

PRESS SUMMARY

Important note: This summary forms no part of the court’s decision. It is provided so as to assist the press and the public to understand what the court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at www.judiciary.uk and caselaw.nationalarchives.gov.uk, using the neutral citation number [2025] EWCA Civ 109

KRISTIE HIGGS v FARMOR’S SCHOOL (CA-2023-001319)

Judgment handed down 12 February 2025 at 10.30 a.m.

1. The Claimant in this case, Mrs Higgs, was dismissed from the school where she worked because she had posted messages on her personal Facebook account opposing the teaching in schools, and in particular in primary schools, of “gender fluidity” and that same-sex marriage is equivalent to marriage between a man and a woman: her belief that such teaching is wrong is derived from her Christian faith. The messages are set out (though not in full) at paras. 10 and 12 of the judgment. Most of the text of the posts was not her own but was copied from other posts. A parent at the School had seen the posts and complained to the Headteacher.
2. The Claimant brought proceedings in the Employment Tribunal (“the ET”) for unlawful discrimination on the grounds of religion or belief contrary to the Equality Act 2010. The ET held that her beliefs about gender fluidity and same-sex marriage were protected by the Act; and in the light of the later *Forstater* decision that conclusion is not disputed by the School. However, her claim was dismissed on other grounds.
3. The Employment Appeal Tribunal (“the EAT”) found that the ET’s reasons for dismissing the claim were legally flawed and ordered that the claim be sent back to it to be re-determined on the correct legal basis.

4. The Claimant appealed to the Court of Appeal on the basis that the EAT should not have sent the claim back to the ET and should have found for itself that she had been unlawfully discriminated against.
5. The Court of Appeal has allowed the Claimant's appeal and made a finding that her dismissal did constitute unlawful discrimination on the ground of religion or belief. The main points in its reasoning are as follows.
6. The dismissal of an employee only because they have expressed a religious or other protected belief to which the employer objects, or which it fears will offend a third party with whom it wishes to protect its reputation, will constitute unlawful direct discrimination within the meaning of the Equality Act.
7. However, the dismissal will be lawful if there is something to which the employer could justifiably object in the way in which the belief was expressed and if it was a proportionate response to that feature – in short, if it was objectively justified. Although that modifies the usual approach under the Equality Act so as to conform with the approach under the European Convention of Human Rights, such “blending” of the two approaches is legitimate.
8. The School sought to justify the Claimant's dismissal on the basis that the posts in question were offensively expressed and included insulting references to the promoters of gender fluidity and “the LGBT crowd” which were liable to damage its reputation in the community: the posts had been reported by one parent and might be seen by others.
9. However, the Court concluded that the factors relied on by the School could not justify the Claimant's dismissal. Its full reasoning is at paras. 159-163 of the judgment, but in short:
 - (1) There was no reason to suppose that the Claimant, who had worked for the School for six years without complaint, had expressed her views at work or that they would lead her to treat gay or trans pupils differently.
 - (2) Although the language of the posts was rhetorical and provocative it did not express hatred or disgust for gay or trans people. The Claimant herself said that she was endorsing the content of the messages rather than their language.

- (3) The evidence of risk to the School's reputation was slight given the limited access to her Facebook account.

In those circumstances, although the Claimant's conduct was unwise, dismissal was a disproportionate sanction.