

NI Tribunal issues first ever ruling regarding gender critical beliefs

Overview

The Fair Employment Tribunal in Northern Ireland has dismissed claims brought by Sara O'Gorman (known professionally as Sara Morrison) against Belfast Film Festival Limited. The case is significant because it is the first Northern Ireland tribunal decision to consider discrimination and harassment allegations linked to gender-critical beliefs.

Although her claim was unsuccessful, the judgment provides useful guidance for employers managing workplace issues that arise in connection with employees' publicly expressed views on sex, gender identity and women's rights.

Background facts

- The Claimant worked for Belfast Film Festival as an Inclusion and Audience Development Co-ordinator.
- In April 2023 she attended and spoke at a Let Women Speak rally in Belfast. In her speech she supported women's rights, criticised several named women's sector organisations and called for men to be kept out of women's spaces.
- Following the rally, the Claimant was criticised online and a number of external organisations raised concerns with Belfast Film Festival about her participation in the event and whether it was compatible with her stakeholder-facing role.
- Additionally, on 3 July 2023, the Claimant was asked by her Line Manager to send an email to a number of community and LGBTQIA+ activist groups, inviting them to collaborate on a proposed "Pride on the Big Screen" event. The Claimant refused to send the email stating that some of the intended recipients might not be well disposed towards her following her participation in the Let Women Speak rally. Same gave rise to further concerns about the Claimant's ability to carry out her role.
- The Respondent commenced a fact-finding investigation to consider the above concerns. The investigation focused on the potential impact of the situation on matters central to the Claimant's role, including stakeholder confidence and relationships.
- The Claimant was subsequently absent from work on sickness leave, citing stress, and later resigned. She brought claims alleging unlawful discrimination, harassment and constructive dismissal.

We note that "gender critical beliefs", broadly the opinion that sex is biological, fixed and is separate from gender identity, are treated in Great Britain as a philosophical belief protected under the Equality Act 2010 (provided they meet the threshold test set out in *Grainger plc v Nicholson*). There has been a recent surge in GB case law in relation to this issue, such as *Forstater v CGD Europe* and *Higgs v Farmor's School*.

In this case both sides accepted that the Claimant's gender critical views counted as a political opinion under FETO 1998. This meant the tribunal did not need to apply the Grainger criteria to decide whether the belief was protected in the first place.

The Northern Ireland framework is different from Great Britain and there is no direct equivalent to the Equality Act 2010. In Northern Ireland, political opinion is a protected ground and the Fair Employment Tribunal is tasked with hearing these complaints.

Outcome

The Claimant's claims were rejected in their entirety.

When considering the Claimant's expression of her gender-critical beliefs, the tribunal took a different approach from some recent decisions in Great Britain. In GB cases such as *Higgs v Farmor's School*, tribunals have distinguished between:

- the right to hold and express a protected belief; and
- the way in which that belief is expressed, which can sometimes justify employer action.

The Northern Ireland tribunal did not carry out that separate analysis. Instead, it focused on the question:

- Was the Claimant treated as she was because of her beliefs, or was it because of the employer's genuine concerns about the impact of the situation on the organisation and its stakeholder relationships?

The tribunal concluded that the Respondent's actions were driven by operational and stakeholder concerns rather than the Claimant's beliefs. Because of that finding, it did not need to consider whether any restriction on the manifestation of those beliefs could have been justified.

The harassment claim was also unsuccessful. Although some of the events complained of arose in the context of the Claimant's publicly expressed views, the tribunal found that the employer's conduct was not sufficiently serious to violate her dignity or create an intimidating, hostile, degrading, humiliating or offensive working environment.

The claim of constructive dismissal claim was dismissed as well. To succeed, the Claimant needed to show that the employer had seriously breached the implied term of trust and confidence. The tribunal found no such breach occurred. Looking at the individual incidents and the overall course of events, it concluded that the employer had acted reasonably. It also rejected the Claimant's argument that the grievance appeal outcome was the "last straw" in a series of breaches, finding instead that it was a genuine and reasoned decision made by the employer.

What does this mean for Northern Ireland employers?

Issue	Practical point for employers
Protected beliefs	Employees must not be treated less favourably simply because they hold or express a protected political opinion or belief.
Workplace impact	Employers should focus on conduct, role requirements, stakeholder relationships, reputational concerns and operational impact rather than disagreement with the belief itself.
Investigations	A fact-finding investigation may be appropriate where there are genuine workplace concerns. The purpose and scope should be carefully recorded.
Stakeholder concerns	External complaints may be relevant, particularly where the role involves community engagement, but employers should avoid acting merely because stakeholders object to an employee's views.
Documentation	Decision-makers should keep clear contemporaneous records explaining the non-discriminatory reasons for any investigation or management action.

Practical recommendations

1. Ensure equality, dignity at work, social media and external engagement policies are up to date and clearly drafted.
2. Train managers to distinguish between holding a protected belief and the way in which that belief is manifested in the workplace.
3. Where concerns arise, define the employment issue precisely before commencing any investigation.
4. Frame investigation terms of reference around objective workplace impact, not the legitimacy or acceptability of the belief itself.
5. Consider whether the employee's role makes stakeholder confidence, impartiality or external relationships particularly relevant.
6. Before taking disciplinary action, consider proportionality, consistency, reputational risk, freedom of expression issues and whether less intrusive measures would address the concern.

Takeaway

This judgment does not permit employers to discipline employees for holding controversial or unpopular views. The safer approach remains to avoid taking a position on the belief itself and focus instead on whether there is any credible evidence of workplace impact.

For Northern Ireland employers, the case is a useful reminder that decisions must be capable of being explained by reference to legitimate employment considerations. Where those considerations are clear, evidenced and carefully documented, an employer will be in a stronger position to defend any further action.