

LexisNexis: Employee holding gender critical beliefs suffered harassment and employer failed to take reasonable steps to prevent it

In a recent LexisNexis article, BDBF's Principal Knowledge Lawyer Amanda Steadman and Senior Associate Yulia Chizh, examined the case of *Fahmy v Arts Council England*, where an employment tribunal considered whether an employee suffered harassment related to her gender critical beliefs and whether her employer was able to avoid liability on the basis that it had taken reasonable steps to prevent it.

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Employee holding gender critical beliefs suffered harassment and employer failed to take reasonable steps to prevent it (Fahmy v Arts Council England)

07/08/2023

Employment analysis: In *Fahmy v Arts Council England*, an employment tribunal considered whether an employee suffered harassment related to her gender critical beliefs and whether her employer was able to avoid liability on the basis that it had taken reasonable steps to prevent it. Amanda Steadman, principal knowledge lawyer, and Yulia Chizh, senior associate at BDBF examine the case and the key takeaways from the decision for employers.

Fahmy v Arts Council England [ET Case No 6000042/2022](#)

What happened in this case?

Ms Fahmy worked for Arts Council England (ACE). She holds gender critical beliefs, meaning she believes that sex is real, important and immutable and should not be conflated with gender identity. She does not believe that trans women are women, nor that trans men are men.

ACE created a fund to support creative and cultural activities during the Queen's Platinum Jubilee. The London Community Foundation (LCF) was responsible for awarding part of this funding to organisations in London. In April 2022, the LCF made a funding award to an organisation called the LGB Alliance to make a film. The LGB Alliance has faced accusations that it is transphobic due to the exclusion of trans issues from its campaigning remit. Following a negative reaction on social media, LCF suspended the grant.

On 14 April 2022, ACE held a 'drop in' Teams video meeting open to all staff to discuss this decision. Around 400 out of 700 staff members attended, including Ms Fahmy. The meeting was chaired by Mr Mellor, the Deputy CEO of ACE. During the meeting, Mr Mellor said that the LGB Alliance was 'a divisive organisation' with a history of trans-exclusionary activity and that his personal view was that the funding award had been a mistake.

Ms Fahmy challenged Mr Mellor, stating that it was misleading to describe the LGB Alliance as anti-trans. She also asked how gender critical views were protected within the organisation. Other employees on the call made comments criticising Ms Fahmy's position stating that it was 'extremely disappointing' to see a defence of the LGB Alliance. Another said that ACE was not obliged to protect people's views, only to protect the welfare of its employees.

After the meeting was over, Mr Mellor contacted Ms Fahmy to acknowledge that the session must have been 'uncomfortable' for her and that Fahmy might be feeling 'a little isolated and bruised'. Mellor also said these were hard issues to resolve. Fahmy replied, stating that she did not feel bruised or isolated and agreed that it was a difficult subject. Fahmy challenged Mellor's decision to voice his personal views in the Teams meeting and said this conflicted with ACE's duty to foster freedom of speech or a respectful working environment.

Later that day, Mr Mellor went on to send an all-staff email saying the 'well-being of everyone is our number one priority, and it always will be. This includes all our LGBTQIA+ colleagues. I particularly want to express my personal solidarity with our trans and non-binary colleagues'.

On 11 May 2022, another employee, known only as 'SB', sent an all-staff email encouraging staff to sign a petition created to raise a formal grievance about the Teams meeting and the colleagues who had expressed 'clear, homophobic, anti-trans views'. It was open to staff to add comments and several posted comments which referred to gender-critical beliefs as a 'cancer' and equated such views to racism or sexism. Another comment described the LGB Alliance as 'a glorified hate group' supported by 'neo-Nazis, homophobes and Islamophobes'.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk), Yulia Chizh (YuliaChizh@bdbf.co.uk) or your usual BDBF contact.