer has treated a worker ‘less favourably’, a comparison must be made with how they have treated other workers or would have treated them in similar circumstances. If the employer’s treatment of the worker puts the worker at a clear disadvantage compared

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with other workers, then it is more likely that the treatment will be less favourable: for example, where a job applicant is refused a job. Less favourable treatment could also involve being deprived of a choice or excluded from an opportunity.

3.5 The worker does not have to experience actual disadvantage (economic or otherwise) for the treatment to be less favourable. It is enough that the worker can reasonably say that they would have preferred not to be treated differently from the way the employer treated – or would have treated – another person.

Chapter 7 – Harassment

7.8 The word ‘unwanted’ means essentially the same as ‘unwelcome’ or ‘uninvited’. Unwanted does not mean that express objection must be made to the conduct before it is deemed to be unwanted...

7.9 Unwanted conduct ‘related to’ a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.”

148. The Code goes on to give examples of where the conduct ‘is related to the worker’s own protected characteristics’ or ‘where there is any connection with a protected characteristic’. Stating that in relation to the examples given in the latter category ‘there is a connection with the protected characteristic and so the worker could bring a claim for harassment where the unwanted conduct creates for them any of the circumstances defined in paragraph 7.6’,

- Unwanted conduct;
- That has the proscribed purpose or effect; and
- Which relates to a relevant protected characteristic.

149. Mr Justice Underhill, (as he then was as President of the EAT), expressed the view that it would be a ‘healthy discipline’ for a tribunal in any claim alleging unlawful harassment specifically to address in its reasons each of these three elements — Richmond Pharmacology v Dhaliwal 2009 ICR 724, EAT.

Relevant Case Law

150. In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL.

Lord Nicholls stated:

7. In deciding a discrimination claim, one of the matters employment tribunals have to consider is whether the

statutory definition of discrimination has been satisfied.
When the claim is

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based on direct discrimination or victimisation, in practice tribunals in their decisions normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator (the 'less favourable treatment' issue) and then, secondly, whether the less favourable treatment was on the relevant proscribed ground (the 'reason why' issue). Tribunals proceed to consider the reason-why issue only if the less favourable treatment issue is resolved in favour of the claimant. Thus the less favourable treatment issue is treated as a threshold which the claimant must cross before the tribunal is called upon to decide why the claimant was afforded the treatment of which she is complaining.

- 8 No doubt there are cases where it is convenient and helpful to adopt this two-step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason-why issue. The two issues are intertwined.

...

11. This analysis seems to me to point to the conclusion that employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others.
12. The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case. There will be cases where it is convenient to decide the less-favourable-treatment issue first. But, for the reason set out above, when formulating their decisions employment

tribunals may find it helpful to consider whether they should postpone determining the less-favourable-treatment issue until after they have decided why the treatment was afforded to the claimant. Adopting this course would have simplified the issues, and assisted in their resolution, in the present case.

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151. In the recent case of Higgs v Farmor's School & others [2025] EWCA Civ 109 Lord Justice Underhill discussed the 'manifestation' of a belief:

(1) Manifestation of belief

54. It will be noted that, unlike article 9 of the Convention, the 2010 Act does not refer explicitly to discrimination on the grounds of the manifestation of a belief. However, it is clear, and was common ground before us, that the phrase "because of [the complainant's] religion or belief" must be read as extending to such discrimination.

55. In a manifestation case proper the employer genuinely has no objection to the employee holding the belief and is motivated only by the conduct which constitutes its manifestation. Most claims of discrimination on the ground of religion or belief are likely to be genuine manifestation cases of this kind.

56. At the risk of stating the obvious, the fact that the 2010 Act gives employees a right not to be discriminated against on the ground of manifesting a belief does not mean that that right is unqualified; but the basis on which it should be treated as qualified is contentious in this appeal, and I return to it below.

152. The court also discussed the 'separability principle' namely that the case law recognises that it may be necessary to decide whether the real cause of the treatment is the conduct itself or is some properly separable feature of it. The court considered that:

57 This line of authority is potentially applicable in a (true) manifestation case, since in such a case the court is concerned (untypically for a direct discrimination claim) with a motivation based not on the possession of the protected characteristic but on particular conduct on the part of the employee.

153. The court referred to the discussion on this principle in Kong v Gulf

International Bank (UK) Ltd [2022] EWCA Civ 941 a protected disclosure dismissal case. Simler LJ (as she then was) stated that:

56. In a case which depends on identifying, as a matter of fact, the real reason that operated in the mind of a relevant decision maker in deciding to dismiss (or in relation to other detrimental treatment), common sense and fairness dictate that tribunals should be able to recognise such a distinction and separate out a feature (or features) of the conduct relied on by the decision maker that is genuinely separate from the making of the

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protected disclosure itself. In such cases, as Underhill LJ observed in Page [Page v Lord Chancellor [2021] EWCA Civ 254], the protected disclosure is the context for the impugned treatment, but it is not the reason itself.

154. Although not a 'rule of law' the separability principle identifies what may be a necessary step in determining what 'as a matter of fact was the real reason for the impugned treatment'.

155. The judgment in Higgs considered 'free speech principles'. Underhill LJ at paragraph 61 stated:

61. The protection of the right of free speech, including speech expressing a person's religious or other beliefs, has always been regarded as a cardinal principle of the common law, and it is of course now also protected by the incorporation by the 1998 Act of articles 9 and 10 of the Convention. There are many decisions of the highest authority expounding the relevant principles, but I do not need to recapitulate them here.

156. He did however note three points of particular importance. Firstly that freedom of speech necessarily entails the freedom to express opinions that may shock and offend. Second, the protection of freedom of speech is particularly important in the case of 'political speech', e.g. expression of opinion on matters of public and political interest. Third, it is important to be alive not just to the effect of restrictions on freedom of speech but to their chilling effect more widely.

157. As the authorities referred to had involved public authorities the court then considered the relevant principles in the context of the employment relationship and the law applicable to it. Whilst the case before this tribunal is not related to employment but trade union membership it is still

concerned with an interpretation of the Equality Act and the decision of Page v NHS Trust Development Authority [2021] EWCA Civ 255 discussed by the Court of Appeal in Higgs is relevant.

158. In Page it was accepted that the claimant had Christian beliefs or 'belief in the traditional family'. His claims of direct and indirect discrimination on the ground of religion or belief were dismissed by the tribunal and that decision upheld by the EAT and the Court of Appeal. At paragraph 74 of Higgs Underhill LJ summarised the decision:

"In summary, Page was decided on the basis that adverse treatment in response to an employee's manifestation of their belief was not to be treated as having occurred "because of" that manifestation if it constituted an objectively justifiable response to something "objectionable" in the way in which the belief was manifested: it thus introduced a requirement of objective justification into the causation

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element in section 13 (1). Further, we held that the test of objective justification was not substantially different from that required under article 9.2 (and also article 10.2) of the Convention. I should clarify two points about language:

- (1) The word "objectionable" in para. 74 is evidently a (possibly rather inapt) shorthand for the phrase in para. 68 "to which objection could justifiably be taken". Both have the same effect as the word "inappropriate" which is also used.
- (2) The "way" in which the belief is manifested is a deliberately broad phrase intended to cover also the circumstances in which the manifestation occurs. That is the ratio of Page (as regards the direct discrimination claim).

159. The court specifically referred to the test for harassment under s26 EA which requires the treatment to be 'related to' the protected characteristic, rather than 'because of' as in section 13(1). Underhill LJ did not consider that difference rendered the ratio of Page inapplicable in harassment cases. In a footnote to that paragraph he expressly referred to written submissions from one of the intervenors suggesting that the different language in the sections could be 'potentially problematic' in this context. He did not agree. He referred to the change in the language of s26 and his decision in Unite the Union v Nailard [2018] EWCA Civ 1203 in which he expressed doubt as to whether it made a difference. However in the context of the question before the court of importing a test of objective justification he could not see why if it is possible in a case of 'because of' it would not equally be possible in the case of 'related to'.

160. The court in Higgs went on to explain the jurisprudential basis for the ratio in Page. What is useful is the summary at paragraph 92 where it was stated:

Direct discrimination in manifestation cases is (uniquely) different from discrimination on the ground of other protected characteristics (and indeed from simple belief discrimination) because it is based, as the Court in Eweida [2013] IRLR 231 identifies, not on the possession of the characteristic as such but on overt conduct, which thus has the potential to impact on the interests of society and the rights and freedoms of others. That distinction may be said to put it in a special category which requires a more flexible approach. As I have said, I find it hard to accept that the legislature intended employees to enjoy an absolute right not to suffer any adverse treatment on the basis of conduct manifesting their religious or other beliefs, whatever the nature of that conduct and whatever the circumstances.

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161. Underhill LJ went on to discuss the EAT decision given in Higgs and 'endorsed' the summary of the underlying principles given at paragraph 94 of the EAT's decision which stated as follows:

94. All that said, I can see that, within the employment context, it may be helpful for there to at least be some mutual understanding of the basic principles that will underpin the approach adopted when assessing the proportionality of any interference with rights to freedom of religion and belief and of freedom of expression.

(1) First, the foundational nature of the rights must be recognised: the freedom to manifest belief (religious or otherwise) and to express views relating to that belief are essential rights in any democracy, whether or not the belief in question is popular or mainstream and even if its expression may offend.

(2) Second, those rights are, however, qualified. The manifestation of belief, and free expression, will be protected but not where the law permits the limitation or restriction of such manifestation or expression to the extent necessary for the protection of the rights and

freedoms of others. Where such limitation or restriction is objectively justified given the manner of the manifestation or expression, that is not, properly understood, action taken because of, or relating to, the exercise of the rights in question but is by reason of the objectionable manner of the manifestation or expression.

- (3) Whether a limitation or restriction is objectively justified will always be context-specific. The fact that the issue arises within a relationship of employment will be relevant, but different considerations will inevitably arise, depending on the nature of that employment.
- (4) It will always be necessary to ask (per Bank Mellat): (i) whether the objective the employer seeks to achieve is sufficiently important to justify the limitation of the right in question; (ii) whether the limitation is rationally connected to that objective; (iii) whether a less intrusive limitation might be imposed without Judgment Approved by the court for handing down. *Higgs v Farmor's School* 39 undermining the achievement of the objective in question; and (iv) whether, balancing the severity of the limitation on the rights of the worker concerned against the

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importance of the objective, the former outweighs the latter.

- (5) In answering those questions, within the context of a relationship of employment, the considerations identified by [the Archbishops' Council] are likely to be relevant, such that regard should be had to: (i) the content of the manifestation; (ii) the tone used; (iii) the extent of the manifestation; (iv) the worker's understanding of the likely audience; (v) the extent and nature of the intrusion on the rights of others, and any consequential impact on the employer's ability to run its business; (vi) whether the worker has made clear that the views expressed are personal, or whether they might be seen as representing the views of the employer, and whether that might present a reputational risk; (vii) whether there is a potential power imbalance given the nature of the worker's position or role and that of those whose rights are intruded upon; (viii) the nature of the employer's business, in particular where

there is a potential impact on vulnerable service users or clients; (ix) whether the limitation imposed is the least intrusive measure open to the employer.”

162. At paragraph 84 the EAT had explained the problem it found with the tribunal’s decision:

The problem with the ET’s approach is that it by-passed any engagement with the nature of the claimant’s rights, and failed to carry out the requisite balancing exercise, when seeking to determine whether the mental processes which caused the respondent to act did not involve the claimant’s beliefs but only their objectionable manifestation. As the claimant objects (ground 1 of the appeal), the ET’s approach meant that it impermissibly narrowed the task it had to undertake. It was not enough to find that the respondent had been motivated by a concern that the claimant could be perceived to hold ‘wholly unacceptable views’ (ET, paragraph 70); the ET needed to consider whether that motivation or concern had arisen out of the claimant’s manifestation of her beliefs (accepted to be protected under the EqA) or by a justified objection to that manifestation.”

163. The court agreed that the EAT had correctly proceeded on the basis that Page had established that, in a case where, as in Higgs, the treatment complained of was in response to the manifestation of a protected belief, the question whether that manifestation was the reason for the treatment involved the application of a test of objective justification. The tribunal decision was overturned as it had not applied such test. The court went on to endorse the guidance given by the EAT whilst stressing that the ‘focus of

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the issues in any given case will only be on some of them, and there may be some cases where other considerations – or considerations which do not fit into her formulation – may be relevant’ (referring to the nine points in sub paragraph 5.)

164. In considering the submissions made on behalf of the claimant in Higgs the court considered ‘assumptions and stereotyping’ as it was a central element of one of the grounds of appeal that the complainant who had raised issues with the school about the claimant’s Facebook post had herself been guilty of discrimination against her in the form of ‘unlawful stereotyping’. Although not having to deal with that particular ground of appeal the court felt it was a relevant issue in relation to the School’s justification in that case. The basis of the claimant’s argument was that the complainant had accused her of ‘homophobic’ views. It was submitted on her behalf that that accusation was not based on any actual expression of

such attitudes in her posts. Counsel stated that ‘it was an assumption that anyone who expressed the protected beliefs must be homophobic or transphobic’ and submitted that there was no basis for that assumption. It was unnecessary for the court to decide this particular ground of appeal but it felt it would be appropriate nonetheless to record the submissions from the EHRC on the law concerning direct discrimination by stereotyping in the context of religion or belief and quoted the following, which albeit, entirely obiter, Underhill LJ’s ‘provisional view is that that is a correct summary of the law’:

“50. ... One particular species of [direct discrimination] in which an employee’s holding or manifesting their belief might have a significant influence on their treatment is through the putative discriminator’s adoption of a stereotype. In such a case, although the reason for the treatment given by the employer is not the protected characteristic, it is nonetheless positively relied on by the claimant. The claimant argues that the decision-maker has, consciously or unconsciously, adopted a stereotype and was significantly influenced by it in deciding on the treatment complained of i.e. on the basis that the claimant would share the perceived attributes of the group, rather than relying on evidence about the particular individual. If that is so then the treatment will be ‘because of’ the protected characteristic. It does not matter if the stereotype is very likely to be true: see e.g. *R (European Roma Rights Centre) v Immigration Officer at Prague Airport* ... [2005] 2 AC 1 per Lady Hale at §82; *Commerzbank AG v Rajput* UKEAT/154/18 [2019] ICR 1613 ... at §.77 per Soole J.

51. ...

52. In relation to religion or belief, a decision-maker will accordingly discriminate where the reason given for the treatment is significantly influenced, consciously or unconsciously, by a

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stereotype that persons who hold or manifest the relevant belief will share attributes of a group which they might not in fact possess. Examples of stereotypes in relation to religion or belief explicitly recognised in the case law are that: persons who hold/manifest certain gender-critical beliefs have animus towards trans persons (see e.g. *R (Miller) v College of Policing* [2020] EWHC 225 (Admin) [2020] 4 All ER 31 at §§250, 281); or that persons holding/manifesting the belief that same-sex sexual activity is sinful have animus towards gay persons (see e.g. *Ngole* at §115). It may be that

some persons who hold/manifest such beliefs have such animus, but it is stereotyping to assume that all do. Given the above cases, the EHRC considers that a Tribunal is likely to be able to proceed on the basis that the stereotypes which they identify exist (Commerzbank, §§79-80), although it may need to give prior notice to the parties of a proposed use of the principle: *ibid.*, §84.

53. The stereotype must significantly influence the decision-maker's decision. That is irrespective of whether, as in a case such as the present, the employer is acting following a third-party objection/complaint about the claimant."

Conclusions

165. The role of this tribunal is only to determine the legal issues before it and not to enter the debate on gender. As has now been said in a number of cases and was said by The Honourable Mr Justice Choudhury (then President of the Employment Appeal Tribunal) in Forstater v CGD & Ors. UKEAT/0105/20 at paragraph 2:

"...The issue is one that has generated strong feelings...We wish to make clear at the outset that it is not the role of this Employment Appeal Tribunal to express any view as to the merits of either side of that debate (which we shall refer to as the 'transgender debate'); its role is simply to determine whether, in reaching the conclusion that it did, the Tribunal erred in law. Our judgment should not therefore be read as providing support for or diminishing the views of either side in that debate".

166. This case is also not about academic freedom. The Film was not an academic work published by the Claimants in relation to their respective specialisms. It contained the views of a number of people who hold the same views as the Claimants, referred to throughout these proceedings as 'gender critical'. Those individuals were not shown as being interviewed by the Claimants in the Film but gave their views on various topics on screen. Both Claimants stated that save for some minor exceptions they shared the views of those who spoke in the Film. The tribunal considers it to be a fine line as to whether in such circumstances the Film can be said to be a manifestation of the Claimants beliefs but applying Page and Higgs it

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accepts that it was. It also accepts that the Eventbrite advertisement approved by them was also a manifestation of their views.

167. In general terms however it is difficult to see how the Claimants were actually subjected to 'any other detriment' within the meaning of s57

Equality Act 2010. They were never written to directly, their names were not mentioned (save in the Eventbrite advertisement) and most of the alleged acts are tweets or re-tweets by the Respondent, so not sent directly to the Claimants. The closest they could get to establishing detriment would be by accepting that it was known by the majority of those who would read the tweets that the Claimants were the directors of the Film and that therefore in suggesting the Film was 'transphobic' it was implicit that the Claimants were also. The tribunal has concluded that is too remote and not within the spirit and meaning of s57, 13 or 26 EA.

168. The only possible comparator is the talk by Katy Montgomerie. The Tribunal does not accept that is an actual comparison within the meaning of section 23 Equality Act 2010 as her talk is materially different. She was giving a talk and was not the director of a film. There had not been a similar Eventbrite description of that talk that had alerted the public to what was to be spoken about.
169. A hypothetical comparator would be directors of a film where Eventbrite promotional material described the content by the use of 'dog whistles' as was done in relation to the Film and which then led to various interested organisations bringing their concerns to their Union. The Tribunal is satisfied that in such a case the Respondent Union would have acted in the same way as it did.
170. Shamoon made it clear that rather than look at whether the complained of conduct was 'because' of the protected characteristic, it is permissible to ask why the alleged discriminator acted in the way they did; the 'reason why'. The case law and particularly Higgs also makes it clear that there is in effect an 'objective justification' defence in cases of this nature. The reason why the Respondent acted as it did was because it believed that other members of its Union would be offended by some of the content in the Film and could be put at risk and that, under its policies, the Union was entitled and indeed required to protect them as best it could. It also held the view that the UoE had such obligations under its own policies. It did not seek to stop the showing of the Film but only that it not be shown on University premises. There is no way of establishing that the reason the Film was not able to be shown on two occasions was because of the tweets by the Respondent.
171. The wording of section 57 Equality Act 2010 in relation to harassment is very specific in that it is to protect members of a trade association from not being harassed 'in relation to membership of it'. The Claimants were not subjected to such harassment by the Respondent. Nothing happened with regard to their 'membership.' They remain members of the Union. It is also

relevant that the Claimants were not members of the Branch or academics at UoE

172. The tribunal has considered the guidance given by the EAT in Higgs at paragraph 94, although not all of that is relevant as this is not an employment case. As was stated at paragraph 94(2) the freedom to manifest a belief is 'qualified'. The right will be protected but not where 'the law permits the limitation or restriction of such manifestation or expression to the extent necessary for the protection of the rights and freedoms of others'. As the EAT stated where limitation of the right is objectively justified that is not 'because of or relating to' the exercise of the right but 'by reason of the objectionable manner of the manifestation or expression'. The Respondent was objectively justified in considering that the way the Film was being marketed by Eventbrite interfered with the rights of its trans members. Others including SPN, Edinburgh University Student Association and PrideSoc also held that view.

173. Each of the alleged acts will now be addressed. As each act is relied upon by the Claimants as both direct discrimination and harassment, they will be considered under each category in turn.

Email the Principal of the University on 7 December 2022

174. At the start of this Hearing when the issues were identified, the Tribunal was not informed that this allegation was no longer pursued. It was suggested in submissions that it was not, but for the avoidance of doubt the Tribunal has dealt with it in any event.

Detriment/Direct Discrimination

175. There is no dispute and it is a matter of record that this email was indeed sent. It was sent to the Principal of the University and not to the Claimants or to a wider audience. In the email the Branch stated that it believed from the description of the event given in the Eventbrite advertisement, that to show the Film on University premises would be in breach of the University's Dignity and Respect Policy and the Union's position on trans inclusion. The email did not seek to ban the Film entirely but called on the University to decline the use of its premises for the event. The email is about the Film and does not name the Claimants. It is not even known when it came to the Claimants' attention.

176. The email was not less favourable treatment of the Claimants "because of" their gender critical belief or a 'detriment' within the meaning of section 57.

177. If it were found to be less favourable treatment/detriment then applying the guidance in Higgs the Respondent was objectively justified in raising its concerns in view of the position of others within the Union who had informed the Union and / or who the Union believed would be offended and/or put at risk by the contents of the Film going by the description of it in the Eventbrite advertisement. Using the wording in Higgs when explaining Page the

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Respondent was entitled to take objection to the way in which the Claimants had manifested their belief.

Harassment

178. With regard to the claim of harassment in relation to this email, the section is very clear in prohibiting harassment “in relation to membership” of the Trade Association / Union. The Claimants were not subjected to unwanted conduct within the meaning of s.26 & 57 Equality Act 2010 in relation to their membership of the Respondent. Their membership has continued. As already stated they were not members of the Branch.

Tweets

7 December 2022: a tweet by the Branch (paragraph 10 Grounds of Complaint)

179. This tweet confirmed that the Branch had asked the University not to host or facilitate meetings which contained content which was transphobic or otherwise detrimental to the safety and wellbeing of LGBTQ+ staff and confirming they had written to the University accordingly.
180. This tweet does not mention the name of the Film, or even the event.
181. The claimants have not identified what the detriment to them is in this tweet which does not refer specifically to the Film or them. It was not less favourable treatment/detriment of the Claimants because of their beliefs. The Union used the word ‘believe’ it to be a transphobic event not actually stating that it was to be such. It was not sent to the Claimants.
182. It was not harassment under s57 as it had no effect on their trade union membership. The Claimants were not members of the Branch that sent the tweet.

9 December 2022: a tweet of a screen shot of a post from the University’s LGBTQ+ society, “PrideSoc” (paragraph 13 Grounds of Complaint)

183. This was in effect re-tweeting by the Respondent of a tweet of another organisation. This was about the event and not just the Film in isolation. Its concern was about allowing the Film to be screened on University premises.
184. Those who PrideSoc sought to represent had their own rights not to be subjected to discrimination or harassment, as did other members of the Respondent Union. The claimants have not explained how this re – tweet was detrimental treatment of them.
185. The claimants were not subjected to harassment by virtue of this re-tweet contrary to s57 EA as it had no effect on their trade union membership.

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12 December 2022: the Branch tweeted a link to a statement about the screening published on its website (paragraph 14 Grounds of Complaint)

186. In this statement the Respondent re-stated the motion that had been passed at its AGM in June 2019 in which it had committed itself to calling on the University to ensure that all events held in its name and on its premises were in line with the Dignity and Respect Policy and that it neither hosted nor facilitated meetings which contain content which is,

“transphobic, biphobic, homophobic or otherwise detrimental to the safety and wellbeing of LGBT+ staff.”

187. The statement confirmed that having heard of the planned screening of the Film, they had asked for permission for it to be held in a University building to be revoked having pointing out that the Film description, (which had now been taken down) contained content that was,

“A clear attack on trans peoples’ identities and not in line with the Dignity and Respect Policy.”

188. They noted in the statement that the Principal had declined their request and alleged that he had not engaged with the specific points raised. As the University had not conceded to their demands and the demands of others, they encouraged members and others to support the two alternative events set out below the statement that had been organised by the Staff Pride Network, the Student’s Association and PrideSoc and which would take place at the same time as the screening.

189. This was not detrimental treatment of the Claimants. It was the Respondent stating the actions it had taken in relation to the screening of the Film. It did not mention the Claimants by name and was not addressed to them.

190. It was not harassment in connection with trade union membership which has not been affected.

29 March 2023: the Branch re-tweeted “EAAF’S tweet” announcing the screening (paragraph 20 Grounds of Complaint)

191. In this re-tweet the Branch stated that it had opposed the screening previously and did so again and referred to it as a ‘transphobic event’ It was a re-tweet, not sent directly to the Claimants. Again the claimants have not identified the detriment they suffered as a result of this tweet. It

cannot be harassment under s57 EA as nothing happened regarding their trade union membership.

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14 April 2023: the Branch re-tweeted a tweet by CATHS advertising its protest and on 21 April 2023: the Branch re-tweeted a similar tweet from SPN (paragraph 22 Grounds of Complaint)

192. In the tweet it was forwarding, Staff Pride Network had described the Film as having “transphobic content”. This was a statement by the Staff Pride Network and not by the Respondent. The same can be said about the re-tweeting of the CATHS tweet. The claimants do not point to any detriment suffered as a result of these re-tweets.

193. They were not subjected to harassment under s57 EA as nothing happened regarding their trade union membership

194. In the event that it were to be found that by retweeting such a tweet the Claimants were being treated detrimentally and/or harassed the Respondent was objectively justified in supporting SPN whose members were of the view that the Film would be interfering with their rights as trans members of the Union.

On 26 April 2023: the then President of UCU Scotland tweeted (paragraph 23 Grounds of Complaint)

195. This tweet stated,

“Today! Solidarity to trans and non-binary staff and students today and every day”.

196. The Tribunal does not accept that a tweet of that nature using those words could be direct discrimination/detriment of the Claimants, or harassment of them. It did not refer to anything in relation to the Film or the Claimants and was only referring to solidarity with trans and non-binary staff and students.

On 26 April 2023: the Branch tweeted two photographs of the protests against the Film (paragraph 25 Grounds of Complaint)

197. These photographs just show people standing behind crowd barriers and a photographer in the forefront. The words used by the Branch are,

“It’s big and we have only just started. No to hate on campus”.

198. It does not refer to the Film or to the Claimants in any way. It was not detrimental treatment or harassment of them.

4 May 2023: the Branch tweeted a letter from Professor Lauren Hall-Lew (paragraph 29 Grounds of Complaint)

199. This letter was to Professor Kim Graham and is entitled, “Define academic freedom and freedom of expression.” It was tweeted by the Branch with no reference to the Claimants or the Film. It is not connected to the Claimants

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beliefs in any way. It has not been explained how this is said to be detrimental treatment of the claimants or harassment under s57 EA

On 26 May 2023: Jo Grady replied to the Claimants (paragraph 31 Grounds of Complaint)

200. This was the General Secretary of the Respondent replying to the Claimants’ letter to her of 28 April 2023. She expressly acknowledges that in line with the findings in the Forstater decision the Respondent acknowledges,

“...that gender critical beliefs are recognised to be legitimate philosophical beliefs protected under the Equality Act 2010.”

201. She stated that it is not for the Respondent to make a specific pronouncement on the Film or its contents, nor is it for the Respondent to stand in the way of its Branches protesting certain expressions of protected beliefs about which they are concerned. She disputed the Claimants assessment that the Branch’s actions in opposing the screening amounted to a statement that those with gender critical views were not welcome within the Branch or the Union. She described the Respondent as a “broad-church” and while they have an agreed policy on many issues, including a commitment to trans and non-binary inclusion,

“Members hold many opposing viewpoints on different issues”.

202. She concluded that the decision of the Branch to oppose the Film screenings,

“...does not equate to a universal condemnation by the Union of all gender critical beliefs or those who hold them. Rather it was a protest against certain expressions of those beliefs which the Branch had reason to believe would undermine the dignity of the

local trans and non-binary community.”

203. This letter was in no way less favourable treatment of the Claimants because of their beliefs, which it expressly acknowledges are protected beliefs.

204. Further, there is no evidence before this Tribunal that the Claimants had been treated unequally as members of the Union. They remain involved in the branch at their universities and are free to vote and stand in elections.

Report

Branch Equalities Officer Report 30 June 2023 (paragraph 32 Grounds of Complaint)

205. The paragraph in the Grounds of Complaint refers to a specific section of the Report where it was stated that there had been persistent attempts by

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‘a small group of colleagues to organise transphobic events...’ There is no reference to the Claimants or the Film. It was not explained to the tribunal how this report or section of it referred to by Dr O’Neill was detrimental treatment of the claimants and/or harassment of them.

206. The tribunal has deliberately dealt with each issue in turn. Taking them all together as a continuing course of conduct the tribunal does not find that it amounted to detrimental treatment of the Claimants or harassment.

207. The Respondent in submissions argued that any matter complained about before 26 April 2023 was out of time. The Claimant’s submit they are clearly relying on a continuing course of conduct by the Respondent from the time of the Eventbrite advert. The tribunal accepts that submission and does not find the claim to have been submitted out of time.

208. It follows from these conclusions that all claims fail and are dismissed.

Approved by:

Employment Judge Laidler

Date: 30 May 2025

Sent to the parties on: 4 June 2025

L TAYLOR-HIBBERD
For the Tribunal Office.

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