

IN THE EMPLOYMENT TRIBUNAL
LONDON CENTRAL

2200179/2022

BETWEEN

RACHEL MEADE

Claimant

~~and~~

(1) WESTMINSTER CITY COUNCIL

(2) SOCIAL WORK ENGLAND

Respondents

ADVICE ON MERITS

Introduction

1. Ms Meade is a registered social worker employed by Westminster City Council. Her regulator, Social Work England, conducted an investigation after a former colleague complained that she had shared “transphobic” material on her private Facebook page; and upon being made aware of the outcome of the SWE investigation, the Council suspended her on gross misconduct charges. She remained suspended for fractionally under a year. Both the regulatory and the workplace disciplinary cases were closed without sanction more than two years after the original complaint, but the process caused Ms Meade great distress and anxiety as well as the expenditure of considerable legal costs.
2. My instructing solicitors, Cole Khan Solicitors LLP, act for Ms Meade in her Employment Tribunal complaints of discrimination on grounds of her protected “gender-critical” belief

against Social Work England and Westminster City Council. Those claims were due to be heard in London Central Employment Tribunal on 1-8 December, but the case was postponed at the last minute for want of judicial resources. It has been re-listed for 6 days in July 2023.

3. I am now instructed to provide a short advice on the merits of the claims, and their wider public significance, for publication on Ms Meade's crowdfunding page. I am happy to do so: it is right that those who contribute or wish to consider contributing to a case such as this should be equipped with as candid as possible an assessment those matters from a named lawyer. Inevitably I will not go into as much detail here as I might in an advice not intended for publication, but my advice here is an accurate reflection of my opinion of the strength and importance of the case. In forming that opinion, I have had the advantage of having read witness statements from all parties and having substantially prepared for the hearing.

The facts and the applicable law

4. Ms Meade is a social worker and a qualified nurse. She is 54, and has spent most of her career to date in the health and social care sector, including the last 21 years in the employment of Westminster City Council. She has an unblemished employment and regulatory record, never before the events giving rise to these claims having been the subject of any disciplinary or regulatory investigation or sanction. She is her family's higher earner and her family depends on her income.
5. Ms Meade believes that sex in humans is binary, immutable, and sometimes has material consequences. That commonplace and one might think self-evidently factual belief is now a subject of bitter controversy, and commonly referred to as "gender-critical". It is a protected belief for the purposes of the Equality Act 2010: *Forstater v CGD* [2021] IRLR 706. That means that employees and regulated professionals are entitled not to suffer discrimination on grounds of (or harassment related to) their gender-critical belief.

6. The protection afforded by the EqA has to be understood in the wider context of the Human Rights Act 1998 and the European Convention for the Protection of Human Rights and Fundamental Freedoms, articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression). Freedom to contribute to public debate on matters of political and/or public interest is afforded a particularly high level of protection; see e.g. *Miller v COP* [2022] 1 WLR 4987 at §73:

[T]he Strasbourg court has made clear that there is wide protection for all expressive activities by virtue of a very broad understanding of what constitutes an interference with freedom of expression. That is particularly so in the context of political speech and debate on questions of public interest and the Strasbourg court has emphasised that there is “little scope under article 10(2) of the Convention for restrictions on political speech or on the debate of questions of public interest”: see *Vajnai v Hungary* (2008) 50 EHRR 44, para 47...

7. The need for that protection is beyond doubt: as Knowles J said at first instance in the same case (quoted *loc. cit.* §116) referring to evidence from Professor Kathleen Stock:

Professor Stock’s evidence shows that some involved in the debate are readily willing to label those with different viewpoints as “transphobic” or as displaying “hatred” when they are not. It is clear that there are those on one side of the debate who simply will not tolerate different views, even when they are expressed by legitimate scholars whose views are not grounded in hatred, bigotry, prejudice or hostility, but are based on legitimately different value judgments, reasoning and analysis, and form part of mainstream academic research.

8. That intolerance has already had serious consequences for those holding and expressing gender critical views in a number of well-publicised cases: to name a very few, Professor Stock herself was bullied out of her post at Sussex University; Maya Forstater was let go by the think tank she worked for; Rosie Kay was forced out of the dance company she had founded and which bore her name; James Esses was expelled from his vocational therapy course; and JK Rowling, has been the target of multiple death and rape threats since tweeting her support of Maya Forstater.

9. In 2020, Ms Meade shared or commented on a number of Facebook posts touching on the proposed reform of the Gender Recognition Act 2004, and related topics. Her Facebook page was private, shared with about 40 contacts (“friends”), and did not mention her professional status as a social worker.
10. One of Ms Meade’s Facebook friends in 2020 was AW, a social worker who had worked with Ms Meade for a time at Westminster City Council. Ms Meade had known AW since a social work student placement with WCC, and she considered AW a friend in the ordinary social sense of the word. In 2020, AW made a collection of some 70 or so screenshots of Ms Meade’s Facebook posts, and made a complaint about her to Social Work England on 15 June 2020, asserting that a number of her Facebook posts were “transphobic” in nature, or evinced “discriminatory views”.
11. A triage decision-making team at SWE referred the case for investigation of possible impairment of Ms Meade’s fitness to practice on grounds of misconduct on 4 November 2020. The team concluded that the concerns raised were serious, and that there were reasonable grounds to refer the complaint to Case Examiners to investigate. Ms Meade was notified of this decision on 9 November 2020. The notification included this summary of the charges against her:

The social worker has posted and/or shared posts on Facebook that are discriminatory in nature.

The social worker has signed petitions by organisations that appeared to pursue a discriminatory goal.

The social worker has donated money to people and/or organisations who appear to hold and/or have publicised discriminatory views.
12. Ms Meade responded on 23 November 2020. She was not at the time aware that gender-critical views could be protected in law, and she believed (rightly as matters turned out) that the complaint posed a credible threat to her livelihood; and in addition, she accepted that SWE was entitled to set standards for the profession. As a result she adopted an apologetic tone, saying (among other things):

I was naively unaware that any posts I shared or liked were discriminatory or offensive in nature as I'm afraid to say I had not fully read or analysed their content before posting. I would not knowingly wish to share posts which would appear to support discrimination to any individuals or groups.

In response to these concerns I have removed all posts, unfriended any organisations or friends that may share posts to my face book account. I acknowledge that I was naïve and showed lack of judgement in my use of social media.

13. Ms Meade's managers, whom she told about the complaint as soon as she was notified of it, were supportive of her, and there was at this time no suggestion of a separate workplace disciplinary process.
14. In June 2021, the SWE Case Examiners wrote to Ms Meade to offer her a choice between accepting a public sanction in the form of a one-year warning, and having the matter referred to a Fitness to Practice panel for hearing. Ms Meade chose to accept the warning, hoping that this would be the end of the matter.
15. The warning was finalised as an accepted disposal on 8 July and posted on SWE's website the following day. Ms Meade forwarded the decision to her manager a couple of weeks later. On 22 July 2022, she was invited to a Zoom meeting at which she was told that she was suspended with immediate effect pending an investigation of gross misconduct charges arising out of the SWE sanction. She learned later that three members of her management chain were suspended at or around the same time, apparently for their failure to escalate the matter of the complaint to higher management as soon as it had arisen.
16. As a result of this development, Ms Meade sought to reopen the regulatory sanction that she had agreed to accept. There were procedural complexities in that which I need not go into here, but the upshot was that SWE withdrew the sanction and referred the matter to a Fitness to Practice hearing instead.
17. Ms Meade remained suspended until a few days after a disciplinary hearing on 8 July 2022, at the conclusion of which she was given a final written warning to remain on her file for

two years. The letter containing the warning characterised the misconduct of which she had been found guilty as follows:

[Y]ou shared some posts on your Facebook account (posts on pages 58 and 94 of the screenshots provided to SWE and the Local authority) which could undermine a service user's confidence in you as a social worker.

18. She was also told:

The Council expects to see an immediate and sustained improvement in your conduct. You should be warned that the likely consequence of further similar misconduct would result in disciplinary action that may lead to dismissal from the Council's service.

19. The same message was emphasised in her return to work meeting on 25 July 2022:

Discussed that boundaries around behaviours will need to be maintained and [Manager] will be carefully monitoring with Rachel and within the team. Expectation outlined that for example Rachel will not be discussing her views with team members who may not previously have been aware of her views but who now are. We discussed that any incident will need to be escalated to Head of Service and HR for advice.

20. Ms Meade appealed the warning.

21. At the Fitness to Practice hearing took place on 17 October 2022, SWE discontinued the regulatory proceedings. On 15 November 2022, the Council wrote to Ms Meade upholding her disciplinary appeal withdrawing the warning.

The claims and responses

22. Ms Meade is now back at work, and since both sanctions have been withdrawn once again has an unblemished regulatory and disciplinary record. But it is clear that both processes took a severe toll on her. Suspension in particular cut her off for just short of a year from the work she loves, and substantially deprived her of contact with her colleagues. She

incurred substantial legal costs in fighting both the regulatory and the internal disciplinary cases. And her public participation in an urgent and important public debate has been completely silenced since November 2021. That remains the case. Although the appeal outcome letter of 15 November 2022 withdraws the disciplinary warning, this passage makes it clear that WCC still considers Ms Meade's conduct to have fallen short of the expected standard, even if not to an extent sufficient to justify a formal sanction:

The Adjudicating Officer made clear that there are two social media posts that she considers to be "beyond the line" in terms of breaching WCC's code of conduct. Bearing in mind that these were only shared on a private group, and that you have not shared any similar posts in the last two years, I conclude that these posts are not sufficient reason to uphold the sanction.

23. Ms Meade has complained of discrimination on grounds of her gender critical belief, protected under section 10 of the Equality Act 2010, by both SWE and WCC. The Respondents' pleaded cases are uninformative, comprising little more than bare denials that Ms Meade's protected belief was the reason for the various acts complained of, limitation defences, and in both cases putting Ms Meade to proof of her protected belief.

Merits of the claims

24. Stripping matters down to their essentials, the tribunal will have to decide three things:

- a. Did Ms Meade hold a protected belief?
- b. Was the treatment to which she was subjected to related to or because of that belief?
- c. Should any of her claims fail because the events they are based on took place more than 3 months before she started her claim?

(i) Protected belief

25. The EAT in *Forstater* held that “gender-critical” belief is protected. Ms Meade’s pleaded belief is highly congruent with Ms Forstater’s; and the Facebook posts that were the subject-matter of AW’s complaint to SWE were straightforward expressions of that core gender-critical belief.
26. That being so, the Respondents’ strategy in putting Ms Meade to proof of her assertion that she held the requisite protected belief is opaque. Doing the best I can with it, I think the Respondents are hoping to treat *Forstater* as defining a core gender-critical dogma; and then to use Ms Meade’s initial apologetic response to the complaint as a basis on which to catch her, in cross-examination, in some unorthodoxy inconsistent with that dogma.
27. If that is the strategy, I do not think it will succeed. The contemporaneous documentation makes it clear that both respondents were reacting, in their treatment of Ms Meade, to what they understood to be expressions of perfectly mainstream gender-critical belief. I do not think the tribunal is likely to be interested in fine distinctions between different varieties of gender-critical belief.

(ii) *Causation*

28. To succeed in her complaint of direct discrimination, Ms Meade will have to establish that she was subjected to detriments because of her gender-critical belief. Judging from its witness statements, the Respondents’ strategy here appears to be to assert that they acted as they did not because Ms Meade held or expressed gender-critical views, but because what she said could have caused offence.
29. There are two problems with this strategy. The first is that it is inconsistent with the manner in which the Respondents’ employees were explaining their decision-making at the time. The other is that it is an argument that proves much too much. If the punishment of otherwise legitimate expressions of certain “protected” beliefs can be excused on the basis that those expressions might offend some third party, the protection afforded by section 10

of the Equality Act - and indeed also by Articles 9 and 10 of the Human Rights Convention - is almost entirely vacuous.

(iii) *Limitation*

30. Both respondents plead limitation defences, saying that some of the acts complained of took place more than 3 months (plus adjustment for the early conciliation process) before Ms Meade presented her claim on 7 January 2022.

31. The problem with those defences is that the s.123 of the EqA provides that conduct extending over a period is to be treated as done at the end of the period. This was explained by Mummery LJ in *Comr of Police of the Metropolis v Hendricks* [2003] ICR 530:

I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the appeal tribunal allowed itself to be side-tracked by focusing on whether a "policy" could be discerned. Instead, the focus should be on the substance of the complaint that the commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed.

32. *Hendricks* was decided under the pre-EqA discrimination legislation, which spoke of an "act extending over a period"; but if anything, the change of wording to "conduct extending over a period" in the EqA brings the statutory wording more clearly into line with that decision.

33. It would be difficult to imagine a clearer case of "conduct extending over a period" than related disciplinary and regulatory processes, each going through a number of different stages. I can see the possibility of a slender argument for SWE that the regulatory process did not produce sufficient concrete detriments in the final period before Ms Meade's claim on 7 January 2022 for her to point to any relevant "conduct" in that period, with the result that her claim against her regulator would be technically out of time, but there are two answers to that. The first is simply that in all the circumstances of the ongoing intertwined

processes and their impact on her, Ms Meade has a very powerful argument for an extension of time on just and equitable grounds. The second is that both processes continued until very recently, and Ms Meade has now presented fresh claims bringing matters fully up to date. Now she has done so, I think the Respondents' already weak limitation defences fall away entirely.

Conclusion on merits

34. The evidence is overwhelming that both Ms Meade's regulator and her employer allowed a former colleague of hers to use them to bully her because of her protected belief, over a long period and with severe consequences for her. That evidence is almost all in the form of contemporaneous documents whose authors appear not to have been inhibited by any awareness that gender-critical beliefs might turn out to be protected. Some of those decisions were made after the first instance judgment of the employment tribunal in *Forstater* on 18 December 2019, which held that gender-critical beliefs were "not worthy of respect in a democratic society", and before the judgment of the EAT to the opposite effect in the same case, handed down on 10 June 2021. That may afford some explanation for the Respondents many errors, but no legal excuse.
35. I consider that Ms Meade has an excellent chance of substantial success against both SWE and WCC, securing declarations of discrimination, compensation for injury to feelings, and recommendations for remedial action by both respondents. Although she suffered no loss of earnings, the impact of both processes on her including in particular a year's unwarranted disciplinary suspension can be expected to be reflected in the award of damages. She has claimed aggravated damages, and there are various features of each Respondent's conduct that I consider apt to justify such an award.
36. My Instructing Solicitors have sent both Respondents an open offer warning that their defences are without merit and that if they persist in them and fail, Ms Meade is likely to apply for her costs. I consider that warning fully justified.

Wider public significance

37. The tribunal will deal with the case, as it must, within the framework of the EqA. Within that paradigm, the case is a story about the bullying of an individual on prohibited grounds by her employer and her regulator. Ms Meade, an individual social worker, has been bullied, and the violation of her right to freedom of expression (and especially her right to freedom of expression on political matters) continues up to the present. The case is undoubtedly important in those terms; in particular because it is the first time a regulated professional has sued her regulator in the employment tribunal for discrimination on grounds of gender critical belief. If her claim succeeds, the outcome will give not only SWE but also all other regulators pause (including, importantly, those that regulate the medical, therapeutic and legal professions) before they allow their processes to be used to curtail freedom of expression on issues of gender identity.
38. But to understand the full public importance of the case requires a wider focus. Social workers deal with some of the most vulnerable children and adults in society, and their work may at any time require them to grapple with questions about gender identity and child development; how best to meet the needs of gender questioning children; children and adults' entitlement to same-sex intimate care; clear communication around healthcare (especially for those without mother tongue English); and a host of similar matters. In other words, the social work profession is one of those in which the public debate about sex and gender has the greatest practical urgency.
39. Despite the importance to social work of these questions, there is little if any public discussion of them from social workers from a gender-critical perspective. Bearing in mind that there are more than 120,000 registered social workers in the UK, this reticence is striking. By one means or another, almost all public debate among social workers on these urgent questions appears to have been effectively silenced.

40. It seems reasonable to infer that the example that has been made of Ms Meade has contributed to this silence. Meanwhile, neither Social Work England nor Westminster City Council has to date given any indication – either in public or in private – that they recognise any significant fault in the manner in which they have treated Ms Meade, with the result that the message, both to her and her colleagues and more widely, remains that social workers cannot contribute to the debate from a gender-critical perspective without serious risk to their careers.

41. The article 9 and 10 freedoms of thought, conscience, belief and expression are not just personal freedoms whose destruction hurts individuals; upholding them is essential to the proper functioning of institutions and professions, and of a healthy society and democracy in which received wisdom, new ideas and established practice can all be subjected to dissent, questioning and scrutiny. In pursuing this case, Ms Meade is not merely seeking personal vindication: she is (at considerable personal cost) performing a service to her profession, and to the vulnerable groups it serves.

42. In the circumstances, it is difficult to over-state the wider public importance of this case.

Naomi Cunningham
OUTER TEMPLE CHAMBERS

20 December 2022