

Maya Forstater Case Resource

CN. Transphobia, TERFs

This resource is intended as a summative guide of the Forstater case¹ and what this ruling may mean for transgender people's rights in the UK. There has been much misinformation and confusion about the case's ruling, largely due to the reaction from the anti-trans British media and reaction on social media². We want all trans people to have accessible information to understand what this ruling was actually about, what the Judge actually said, and what implications this has for future interpretations of the 2010 Equality Act.

Please note- although we have some legal background, neither of the authors of this resource are qualified solicitors, and this resource is not intended to be an authoritative or exhaustive account of the case. For all legal advice and guidance, please contact a qualified party such as the [Citizens Advice Bureau](#).

Outline of the Case

The Employment Tribunals Case Number: 2200909/2019

13-21 November 2019

Claimant- Maya Forstater

Respondent- Centre for Global Development

- Maya Forstater was a tax expert working in a think tank called the Centre for Global Development (CGD), a charitable organisation that campaigns against poverty and inequality. Her contract to work for CGD was not renewed after Forstater's numerous anti-transgender posts on social media came to light.
- Politically, Forstater identifies as a "gender-critical feminist"- a type of feminism that claims that sex and gender are biological and immutable, that a person cannot change their sex or gender.
- Forstater repeatedly misgendered trans people online and in relation to trans people she knew in a professional context, refusing to use their correct pronouns. She also wrote articles explaining her anti-trans views and shared them with her colleagues at work.³
- After the CGD refused to renew her contract, Forstater took the organisation to an employment tribunal, a type of court that deals in matters of employment, to claim they'd acted illegally and discriminatively in firing her. Forstater's case was supported by the Index on Censorship, and was crowdfunded on the site CrowdJustice.

¹[Maya Forstater v CGD Europe and others: 2200909/2019](#)

²[Judge rules against researcher who lost job over transgender tweets](#)

³[I lost my job for talking about women's rights](#)

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- This case was significant because it was a “Test case” - the first time this particular question on whether anti-trans beliefs are protected under the equality act had been put to the British courts.
- Rulings by the Employment Tribunal are legally binding but they don't set precedent⁴ (they won't mean every future case on this subject is bound to make the same conclusion). However they do have legal weight, and may mean less cases on this subject appear before the courts in the future.

The Legal Test

Forstater claimed her belief that transgender women were really men, and could never be women, was protected under the 2010 Equality Act⁵ as a philosophical belief. If her anti-trans views met the test of being a philosophical belief under the Equality Act, this would mean her beliefs are protected by law, and so the organisation could not refuse to renew her contract on the basis of these beliefs.

In order for a belief to be considered a ‘philosophical belief’ and therefore be protected under the Equality Act, it must meet the Granger Criteria. These are five points all of which must be satisfied and are as follows:

1. The belief must be **genuinely held**.
2. it must be **a belief and not an opinion or viewpoint** based on the present state of information available
3. it must be a belief as to a weighty and **substantial aspect of human life** and behaviour
4. it must attain a certain **level of cogency, seriousness, cohesion** and **importance**; and
5. it must be **worthy of respect in a democratic society**, not be **incompatible with human dignity** and not conflict with the **fundamental rights of others**.

The Judgement

- Ultimately, the initial employment tribunal stated her belief was not protected because it was **absolutist**⁶ - there were no exceptions to her belief that under no circumstances were trans women women or that trans men were men, even if they possessed a Gender Recognition Certificate (GRC).
- In terms of the legal test, her belief met the first 4 legal requirements but failed on the final point, i.e. it was **not worthy of respect in a democratic society**

⁴ [Maya Forstater: Woman loses tribunal over transgender tweets](#)

⁵ [Equality Act 2010](#)

⁶ [THE EMPLOYMENT TRIBUNALS](#)

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- Much of what the Judge said doesn't have a great deal of relevance to future cases or assessments, although anyone who wants to read the judgement in full can do so [here](#). The first 3 strands of the test were considered by the judge to be met easily.

However part 4 of the test - whether Forstater's anti-trans beliefs met a 'certain level of cogency, seriousness, cohesion and importance' - contains some interesting quotes from the Judge about whether transphobia is considered a cohesive belief in the eyes of the law.

- "[Her belief] is avowedly not religious or metaphysical, but **is said to be scientific**. Her belief is that a man is a person who, if everything is working, can produce sperm and a woman a person who, if everything is working, can produce eggs. [...] **The Claimant largely ignores intersex conditions and the fact that biological opinion is increasingly moving away from a absolutist approach** [to the science of determining sex].
- However, I bear in mind that "coherence" mainly requires that the belief can be understood and that "not too much should be not expected". **A "scientific" belief may not be based on very good science** without it being so irrational that it is unable to meet the relatively modest threshold of coherence.
- On balance, **I do not consider that the Claimant's belief fails the test** of being "attain a certain level of cogency, seriousness, cohesion and importance"; **even though there is significant scientific evidence that it is wrong**.
- I also cannot ignore that **the Claimant's approach** (save in respect of refusing to accept that a Gender Recognition Certificate changes a person's sex for all purposes) **is largely that currently adopted by the law**, which still treats sex as binary as defined on a birth certificate."

Lastly, the judge ruled that Forstater's total anti-trans views failed the last requirement of the test- they were not 'compatible with human dignity' and such beliefs also 'conflict with the fundamental rights of others.'

- "I consider that the Claimant's view, in its **absolutist** nature, is **incompatible with human dignity and fundamental rights of others**. She goes so far as to **deny the right of a person with a Gender Recognition Certificate to be the sex to which they have transitioned**.
- I do not accept the Claimant's contention that the Gender Recognition Act produces a mere legal fiction. It provides a right, [...] for a person to transition, [...] and thereafter to be treated for all purposes as the being of the sex to which they have transitioned. [...]
- Therefore, **if a person has transitioned from male to female and has a Gender Recognition Certificate that person is legally a woman. That is not something that the Claimant is entitled to ignore.**"

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- **“There is nothing to stop the Claimant campaigning against the proposed revision to the Gender Recognition Act to be based more on self-identification.** She is entitled to put forward her opinion that these should be some spaces that are limited to women assigned female at birth[...]. However, that does not mean that her absolutist view that sex is immutable is a protected belief for the purposes of the Equality Act.
- **The Claimant can legitimately put forward her arguments about the importance of some safe spaces that are only available to women identified female at birth, without insisting on calling trans women ‘men’.**”
- I conclude from this, and the totality of the evidence, that the Claimant is absolutist in her view of sex and it is a core component of her belief that **she will refer to a person by the sex she considered appropriate even if it violates their dignity and/or creates an intimidating, hostile, degrading, humiliating or offensive environment.** The approach is not worthy of respect in a democratic society.”

Implications of the Ruling

- As highlighted in the last paragraph, the crux of the case was on the fact that intentionally and absolutely mis-gendering transgender people violates their dignity and creates an “intimidating, hostile, degrading, humiliating or offensive environment”, meaning such behaviour cannot be defensible as a legally enshrined right under the equality act.
- This ruling does NOT mean that Forstater’s views were illegal to hold, or that they constitute hate speech. It does NOT mean that she will face legal punishment for holding them per se.
- It only means that her absolute belief in totally refusing to gender any transgender people correctly is not a protected belief, akin to a philosophical or religious belief as identified under the 2010 Equality Act. As seen in this case, an employer (such as business, charity or government department) may therefore take her belief into account when making decisions such as whether to renew her employment contract.
- Self-proclaimed “gender-critical feminists” would still be legally protected for criticising transgender rights⁷, and can still hold a belief in so called “single-sex spaces”, ect. The ruling only means that they cannot be protected under the Equality Act if they argue these beliefs in such a way as to offend the rights and dignities of others, i.e. of trans people.

⁷ [Maya Forstater’s case was about protected beliefs, not trans rights | Gaby Hinsliff](#)

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- The ruling does not necessarily demand that Forstater, or anyone else, need to use “she” pronouns for trans women, or “he” pronouns to trans men, only that Forstater can’t insist that all trans women are really men as a central tenet of her belief if she wishes for it to be legally protected. ⁸
- If, for example, Forstater had still upheld being a “gender-critical feminist” and had campaigned against trans right but had gendered trans people neutrally using “They” pronouns and had recognised the validity of a Gender Recognition Certificate, then it’s likely the Judge would have protected her beliefs under the 2010 Equality Act. This is because, although we may still believe her views to be transphobic, she wouldn’t necessarily have been infringing on the rights or dignity of trans people by sharing them.
- As stated above, cases in the Employment Tribunals do not carry the same legal weight of precedent as cases heard in the Courts. Future hearings in either the tribunal or the courts may decide differently on this matter, and may or may not set a different precedent.

Appeal

In January 2020, Forstater’s legal team submitted an appeal to the Employment Appeal Tribunal in an attempt to challenge the decision made by the first Judge and to claim that the law was misapplied in this case. Forstater’s legal team have not shared much more information on how they will be challenging the initial ruling, but it seems clear they will argue that her absolute anti-trans views meet the final part 5 test of the 2010 Equality Act, i.e. that they are worthy of respect in a democratic society, and do not conflict with the fundamental rights of others.

It is difficult to say at this time whether the Tribunal will hear the appeal and what their ruling will be. The Coronavirus epidemic has postponed a lot of non-essential legal activity so no dates have yet been given. We’ll be following this case closely and update this resource with any new information when it comes out.

⁸ [The Maya Forstater case and so-called ‘gender critical’ feminism: what was actually decided and what does it reveal about UK discrimination law?](#)