



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4102236/2023**

**Hearing Held at Edinburgh on 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup> January  
and 3<sup>rd</sup> and 4<sup>th</sup> April 2024**

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**Employment Judge McFatridge  
Members: Ms Watt  
Mr Cardownie**

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**R D Adams**

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**Claimant  
Represented by:  
Ms Cunningham,  
Barrister  
Instructed by  
Messrs Gunnercooke  
Solicitors**

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**Edinburgh Rape Crisis Centre**

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**Respondent  
Represented by:  
Mr Hay, Advocate  
instructed by  
Worknest Law**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The unanimous Judgment of the Tribunal was that:

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- (1) The respondents unlawfully discriminated against the claimant on the grounds of religion or belief.
- (2) The respondents unfairly constructively dismissed the claimant.
- (3) The remedy to which the claimant is entitled will be determined at a future Hearing.

### REASONS

1. The claimant submitted 2 claims to the Tribunal which were subsequently conjoined in which she claimed that the respondents had unlawfully discriminated against her on the basis of her belief and that she had been unfairly constructively dismissed. The belief the claimant relied upon was what in shorthand terms is often referred to as gender critical beliefs. The respondents submitted a response in which they denied the claims. They denied that the claimant had been dismissed and stated that she had simply resigned. They denied discrimination. The case was subject to a degree of case management. On 30<sup>th</sup> October 2023 the claimant having recently changed representative submitted an Application to Amend by substituting new consolidated Particulars of Claim and this amendment was accepted. The amended Particulars are set out at pages 94-105 of the Hearing bundle. At the commencement of the Hearing the respondents applied to amend their response. This amendment was opposed by the claimant but following legal arguments the Tribunal agreed to accept this amendment. Further details of this are set out below. At the Hearing the claimant gave evidence on her own behalf and evidence was led on her behalf from Nicole Jones who gave evidence in relation to a meeting she had attended at Edinburgh University in March 2023 which was addressed by the respondents' Chief Executive. Evidence was led on behalf of the respondents from Mhairi Roscoe Mathison (otherwise Mhairi Roscoe), a member of the respondents' Board of Trustees who chaired the disciplinary hearing involving the claimant, Katy McTernan, Head of Services with the respondents and a member of their senior management team, Miren Ochoa Sangues, Chair of the respondents' Board

who dealt with a grievance lodged by the claimant and Katie Horsburgh, a Board member who dealt with the claimant's appeal against the disciplinary outcome. The first two witnesses gave their evidence in chief orally however the parties agreed during the course of the Hearing that in order to save time the remaining two witnesses would give their evidence in chief by way of witness statements which they were then cross examined upon. At the outset of the Hearing the parties lodged a draft List of Issues and an Agreed Statement of Facts. Whilst the draft List of Issues was not agreed the parties were able to highlight their points of difference to the Tribunal and the document was of assistance to the Tribunal's deliberations. It is set out in the attached appendix for ease of reference. In advance of the Hearing the Tribunal granted a Rule 50 Order relating to the identity of a particular member of the respondents' staff who is referred to in the decision below as AB. The Tribunal also received and agreed to a request by an organisation called Tribunal Tweets who wished to live tweet the proceedings. During the course of the Hearing the respondents made an Application that this permission be revoked. After discussion the Tribunal declined to revoke the permission which had been given. Given that both parties made submissions on the point the matter will be further discussed in appendix 2 simply so that there is a record of our reasoning in the matter. The proceedings were recorded using the Tribunal's CVP system which also allowed a number of members of the public to view the proceedings remotely. The proceedings had initially been due to complete on 25<sup>th</sup> January. However the final evidence was only completed late on that day and there was no time for submissions. It was agreed that the parties would return on 3<sup>rd</sup> April and submissions were heard on that date. In advance of this the claimant's representative applied for and received a transcription of the evidence which had been led during the first 8 days. This was lodged and was made available to the Tribunal just before the last day of the Hearing on submissions. The submissions were not concluded until late on the day of 3<sup>rd</sup> April and the members of the Tribunal subsequently met on 4<sup>th</sup> April in order to deliberate on the Judgment in this case.

2. On the basis of the productions and the Agreed Statement of Facts and the evidence heard at the Hearing the Tribunal found the following essential factual matters relevant to the claims to be proved or agreed.

## 5 Findings in Fact

3. The respondent was founded in 1978 as a service provided for and by women. At all material times it has advertised its jobs and volunteer positions as for women only relying on the occupational requirement exception at Schedule 9 to the Equality Act 2010. At the time the claimant joined the organisation they provided their services to women and all trans-identified or non-binary people. The claimant had a career in the voluntary sector prior to joining the respondent in or about February 2021 as a Counselling Support Worker. She started her career running a respite holiday home for families experiencing poverty from Glasgow where she took a human rights based approach to poverty. She then moved into community development work and community education. She then worked for an organisation called "Bridging the Gap" in Gorbals, Glasgow bringing together people in different communities. She worked there for around 17 years. As well as her principal work in the voluntary sector she had an interest in a discipline called non violent communication. This is a set of tools, skills and principles which is used across the globe and is aimed at helping people get through difficult communications. The claimant worked extensively on this over the years and became a certified trainer in 2017. In "bridging the Gap" She worked with people who were refugees as well as with people experiencing sexual violence. Over the years the claimant worked extensively with people who had trans identities and worked well with them. Her training in non violent communication informed her other voluntary work. Part of her training involved seeking to understand the core motivations for what people were doing even if she disagreed with them or with their behaviour. She found this affected her approach to different views between her and her colleagues, for example she was able to work closely with Catholic churches in the Gorbals who were helping the same group of people but from a different ideological perspective. The claimant was successful in obtaining an appointment with the respondents and in advance of this she became aware

of their trans inclusion policy. The claimant was initially very excited and supportive of this. It was only subsequent to her appointment that she became more aware of what she saw as various parts of their approach which she felt to be “off”.

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4. Whilst supportive of individuals who are trans the claimant does not believe that gender identity is in all circumstances more important than sex. She believes that biological sex is real, important, immutable and not to be conflated with gender identity. She does not believe that everyone has a gender identity and she believes that biological sex is especially relevant in relation to sexual violence. She believes that a trauma informed approach to supporting survivors of sexual violence entails respecting both their understanding of others as male or female and their choice about whether they wish to engage with male or female support workers. These beliefs are currently referred to as gender critical or sex realist beliefs.

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5. Shortly before she started working the claimant met with the respondents' then Chief Operating Officer Maggie Chapman on 21<sup>st</sup> December 2020. She went for a walk with her. This was the first time that she heard what she described in the Tribunal as the “mantra” that “trans women are women”. She felt concerned that there was no real definition or clarification associated with this statement. She felt it was odd. Once she started work she felt it became more and more apparent that there were issues regarding the way that gender issues were dealt with in the organisation. She felt there were obvious places where the organisation needed to talk about it but felt that support workers were not permitted to talk about it. She described things around the issue as being “eggshelly”.

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6. She became aware early on that people who wrote into the organisation raising the issue were classed as bigots and that emails from them were stored in a folder called Hate emails.

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7. At around the time the claimant started the respondents advertised for a new CEO. The job advertisement which was sent out on 3<sup>rd</sup> February 2021 said that only women need apply, referring to Schedule 9 of the Equality Act.
- 5 8. In April 2021 staff were told that Mridul Wadhwa (MW) had been appointed as the respondent's new CEO. There was considerable press controversy about this appointment at the time on the basis that MW was a trans woman who did not have agender recognition certificate and was thus legally male. The claimant's understanding was that MW was biologically male but lives sincerely  
10 believing that she is a woman. The claimant was initially happy with MW's appointment as CEO as she felt that it would be helpful to have staff representing the range of service users using the service. She was aware that trans people experience an increased risk of sexual violence. Her view, however, was that it was important that the organisation be honest and clear  
15 with people and give people a choice. She had no issue with trans people using the service or working in the service. She felt that was a good thing. She did, however, feel that it was important to allow people to have choice on the basis of sex. She believed that 98 to 99% of sexual violence was perpetrated by male people however they identified. She believed that all victims of sexual  
20 violence would almost certainly wish to speak to a female person. She felt that the respondent's view that sex did not matter was wrong. She felt that their view that gender identity was the only thing that matters was incorrect. She also disagreed with their view that it is only one's personal preference which matters in relation to gender identity and that if someone says they are the  
25 opposite sex or non binary everyone should treat them that way.
9. Her belief was that sex is binary and everyone is either male or female at that level. Her belief was that whilst in most circumstances the distinction between biological sex and gender identity did not matter that in a service dealing with  
30 sexual violence the respondent should be honest and clear when asked to give a clear and unambiguous answer in order to provide that service users give informed consent. As a professional Counselling Support Worker she considered that informed consent was the basis of the counselling relationship. Her view was that as she came to know more and more of the respondent's

position which was that there is no difference between a man and a trans man or between a woman and a trans woman or a non binary person was simply incorrect and not possible. She believed that this approach would cause service users to self exclude from the service.

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10. Towards the end of her period working at the respondent the claimant became aware of a specific case where a woman in her 60s approached the Edinburgh Rape Crisis Centre and indicated she wished to take part in group work. She had kept secret for 40 years the fact that she had been sexually assaulted. She wished to meet other survivors as part of her recovery. The claimant was aware that during the course of her initial conversation she asked ERCC if they could reassure her that it was women only. She was advised that ERCC were trans inclusive and when she made clear that she was unhappy that she may be seeing someone who was not biologically female she was advised that she was not suitable for their service and was excluded from the service. The claimant was concerned that this meant that someone was effectively excluded from the services of the respondent for asking for a women's only survivors group. She also became aware later in her time with the respondent that the respondent had a policy of not referring people in this situation to Beira's Place which by this time was a sexual violence support centre set up specifically as a single sex space or as an organisation run by women for women.

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11. She became aware that the respondents would not as a matter of policy ever refer people to Beira's Place or even advise them of its existence. The claimant also came to have a concern that if the respondents gave ambiguous, or incomplete answers on this point then a situation could arise where the counselling relationship could be irretrievably damaged. She envisaged a situation where a service user would enter into a therapeutic relationship with a counsellor who she believed to be female and later discovered that the counsellor was in fact biologically male. Following the appointment of MW the claimant's concerns grew. She came to the view that the respondents' approach was inconsistent and unclear. With regard to non binary people she noted the content of the respondents' trans inclusion policy. This was reviewed during the course of her employment and the latest version is dated March

2022 and is lodged at page 172-177. She noted that the amended policy confirmed that non binary people are not protected under the Equality Act. Her understanding of non binary people is that it is someone who identifies as neither male nor female and she believes that this causes confusion with the policy which states that the organisation is women only. The claimant's own view was that women should not be treated in terms of male and female and did not require to conform to stereotypes of the female role. She herself was very clear she did not want to be stereotyped and did not try to look particularly feminine. She felt that to some extent non binary was a performative identity. She felt that it was inappropriate to say that one was non binary in order to escape female stereotype. She wished to see a world where everyone was simply treated as a human albeit with one or other biological sex. It was her view that given the binary nature of sex even those with disorders or with different genitalia were still either male or female but that it was entirely possible for people to decide to live as neither one nor another.

12. Following the appointment of MW the claimant felt that there were a number of matters which required to be discussed in relation to the issue which were not simply not being discussed. She became concerned that emails coming into the Centre expressing dissatisfaction with the appointment of MW rather than a woman were treated as hate mail. She discovered that they were put into a folder called "hate Mail". The claimant also listened to two podcasts which MW put out during this time. The claimant was very surprised at the language being used by MW. MW referred to people who did not agree with her approach as being bigots.

13. The claimant sought a meeting with Katy McTernan who was her Line Manager's Manager and the respondents' Director of Operations to say that she was concerned and felt that these issues were something which they needed to talk about. The claimant with her background in non violent communication was particularly concerned about some of the language being used. The claimant spoke to Ms McTernan about the podcasts which she had listened to where MW had said:



“If you are transphobic in a way that you don’t recognise trans people for who they are then my experience suggests that you are also racist, you are also ableist and probably a misogynist even though you might be a woman.”

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14. The claimant spoke about concerns about how in the light of what MW had said in that podcast MW would interact with those who didn’t share her beliefs. She explained about her own gender critical beliefs and that she feared that her own inability to agree that trans women were literally women would lead to her being called transphobic. Ms McTernan sought to reassure the claimant that MW was unlikely to be as activist in her performance in her role as CEO as she had been in the podcast where she was speaking primarily as a trans activist. The claimant had a wide ranging discussion with Ms McTernan and raised some anomalies. Asked how the organisation would deal with people with the situation where they would hire a person as a non binary when it was a woman only service Ms McTernan had indicated that she would ask non binary staff if they were willing to be regarded as females. The claimant also raised the issue regarding the file of emails being described as hate mail.

15. She raised the issue that MW did not have a gender recognition certificate and was therefore legally as well as biologically male. Ms McTernan explained that the reason MW did not have a gender recognition certificate was that she had transitioned in India. The claimant asked Ms McTernan if it would be possible for her to provide this information to potential service users in order to reassure them. The claimant was aware that there had been a considerable amount of publicity at the time in relation to the appointment of MW and that there was some controversy as to whether it was appropriate for a women only organisation to have appointed someone who was biologically male. The claimant’s impression was that Ms McTernan was not opposed to this although the matter did not proceed further.

16. Following MW taking up office on 5<sup>th</sup> May 2021 the claimant had an introductory meeting with her. This was a lengthy meeting which lasted about 3 hours where the claimant spoke to MW about a range of topics impacting ERCC, the

rape crisis movement and plans for the Centre. There was some discussion on trans inclusion and trans people where a frank sharing of views took place.

- 5 17. An incident occurred towards the end of May where a survivor contacted the organisation for support who was a man. The organisation had responded saying that they did not support men and directed this individual to another resource. MW and another member of staff had intervened and agreed that the respondents would in fact provide support to this individual and that the support would be provided by a different team from the one the claimant worked in. MW sent an email to the members of the claimant's team and others 10 on 28<sup>th</sup> May setting out her reasons for doing this. The email was lodged (page 466-467). Within the text of this email MW identified that a member of her family was a survivor of sexual violence. The name and identifying details were redacted from the copy email lodged with the Tribunal but were provided in the 15 email sent to the claimant's team.
18. The claimant's team had responded to this email and written to MW suggesting that the counselling for the male service user be paused until a policy had been worked out. The claimant was upset by MW's reply which appeared to indicate 20 that the claimant and her colleagues had made assumptions that the service user was BAME and essentially accused those members who were concerned of being racist. The claimant also felt it was inappropriate to disclose that sexual violence had been visited on a minor since this minor could by definition not give consent to the disclosure.
- 25 19. On 11<sup>th</sup> August 2021 the claimant forwarded two colleagues an email from the respondents' support inbox expressing distress about MW's remarks on a podcast entitled "Guilty Feminist". The claimant said she believed that the email deserved a considered response and offered to help draft it. MW 30 responded to say that she would respond to the email and later in the day confirmed that she had done so. The claimant asked to see MW's response but MW did not send it to her. (Pages 475-478).

20. At this time there was still considerable press coverage of the appointment of MW which included criticism of the fact that someone who was a biologically male person had been appointed as Chief Executive Officer of an organisation which was meant to be women only. Shortly after that Anne Carr, one of the respondents' Managers wrote to all staff confirming that despite the criticisms the organisation had had some success in fund raising. She shared a number of positive emails about the appointment of MW. (page 619).

21. The claimant joined in this thread and in her email (page 620) she went on to raise some issues regarding inclusion which concerned her. She set out her view that fear fuelled hatred and she was 'always up for a chat' regarding these complexities. MW responded stating:

"The senior leadership team is working on a response right now that will help us all to respond sensitively and sensibly to those who are worried about using our service. It will be ready soon for staff to look at. We will need to do more as we go through the year." (Page 621)

22. Following this exchange the claimant subsequently became concerned that nothing seemed to be happening and having originally been told that she could discuss these issues with Katy McTernan she was advised that Ms McTernan did not have capacity to take these matters forward. The claimant therefore wrote to Lauren in relation to an organisational response to the various critical emails ERCC had received (p622). She also referred to the controversy which had arisen following the Guilty Feminist podcast and raised the issues she had previously discussed directly with Mridul Wadhwa at their meeting. She referred to having read the emails and spoken to about a third of the staff over the last 6 months. She referred to staff reporting anxiety, frustration and an "eggshelly atmosphere". She noted that the toxic and polarised exchanges outside of the organisation were scary and that people wanted more nuanced discussion. She went on to state:

"Positions on this topic are understandably held very tightly and with a huge amount of meaning, personal history and often trauma attached to them. One suggestion for moving forward is to form a group of staff and Board members who are each individually confident that they can

hold people with very different views than theirs with care and respect and still see their humanity ....”

5 The full email was lodged (page 622-623). The process did not proceed any further.

23. In August 2021 the claimant wrote to the members of the senior management team expressing her concerns about an email which had been received in the support inbox. Her concern was that she believed that this email was simply  
10 going to be filed in the “Hate emails” folder and she felt it deserved more of a response. Her email to the management team stated:

15 “I am forwarding this email from the support account to the info account as I imagine that for some of you it would come under the category of transphobic. I will delete it from the support account. I know many of the emails we have received since Guilty Feminists went out are phobic and hateful, as has much of the social media been. That is not acceptable and I would not wish them on anyone. For me this one I believe merits careful reading and a considered response. As  
20 someone less impacted by these emails I would be willing to help draft ones. I also think it points to a need for more discussion within our service about how to talk about this issue with other organisations and in public.” (page 475)

25 The email in question was from a service user whose name was redacted. It is lodged (page 475-476). It is probably as well to set out the terms of this email in full.

30 “I have spent most of the last 24 hours either in tears or trying to hold them in to not alarm my husband or young daughter.

35 I listened to the Guilty Feminist podcast discussion with your CEO in the morning. Near the start of the interview the host mentions a friend that said no but the man raped her anyway. She refused to have that be her story, so she continued to date him to bury what he had done to her so she didn’t have to face that reality. That happened to me 15 years ago now. Thankfully I didn’t date him but he has followed me on every social media account I have had since. Instagram, Facebook, LinkedIn, Twitter, you name it he’s found me. I immediately blocked  
40 him never really understanding why I found it so irritating when his name popped up. It’s been nagging at the edges of my consciousness for the last year or so but that story brought it screaming back through the course of the day.

5 It started as flashbacks being held/restrained by my older brothers as  
a child. Not for anything sinister just to irritate me as older brothers do  
to exert and demonstrate their power over me and keep me in line.  
That feeling of knowing you will never physically overpower this person  
so you may as well submit started to rise. I had spent several hours  
trying to battle flashes of that night 15 years ago while also avoiding  
my innocent and supportive husband flinching when he tried to give  
me a cuddle. I lost in the end and have been left quite starkly with the  
10 reality that a man I met 15 years ago raped me. I was raped by a guy  
I met on You dates.

15 To hear you are CEO of a Rape Crisis Centre say that I am a bigot  
because I could not bear to be in the proximity of my husband  
yesterday let alone a male who is a complete stranger was an absolute  
punch in the gut. The idea of reframing my trauma to make him, or  
any male more comfortable while trying to hold myself together and  
not descend into that all too familiar dark spiral makes me incredibly  
angry.

20 I also happened to be a trainee counsellor (which is always why this  
episode, being raped has been nagging at my consciousness) and the  
assertions of your CEO that "therapy is political" are so completely  
abhorrent I felt compelled to write this email. From day one of  
counselling training the focus is on gaining enough self awareness to  
25 put aside your own agenda and be entirely with the person in front of  
you that has come to you for help and understanding. To put aside  
your own prejudices to accept that person for exactly who they are a  
human being that needs help. The idea that it is the counsellor's  
position to challenge prejudices that the client does not wish to  
30 challenge is against every word the BACP ethical framework as I  
understand it.

35 My trauma is 15 years old and I could not bear to be near my own  
husband last night. I believe as humans we can assess almost  
immediately if the person in front of us is male or female, regardless  
of their gender identity. How can you run a Rape Crisis Centre based  
on the belief that a deeply recently traumatised female does not have  
the right to say she does not want to be alone with a male and if she  
40 does express that she is a bigot?

45 I would like to be clear. I absolutely understand the needs and rights  
of males that have been victims of sexual violence and do not wish to  
take away from their decisions around if they feel safer with a male or  
female or right to support in any way. I just do not understand how  
you could think the position of your current CEO is tenable after  
publicly declaring that women are bigots for demanding the same  
rights?

5 In all honesty I rolled my eyes a bit when the conversation mentioned something along the lines of sexual violence doesn't have to be physical it can be words. I thought pfft, words are not violence. By the end of the day for the first time I understand how words could be violence as well. Thank you for that. It's helped my growth and training. I felt deeply violated by the words of your CEO. I am lucky in that I have had a counsellor that I was able to contact this morning and can fit me in on short notice. I also have my peers from my counselling training to talk to and be heard with the rage, hurt and anger I am feeling after listening to that podcast. I am also sufficiently far in my training not to internalise feelings that have been triggered by your CEO but leave those entirely with the CEO.

15 I do truly hope your CEO will reflect on the damage she has done, the work she clearly needs to do to address their own prejudices. I sincerely hope she will do the right thing and resign to do that work and restore women's faith in your service.

20 My heart goes out to any women who will no longer feel they can turn to Edinburgh Rape Crisis Centre in their darkest hour. I truly hope they are able to access the support they do so need and deeply deserve."

24. MW responded to the claimant on 11<sup>th</sup> August saying that she would write the response herself (page 477). She later confirmed that she had done so. The claimant asked for a copy of the response but did not ever receive this.

25. On 21<sup>st</sup> September 2021 a member of the public identifying herself as a Black lesbian feminist wrote an open letter to the respondent asking the respondent to ask its service users their views on women only spaces and trans inclusion. MW acknowledged on SLACK (the respondents' internal communication system) that the letter had been received and said that the Centre would not respond in due course . MW said that the respondent had engaged with the writer previously and did not believe the writer was acting in good faith.

35 26. On 1<sup>st</sup> October 2021 Nico Ciubotariu (NC) started work for the respondent as its Chief Operating Officer.

27. On 5<sup>th</sup> October 2021 the claimant emailed all staff to announce mandatory trans inclusion training to be delivered by Vic Valentine of Scottish Trans Alliance. The claimant attended the training on 9<sup>th</sup> November. During the training the claimant was shown a video made with school children around 12

to 13 years old who identified themselves as trans. The claimant was shocked at a particular section of the training which showed the children talking about the “stupid questions” which they should not be required to answer. The claimant noted one of the children said they had been asked about whether their medication meant they would be able to have children in the future. This was dismissed as one of the “stupid questions” which came from a ‘place of discrimination.’ The claimant expected adults around any young person in that situation to be able to ask that question and it seemed odd to the claimant that such a question was said to be something which could only be regarded as transphobic and discriminatory. The claimant raised this at the training but was immediately shut down. The claimant was told by a number of those present that she was ‘expecting trans people to be answerable for their identities’ and told that she was simply wrong. Two seniors including Kim Townsend, the claimant’s direct Line Manager both confirmed this to the claimant.

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28. On 17<sup>th</sup> March 2022 Kim Townsend, the claimant’s Line Manager wrote a reference for the claimant to support her application for a 3 year counselling diploma course (page 181). The reference was in supportive terms. It noted that the claimant often went above and beyond what was expected from her role and that she could not recommend the claimant highly enough for a place on the counselling diploma.

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29. The position by March 2022 was that the claimant was a fully integrated member of the respondents’ staff. The respondents at that time were run by a Chief Executive who was answerable to the volunteer Board of Directors. There were 3 senior posts; the Chief executive officer was Mridul Wadhwa. The Chief Operating Officer was Nico Ciubotariu (NC). Previously this had been Maggie Chapman who had left. The Services Manager was Katy McTernan. There were another 37 employees in different teams. Each team had a Line Manager. There was an Advocacy Team, a Children and Young People Team, a team dealing with the BME community, a Prevention Team and 3 geographical teams. The claimant worked in Edinburgh Adult Services and her Line Manager was Kim Townsend. By March 2022 the claimant had through the various interactions set out above made it reasonably clear that

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she had issues with how the gender identity belief which appeared to underpin many of the views of the respondents' senior management as well as others within the organisation and how it intersected with service delivery or might affect service users.

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30. On or about 31<sup>st</sup> March 2022 one of the other members of the claimant's team (AB) forwarded an email to other colleagues. AB was formerly known by a name which sounded and read as if she was female. The claimant's understanding which mirrored that of her colleagues was that AB was biologically a woman but that at around this time they were identifying as non binary. The email sent stated:

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"Subject: Changing my name

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Hi everyone I hope you're all well and enjoying the bit of sun and spring we're getting. I wanted to let you know (in this quite uncomfortable medium of an email to all EESH) that I've changed my name. I'm going by [AB] now. My pronouns are still they/them.

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I'm not up for having conversations about my reasons for the change but please note I won't feel badly about it taking some time to get used to. It's taking me some time to get used to it too.

With love

AB"

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31. The new name which this Support Worker adopted was one which sounded and appeared to be male. It was a name which is on occasions used by women but when a woman uses it it is spelt differently. Prior to the commencement of the Hearing both parties had agreed that a Rule 50 Order be made preventing AB being identified either by their previous or current name. In the remainder of the Judgments the initials AB will be used for this person.

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32. Following receipt of this email the claimant and members of her team had a concern that service users were being referred to AB might have a concern that AB was male.

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33. There was a brief interaction between the claimant and Mridul Wadhwa in May 2022. The claimant had attended a meeting with an organisation called



“Smartworks” who supported women who were unemployed by providing them with smart clothes suitable for attending interviews. At the meeting the claimant had asked them if they would extend their service to include providing outfits for trans women and they had agreed. The claimant had reported what she  
5 thought was positive news to the staff team. Her email was lodged. She said they offer free high quality outfitting for women, including transwomen and non-binary people...”. (p626). Ms Wadhwa responded at p 506 saying that she had been wrong to use the phrase transwomen. She said  
10 *“I just wanted to say that the term trans is usually used as an adjective rather than how it is used here. I am not sure if it was a typo but it can for many of us feel like othering and oppressive. I thought I should let you know.”*

34. There was a team meeting of the claimant’s team at the end of May which was attended by the Team Leader Kim Townsend. Although a member of the team,  
15 AB was not at this meeting. There was a discussion at the meeting about responding on AB’s behalf to such enquiries from service users. All present indicated that they required some clear guidance on the subject. The situation was that each member of the team took it in turns to respond to service user enquiries. There is a duty rota. The issue of how to deal with questions coming  
20 in from service users in the light of AB’s name change led various team members at the team meeting to raise the issue. The team were told that they would have to respond on AB’s behalf. They were told it was inappropriate to ask AB to respond to such enquiries.

25 35. Another member of the team, not the claimant, said that if so they would need clear guidance as to what to say and how to respond to those questions. Ms Townsend said at the meeting that she would take the issue back to management to get further clarification.

30 36. Following the team meeting at the end of May the claimant had a routine supervision appointment with her Manager Kim Townsend on 9<sup>th</sup> June. During the course of the meeting the claimant again raised the issue of how to answer service users’ questions about AB’s sex and whether or not she was a man. During the meeting Kim Townsend told her that she had not gone to

management yet but was still planning to go to management to get further clarification as to how to respond to these questions.

- 5 37. The format for recording supervision meetings was a new one which had only started the previous month. The record form was lodged (page 185). The first part of this was completed by the claimant in advance of the meeting. The second part was completed by Kim Townsend without reference to the claimant. The claimant was not sent a copy of the note of supervision at the time and disputed the accuracy of Kim Townsend's note once she was sent  
10 the document. The claimant is recorded in one box on page 186 under "What's something you are finding challenging". It states:

15 "Discussion around trans inclusion and what we are sending as an organisation who says they only employ women – but we are offering sessions with non binary people."

38. A box above that states that under Actions Agreed:

20 "Kim to take up to senior team about conversations about non binary workers. Context: R voiced feeling SU's would be more at ease with knowing more about the biology of NB workers – I responded to say that this is not a conversation we would have with an SU and the reasons why. R feels there isn't clarity around what we say in terms of female only workers and how do we respond if an SU asks about  
25 this in regard to what we say versus what we do."

39. The Tribunal were not satisfied that this box contained an accurate record of what was said at the supervision. We accepted the claimant's evidence which was to the effect that Ms Townsend was still going to check with senior  
30 management and get back to the claimant.

40. On 15<sup>th</sup> June 2022 it was the claimant's turn to be on duty to respond to service user enquiries at Edinburgh Adult Service. This involved monitoring a particular email account known as the support account. All employees who  
35 are part of the Edinburgh Adult Service's Team had access to this account albeit they would only routinely monitor the inbox whilst they were on duty.

41. On 15<sup>th</sup> June the claimant opened an email to the support account from a service user. The name of the service user is redacted. The email is lodged (page 513-514). The heading of the email is "Appoint confirmation 2pm on 20<sup>th</sup> June. The email states:

5

"Hello

Thank you. That time is okay for me however I feel I must ask, not wanting to assume genders or anything, but is [AB] a man or a woman? Because as a woman I would feel very uncomfortable talking with a man."

10

42. The service user sending this email was an abuse survivor. The claimant was aware that there had already been an issue with this particular service user in that there had already been a delay in responding to her request for support.

15

43. The claimant understood from this email that it was important to the service user to know whether AB was a man or a woman. She considered this to be a definition on the basis of sex of a man or a woman because for her to be able to speak to their Support Worker it was important to them that the Support Worker was a woman. The claimant understood the service user to be asking about the biological sex of AB.

20

44. The claimant considered that it was impossible for the service user to be talking about gender identity only. She felt that if the service user had wanted to know they would have asked about the gender identity of AB. The service user was talking about a man or a woman which is a binary choice.

25

45. Following receipt of this email the claimant wrote to Kimberley Townsend, her Line Manager and the email was copied to AB. The email was lodged (page 514-515). It is as well to set it out in full:

30

"Subject: Guidance on how to respond to the question about gender from SU

35

Hi Kim and [AB]

I am not sure how you would want me to respond to this? Can I get some guidance?

5 My experience is there are many different ways trans people would prefer to address this question that feel right and respectful to them whilst still answering the concerns of the SU. My instinct is to say

Hi

10 Thanks for asking. [AB] is a woman at birth who now identifies as non binary.

Best wishes  
ERCC Support Team.”

15

46. The email was sent at 13:01. AB responded at 13:55 saying:

“Hi

20 “I am just linking Mridul into this as we were (by chance) just talking about this issue. I have explained that there is some urgency in getting back to the survivor because of her tricky experience getting started with support.”

25 47. As noted by AB in her email it is clear that MW and AB had spoken on the telephone at around 1pm. MW had sent an email at 12:53 on 15<sup>th</sup> June to AB asking her if she was free for a quick chat (page 510). Following the phone call MW had sent AB an email which was lodged (page 510). The email stated:

30 “Hi [AB] thank you for speaking to me earlier. I apologise for not giving you any forewarning about the conversation before we spoke, on reflection I should have. I hadn’t meant to broaden out the conversation in the way that it did, and should have stuck to the boundaries that I attempted to set when I started the call.

35

We spoke about a possible approach to responding to survivors’ questions about your identity. Thank you for reflecting back to me that the conversation on how we respond to questions about gender neutral names/identity shouldn’t be about what you think but an organisational response. That is my intention, I recognise that we should have had this conversation earlier than today.

40

Thank you for being so open and honest in what felt like a difficult and emotional chat to have; especially since it was not what you were expecting would happen in your day.

45

I will take what you have said to my meeting with Kim and Nico on Friday. I will keep you updated.

I hope that you are able to have a calm rest of the day.”

5

48. At 14:50 on 15<sup>th</sup> June the claimant’s Line Manager Kimberley Townsend responded to the claimant by email (page 515-516) sent to the support account. The email was copied to AB and MW.

10 49. She stated:

“I have just responded to [survivor] from support account to say that ERCC does not have many men on their staff/volunteer team, and no more, after advice from Mridul. All our workers and volunteers have a right to privacy and also in this specific instance disclosing someone’s gender identity is a breach of the Equality Act, which is why we wouldn’t say anything further in our response.

15

Any issues let me know.

20

Best wishes.”

50. The claimant sent an acknowledgment at 15:27 but then at 15:56 she sent a further email which was sent to Kimberley Townsend and AB. It was also copied to MW: (p125)

25

“Hi again this does seem a minefield to me and I am sure even more so to those more directly impacted.

30

I am interested to know more about the legal framework here, which we do need to adhere to and of course I want to protect people’s privacy. I also want to do what we can to meet SUs, where they are from, the little we know about them in their email referral.

35

My understanding is that currently gender reassignment is a protected characteristic as is sex under the Equality Act not gender identity. Can we legally disclose someone’s sex? Am I wrong about that?

Is this the kind of thing we can discuss at the meetings on 7<sup>th</sup> July?

40

Best wishes  
Roz.”

51. MW then wrote to the support account copied to Kim Townsend and NC at 16:29 on 15<sup>th</sup> June. (p523). She said:

5 “Hi all I just want to acknowledge the difficulties around this.

I am not in favour of having complex discussions on the Equality Act in a team meeting and it is not the right forum for discussion on a matter that most people within the organisation have limited/no legal expertise on.

10 It’s a management/governance issue and will be dealt with as such. We have access to legal advice and expertise on these. If there are subsequent legal questions about specific legal situations send them to us via your senior.

15 To be clear, gender reassignment is a protected characteristic, protects trans people, their gender identity/sex and it is a breach of the Act to disclose it as an organisation or as a representative of the organisation to anyone within or outside the organisation.

20 Even legal experts remain divided/unclear on the meaning of legal sex and how different protected characteristics compete with each other on the law. Some of you may find it helpful to watch the evidence being given to [[link to Scottish Parliament session](#)] on the Scottish Parliament TV. Evidence provided by Rape Crisis Scotland on 31<sup>st</sup> May and evidence on 14<sup>th</sup> June 2022 by a group of legal experts some who are for/against/worried about GRR reform might give you an idea about the complexity of this.

25 We have been transparent with service users that men do not work here, it is up to individual trans/non binary workers and volunteers to disclose their gender identity if they wish to service users.

30 We are also open about the fact that we are a trans inclusive organisation and that is public knowledge. In our next senior leadership meetings we will look at how we can make that more explicit and clear about our trans inclusive stance.

35 We have created an opportunity for staff to talk about trans inclusion in the Centre and in rape crisis work and anything else around this at upcoming facilitator events. NC has the dates for that in case you don’t have it already. Thanks for your patience and interest in getting things right.”

- 40 52. The claimant responded at 18:52 on 15<sup>th</sup> June. The email was sent from the support account and was copied to MW and NC. It was not copied to AB. The claimant said:

5 “Thanks. I appreciate your acknowledging the complexity and I am glad the senior leadership team are going to discuss it further. Clarity will be a relief. It was the meetings coming up on 7<sup>th</sup> July to talk about trans inclusion at the Centre that I was referring. Thanks for the links for more information.

Warmly  
RA” (page 523)

10 53. The following day at 13:05 AB sent an email to support account copied to Kimberley Townsend and MW. The email stated:

“Hey

15 If this email chain continues, please can someone remove me?  
Thanks.”

20 54. On 20<sup>th</sup> June the claimant’s Line Manager sent her an email which was copied to Katy McTernan and Nico Ciubotariu which was lodged (page 526). It stated:

25 “I want to check in with you about the email chain from the support account last week and our agreed actions from our last supervision on taking the conversation around managing concerns from SUs about workers non binary identities up to higher management, which I did do last week. I have cc’d in KM and NC for this reason and in case there are any ongoing questions.

30 I have been reflecting on the email chain on Wednesday 15<sup>th</sup> June in response to a service user wanting clarity around the worker’s gender. I felt quite shocked by your suggestion for a response when as far as I understood we had discussed this point once in the team meeting on 31<sup>st</sup> May and again in our supervision on 9<sup>th</sup> June. Both times I advised it would not be appropriate to disclose any personal information about another worker and the need to be respectful to other worker’s privacy.

35 As I have shared in our previous conversations I do see the complexities in this situation for service users and us as an organisation and I appreciate you sharing your concerns with me. Simultaneously we need to ensure that workers feel safe to be themselves. That their privacy is respected and that communications we have about this don’t cause anybody in the team any harm or isolation. I want to check that after our conversations and MW’s response to the support account email chain last week that there is a mutual understanding that we won’t be discussing another worker’s personal information with service users on their behalf. This is  
40 something for the worker themselves to decide on disclosing or not  
45

when they meet the service users. At the moment our response should be “ERCC does not have any male volunteers/team members”. I will be emailing the rest of the team this guidance also.

5 I fully acknowledge that the way we have been setting up HAN  
sessions means those conversations have been and would continue  
to be difficult to navigate for workers when these questions from SUs  
arise. For that reason after discussing these issues with MW and NC  
10 we will be changing how we offer HAN sessions so we can be more  
inclusive and give a chance for the worker to introduce themselves to  
the service user before sessions start. Details on this will follow once  
we have confirmed them and will be shared with the team.

15 I also mentioned your email about the AGM/Board as agreed – I see  
MW has now had time to respond.”

55. The claimant responded at 19:36 on 20<sup>th</sup> June (page 527). She said:

20 “Thank you for checking in about this. I fully understand the  
importance of not disclosing personal information about another  
worker and of discussing this in the most respectful way we can. I find  
myself stuck in that moment on email callbacks which has some  
urgency as to what wording to use when asked if the worker allocated  
25 is a man. My suggestion was an attempt to be respectful of [AB’s] non  
binary identities, in that non binary for some can be both male and  
female or man and woman so to say they are not a man would deny  
half of their identity. As [AB] has recently chosen a more traditionally  
masculine name I thought this might be of particular importance to  
30 them. I am sorry if this is not how it landed with [AB] or anyone else.  
Please pass on my apologies if it landed painfully. I understood from  
previous correspondence from AB about their name change that they  
have asked not to have this issue discussed with them so I have not  
felt able to discuss this further or found the words to check in with them,  
though it has been very much on my mind.

35 My instinct to name biological sex was also an attempt to meet the  
SUs question in the more nuanced way that I think honours their fears  
and their experience and reality that they live in a world where the  
threat of violence by biological males is constant. It is something I  
40 have spoken to you about and appreciate your listening to. I long for  
it to be a conversation we address as an organisation. I don’t think we  
can assume that when an SU asks if their counsellor is a man that they  
are asking only about gender identity. I imagine they would as workers  
share an understanding that male violence is a consequence of the  
45 way most men are socialised as well as their (on average) stronger  
physical bodies and that women’s susceptibility to violence is a feature  
of their socialisation as women and their on average smaller weaker  
bodies. I imagine therefore that how someone is socialised in their  
formative years and their birth sex is of importance to SUs. Also as



5 you know it is the nature of trauma that people's felt responses are not  
from the rational brain but from the amygdala and for people who have  
been abused by men (the vast majority of our SUs) they are very  
attuned to be triggered by the presence of male bodies or the thought  
that they might be male and have no capacity to consider or simply  
have never encountered gender identity ideology. I believe the  
barriers to them accessing support would be reduced if they could ask  
for support from someone who they will more easily trust that they  
have experience of their biology and socialisation in their formative  
10 years as female are relatable. I imagine this may also be true of people  
with trans identities who would prefer to be supported by someone  
whose experience of body and socialisation matches theirs. I would  
love to see us ask this more widely of past SUs and the public to inform  
our service and the questions we ask/options we give. There may also  
15 be people for who the sex and/or identity of the worker is not important.  
Maybe all of that is being addressed in a new way you are suggesting  
for H and N session. I am glad to hear that the current response is "for  
now" and may be changed in future.

20 I appreciate that it is not appropriate to disclose the birth sex of an  
individual worker. In the short term without needing to disclose  
anything about individual workers could we think about adding some  
questions to our referral form which might ensure we better match the  
needs of SUs to their worker before it gets to the allocation stage so  
25 we are not compromising the privacy of the worker?

I have tried several times over the past year to have or to support this  
conversation in a spacious way that is respectful of all ideologies and  
experiences to avoid getting to where we got on Wednesday. The use  
30 of the words terf, bigot and fascist in our organisation is in my  
experience and from what I hear from others shutting down nuance  
and well intentioned conversation. I speak as someone who has rarely  
conformed to a stereotypical gender role who celebrates the pushing  
of all gender role boundaries and welcomes diversity. How we balance  
workers' privacy and respect their identities and meet SUs where they  
35 are with us as few barriers as possible matters a great deal to me.  
That all service users get an equality of service that works for them  
matters to me in our individual and group work.

40 I recognise I brought some reactivity and not as much care as I would  
like to this exchange when trying to address it under time pressure. I  
am sorry you were shocked by it. I will of course follow the current  
guidance on how to respond.  
Warmly.

45

RA."

56. Approximately a week after the original exchange the claimant sent a further email to AB on 22 June at around 15.54. This was sent from her own email account. It was lodged (page 518). It said:

5           “Hi [AB] it has been on my mind to contact you since the email exchange we were in last Wednesday and I have hesitated as I remember you saying you did not want to talk about your name change.

10           Please read this as an invitation and I am okay to hear no or nothing back.

15           I am curious about how that conversation, ERCC’s response and anything I said landed with you.

20           I realise that at the end of the email chain I was reactive getting into legal questions which I imagine may have been triggering given you have told me before that there is no legal recognition for non binary people. I regret that now. I think it was not the place for that conversation.

25           I sincerely want for us to find a way through this that is respectful of workers, trauma informed and meet service users where they are, answering their concerns. Before that I’d like to know how it sits with you.

30           Ideally I would prefer a conversation as email is never the best way to communicate in my view. Would you be up for that? And a few words by email would also be welcome.

35           Warmly  
          Roz.”

57. The title of the email was “How are you left? If you are willing to say”. It was lodged (page 518). AB responded to the claimant later the same day (22 June) at 17:36 stating:

40           “Your email was humiliating, so I feel humiliated. I don’t want to have any conversations about this with you.”

58. Later that day, at 18:22 on 22<sup>nd</sup> June MW emailed AB stating:

          “I’m just checking in to see how the past week has been. I’m still carrying our conversation with me. It was a difficult one for us to have.

I just want to acknowledge that I realised this might not have been an easy week. I hope that you are being able to lean into your supports, also I am here, flaws and all. Speak soon.” (page 512)

- 5 59. The email from MW to AB appears to have crossed with an email which AB sent to Mridul Wadhwa and Kim Townsend in which she enclosed a copy of the claimant’s email to her and also her response. She emailed them at 18.23. She stated:

10 “I am forwarding this to you because I want you to see how I am responding to these kind of requests. And so you are aware that I no longer feel comfortable being in any situations where I need to deal directly with Roz.

15 Our current processes mean that every few days I feel really deeply ashamed because the whole team sees someone else struggling to answer the questions about me. This on its own is making me dread seeing my colleagues and dread looking at the support account. I certainly don’t feel confident to go to a team meeting. On top of that  
20 the prospect of the trans inclusion training on the 8<sup>th</sup> is currently really scary.

Beyond the everyday level of shaming Roz’s response last week felt violent and humiliating and it wasn’t okay. Thank you Kim for taking  
25 time with me to acknowledge that. However I’d like to know what is going to happen to prevent Roz and my other colleagues (however inadvertently) humiliating me further.

I don’t believe I am the problem here but there needs to be a clear  
30 strategy, direction and management here because I’m not okay.” (p519)

60. AB sent a further email at 18:43 to MW saying:

35 “Hey that’s weird timing. I’ve just sent an email to you about how I am. It’s been a really difficult week and I found our conversation especially difficult. There are things that you have said in our conversations that have been really painful to hear and have made me feel like I am the problem. At the moment that’s a message I am  
40 receiving most clearly is how much of a problem or threat I am for ERCC and the network. That’s painful and disappointing to hear from a place that I have given so much to and from people who I expected would understand and would have my back. I definitely need warning before any conversation of that in the future.” (p512)

45

61. MW then sent two emails to AB. The first was sent at 19.11 on 22 June (page 513). She said:

5 "I am deeply sorry that I made you feel that way. I definitely do not think and never have thought that you are the problem or a threat. I did not want the conversation to go how it went and I take responsibility for taking it there and I will ensure that it doesn't happen again.

10 I have tried to be as transparent as I can be about the challenges of being a non binary person and a transperson in this movement and the challenges ahead. It is painful and worse. Because it is personal. And I acknowledge that what I have to say has not created safety or demonstrated care. I will be more mindful of that.

15 I can see that Kim has just responded to you. What she hadn't said is that we are looking at what HR mechanisms are available to us to respond to the team member in question.

20 I am not usually in the Centre tomorrow but will be there if you wish to meet.

25 Please know that you are valued and I want you to be part of this network as you are. Perhaps my actions might convince you more than my words. Lots of care."

62. MW also sent a second email to AB which was copied to Kimberley Townsend sent at 19:36 on 22 June (page 520) which stated:

30 "Hi [AB] I have replied separately to your email to me expressing my feelings and responsibility around what has happened.

I can see that Kim has responded to you.

35 It is humiliating what Roz has done. We will ensure that there is no more contact with her. I hope that we can find a safe and inclusive way forward for you to be involved with your team. Kim and the senior leadership team will work towards making that happen.

40 Transphobia exists in our organisation as do other prejudices. The meeting on the 8<sup>th</sup> is going to be difficult and I recognise your dread. We are doing our best to prepare the facilitators for it but I can't say

with confidence that the conversation is not going to be hard to hear/be part of for those of us who are trans/non binary. I don't intend to go for precisely that reason.

5 I also wanted to make you aware that you can file a formal complaint about any of this.

I am available to meet with you tomorrow along with Kim or alone. I am not usually in the Centre on a Thursday but can come in.

10

Lots of warmth  
M"

63. That evening at 15.34 (23 June) the claimant sent a further lengthy email to  
15 AB. The email was lodged (p531). It stated:

20 "I am so sorry you feel humiliated. I value you as a colleague and I hear your distress in how my words impacted you. I imagine you have had many experiences like this and to have this also at work is even more painful. What I offered I now see as clumsy and lacking in enough care for you or nuance in expressing my thinking.

To humiliate you was the opposite of my intention. I am sad that I did not find the words or express my confusion in a way that would have felt respectful. I will learn from this.

25 I hear that you do not want to talk with me any more about this topic. I imagine there is so little trust that I would hold your experience with care. I hope this might change in the future and I will do what I can towards that.

30 I do not therefore expect a response, and if you are willing to read it, I offer you below what I sent to KT when she expressed her shock about what I had written, in the hope that you might view where I am coming from on this differently, not to take away from the impact on you.

I fear that if I don't send it with this email, that you might not open another email.

35 With regret, sadness and warmth.  
RA"

Attached to the email was a copy (excepting the first sentence) of the lengthy email sent to Kim Townsend by the claimant and lodged at page 527 which is quoted in full above.

64. AB wrote to MW the same day (23 June 2022) in apparent response to the emails MW had sent her the previous evening saying:

5 “Thanks also for this. I’m curious what the HR mechanisms bit means and imagine you will not be able to tell me much more about that but I’m really glad to hear that there might be some kind of intervention around Roz’s communication.

10 Thank you for saying that last part. It’s good to hear but even better to feel you are committing to action and changes.” (p522)

65. Other than the people the claimant’s emails from the support account were directly sent to (AB, MW and Kim Townsend) the claimant and other members  
15 of the staff team could potentially go into the support account and look at the sent items and see it. The chance of anyone wanting to look at the sent items for a day when they were not on duty was very slim. At no time were any of the claimant’s emails ever deleted from the support account. The email sent to AB by the claimant on 23 June was not copied by the claimant to any-one  
20 else although it appears that AB copied it.

66. The claimant’s view was that Kim Townsend’s response to the service user was inadequate. The service user was simply told that the organisation did not employ men. It was not sufficiently clear in her view. The claimant and anyone  
25 else who had followed the controversy in the press would be fully aware that MW, the organisation’s Chief Executive Officer, was legally and biologically male. In addition, the Rape Crisis Centre’s policies meant that if they employed someone who was female and that person transitioned to male then they would still employ them. The claimant’s view was that even using the respondent’s  
30 own definition it was simply untrue to say that the organisation did not employ men. The claimant considered that the question was not answered adequately and that in fact the answer was deliberately muddy.

67. On 27<sup>th</sup> June AB emailed Kimberley Townsend to note that she was rostered  
35 to work with the claimant the following Monday and asked if she could move days. Ms Townsend wrote to AB on 27<sup>th</sup> June stating:

“Ah yes I’ll see if anyone else can do Mondays going forward but for now I have taken you off back up on the days that you were on it and Roz is away the 2 you were down to do it for July anyway.”

5

68. Whilst all this was going on, there was a conversation on SLACK when AB shared an article that appeared in The Guardian. The conversation was lodged at pages 508-509. It took place on 23 June. AB said:

10

“Something that made me feel hopeful last week. This fairly thorough bit of research shows that outside of a very small minority (that we as an organisation and some of us as individuals obviously have a disproportionate amount of contact with). The general public aren’t stressed or afraid or up in arms about trans people existing. They mostly agree with support for trans people or just don’t care. Predicably the younger generation judges more and more on board with supporting trans people with half of Gen Z saying they know a trans person.

15

20

My takeaway is that the transphobes are going to die out – quite quickly. And that they all need to get on board and move with the times, move with the generations. Anyone/any organisation failing to be trans inclusive is going to quickly become obsolete.”

25

69. One of the claimant’s colleagues (Aiki) responded to this. She stated:

30

“I pin all my hopes of a new generation they are so much wiser when it comes to human and trans rights. I am very surprised The Guardian published such an article as they have a history of cherry picking studies and figures so they can show the opposite or interviewing transphobic organisations like LGB Alliance when they write on trans issues instead of interviewing the trans community and activists. So if even Guardian has published such an article it means you have a lot of hope for the future.”

35

70. AB responded to that stating:

40

“I know right can’t quite believe The Guardian is giving me this feel like boycott is fully warranted after them publishing Sonia Sodha’s latest transphobic poison about Roe v Wade but I’ll take this gladly.”

71. The Edinburgh team had their monthly team meeting at the end of June where the issue was discussed.
72. On 29<sup>th</sup> June the claimant received an email which invited her to an investigation meeting to be held on 6<sup>th</sup> July at 2pm. The email was lodged (page 546). There was a letter enclosed with this (page 549-550).
73. The claimant was horrified. As far as she was concerned she had done the right thing. She had offered an explanation as to why she had done it. There had been no communication to her and no response to the email following her email to Kim Townsend. The claimant said that she would agree to the guidance given despite her doubts. She had apologised and agreed that there was a place that she could talk about this in future in order to come to a clear view as to what she was meant to do. The claimant felt very frightened by the email and felt it was disproportionate. Her position was that both at the team meeting and the supervision meeting with Kim Townsend, Ms Townsend had agreed there was a lack of clarity and promised to speak to senior management and then get back to her. There had been no clarity given until Kim Townsend had responded to the service user herself with a statement which the claimant considered simply muddled things.
74. The claimant duly attended the investigation meeting. The note of the meeting prepared by Ms McTernan was lodged (page 205-207). The Tribunal was satisfied that the notes at pages 205-207 were a reasonably accurate albeit not verbatim record of what took place at the investigation meeting. At the beginning of the meeting the claimant asked NC to clarify that the meeting was about the emails. She asked NC to clarify what she thought the instruction was. The claimant gave an explanation of what she had done and what she was trying to achieve. At the end of the meeting she asked how the organisation could repair her relationship with AB. At the end of the meeting NC said that she may have to come back to the claimant for clarification but would let her know. She said that she would prepare a report with a recommendation regarding the next step. The claimant said that she felt very



vulnerable having everyday conversations with people and not knowing which member of staff knew what. NC confirmed that she would be speaking to people in the original chain and may need to speak to others who would be at the meeting.

5

75. There was a staff meeting on 7<sup>th</sup> July which the claimant attended which was about trans inclusion. There was no space for discussion about getting to the heart of any of the issues but instead the meeting was essentially based on two questions around "*how can we be better at being trans inclusive.*" The meeting was very tightly controlled. The claimant ended up in a breakout room with AB but AB then received a telephone call and left the meeting. At that point nobody had told the claimant that AB had been promised by MW that AB would not require to have any further contact with her. The claimant in fact first heard about this promise when she subsequently made a Subject Access Request of the respondents after these proceedings had commenced.

10  
15

76. On 7<sup>th</sup> July 2022 NC and KT also met with the respondents' CEO Mridul Wadhwa (MW). A note of this meeting was lodged (page 209-210). MW indicated that she had been on a phone call with AB when they received the email from the claimant asking how she should respond. She said that she had responded to the claimant's Line Manager (KT) and agreed a response. She then said the claimant had responded questioning how to meet survivors where they are and questioning whether gender identity is protected. She was reported as going on to say "Email sounded reasonable, however RA has had other conversations with MW, indicating that she has knowledge about this area. Confusion about meeting to discuss this but complex legal issues should be discussed by SLT not for other staff members to talk about other people's gender identity. A meeting plan to discuss how to reply to such queries from service user, MW was in touch with AB to discuss how they felt."

20

25

30

77. MW said she was angry about the email exchange especially once she found out that there was clear instruction given to RA and other workers that we would not respond in the way she suggested. However, the claimant went ahead and asked AB. The note goes on to state:

NC “Coming back to your comment about emails seeming well meaning, however other conversations made you feel that this is not the case?

MW “not the first time RA has spoken about trans issues. RA has spoken to MW when she started, has attended trans inclusion training (as far as MW knows), this covered gender identity on the Equalities Act. RA has been given opportunities to express her views and ask questions. She has had answers from MW especially around trans inclusion and her senior had also had specific conversation about this.

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- 10 78. There appears to be little thought or sensitivity about how hurtful and painful the email exchange would be for trans people.

NC: “To clarify you have spoken to RA about trans inclusion.”

MW: “Yes when I started in May/June 21”.

- 15 NC: “This enquiry was about a survivor asking if AB is a man or a woman. Are you aware of any other similar situations?”

MW: “Yes I’d heard this from AB who passed on an email exchange demonstrating what they respond. Aware of previous question re identity of worker and response before MW joined the team. AB had not had the conversation with other colleagues about being non binary possible assumption.”

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NC: “You said you spoke to KT about the email and guidance on how to respond.”

MW: “At the meeting on 17<sup>th</sup> June KT mentioned that she had discussed this at the team meeting and supervision. Discussed at an EAS meeting (AB not attending). Message clear that we won’t disclose gender history about anyone. No notes of the team meeting. KT mentioned bringing it up at supervision. There should be notes.”

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- 30 79. Documents were also lodged with the Tribunal which bore to be notes of meetings which NC had with other members of the respondents’ staff. However, no evidence was led regarding these meetings at the Hearing.

80. On page 212 there is a note of a meeting with a team member identified as LCB. On page 213 there is a note of a meeting with a team member identified as DS.

5 81. On page 214 there is a note of a meeting with a team member called MVN. The note indicates that during the course of this meeting MVN used the word TERF. There is no record of this being commented upon. She was also reported as saying:

10 “clarified it was not a one off conversation and the issue came up multiple times. There were arguments/or tensions rather about trans inclusiveness for quite some time. During a trans inclusiveness training last year people were shown a video where young trans people speak about questions they receive they rather didn’t which is completely understandable. RA argued that not  
15 being allowed to ask trans people questions is not right. MVN thinks it is not up to trans people to educate others, and if others want to learn more they can attend training or read books.

MVN said it also hurts to see how other people feel we should respond to hate  
20 from transphobic people/TERFS. Last year around when MW started there was an mail by JO, DS, LCB and RA who signed as the Thursday team albeit MVN was not at that meeting. At the more recent meetings it hasn’t been brought up again.”

25 82. On page 216 there is a record of a meeting with a team member known as OK. She is noted as saying “There was a discussion on how to approach it. Discussed how to avoid conversation of what non binary means – and how support workers to respond to that. She noted that RA had acknowledged difficulty in navigating that. She then went on to say “Does not remember the  
30 discussion coming to a conclusion. Maybe KT said she will get more guidance and come back.”

83. There was a note on page 217 of a meeting with a team member known as HD. With regard to the team meeting she is reported as stating in response to

the question whether any agreement was reached on how to deal with the issues by saying “It was a general sort of agreement. KT also said she will take the matter back to have a further discussion with SMT. MW sent an email clarifying an overview response later on. It was put to her by NC “So KT said that support workers should take into account AB’s privacy and need for confidentiality, and tell survivors AB is non binary but not get into a big discussion and if they are not happy pair them with someone else. HD’s response is said to be “Pretty much yes. KT came across in a supportive way on AB’s behalf. She said she had a conversation with AB about it before and also wanted to be supportive of the support workers doing the call back. Thinking more about it there were emails from the support account in relation to survivors’ enquiries and MW’s response may have come from that.”

84. At page 218 there is a record of a meeting with a team member called LS which took place on 22<sup>nd</sup> July. It is probably as well to set out the note in full.

“LS asked for a meeting with NC.  
LS disclosed there were few situations where LS had been in conversation with RA about trans inclusivity and struggled with them.

One incident was in August 2021 when LS had just started. Discussion in the office around transphobia and who finds ERCC a safe place – RA argued that other people won’t access the service because we opened the door for trans and non binary people. LS felt uncomfortable.

During the last trans inclusivity training what a colleague said stuck with LS – how can we provide a safe space for trans and non binary survivors when our colleagues don’t feel safe. Since then LS picked up on little things RA said. She started second guessing what RA actually wants to say. SN was in that training too and did not feel comfortable with RA’s comments. SN said to LS that RA said in the breakout room in the first trans inclusive training that if somebody comes as a white person in a black people space to infiltrate it suggesting that trans women are men in disguise.

In the trans inclusive training RA also said something about how if we don’t speak about binary we uphold patriarchy. LS: understood RA meant we have to listen to the voice of people who disagree with trans inclusive views.

5 RA also said that ERCC staff should represent everybody from outside LS :understood that if there are people out there with transphobic terf views – we should have the same. RA also didn't explain more because people would disagree too. In her last clinical supervision LS spoke about this for the first time – LS doesn't want to be complicit in any form in anti-discriminatory (sic) behaviour. LS spoke to her senior DVP who advised to come to me NC: assured LS her concerns would be taken seriously and might be in touch with more information."

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85. There is a note on page 219 of a meeting between NC and a team member called SN. Again, it is probably as well to set this out in full:

15 "NC: explained why the meeting was called as an investigation is ongoing, explained confidentiality about the investigation and asked what gave SN cause for concern.

20 SN: before SN started, RA gave her a tour of the building. When MW started working and anti trans attacks were happening, RA said that we need to be open to have a dialogue with people on the other side. Did not say anything at the time as she was new. There are no personal issues between RA and SN. They are getting on okay.

25 During the trans inclusion training delivered by the Scottish Trans Alliance RA said something along the lines of that if a white person identifies as black they can access black spaces. This topic is something SN feels close to and what RA has said felt othering and routed in white supremacist feminists. SN believes trans women are women and what RA suggested felt like cultural appropriation.

30 NC: asked to clarify understanding of what SN perceived to be RA's point of comparison – was it implying that trans women identify as such to gain access to women only spaces?

35 SN: it felt a bit like that. SN also did not like the implication around race – if she is Pakistani, she is Pakistani and not pretend to be just to get access. What RA has said was worrying.

NC: was there anything recent that brought this back up to memory?

40 SN: the most recent trans inclusive training. RA has said again something about being inclusive of everyone open to hear all views and for everyone to have representation. SN feels the Centre is more about supporting the voiceless especially people who have no other avenues rather than the majority who might have access to other resources.

45 If survivors don't know who they are or are on a journey, if RA is not open to that journey survivors might feel a block and not share and it is important to work with all of it.

SN spoke to AC who mentioned another incident during training on a conversation about white feminism. AC said she is open to have a chat. NC: was there anyone present at the examples mentioned

above. SN: can't remember about the first incident and there was everyone on the training for the second as it happened at the end.

5 A lot of what RA says sounds innocent but feels wrong. It is so subtle but it does not feel comfortable to be around her. SN: asked if she would get any feedback about any outcomes and if RA would know SN spoke to NC. NC: will clarify what SN can be told. NC explained that if the investigation leads to a disciplinary hearing RA will have access to all notes of the investigation. SN: acknowledge that and it is okay for RA to know in those circumstances".

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86. On page 220 the respondents lodged a note of a meeting between NC and a team member called AC which took place on 28<sup>th</sup> July 2022. Again, it is probably as well to set out this note in full.

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"NC: explained why the meeting was called, that an investigation is ongoing, explained confidentiality about the investigation, and asked what gave AC cause for concern.

20 AC: there were subtle things here and there. Then saw AB affected and stressed out and AB told AC what had happened and then AC saw the email in the support account. AC did not initially pay much attention to what RA was saying and in hindsight would have asked RA more questions about what she means by things.

25 The first time AC noticed something was when the organisation wrote a letter to support trans people and this was discussed during a meeting. During that meeting, RA had said something about how is this letter going to feel to people affected by it referring to transphobic people.

30 RA also started to offer to meet one on one with other workers to discuss about this.

Another incident was when AC was with RA and LV during a book club discussion, where a chapter from a book about sex workers was discussed and AC shared that she might have been a white feminist in the past but now felt embarrassed by it.

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RA emailed AC to arrange a one to one meeting. AC tried to avoid it as she had other more important things going on but RA insisted on coming in on a Thursday. During that conversation there was nothing specific again but RA said something to the effect why go against other women (when speaking about white feminism and trans exclusionary radical feminists – terfs) instead against patriarchy and that we should show love and compassion to all women. AC did not think much of it then as she is not interested on spending energy on terfs feelings or gender toilets but knowing what she knows now and what AB shared gives her concern.

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RA also mentioned something that might be hard for trans men to go to men's toilets.

NC: was the implication that trans men are actually women and that's why it would be hard for them to go to men's toilets?

5 AC: that could have been the implication but it was said in a way that made people think it came from a place of compassion for trans men as some might be uncomfortable using men's toilets.

RA also said she is gender non conforming because she has short hair. AC felt confused and could not understand what RA's views were.

10 AC is very passionate about equality and intersectionality, but didn't feel angry after interactions with RA. All the things she said are subtle and there is not something that you can put your finger on.

NC: you mentioned some people agreeing can you remember more?

AC: the other people were not agreeing but they were concerned about everyone else.

15 AC: can't remember who the people were but thinks LCB agreed to meet. If people do not have a lot of awareness on the topic it is easy for RA's comments to seem caring but after speaking to SN I noticed some things too and what happened to AB, AC does not think these comments come from a good place. AC did not realise at the time and thought of RA as more of a nuisance.

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These incidents happened a while back maybe in September last year or even earlier closer to when MW had started.

25 AC does not have regular contact with RA as they are in separate teams so it was only on a couple of instances they intersected. NC will clarify what AC can be told about outcomes. NC explained that if the investigation leads to a disciplinary hearing RA will have access to all notes of the investigation. AC: did not mind RA knowing, AC spoke to NC."

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87. The note goes on to include the text of an email sent by AC to NC after the meeting on 3<sup>rd</sup> August. She indicated that she felt that RA had been trying to avoid her after AC comments about terfs having harmed the trans community in the UK and made things unsafe for them. She raised a couple of instances where she felt the claimant had excluded her.

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88. There was a note of a further meeting which appears to have taken place between NC and LS on the 29<sup>th</sup> of July lodged at pages 222-223. Again, it is probably as well to set this out in full.

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"NC: explained why the meeting was called that an investigation is ongoing, explained confidentiality about the investigation and asked more details about LS concerns. LS: is happy to stand by what she is saying and believing in. LS: during the trans inclusion training RA had an ambiguous message in wording about some things – she said

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something on the line of if we do not stick with the gender binary we uphold the patriarchy and if we don't consider the views of others we uphold the patriarchy.

5 RA also said something like ERCC staff should represent all communities – LS understanding that RA was arguing that ERCC staff should include people with discriminatory views.

LS was also concerned because of something LV has said, that non binary staff members don't feel safe to be themselves – so if staff members don't feel safe how can it be a safe space for survivors?

10 When LS first started working for ERCC it was in the middle of a transphobic wave of comments – there were some when MW started working and then when the Guilty Feminist podcast happened and more transphobic comments came our way. RA, LS and AB maybe DS as well were part of a conversation around inclusivity. RA argued that we should consider other people's views – the people who are pushing back against us being trans inclusive. There was a discussion about if we opened the door to trans people it does not mean we close the door on the white CIS communities, but if us being inclusive for trans people means white CIS people self exclude so be it. RA did not think that is okay.

20 LS was shocked that someone who works for ERCC has these views. LS has been cautious around RA, felt she needed to be on defence. LS spoke with other colleagues, who thought the same as LS, so she felt validated.

25 LS does not think these comments made by RA are unintentional. They are not overt but there is a continued undercurrent. LS brought this up at external supervision that she does not think RA holds the views of the organisation – and there is a mismatch there.

30 NC: so what you are saying is RA has these transphobic views that are not in accordance with ERCC and the comments she makes are intentional but very subtle, so it is almost like a hidden meaning to what she is saying, and it is a pattern as it hasn't happened only once?

LS: yes it might have to do with RA being trained in non violent communication.

35 During the last trans inclusive training when someone wanted to clarify what RA meant by her comments RA just said it is a bigger conversation. She was not willing to be challenged on her views nor to actually discuss what she meant.

40 This was difficult because people in the Centre who might not be aware of that underlying current wouldn't question her view and they might agree with them.

45 NC: just to clarify are you saying that RA says things that might sound positive, like including everyone, whereas her meaning might be different (i.e. include transphobic views) so it is easy for someone else to agree with what she is saying and miss the nuance?

50 LS: yes and LS does not understand the purpose. Couldn't work if these are RA's beliefs. Why is she with an organisation with different values. RA seems to be closer to first wave white feminism, whereas ERCC is moving away from that and trying to rebuild our reputation



with trans and non binary communities so that feels counter productive. LS did not speak directly to any trans or non binary colleagues, but if what LV said in her training is any indication how can we have those communities' trust?

5 There is some toxicity coming from RA's comments that needs to be dispersed.

LS: is wondering how we can move forward in this situation and how it can be changed. It does not seem that RA is absorbing any of the trans inclusive training. LS is worried about trans and non binary survivors being matched up with RA and feels that would be unsafe and unethical. NC: asked who LS spoke about this. LS: spoke to SN, AC and AD (at the beginning, after the office situation)."

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89. In the meantime the claimant had heard absolutely nothing from NC or anyone in the respondents about her investigation since the meeting on 6<sup>th</sup> July.

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90. On 4<sup>th</sup> August 2023 NC sent the claimant an invitation to a second investigation meeting. This was lodged (page 591-592). It stated:

20 "The purpose of this meeting is to discuss new allegations concerning you expressing potentially transphobic views in breach of ERCC's values and equality and diversity and trans inclusion policies. These new allegations have arisen whilst my initial investigation into allegations of misconduct of which you will already be aware following my letter sent on 29<sup>th</sup> June 2022 was ongoing."

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91. Once again the claimant was advised the meeting would be conducted by NC and KM. would act as notetaker. The invitation states that a further copy of the Disciplinary Policy is attached however as before there is no actual record of that being attached to the email. The claimant was not sent copies of any of the investigation interviews which had already taken place.

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92. The claimant was absolutely horrified and upset to receive this. She was extremely frightened. She felt that she had given a good account of herself at the first investigation meeting. She had been becoming increasingly anxious over the period of time since then. She felt that the new letter seemed to expand the scope of the investigation hugely. She also felt it was extremely vague. She was puzzled as to what it could be about but she was also extremely frightened. She felt there was nothing to say what she was supposed to have said or done and what she was being investigated for.

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93. The meeting was due to take place on 10<sup>th</sup> August at 2pm. At this point the claimant was going through a stressful period in her personal life. An extremely close relative was seriously ill with cancer and the claimant had arranged additional holiday in order to go to look after her. She had also made arrangements with the respondents to allow her to work from home which meant that she could do this whilst remaining at her relative's house. The claimant emailed NC on 4<sup>th</sup> August. The email was lodged (page 593). She explained that she was currently at the other end of the country looking after her relative and would not be in a position to attend the meeting on 10<sup>th</sup> August but asked that it be rescheduled. In her second paragraph she states:

“I am shocked to receive this invitation. Please would you give me more detail about what exactly I am alleged to have said that is considered transphobic prior to this meeting as I am completely in the dark. I would like to be able to prepare for the meeting with that information.”

94. NC responded shortly after that to say that she had not been aware that the claimant was working remotely. She indicated that she would be happy to proceed with the meeting remotely or reschedule. She then went on to state:

“The allegations are about some comments you may have made on a couple of occasions. As before this meeting is a fact finding investigatory meeting to establish what happened. It is not a disciplinary meeting. You will have the chance to tell us about it in your own words.” (Page 593)

95. The claimant not unnaturally felt that NC's response gave her absolutely no information about the new allegations she was facing.

96. The hearing took place remotely on 10<sup>th</sup> August. The meeting was chaired by Nico Ciubotario and Katy McTernan took notes. LCB, a colleague, attended as a witness for the claimant. KM's note of the meeting was lodged (pages 224-228).

97. During the course of the investigation meeting various allegations were made to the claimant about things she was supposed to have said. She denied saying some of them. In respect of others she felt that her position had been totally misrepresented. She felt the meeting was extremely unfair. She felt that the whole of her was being investigated, her thoughts, motivations. She was concerned that things she had raised in trans inclusive training were being brought up and deliberately misinterpreted. She recalled that at trans inclusion training the organisers had stated: "This is a safe space where there is no such thing as a stupid question and you can ask anything". She was absolutely horrified to find that questions and conversations she had had from a year before which had never been raised with her were suddenly being all brought together. She felt it was extremely unjust. She also found it terrifying. She felt that the references all the way through the meeting to her being transphobic was not at all representative of her. It appeared that she was being shoehorned into this definition. She felt that it was like a lens was being put on everything she had ever said.

98. She was particularly concerned about an exchange which occurs at the bottom of page 225. This follows the section where she was asked about polarisation and gave her views about the difficulties caused by the level of debate with the organisation. She referred to certain things being said – "Trans people are described as bogus, paedo, also people are quick to call other people terfs being interpreted as if they are trying to eradicate trans people likened to fascists or bigots ... . These are extreme ways to describe people ... othering is what happens and I don't want us to do that." She noted that the reference she made to binary in this context appeared to have been taken out of context as a reference to non binary people. NC then asked:

"You are saying that you would like people not to be labelled if they bring up any questions and you think that people are not able to have these conversations?"

She is noted as responding:

5 “Some people on all sides and all topics I see labelling as part of the patriarchy and one aspect of not upholding patriarchy is to see the complexity of situations.”

10 NC then said “Can you tell me the name of someone else who feels like this?”. The claimant then responded “Are you asking about other people who feel that it is eggshelly? I am uncomfortable passing on these names. You could ask Kim about what has happened in meetings. I won’t name people without their consent.”

15 99. The claimant was particularly concerned and did not feel safe about this. She was concerned that if she named anyone else that they would be put through a similar process. She did not feel at all comfortable with the way this question was going.

20 100. Following this meeting the claimant had an informal meeting with Katy McTernan on or about 16<sup>th</sup> August 2022. She wanted to discuss with her if she could corroborate what the claimant had said at the investigation meeting based on the original meeting which they had had in March or April 2021 when the claimant had gone for a walk with her. Katy McTernan had been at the trans inclusion training and the claimant believed that she would be able to corroborate that she had not read anything into what the claimant said at the trans inclusion training which was transphobic.

25 101. On 11<sup>th</sup> August the claimant attended a routine supervision meeting with her Line Manager. The notes of this supervision meeting were lodged (pages 190-192). In the box on page 191 where it asks “What’s something you are finding challenging?” the claimant is reported as saying “Investigations are overwhelming and distressing – R feels misunderstood and unsafe.” No actions by her Line Manager are recorded in relation to how this issue should be dealt with.

30 102. On 17<sup>th</sup> August the claimant emailed Katy McTernan and Nico Ciubotariu expressing concern that the investigation had gone beyond the scope of the

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original investigation and asking for a decision in writing as soon as possible. She also submitted additional corroborative evidence and a character reference from a trans friend along with the email.

5 103. In the meantime on 17<sup>th</sup> August Nico Ciubatario held a further investigation meeting with Kim Townsend. No note taker was present. A note of the meeting was lodged (page 229). Oddly enough Kim Townsend was not asked about the clarity or otherwise of any instruction she had given to the claimant as to how she should respond to requests from a service user along the lines of the one which in fact was made on 15<sup>th</sup> June. She was not asked what was said at the team meeting where the subject was discussed. She was not asked what specifically was said at the supervision meeting she had with the claimant where the subject how to respond to enquiries about AB's gender was discussed. The claimant's position which was that on each occasion Kim  
10 Townsend had told her that she would be speaking to the senior management team in order to obtain clarity was not put to her. Instead the discussion appears to have centred around questioning about a meeting where the claimant was said to have spoken about the responsibility of making spaces safe for trans people and women. KT said she recalled a group discussion which she said was more about it being a societal issue to ensure safe spaces for trans and non binary people. NC is then recorded as stating:

“Was there anything specific/relevant to ERCC?”

25 104. The broader context was around a conversation around trans exclusionary feminism and RA's view was more of why go against other women then instead of patriarchy. RA explained that what she meant was more about shared responsibility and the focus should not be on women only services to make that happen. Ms Townsend is reported as saying that she didn't remember anything specific to the Centre. KT denied witnessing anything about trans  
30 exclusion or a feminist discussion.

105. Thereafter NC had a meeting with a team member called LCB on 19<sup>th</sup> August 2022. Various leading questions were put to her by NC. Her position was that:

5 “every time RA raises something was because she wanted to get it right for survivors with care and respect. This is how it came across to me. There was nothing that flagged up as transphobic.”

106. There was then a meeting between NC and Katy McTernan minuted as having taken place on 22<sup>nd</sup> August 2022 and a note of this was lodged (page 231). NC asked KM about the most recent trans inclusive training she had attended. She confirmed that it did not seem that RA had said that we should not employ trans and non binary people.

NC put it to her:

15 “When saying ERCC should reflect population, could that have meant including people who do not hold trans inclusive views?”

KM responded:

20 “That is not how I understood it. The Centre was more towards being inclusive of trans and non binary people.”

107. NC is then reported to have questioned her again:

25 “Checking understanding – RA’s point was more about ERCC embracing trans and non binary people and not about representing potentially trans people about views from outside.”

108. KM confirmed that that was correct and said she would have challenged it if she thought there was something different. KM was then asked about the email which the claimant had sent to her following MW’s appointment regarding creating guidance for staff on responding to negative emails. She confirmed that the claimant was not involved in the final outcome relating to that. Ms McTernan is then reported as saying:

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“I can’t remember. Context was how we respond. KM’s interest was less in the negative emails that came in but if an email or call came

5 from someone who is genuinely looking for support – how would we manage that. KM worked with seniors to answer sensitively and appropriately. There was a concern around phishing emails – people pretending to seek support to look for information they could then weaponise. KM did workaround answering people genuinely looking for support – and for ERCC to respond in a person centred way.”

109. On 25<sup>th</sup> August 2022 after a survivor group reunion meeting which the claimant and KM jointly led, the claimant asked KM when she could expect a decision on the process. She did not get an immediate response.

110. On or about 26<sup>th</sup> August 2022 the respondent finalised the investigation report. A copy of the investigation report was lodged (page 232-248). The conclusion recommended formal action. In a section on page 247 is recorded the following:

15 “Conclusions:

20 KT gave verbal instructions on how to respond to survivors’ enquiries about a worker’s gender. This is supported by accounts from people present at that meeting. Therefore, RA’s suggested wording seems to be less about not having guidance but more from having different views on trans inclusion and disagreeing with ERCC’s and her Line Manager’s approach. This is consistent with views expressed by RA in other spaces (like trans inclusion trainings or book club readings) that seem to support excluding and invalidating trans and non binary people’s experiences. These views can be very subtle and it feels difficult for people to pinpoint the exact meaning of what RA has said although it makes them uncomfortable. Despite denying holding transphobic views when asked to explain RA’s explanation seems to support the concerns raised by other staff members with regard to underlying transphobia. Some staff members feel that when RA raised issues around trans inclusion she did so with care for trans people. This seems to confirm both RA’s view that she is looking for nuance dialogue and other people’s concerns who described RA’s concerning comments as subtle and difficult to pinpoint.”

35 111. In September 2022 the claimant emailed NC to ask when there would be a decision. This email was lodged (page 631). NC responded the following day apologising for the delay and confirming that she had finalised the report and passed it to the Board. The email stated that her involvement with the process ended (page 631). The claimant emailed her Line Manager Kim Townsend on 40 5<sup>th</sup> September 2022 telling her that she was still waiting for a decision on the

investigation and was exhausted with it (page 632). Kim Townsend responded on 7<sup>th</sup> September to say “I have just spoken with Nico. She is going to make contact with the Board and request they make contact with you soon directly – even if just to give you a sense of a timeline/what to expect (hopefully they will have a decision soon)” (page 633).

112. In the meantime on 1<sup>st</sup> or 2<sup>nd</sup> September MW, the respondents’ CEO, had contacted Mhairi Roscoe, a member of the Board of Trustees who joined the Board in May 2022. At that time the Board had around 7 members. Mhairi Roscoe had not served on a charitable Board before her appointment but did have some experience in the voluntary sector where she worked. The Board would not normally have any contact with support workers. They would meet the senior management team at Board meetings. Ms Roscoe had not had any particular specific contact with the claimant prior to being asked by MW to serve on the disciplinary panel. She also had been a Manager in the voluntary sector for some time. She had some experience in the past of being involved in investigation hearings and whether to proceed to a grievance or disciplinary. She had never chaired a disciplinary hearing before.

113. The respondents’ Disciplinary Policy was lodged (pages 110-121). The Policy provides that disciplinary hearings will be chaired by a member of the Board of Directors. However, in this case the respondents decided to have 3 Board members on the panel. Ms Roscoe was unaware whether the decision on having three panel members and who they would be was made purely by MW or by the senior management team. Ms Roscoe did not have any input into who the other members of the panel would be. MW gave Ms Roscoe to understand that there had already been some discussion about who should be on the panel and Ms Roscoe was asked if she would have time to deal with it.

114. Ms Roscoe had not received any specific training in disciplinary matters whilst with the respondents. She had attended some training earlier in her career with another organisation. She had not had any specific training in the implications for employment relations or the Convention rights of freedom of conscience and freedom of expression. She also had had no training touching



on the implications of the Employment Appeal Tribunal's Judgment in the case of Forstater in June 2021. Ms Roscoe had not heard of the Forstater case when it was referred to by name. However, when the facts of the case were read out to her she did recall having some knowledge about the case.

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115. Ms Roscoe was advised that she would have access to Worknest who are an HR advisory company who the respondent have on retainer.

116. Following the initial contact with MW where she had agreed to chair the disciplinary Ms Roscoe received a further telephone call from NC on or about 10 7<sup>th</sup> September.

117. Ms Roscoe received the information pack on Friday 9<sup>th</sup> September. This comprised the investigation report and various notes of the investigation 15 meetings which had taken place. Ms Roscoe read the investigation report and the information pack over the course of the weekend 9<sup>th</sup>, 11<sup>th</sup> September.

118. On 11<sup>th</sup> September Mhairi Roscoe emailed NC. For some reason her name was redacted on the email lodged (page 634). She said that the panel wished 20 to arrange a meeting with RA but wished to check that the dates she had in mind were part of her work pattern. She responded the following day at 9:08 to confirm this. At 11:43 on 12<sup>th</sup> September Mhairi Roscoe emailed NC to say that she would draft the invitation and run it by Worknest. She sent the draft letter to the claimant to Worknest at 11:43 on 12<sup>th</sup> September (page 637). She 25 asked them to check over the letter and get back to her.

119. On 14<sup>th</sup> September Mairi Roscoe was contacted by MW who said that NC was off on leave and offered to assist in the matter of obtaining the claimant's address and contact details and also providing a letterhead template. Ms 30 Roscoe sent an email to MW at 21:35 on 14<sup>th</sup> September saying "Thank you so much for all of this. I am sending the communication tonight." She confirmed that and booked a room for the meeting.

120. On or about 13<sup>th</sup> September Mhairi Roscoe emailed the claimant to tell her to expect an invitation to a meeting in the next couple of days (page 643). On 14<sup>th</sup> September 2022 the claimant had a conversation with Katy McTernan in the kitchen at the respondent's premises. The claimant was in tears and said that she had still heard nothing after 10 weeks of investigation and this was not what she would expect of an organisation that prides itself on looking after the wellbeing of its staff. Ms McTernan acknowledged this was difficult for the claimant.

121. On Sunday 18<sup>th</sup> September MR emailed the claimant a letter inviting her to a disciplinary hearing and enclosing a zip file containing the investigation report, notes and notes of meetings. The letter set out two charges of misconduct and one of gross misconduct and invited the claimant to a disciplinary hearing on 28<sup>th</sup> September 2022. The letter of invitation was lodged (page 648-649). The purpose of the hearing was said to be to allow the claimant an opportunity to provide an explanation in relation to the following allegations:

“

- Misconduct that you did not follow management instruction about how to respond to service users and public queries about staff members' private information. Please refer to section 8.4 of the ERCC Employee Data and Privacy Notice.
- Misconduct: that you disclosed private details of an individual's gender journey on a public forum. Please refer to section 8.4 of the ERCC Data Policy and Privacy Notice.
- Gross misconduct that you engaged in behaviour that was likely to cause distress to a colleague or colleagues. Please refer to ERCC Trans Inclusion Policy and the ERCC Bullying and Harassment Policy.”

122. The claimant was told that if the panel found the allegation to be proven they may decide to take a number of actions detailed in the Policy up to and including:

“A written warning or a final written warning or dismiss you without notice or pay in lieu of notice or if you are found guilty of gross misconduct you may be dismissed without notice or pay in lieu of notice.”

123. It is noteworthy that although the first two charges relate to the respondents' Data Policy and Privacy Notice there had been no reference whatsoever to this Policy in either of the letters inviting the claimant to an investigation meeting.

5 124. The respondents' Employee Data and Privacy Notice was lodged (pages 121-150).

125. The claimant received this email on 19<sup>th</sup> September. The claimant was extremely upset to have received this. She considered that at the two  
10 investigation meetings she had been able to answer all of the points put to her. She felt she had given solid explanations and provided solid corroborating evidence. She expected that when the investigation report went to the Board they would have dropped it. The claimant telephoned Kim Townsend to say that she had received the letter. Kim Townsend said that she did not know  
15 anything about it. The claimant said that for her the most shocking thing was the third allegation which was characterised as gross misconduct. She was horrified to read the part on the second page where it says she could be dismissed without notice or pay in lieu of notice if it was gross misconduct. She was extremely upset. She told Kim Townsend that she could not come into  
20 work as she was so upset. She said she needed to have time to digest and respond to this. The claimant felt the carpet had been completed pulled from under her and felt that it was potentially her career over and her reputation ruined. Kim Townsend agreed that the claimant could have some time and agreed to cancel the service users the claimant was due to support.

25

126. Later in that week the claimant went to the doctor and was signed off sick. The claimant's view was that she would be entirely unable to carry out her job of supporting traumatised people given that she was not functioning very well herself and felt she had kept going for 3 months but that it was no longer  
30 responsible for her to go into a room with other people and try and be present for them. The claimant felt utterly shaken and alone at this point. The claimant was signed off work with stress by her GP on 23<sup>rd</sup> September 2022. The sick line was lodged (page 903).

127. On 21<sup>st</sup> September the claimant emailed Mhairi Roscoe asking a number of questions about the disciplinary process including the question why one of the original charges of misconduct had been escalated to gross misconduct. This email was lodged (page 650). The email also asked in what way the “other conversations” came to NC’s attention” during the investigation process. The claimant also asked who from the Board had received a copy of the investigation report. She noted that ERCC disciplinary procedure said that she should be informed of the allegations against her and the basis for those allegations. In light of this she asked Mhairi Roscoe to explain the basis for the two allegations of misconduct and one allegation of gross misconduct. She also asked for a copy of the Anti Bullying Policy and a note of who would sit on the appeal process. On 24<sup>th</sup> September Mhairi Roscoe wrote back to the claimant stating “Please accept my apologies for the delay in our response to your questions. I have had to revert to ask questions and will come back to you as soon as I have them all.”

128. On 26<sup>th</sup> September 2022 Mhairi Roscoe sent the claimant a further letter of invitation to the disciplinary hearing (page 655-657). The letter was sent under cover of an email sent at 7:49 on 26<sup>th</sup> September. The email states:

“Please find attached a reissued letter inviting you to a disciplinary meeting on Wednesday 28<sup>th</sup> September at 4pm.

I recognise that the letter contains the same date for the panel but with reference to our email exchange earlier today, the panel would like to offer some alternative dates to hopefully assist you. .... If you would like to change the meeting the panel can be available to meet with you at 4pm on either Thursday 13<sup>th</sup> October or Friday 14<sup>th</sup> October. Please can you confirm which date would suit you and your Unite representative by 5pm on Friday 30<sup>th</sup> September.

Once again please can you confirm the receipt of the letter and this email.

I look forward to hearing from you regarding the date.”.

129. Somewhat curiously the letter of invitation sent along with this email of 26<sup>th</sup> September is dated 12<sup>th</sup> September 2022. It confirms the same date of meeting 28<sup>th</sup> September at 4pm. Although the allegations are identical the third

bullet point simply states 'misconduct' instead of gross misconduct. The paragraph on the second page is changed to state that if the panel finds the allegations to be proven they may decide to take a number of actions including a written warning or a final written warning. The reference to dismissal is removed.

130. As noted above the covering letter from Mhairi Roscoe does not make any reference to the change of the third allegation to misconduct from gross misconduct. It does not provide any explanation whatsoever at all. The claimant in fact did not notice this change at the time and continued to believe that she was potentially facing dismissal if the third allegation was proved.

131. On 10<sup>th</sup> October the claimant sent Mhairi Roscoe an extremely detailed and lengthy written response to the investigation report. This included a timeline and supporting documents. The claimant's written response was lodged at pages 658-661. The timeline and supporting documents were lodged at pages 668-741.

In her covering email the claimant stated:

"I note that you have not yet responded to the clarification questions I asked. I would still appreciate a response in time for me to digest it before the meeting."

Mhairi Roscoe then responded at 4:10 on 8<sup>th</sup> October. She stated:

"Thanks for all these documents. Obviously there is a lot here for you to go through and a lot for the panel. We will give them the due attention.

I would ask you to reread the revised letter I sent you. This is important, and hopefully will be helpful to you.

With regards to the questions you asked they will be covered in the meeting. With regard to the Board members, the disciplinary procedure states when Board members are required to be part of the process, and this standard has been reached in this case. The named Board members have seen the report and the documents."

132. At this stage the claimant had still not received a response to paragraph 5 of her email of 21<sup>st</sup> September where she asked the respondent to explain to her the basis of the allegations.
- 5 133. The disciplinary hearing took place on 14<sup>th</sup> October 2022. The notes of this meeting were lodged (pages 280-325). The panel at the disciplinary hearing comprised Mhairi Roscoe, Mhairi Redman and Niamh McCrossan. These were all members of the respondents' Board. The claimant was accompanied by Carrie Binnie, her Union representative. During the course of the meeting  
10 the claimant asked why the charge had been initially stated to be gross misconduct and why it was then reduced to misconduct. One of the panel members (Niamh McCrossan) told the claimant that it was an administrative error. The panel then moved on to something else.
- 15 134. In advance of the hearing Mhairi Roscoe had met with her colleague. Mhairi Roscoe and her colleagues had been involved in framing the allegations and in their view they had believed that the third allegation amounted to gross misconduct. Subsequently Mhairi Roscoe received advice to reissue the letter without the words gross misconduct and the advice she received was that if  
20 she was asked she was to respond that an administrative error had been made and to apologise.
135. The panel had agreed in advance that they would allow the meeting to take as long as it took. They didn't want to have an end time. Ms Roscoe's view was  
25 that the investigation report had started with a narrow and succinct remit. During the investigation she believed subsequent allegations had been made. With regard to the substance of the allegations the panel noted that much of it had occurred in training spaces or safe spaces and they felt that it was important that the respondent retain those training and safe places as that.  
30 Since they were reading notes of things they felt it was very difficult to make a conclusion based on the report and based on the conflicting evidence that was contained in that report about that expanded investigation. They therefore made the decision that they would focus entirely on the initial allegations which were the events which had taken place over the period from 15<sup>th</sup> to 24<sup>th</sup> June.

Although this decision was made in advance of the hearing they did not at any time communicate this to the claimant prior to the hearing. They did not give an answer to the question asked by the claimant as to why on earth the disciplinary allegations which related to the period from 15<sup>th</sup>-24<sup>th</sup> June had somehow become expanded into more general matters. During their discussions they had decided that they may ask NC about this once the hearing was over, however in the event they did not actually do so.

136. The disciplinary meeting was recorded and the note of meeting was thereafter transcribed by Mhairi Roscoe. It would have been possible to have a transcription service do this, however it did not occur to Mhairi Roscoe to do this.

137. The disciplinary hearing lasted 3 hours 20 minutes. At the end of it the claimant handed a sealed letter to the panel indicating that this was a grievance about the process and the way she had been treated by the organisation. Ms Adams said that she did not know who she should give this to. That's why she had brought it in a sealed envelope. She offered to give it to the panel and for them to hand over to whoever should be dealing with it. The claimant was keen to be seen to put her grievance in before the outcome. She wanted it to be clear that whatever they decided she felt the way she had been dealt with up to that point was completely unacceptable. There ensued a conversation about who the grievance should be sent to and the claimant understood she would be given this information in early course.

138. On 20<sup>th</sup> October the claimant had still not heard and contacted Mhairi Roscoe asking for her to email back by the end of the day saying to whom the grievance should be sent. She said that if not then she would be sending the grievance to Miren Ochoa Sangues, the respondents' Chair (pages 733-734).

139. Later that afternoon Mhairi Roscoe emailed the claimant to say that the panel had decided to pause the disciplinary process until after the grievance was resolved. She went on to say "This ensures that any issues that may have

bearing on the disciplinary process can be resolved and ensure fairness.” She confirmed that the claimant should send her email to Miren Ochoa Sangues.

5 140. The claimant’s grievance was emailed to Miren Ochoa Sangues on 20<sup>th</sup> October – 735-736. On 20<sup>th</sup> October Miren Ochoa Sangues emailed the claimant to say she would be responding in due course.

10 141. The claimant was then invited to a grievance investigation meeting. On 10<sup>th</sup> October the claimant asked if this could be converted to a hybrid meeting as her Union rep had Covid. The investigation meeting took place on 10<sup>th</sup> November. A note of the meeting was lodged. The meeting was chaired by Miren Ochoa Sangues, the Convener of the Board. The claimant was also present. The claimant’s Union rep attended online (Carrie Binnie). The claimant found the meeting unsatisfactory. The Union rep pointed out at the beginning of the meeting that it was unusual to have an investigation meeting as part of a grievance. The claimant felt that instead of trying to investigate the points of grievance Ms Sangues was trying to investigate the claimant. She was attempting to shoehorn the grievance points into a different set of headings. The claimant felt that Ms Sangues was trying to narrow down the points so the grievance would not cover other areas which the claimant felt were important.

20 142. The claimant was then invited to a grievance hearing on 21<sup>st</sup> November 2022. The invitation letter was lodged (page 800). The claimant felt that the points raised in the letter were much broader than the points which she had raised and she was concerned that they were therefore designed so that they could be answered in a broad non specific way.

30 143. The grievance hearing took place on 20<sup>th</sup> November 2022. It was attended by Miren Ochoa Sangues and Anne Hamilton who was a note taker. The claimant was again accompanied by her Union rep. During the hearing the claimant pointed out that the wording set out in the invitation hearing was not how she would have put things.



144. A note of the meeting was lodged (pages 334-337). At the end of the hearing the claimant raised the point that having been off sick since September her sick pay was about to run out. Her Union representative suggested that given the circumstances the claimant should be suspended on full pay until the processes were completed. Ms Sangues said she would get back to the claimant regarding this.

145. At the beginning of December an incident occurred which concerned the claimant. There was a conversation on SLACK regarding the opening of "Beira's Place" on 13<sup>th</sup> December. Beira's Place is an organisation providing support to victims of sexual violence. It was partially funded by well known author J.K. Rowling. It is a single sex service which only employs cisgender women. AB sent an email to everyone in the organisation which is lodged at page 764. She stated:

15

"Subject: Bad News in Collective Care  
Hey everyone just writing to acknowledge the really terrible news that came yesterday about JK Rowling's new Centre.

20

It landed really heavy with me, and I wonder if it did for some of you too.

25

I wonder if it would be useful to have a moment to get together (online ofc) to talk about it and rage about it and express whatever other feelings come up.

30

If everyone would like that reply to this or my SLACK message and I'll set up a time.

Big love to you all in the face of this total festive stinker."

146. She attached a link to a Guardian article which reported the opening of Beira's Place. The claimant was surprised at the way this email unashamedly assumed that there was only one way of thinking about these matters. She felt that this was being openly shared as being the right way to think and that there was absolutely no space for dissent for someone who did not subscribe to gender identity theory and did feel that biological sex was important. Following this MW, the CEO of the organisation sent a further email (page 764A). She said:

5 “I just wanted to let you know that I was made aware of this place only yesterday when the news hit the papers. I have many feelings about this place and have expressed them as such offline and would encourage you to as well. [AB] has led on creating space for that and I would encourage you to lean into it.

10 I am endeavouring to take a pragmatic approach to the existence of a service for those who don't think ERCC is suitable for them. I believe in survivor's choice and now there is a choice for those who are not in a position to use our services.

15 In saying that our values and positions are markedly different, we are an organisation who are doing our best to imbed inclusion into our systems and the work we do now will survive and thrive beyond all of us. This new organisation has been founded on a platform of exclusion, misinformation and what I would describe as white feminist imperialism, that interesting combination of the flaws of white feminism and the white saviourism of colonialists and of course capitalism of  
20 which the founder is a beneficiary. ...”.

There were also a number of emails from other members of staff supporting AB's position.

25 147. The claimant received her grievance outcome on 13<sup>th</sup> December. This was lodged at pages 756-762. Ms Sangues did not uphold any of the claimant's grievances. The claimant felt that the grievance outcome appeared to have been written by someone who had not been at any of the grievance meetings. She felt that her original grievance had been reframed and that the reframed  
30 points had then been answered in a way which held strongly to the organisation's point of view. She felt that it was not even accurate. Ms Sangues had met with MW in order to discuss the claimant's allegations that MW had shown bias from the outset and had condemned the claimant by labelling her actions as transphobic. Ms Sangues accepted MW's position that  
35 she had not been involved in the disciplinary process. During this meeting MW confirmed to Ms Sangues that she had witnessed AB's reaction to the claimant's comment and that as a trans woman she believed the claimant's communication was transphobic. MW told her that this had brought back past experiences of transphobia and that was why she had asked not to be involved  
40 in the investigation process.

148. As a matter of fact Ms Sangues was aware that MW had been involved in the disciplinary process because MW had contacted Ms Sangues at the end of August and asked her to identify 3 members of the Board who would be able to deal with the disciplinary. There was no explanation why Ms Sangues did not challenge MW on this point. Ms Sangues believed that the claimant had been given guidance about what not to say about her colleagues' private information but that she had continued to challenge this. Ms Sangues' position was that she had omitted some of the points raised by the claimant because she wanted to keep the disciplinary and grievance processes separate.

149. The claimant decided to appeal the grievance outcome. A copy of her letter of appeal was lodged. In the meantime the respondents confirmed that they would not suspend the claimant but did agree to extend her sick pay by 4 weeks. This decision was only intimated after various strongly worded letters from the claimant's Union official. Despite the fact the claimant remained off work after the end of the 4 weeks, the respondents refused to extend her sick pay further. The letter of appeal was lodged (388-342). The claimant attached to this a detailed point by point note of her position on the outcome of the grievance.

150. The grievance appeal hearing took place on 31<sup>st</sup> January 2023. It was conducted by Elaine Cameron, one of the respondents' Trustees. She did not give evidence at the Tribunal Hearing. The claimant was again accompanied by her Union representative Carrie Binnie. The transcript of the appeal hearing was lodged (pages 345-429). The Minutes of the Appeal Hearing were also lodged (pages 430-435).

151. On 2<sup>nd</sup> February Elaine Cameron wrote to the claimant with the decision on the grievance appeal. The letter was lodged (pages 818-820). The letter dealt with the appeal on the basis of 2 grounds. The first being "lack of objectivity in decision making", the second being "the grievance process was not followed correctly and it was an unnecessary lengthy process causing detriment to you."

152. With regard to the first ground, the outcome was stated to be:

5 “from reviewing all of the documents surrounding the grievance process and the evidence you have provided during the appeal there is no evidence that lack of objectivity in the grievance decision process has impacted the final decision not to uphold your appeal on the grounds of discrimination due to belief-not upheld.”

10 153. With regard to the second point, that the grievance process was not followed correctly, she stated:

15 “I acknowledge that this grievance process has not been handled as well as I would expect it to have been by the organisation. I accept that it has been lacking in the following areas, a drawn out process and unwanted terminology used with certain documents, the absence of Minutes from one meeting. However based on my review of the available evidence I agree that the original decision of the Grievance Chair was correct and that the procedural issues have not impacted on the fairness of the decision.”

20

154. Under recommendations she stated that she had asked ERCC to:

- 25 “
- Review the disciplinary and grievance policies and the training that is given to all Managers and Trustees in these areas
  - Consider this decision whilst considering the next steps for the currently paused disciplinary action and inform you as soon as possible the next steps
  - Provide note taking/Minute training to Managers where required
  - Review this case with the organisation’s Legal and HR Advisors to ensure that learning is applied in future.
  - Apologise to the appellant for the lengthy process and for the unwarranted and unhelpful language used within documents relating to the disciplinary and grievance process
  - Seek to engage with you to support and agree a return to work plan.”
- 30
- 35
- 40

155. Despite the fact that the disciplinary process had been specifically put on hold until such time as the grievance process was complete Mhairi Roscoe decided, having restarted the grievance process, that it would not be appropriate for her

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or her colleagues to refer either to the grievance decision or the grievance appeal decision before coming to a conclusion. Accordingly they did not see a copy of either the grievance decision or the grievance appeal decision. Ms Roscoe received a text from Elaine Cameron around 2<sup>nd</sup> February 2023 simply to advise that the grievance appeal process was now concluded. She did not have sight of the outcome letter. Ms Cameron did not convey any information to her regarding the outcome of the grievance or what the conclusions had been. On that day Ms Roscoe drafted a disciplinary outcome letter and sent it at around 7 pm to the other 2 members of the disciplinary panel.

156. The disciplinary panel had met a few days after the original disciplinary hearing the previous October but had not met since then. Ms Roscoe drafted the outcome letter based on her understanding of the panel's joint point of view. Having sent the draft to the other 2 members Ms. Roscoe subsequently received a response from them confirming they were in agreement with the content of the letter. Ms Roscoe then ran the letter past the respondent's legal advisors and it was issued to the claimant on 6<sup>th</sup> February. The letter was lodged (pages 821-822) – the outcome was that the first and third allegations were upheld but the second was not. The findings were:

“

- that you did not follow the management instruction about how to respond to service users and public queries about staff members' private information.
- That you engaged in behaviour that was likely to cause distress to a colleague or colleagues. We refer specifically to the email sent to your colleague on June 22<sup>nd</sup> at 15:54 and June 23<sup>rd</sup> at 15:34 after their explicit request to have no more conversation about the issue in hand. This caused them upset and distress.”

157. The letter then goes on to state:

“Ordinarily this would result in a warning being issued to you however because of the prolonged nature of the disciplinary process it is the unanimous view of the panel that we will waive this. Therefore no further action has been taken and no warning is being issued.”

158. The letter does however go on to state:

5                    “We would like to point out that it is essential that going forward you are entirely respectful of the wishes of your colleagues and follow closely the instruction of your Managers around sensitive personal issues. We would also state that you should consider fully the impact your actions may have on your colleagues and those around you.

10                    We would also like to communicate that the policies of the Edinburgh Rape Crisis Centre with regard to the employment and provision of support to all people are entirely reserved to the Board and will remain so going forward.”

159. The claimant was advised of her right of appeal. The letter also goes on to  
15                    note that the claimant was off sick and that she should contact her Line Manager when she wished to start a conversation about returning.

160. The claimant considered that the disciplinary outcome was unsatisfactory. She  
20                    was concerned that the emails which were referenced as causing distress to a colleague or colleagues could not really be regarded as offensive. One was an apology and the other was an explanation email which she had carefully worded. Her view was that AB had said that she wasn't looking for a conversation and the claimant was specifically not asking for a conversation but sent an apology and then an explanation quite explicitly stating in the  
25                    emails that she was not looking for a conversation. She did not feel that she had harassed AB in any way and felt that it was unjust to make this finding. The claimant felt that the outcome was that the panel were still saying that she had done something seriously wrong and she felt this was unjust. The claimant sent an appeal to Katie Horsburgh, the member of the Board who had been  
30                    designated to deal with the appeal. The email sending this is lodged at page 823 and the appeal letter itself at page 824. The appeal letter was dated 8<sup>th</sup> February.

161. The claimant attended the disciplinary appeal meeting which took place on 6<sup>th</sup>  
35                    March 2023. It was chaired by Katie Horsburgh, a member of the respondent's Board. Nico Ciubotariu also attended the appeal meeting as did Mhairi Roscoe. The claimant was accompanied by her Trade Union representative

Ms Binnie. A note of the meeting was lodged (pages 430-435). The notes were taken by Anne Hamilton, a note taker. During the course of the hearing NC was asked a number of questions by the claimant. When asked if she still upheld the view that suggested to the claimant that the claimant was transphobic NC replied that it was a fact finding mission and a gathering of evidence and the facts and evidence did uphold the complaint. She clarified saying that some of the claimant's opinions could be construed as subtly though not overtly transphobic. The claimant asked why, when she was subject of a complaint for not following guidance and upsetting colleagues, the transphobic issue had come at all. NC said that if during interviews staff produced further allegations they had to be investigated. The claimant challenged NC about asking leading questions. Mhairi Roscoe was questioned by the claimant.

15 162. The claimant received a letter on 10<sup>th</sup> March setting out the outcome of the appeal. Her appeal was not upheld. The letter was lodged (pages 843-846). The last paragraph notes "You have asked for a public statement to your colleagues that ERCC does not believe you are transphobic. This process has found that you breached the disciplinary policy not the trans inclusion policy. 20 Your disciplinary process and outcome as per our policy is confidential and therefore we cannot make any public statements about it.

163. The claimant's view was that throughout the respondents were failing to engage with the actual issues. She felt they were not engaging with the full picture. She felt the important point she was upholding was how the organisation should respond to service users and the need to be honest and transparent and clear so people could be informed on how they operated. She felt the service users were forgotten. She felt that the whole focus of the investigation had been on labelling her as transphobic and she had wanted everyone to be told that she was cleared of that but they weren't prepared to do that. There was nothing in the letter about how to restore relationships with AB. AB had been told that things would be organised so that she did not have to work with the claimant. This had not been addressed.

164. The claimant wrote to Ms Sanges on 17<sup>th</sup> March setting out her concerns. The letter was lodged (page 848-849). It is probably as well to set part of this out in full.

5 “In order for me to feel safe enough to return to work and clear about my job going forward please would you answer these questions.

10 Miren, you wrote in the grievance decision that “in my investigation meeting with Mridul Wadhwa she acknowledges that “as a trans woman, she believes the communication used by Roz was transphobic”. (1) Would you guarantee that Mridul will be told by the Board that no evidence of transphobia was found as a result of the investigation and prevent her from continuing to make that allegation? (2) In a disciplinary appeal hearing Nico stood by what she wrote in the report. The report states:

15 “RA believes that people who are raised with male privilege should not be in women’s groups. RA sees referring to trans exclusion and radical feminists as terfs as not conducive to dialogue. RA also believes the responsibility should lie with other areas of society not only with women only services and the focus should be on male violence. These views are all consistent with the concerns raised by the other staff members with regards to underlying transphobia”.

20 This is consistent with views expressed by RA and other spaces (like trans inclusion trainings or safe spaces ) that seem to support excluding and invalidating trans and non binary people’s experiences.

25 Despite denying holding transphobic views when asked to explain RA’s explanation seemed to support the concerns raised by other staff members with regards to underlying transphobia.”

30 Would you give Nico the same messages that I have not been trying to be transphobic.

35 I appreciate the offer of mediation with [AB]. I have not asked for mediation with Mridul Wadhwa due to the evident power imbalance. I request that the clarity of my position comes from the Board.

40 (3) I asked for unambiguous guidance so I can be clear when responding to service users. The guidance referred to by Katy in the disciplinary hearing appeal decision remains ambiguous.” There is already clear guidance in place on how to respond to service users who enquire about the gender of their support worker and all staff have been made aware of this



guidance – I confirm that we have no men working for us without disclosing one’s gender history.”

5 It does not cover service users who are asking about biological sex not gender identity. Please give me guidance on how to respond to those service users.”

10 165. At around this time (March 2023) the respondent’s Chief Executive, Mridul Wadhwa spoke at an event at Edinburgh University entitled “Inclusion is beautiful but including is ugly”.

15 166. The meeting was attended by Ms Jones who is someone with an interest in the gender debate and holds sex realist views. At the time she gave evidence to the Tribunal she worked for Sex Matters which is an organisation which campaigns for sex realist views. Ms Jones was aware that the University has a dignity and respect policy but considered the tone of the meeting did not follow it. There was considerable cursing from Mridul Wadhwa and a lot of mention of “terfs” and transphobes in a disparaging way. Mridul Wadhwa referred to those who enquired about whether or not she had a GRC and stated  
20 that this was a transphobic question and Mridul Wadhwa said “Fuck them” and described these people as terfs.

25 167. A question was asked about the recent opening of Beira’s Place and MW responded using the phrase “If you want to follow the law to its boring detail and boring limitation” in a way which suggested that she did not respect the law. During the question and answer session someone asked what was the best way to get staff on board with the inclusive policy. MW responded very bluntly saying “Fire them”. Ms Jones also became aware of a tweet from Lighthouse Books who reported on the event in a tweet.

30 168. Highlights included:

- Swearing as self care
- firing can be as important as hiring in creating more inclusive spaces
- 35 - privilege isn’t static & progress is rarely linear so accountability is crucial
- if an institution “actually” values diversity and inclusion it “will” defend them.”

This tweet was lodged (page 916).

169. It is unclear whether or not the claimant was aware of this event at the time.

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170. On 30<sup>th</sup> March the claimant received a response to her email from Katy McTernan which was lodged (page 850). The reply stated:

10

“Kim passed on your query to me. Our guidance remains that we do not share personal information about staff or volunteers. We no longer refer to named counselling support workers when setting up appointments, so this is less likely to arise. If it does and the service user is not content with a response that we do not employ men, then this would be passed to your Line Manager or another member of SLT to follow up.

15

Our current groups are open to all women. If we decide to run a mixed group, that will be clear at the point of invitation for service users.

20

As part of your return to work plan we will cover all changes since you have been off. This will give us the opportunity to ensure that you are confident in all processes and answer any further operational question. Once we have a confirmed date for your return to work we can arrange a meeting.

25

Best Wishes  
Katy.”

171. Around this time the Board also responded to say that they would not put out a statement to the effect that the claimant was not transphobic but that MW and NC would see the outcome of the disciplinary hearing. The claimant’s view was that the response she had received from Ms McTernan indicated that there was still no clarification and there was nothing to reassure staff members on duty that service users were getting a clear unambiguous response to their questions. The claimant felt that the respondents were still refusing to address the issue in hand. She did not think that she would be safe in returning to work. She felt that her strongly held view that sex is biological meant that she would be accused of being transphobic. She felt she could not work for people who felt she was not entitled to her beliefs. She did not think that she would be protected in any way if she asked for clarity on the issue.

40

172. The claimant was already under some financial stress due to the fact that her sick pay had been stopped. She had received statutory sick pay which had stopped and she was on no income. She did not think it was safe for her to return. The claimant resigned. Her letter of resignation was lodged. (p852)

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173. After the claimant resigned she contacted Beira's Place and sent them her CV. She explained that she was out of a job. She subsequently met with them and they offered her employment starting at the beginning of May 2023. At the time the claimant resigned she did not have any offer of a job from Beira's Place or any indication that such a job offer would be forthcoming.

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174. The 3 members of the respondent's Board and the 1 Manager who gave evidence, Mhairi Roscoe, Katie Horsburgh, Miren Sanges and Katy McTernan are all strong believers in gender identity theory. They do not believe that sex is immutable. It is their view that a trans woman is a woman and that biological sex is not relevant. They do not believe that sex is binary but believe that it is possible for an individual to be non binary.

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### Observations on the Evidence

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175. There was surprisingly little dispute between the parties as to the relevant facts in the case. There was an Agreed Statement of Facts which dealt with a substantial number of the salient events which had occurred during the disciplinary and grievance processes.

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176. In general terms we found the claimant to be a careful witness who was anxious to be totally truthful in her evidence. She made appropriate concessions. We found her evidence to be entirely credible and reliable. It was entirely consistent with the contemporary documentation. The claimant disputed the accuracy of the supervision note from Ms Townsend, her Line Manager. Ms Townsend did not give evidence. The Tribunal noted that the claimant only received the supervision documents at a fairly late stage and that she challenged these with the respondent as soon as she did. The Tribunal accepted her evidence in relation to the instruction which she was actually

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given by Ms Townsend and did not accept that the supervision note was accurate.

5 177. With regard to the respondent's witnesses a considerable part of their cross examination was in fact spent in asking them to elaborate on their views on gender identity and gender critical views. It was clear to the Tribunal that all of them hold very strong views which can only be described as based on gender identity. The tribunal felt it appropriate to make a separate finding of fact to the effect that they held views on gender identity which were the exact opposite of those of the claimant. All of them were very clear that there is no such thing as biological sex and that a trans woman is a woman. They believed that a person who was assigned male at birth can become a woman simply by asserting that they now identify as a woman. They also believe that sex is not binary and that some people may be non binary so far as their gender is concerned. Much of the cross examination appeared to be designed to shake them in these beliefs or at least put alternative beliefs to them. We have not made any findings in relation to this since it was not part of our role to decide whether their beliefs are true and correct or not; just as it was not part of our role to decide whether the claimant's beliefs were true or false. There were however a number of issues where we were not satisfied with some of the evidence given to us by the respondent's witnesses.

25 178. We found Mhairi Roscoe's evidence regarding how the third allegation against the claimant came first of all to be described as one of gross misconduct and thereafter one of misconduct to be entirely unsatisfactory. She was quite clear in her evidence in chief that it had been the decision of her and the fellow members of the panel that this allegation met the definition of gross misconduct and that is why it had been included in the original draft. It was her claim that the original draft had been prepared on or about 12<sup>th</sup> September. There is an email to show that it was available on that date. She could not explain why it was that the letter which was sent to the claimant a few days later was then dated the 18<sup>th</sup> other than that the date would have been changed to correspond with the date it was actually sent. Thereafter the claimant went off sick and at the same time sent in her email questioning why this allegation was now to be

regarded as gross misconduct. Mhairi Roscoe's evidence as to how this was dealt with was entirely incomprehensible. Basically what she stated was that she had taken advice. She was not prepared to go into that advice and given that it was legal advice she could not be questioned on this. She said that she had been told to say that an administrative error had been made and that this was not gross misconduct but misconduct. She gave no real explanation as to why the new letter which was sent out was dated 12<sup>th</sup> September which appears to be the date the original was prepared. The idea that the allegation had initially been termed gross misconduct due to an administrative error was entirely inconsistent with the evidence she gave in examination in chief that she and her colleagues had debated the issue and decided it amounted to gross misconduct.

179. It was put to her several times by the claimant's representative that the most likely explanation was that the letter had been originally drafted with allegation 3 showing as misconduct which was undoubtedly the correct categorisation. She then put it to Ms Roscoe that someone within the organisation, probably MW or NC or both, had wanted to get rid of the claimant and therefore insisted that this be changed to gross misconduct. As a result the letter was sent out with allegation 3 being categorised as gross misconduct. It was then submitted that the respondents had panicked when the claimant went off sick and made it clear she would be putting up a fight and as a result they had lost their nerve and reduced the charge to one of misconduct which was what it should have been all along. She suggested that what happened then was that the original draft of the letter (dated 12<sup>th</sup> September) was sent out which was the most likely explanation as to why this letter which was actually sent out on 26<sup>th</sup> September bore a date from 2 weeks previously. Ms. Roscoe denied this explanation.

180. The Tribunal's view was that whilst we did not accept Ms Roscoe's explanation we were not prepared to make a positive finding of fact that matters had transpired in exactly the way set out by the claimant's representative. The finding is, however, that this is something entirely inexplicable which the respondents have entirely failed to provide any proper justification for.

181. We also had some reservations about the evidence of the other respondent's witnesses in particular in relation to the input of MW and NC into the process. All of them were very keen to say that they were completely independent of MW and NC. However the Tribunal's view was that whilst there was no smoking gun showing any direct instruction, it was clear that all 4 of them would have felt influenced by MW's view on things. It was noteworthy that Ms Sangues and Ms Horsburgh appeared to be extremely inexperienced and had only been on the Board for a fairly short time. Ms Roscoe was more experienced but had never carried out any disciplinary hearing before.

182. Ms McTernan who was the only member of staff who gave evidence had actually had very little input into the process. She had attended a couple of the initial investigation meetings as a note taker. She had not been involved in any decision making. Her evidence was of fairly limited value. She did however give strong evidence about her own views which very much echoed the "party line" espoused by the other Board members who gave evidence in relation to gender issues.

183. When dealing with the evidence it would be remiss of us not to mention the most significant issue in relation to the respondent's case which was their failure to call MW or NC. It was clear that these were 2 leading actors to what had taken place. NC carried out the investigation and made the decision to widen it and speak to individuals who had absolutely nothing to do with the original allegations but simply wished to bad-mouth the claimant on the basis of her allegedly transphobic views. There were clearly a number of questions which NC was required to answer and NC was not called to give evidence. Other than saying that NC no longer worked for the organisation absolutely no explanation was provided for this.

184. It was also clear that it was the claimant's case that MW, the respondent's Chief Executive, was the invisible hand behind everything that had taken place. There were a number of matters where the Tribunal heard evidence which indicated that she had become involved. The written evidence showed that she

expressed a view as to the claimant's guilt at the outset. Although the respondent's witnesses protested that she took a backseat it was clear that in fact she had been involved in asking members of the Board to take up their respective roles. In the view of the Tribunal absolutely no explanation was provided as to why she refused to give evidence in the case. The Tribunal felt that given the complete absence of any explanation for NC and MW giving evidence then we were entitled to draw an adverse inference as to what their evidence would have been in relation to those matters where the respondent's position conflicted with the claimant's evidence.

## Discussion and Decision

### Issues

185. The claimant initially raised Claim Number 4102236/2023 in March 2023 claiming unlawful discrimination on grounds of religion and belief. She then raised Claim Number 4103479 on 23<sup>rd</sup> June 2023 in which she claimed that she had been unfairly constructively dismissed. An Order was made that both claims be considered together by Judge Eccles on 1<sup>st</sup> August 2023. Following a change of agent the claimant lodged consolidated Particulars of Claim on 30<sup>th</sup> October 2023. In their covering email they accepted this amounted to an amendment of the claim and sought permission to amend. On 14<sup>th</sup> November the Tribunal confirmed that the amendment had been accepted and the consolidated Particulars of Claim were accepted. In preparation for the Hearing a draft List of Issues was prepared but was not agreed. On the first day of the Hearing the respondent's representative indicated that he was seeking to amend the Grounds of Resistance in 2 respects. He accepted that this was to some extent late in the day in that the respondents had not sought to amend their response subsequent to the claimant lodging their amended Particulars in October 2023. After discussion the Tribunal agreed to accept the respondents' application to amend. Reasons were given at the time. The Tribunal applied the usual **Selkent** principles and considered that it was in the interests of justice for the respondents to be able to put forward the 2 additional matters which they had raised in their defence. It appeared to us there would

be no significant addition to the evidence to be led and that there would effectively be no particular prejudice to the claimant in allowing the amendment. Following the amendment the Tribunal accepted the issues comprised those set out in the draft List of Issues which had been discussed  
5 between the parties subject to the following additions:

(1) in paragraph 15 in relation to the claim of indirect discrimination under section 19 of the Equality Act the Tribunal accepted that additional words should be added at the end: "If yes to what aim  
10 was that directed? -Preserving AB's Article 8 ECHR and other rights and maintaining the relationship of mutual trust and confidence between the respondent and AB and avoiding reputational damage.

15 186. In respect of the claim of constructive dismissal amending paragraph 19 so it reads: "If R did so act did C resign in response to that breach?" and then adding an additional paragraph 18A relating to the breach of the implied term of trust and confidence "If R did so act did the claimant affirm the continuation of the contract of employment."

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187. Although the List of Issues is referred to for its terms the issues in the case can be succinctly stated as:

25 "(1) a claim of constructive unfair dismissal where the claimant alleges a breach of the implied term of trust and confidence. The respondent denies that they acted in repudiatory breach of the implied term but states that if they did so act the claimant affirmed the continuation of the contract of employment and was therefore not dismissed. They also did not accept that if a breach had occurred that the claimant had resigned in response to it.

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(2) unlawful discrimination on the grounds of religion or belief. The claimant asserted that she held the belief of sex realism and that she lacked the belief in gender identity theory as set out in paragraph 5 of the consolidated Particulars  
35 of Claim. This was not disputed by the respondent. The respondent also accepted that the belief was protected in terms of section 10 of the Equality Act."



188. The claimant claimed harassment, direct discrimination and indirect discrimination. There were 10 specific matters raised which were alleged to be harassment. (a-j). These are set out more fully below. The same 10 matters were also relied upon as instances of unlawful direct discrimination under section 13 of the Equality Act. The claimant's alternative case on direct discrimination was that if the treatment was not treated less favourably or harassed because of the claimant's protected beliefs or of the respondent's perception of the claimant's protected beliefs then the claimant was treated less favourably because of a manifestation of her protected beliefs.

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189. As noted below the parties also raised the issue of whether if the claimant was treated less favourably as a result of a manifestation of her beliefs was the respondent's treatment of the claimant justified. As noted below the parties referred to the approach set out in the case of *Higgs v Farmors School* on this issue. Finally, the claimant referred to those same incidents as also being instances of indirect discrimination on the basis that the respondent treated manifestations of gender critical belief or a lack of belief in gender identity theory as a disciplinary matter. In order to assist clarity the full text of the Agreed List of Issues subject to the amendments which the Tribunal accepted on the first day of the Hearing are set out in the Appendix attached.

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190. During the course of the Hearing the parties agreed that the present Hearing would deal solely with the issue of liability, with remedy, if appropriate, being dealt with at a subsequent Hearing.

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### 25 **Submissions**

191. Both parties made full written submissions which they then expanded upon orally. Both sets of written submissions are referred to for their terms. Rather than attempt to summarise the various submissions and no doubt fail to do justice to them these are referred to where appropriate in the discussion below.

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### **Discrimination on the basis of religion or belief**

192. Before looking at the claims in detail it is as well to briefly touch on the nature of the claimant's philosophical belief in this case. The claimant's agent spent the first part of her submission setting out the context of the claimant's belief and stating that the claimant's belief that there are only two sexes and that humans cannot literally change sex is in her view a self evident fact which sets out the background as to why the fact that this is now something which appears to be controversial leads society to consider the claimant's beliefs to be a philosophical or religious belief. The Tribunal's view was that we do not require to in any way conclude that the claimant's belief is correct or that the beliefs espoused by the respondent's witnesses are incorrect in order to deal with this case and make our findings. The Tribunal's view on this question was that we accepted that the claimant holds the beliefs set out in her amended Particulars which are generally referred to as gender critical or sex realist beliefs. It was also very clear to us that many people within the respondent's organisation including all of the respondent's witnesses hold a contrary belief and believe in gender identity theory. It was clear from the evidence we heard that that these two theories are opposed and that indeed there is an ongoing conflict between adherence of the two. It is the role of the law to mediate that conflict and the role of employment law to mediate that conflict within the employment relationship. This does not in any way require the law to come down on one side or other of the philosophical debate. The law does however require to take cognisance of the human reality behind the debate. It is one where both sides hold extremely passionate views. Indeed both sides feel with some justification that they have "skin in the game" and that the matter is more important than a mere philosophical difference. For those who are trans their lived experience clearly suggests to them that sex is not immutable or simply a matter of biology. Many will have a life history where they considered that they were in the "wrong body" and at some stage in their lives have taken steps to transition from one gender to another. Such a transition is only possible if one believes to at least some extent in gender identity theory. For those who are in that situation to suggest that sex is biological and immutable can easily be seen as a threat to their very self identity and some of the most important parts of their being. Equally those who hold the claimant's belief may consider that the view that sex is fluid and that gender is essentially a matter of self

identification as being a threat to advances which they have fought for over the years in terms of women's safety and providing protected women only spaces. In most legal situations the existence of two distinct philosophies of gender makes no difference whatsoever. In most situations the law insists that men and women are treated exactly the same. The Tribunal agreed with the claimant's representative that this is one of these cases where sex does matter in that the respondents are a Rape Crisis Centre. They specifically refer to using the exemption provided in Schedule 9 of the Equality Act on the basis that it is an occupational requirement for employees to be women. In this case there did not appear to be any suggestion from either party that it would be appropriate for a man to be so employed. The difference between the claimant and other members of the respondent's staff and management was in the definition of what is a man and what is a woman which brings the conflict between the two philosophical beliefs into sharp focus. In her submission the claimant's representative invites us to make a finding that a Rape Crisis Centre is an environment in which the ability of traumatised people to give informed consent depends crucially on an acknowledgement of the material reality of sex.

193. The claimant's representative specifically submits that whereas in a think tank or University it may be appropriate to proceed on the basis that all Grainger compliant beliefs should be treated equally. This is not something that can be said of a Rape Crisis Centre. The position of the claimant's representative appeared to be that this would be akin to saying that a flat earther is entitled to a university lectureship in geography. A full acceptance of the view expressed by the claimant's representative would appear to be that a rape crisis centre is entitled to discriminate against those who subscribe to the gender identity theory espoused by the respondent's witnesses. We have not come to this view.

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194. Our belief is that there may well be a place within a Rape Crisis Centre for those who hold both philosophical beliefs. It is very likely that a Rape Crisis Centre will find itself dealing with service users who hold both sets of beliefs. Our view, however, is that what is important is that holders of one belief or

another are not discriminated against for either the fact that they hold that belief or the fact that they manifest that belief nor should the organisation impose provisions, criteria or practices which place the holders of one belief or another at a particular disadvantage.

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195. Essentially our view of the law is that the law imposes a duty on both sides to tolerate each other in the workplace. Tolerance means not just accepting views which one may not be terribly bothered about but means accepting that others hold views which may cut to the core of one's being. It does mean that in organisations such as a rape crisis centre such matters require extremely careful handling but, in our view this is the approach which the law requires. This is the approach which we have taken in our discussion of the individual claims below.

#### 15 **Direct Discrimination/Harassment**

196. We are treating these together since the same incidents are relied upon by the claimant in respect of her claims of direct discrimination and harassment. Given the terms of s212 of the Equality Act which states that detriment cannot include conduct which amounts to harassment, conduct which amounts to harassment cannot also be regarded as direct discrimination. It is therefore appropriate to consider first whether the conduct alleged amounted to harassment. If it did then there is strictly no need for us to go on to consider whether it amounts to direct discrimination That having been said it is appropriate to record that in respect of her direct discrimination claims, the claimant compares herself with a hypothetical comparator being someone with exactly the same characteristics as her who behaved in exactly the same way as her but did not hold her gender critical beliefs.

30 197. The harassment claim was that the claimant was subjected to unwanted conduct related to her gender critical belief or lack of belief in gender identity (her beliefs) which had the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. (the proscribed effect)

198. The first item of conduct is stated to be **“Assuming, in the absence of any proper investigation, that the claimant had been guilty of misconduct and had mistreated AB in the email of MW to AB of 22<sup>nd</sup> June 2022.”**

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199. The facts behind this allegation are at the core of the case and it is as well to set out the Tribunal’s view on this and the context in which the incident occurred.

10 200. The Tribunal’s view of the context was that when the claimant joined the organisation she was very much on board with the idea that people can identify however they want and that people are all on a journey with exploring who they are and expressing that in different ways. She was perfectly happy with using the genderbread man teaching aid in a workshop which she had previously  
15 carried out on LGBT issues. The claimant refers to discovering as time went on that there was, in her view, ‘something off’ with the way that Edinburgh Rape Crisis Centre considered these issues. The Tribunal’s view was that essentially the claimant gradually became aware of the crucial distinction between her generally trans positive but also sex realist philosophical belief  
20 and the more extreme gender identity belief which she became aware was prevalent in the organisation and indeed was clearly held by the respondent’s witnesses who gave evidence to the Tribunal and is evident from some of the written documents in the case.

25 201. A particular issue for the claimant was what to say to service users who wanted to be sure that they would be seen by someone who was biologically a woman. Following the controversy which accompanied the appointment of Mridul Wadhwa the claimant knew that there had been extensive publicity around the fact that Mridul was biologically male and did not hold a Gender Recognition  
30 Certificate. The claimant’s view was that in those circumstances it would be inappropriate and simply untruthful to tell a service user that the organisation did not employ men. In the claimant’s view it may well be the case that if the service user was themselves an adherent of gender identity theory and fully subscribed to the view that “a trans woman is a woman” there would not

5 necessarily be a problem. Her concern was that at the coal face dealing with real life service users who were survivors of sexual assault it was likely that many would subscribe to the claimant's strongly held belief that whilst trans people ought to be supported, at the end of the day sex is biological, immutable and binary.

10 202. The claimant's views on the subject had become known to the Managers within the organisation through various events which the claimant had attended and also the claimant's earlier involvement in trying to write guidance on the subject. The tribunal was in no doubt that the respondent managers had identified the claimant as some-one who did not subscribe to what they believed were the correct views on the subject. They were well aware of her gender critical beliefs and it was a concern to them. There is ample evidence of that in the various interactions which took place up to and prior to the emails sent by Mridul Wadhwa on 22 June.

20 203. The tribunal accepted that the claimant's reason for expressing the various concerns she had in relation to the respondent's approach to the gender issue was not simply based on a wish to tell them about her views. We accepted the claimant's evidence that "the most important thing for me is that we are honest about what that means". She had no issue with trans identified people coming to use the service or working at the service so long as the service was clear about what that actually meant. The key difference from her point of view was the respondent's view that biological sex didn't matter and that gender identity is the only thing that should matter was something she did not believe in. Her concern was that it would be extremely damaging if someone went to see someone that they thought was a woman and later discovered that that person was actually biologically a man.

30 204. As noted above, the claimant responded to the survey and having waived her anonymity in the survey attempted to explain her concerns to Kathryn Dawson. Over time the claimant had become aware from the feedback she was getting that there was a definite ideology behind much of the respondent's actions in this way. She received feedback from MW about using the expression "trans

woman". She also became aware of what she described in evidence as the respondent's mantra that "a trans woman is a woman". Like others within the organisation the claimant was concerned about some of the reports of prior statements of Mridul Wadhwa before she joined the respondent and in particular what appear to be the suggestion that people holding the claimant's view on sex realism should be regarded as bigots, racists and ableists. She was concerned at the tone of some of the correspondence within the organisation.

10 205. A particular difficulty is caused when AB, someone known to the claimant and with whom the claimant has been on friendly terms, states that they are changing their name. The Tribunal was not given any evidence regarding the point at which AB began to identify as non binary, but in any event the real issue was AB changing their name from a name which sounded female to a name which sounded male. The claimant was aware that one of the orthodoxies which appears to flow from gender identity theory is that one should not in any way question anyone about their gender history or gender journey. She and her colleagues sought guidance from their Line Manager as to what to say if they were asked whether or not AB was a man.

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206. The Tribunal's view of the evidence was that neither the claimant nor her colleagues ever received a satisfactory answer to this. The Tribunal did not accept that the supervision note which was lodged but not spoken to by Ms Townsend was accurate given the claimant's clear and definite evidence that it was not. Even taken at its highest, however, the notes suggesting that the claimant should simply say that the organisation does not employ men did not properly address the issue and left the claimant with a legitimate concern as to how she should properly respond to such a question if it were ever asked.

30 207. The situation which the claimant has feared then arises. The claimant receives a direct request in the email at page 513-4 –

"Is [AB] a man or a woman?"

208. Although the email does not go into detail the Tribunal believed that the claimant correctly saw this as an enquiry into AB's biological gender. The service user wanted to know if they would be getting counselling about the sexual assault from someone who was a man or from a woman and went on to say that as a woman they would feel very uncomfortable talking with a man.
209. At this point the matter has been raised by the claimant and her colleagues at the team meeting and their Line Manager said she would speak to the senior management team and get back to them. It was also raised by the claimant at her supervision with her Manager and once again the claimant had been told that her Line Manager would speak to the senior management team and get back to her. Her Line Manager has not yet got back to her on this.
210. The claimant sends an email at page 514 at 13:01 seeking guidance. She then goes on to state "My instinct is to say hi thanks for asking. AB is a woman at birth who now identifies as non binary." The Tribunal's view was that the claimant had been placed in a difficult position by the refusal of her Line Manager to give her clear instructions in what was clearly always going to be a difficult situation. Her view was that suggesting a response prefacing that with "My instinct is to say" the claimant was doing nothing more than providing a suggested common sense response. It was a response clearly informed by her gender critical beliefs. Our view however was that it was not the response per se which caused her employers to take action against her but that the matter was taken as a pretext and that the real reason was that the claimant held gender critical views.
211. We entirely agreed with the claimant's representative that for AB and MW to later characterise the emails sent by the claimant as humiliating or transphobic is a nonsense. As it transpires it appears that AB is at the time of this email having a conversation with MW. It appears that things are said during this conversation which MW subsequently thinks may have caused upset to AB. However we are not told what they are. AB's immediate response to the claimant's email is fairly banal. They email at 13:55 stating that they were linking MW into this as they were just talking about the issue with MW. They



say that they have explained to MW that there was some urgency in getting back to the survivor because of her tricky experience getting started with support. It is clear that despite what they later claim the email has not caused them the upset and humiliation they later claim. It is also suspicious that the claim of humiliation only comes later after they have been in contact with Mridul Wadhwa.

212. We shall deal with the respondent's duties to AB below where we discuss the issue of justification. However, at this stage it is sufficient to say that we considered AB's later reaction to be completely overblown.

213. The claimant is trying to deal with a service user who is seeking clarity. In the past the claimant herself has raised issues around the need for clarity in this subject. Her view, informed by her philosophical belief, is that one requires to be clear about biological gender. It may be that there are some service users who will be satisfied with an answer based on gender identity along the lines of saying that AB identifies as non binary or indeed a simple statement that AB is not a man and take that to mean that AB is not someone who identifies as a man and be entirely satisfied with that. Given the claimant's belief system, however, the claimant is fully entitled to the view that there will be individuals who also hold her system of belief who consider that a straight answer along the lines that she has suggested is the clear and obvious one that should be given.

214. It is against this background that Mridul Wadhwa sends her 2 emails of 22<sup>nd</sup> June to AB. Both are egregious. Although the claimant does not see them at the time the fact that the chief executive of the organisation is telling other colleagues that the claimant is guilty of humiliating a colleague is bound to cause the proscribed effect on the claimant. Her email states without having carried out any investigation that what the claimant did was humiliating. She also goes on to state that she will arrange it so that AB has no further contact with the claimant. Given that they are colleagues working in the same team this seems to be an extraordinary step to take. MW then goes on to say "Transphobia exists in our organisation as do other prejudices". The clear

implication of this is that the claimant is transphobic. She then goes on to invite AB to file a formal complaint. In the view of the Tribunal this was clearly unwarranted behaviour which was linked to the claimant's philosophical belief. It clearly had the effect of creating an intimidating, hostile, degrading, humiliating and offensive environment for the claimant. She was being called transphobic and a promise made to a colleague that they would no longer have to work with her. We agree with the claimant's representative that in the view of Mridul Wadhwa, the chief executive of the organisation, the claimant's belief is hateful and that by holding it she is a bigot and a transphobe. It was this view of the claimant's belief which motivated Mridul Wadhwa to behave as she did. The fact that there is more to it than a simple desire to protect a member of staff is clear from her interview with NC where she herself raises the issue of the claimant 's underlying beliefs. She clearly saw the claimant as some-one who was not on side with the respondent's belief system. As she subsequently stated to the meeting at Edinburgh University she saw firing people as a way of ensuring the staff in the organisation fully complied with her definition of trans inclusion. The claimant's beliefs were incompatible with this definition. This was clearly harassment.

**20 The disciplinary investigation commenced by the Respondent on 28<sup>th</sup> June 2022 comprising investigation meetings with the claimant on 6<sup>th</sup> July and 10<sup>th</sup> August 2022 and interviews with other members of its staff.**

215. The Tribunal was not able to determine from the evidence the precise chain of events which led the respondents to decide to commence a disciplinary investigation. It would appear that the decision was made by Nico Ciubotariu and Mridul Wadhwa either together or separately. The Tribunal's view was that, as noted, they were well aware of the claimant's gender critical beliefs, as indeed was Ms McTernan, the other member of the senior management team. She confirmed this in her evidence. Ms McTernan said her sole role was as note taker at various meetings and that she was herself interviewed. She did not give any evidence about being involved in the decision as part of the senior management team and it would therefore appear that the decision was made

either by NC on her own or by NC and MW together. We heard absolutely no evidence from them as to the thought process which led up to this.

5 216. There is a document lodged at page 542 which bears the date 28<sup>th</sup> June and bears to be an email or some other type of message from “Redacted” to K Townsend and Nico Ciubotariu which appears to refer to the issue. It is not clear who “Redacted” is. On 22<sup>nd</sup> June Mridul Wadhwa has also written to AB. She is referring to her own conversation with AB and that this may have upset AB in some way. She then states that “I can see that Kim has just responded to you. What she hasn’t said is that we are looking at what HR mechanisms are available to us to respond to the team member in question.” This appears to be MW stating that she is looking into what HR steps can be taken in relation to the claimant. This is coupled with her invitation in the earlier email that AB can put in a complaint if she wishes. In all the circumstances the Tribunal felt that it was certain that MW and NC had both been involved in the decision to initiate an investigation. The Tribunal’s view was that on the basis of the primary evidence in the case this was clearly linked to the claimant’s philosophical belief. The alternative explanation that the disciplinary process was invoked because of the upset to AB does not hold water. It is clear that Mridul herself is saying that she had upset AB by discussing the matter. She is not subjecting herself to a disciplinary process.

25 217. As noted above the Tribunal’s view was that none of the emails written by the claimant could in any way be regarded as constituting any kind of disciplinary offence. It is clear that there was an issue about what would happen if a service user asked if AB was a man or a woman. The claimant and her colleagues had all highlighted this in advance. They had not received what they felt was a clear enough answer or an answer that would cover all situations. The situation had arisen and the claimant had responded in a perfectly reasonable way. The Tribunal’s view is that there is ample evidence to find that the decision to launch a disciplinary investigation was due to the claimant’s belief. Further evidence for this can be gleaned from the statements made by MW at Edinburgh University where she was asked how to ensure inclusivity within an organisation and she replied to the effect that firing was as important as hiring.

In the view of the Tribunal we are entitled to infer from all of the evidence that the reason the disciplinary investigation was commenced and the claimant interviewed was because the respondent wished to make an example of the claimant because of her gender critical beliefs. It appeared to be the view of the respondent's senior management that the claimant was guilty of a heresy in that she did not fully subscribe to the gender ideology which they did and which they wished to promote in the organisation. This was an act of harassment on the basis of her belief.

10 **Paragraph (c)**

**Decide to broaden its investigation to add new allegations as set out in its letter of 4<sup>th</sup> August 2022.**

15 218. The basic facts behind this are not in dispute. Nico Ciubotariu decided to broaden the scope of the investigation and advised the claimant of this and invited her to a further meeting. Nico Ciubotariu did not give any evidence in relation to this and the Tribunal can only draw inferences from the evidence before us. This shows that for some reason Nico Ciubotariu agreed to meet with a colleague of the claimant who had absolutely nothing to do with the allegation being investigated. The statement says that the worker raised the issue at supervision with her supervisor who worked in a different team from the claimant and she suggested she go speak to Nico Ciubotario. This is a very strange state of affairs. It begs the question as to how the colleague's supervisor would know that the claimant was being investigated and at least the broad nature of the allegations against her. It would also be reasonable to assume that the supervisor in the other team understood that the claimant's general beliefs would be of interest to the investigation.

30 219. The content of the various statements which were then gathered in relation to this expansion of the investigation clearly show that this was all about the claimant's gender critical beliefs. We would agree with the characterisation of the claimant's representative that this was a heresy hunt. Many of the questions asked can really only bear that interpretation such as where on page

222 NC states “Just to clarify, are you saying that RA says things that might sound positive like including everyone whereas her meaning might be different (i.e. include transphobic views) so it is easy for someone else to agree with what she is saying and miss the nuance” and on page 219 where SN is quoted as saying “A lot of what RA says sounds innocent but feels wrong. It is so subtle but it does not feel comfortable to be around her.” It was absolutely clear from the evidence that the respondent’s behaviour in extending the scope of the investigation was unwanted conduct which had the effect of creating an intimidating, hostile, degrading, humiliating and offensive environment for the claimant. It was also the view of the Tribunal that we could readily infer that that was the purpose of the treatment. The only possible purpose was to make clear to the claimant that her beliefs were unacceptable. The claimant was being told that in the view of the respondent her gender critical beliefs equated to transphobia and were unacceptable. Given the terms of section 212 of the Equality Act this treatment cannot also be taken to be direct discrimination, however if we are wrong in our assessment that the respondent was guilty of harassment it is absolutely clear that the claimant was being directly discriminated against in respect of this matter.

## 20 Paragraph (d)

**Reached conclusions of its investigation as contained in the report finalised on 26<sup>th</sup> August 2022 and sent to the claimant on 18<sup>th</sup> September 2022.**

25 220. Once again the basic facts are accepted. The terms of the report are available. The Tribunal’s view was that the report clearly shows that Nico Ciubotariu was motivated by her view that the claimant’s philosophical belief was hateful, bigoted and transphobic. The conclusion set out on page 247 which indicates that the claimant’s behaviour was consistent with views expressed that seem to support excluding and invalidating trans and non binary people’s experiences. She states “These views can be very subtle, and it feels difficult to pinpoint the exact meaning of what RA has said although it makes them uncomfortable.

Despite denying holding transphobic views when asked to explain RA's explanations seem to support the concerns raised by other staff members with regards to underlying transphobia." Again the Tribunal had little hesitation in finding that this report amounted to harassment and would have  
5 amounted to direct discrimination but for the terms of section 212.

**Paragraph (e)**

**Conducted disciplinary hearing on 14<sup>th</sup> October 2022.**

10

**Paragraph (f)**

**Conclude the claimant's grievance with reasons contained in the letter sent to the claimant on 13<sup>th</sup> December 2022/**

15

**Paragraph (h)**

**The disciplinary outcome with reasons sent to the claimant on 6<sup>th</sup> February 2023.**

20

**Paragraph (i)**

**Refused to overturn the outcome of the disciplinary decision for reasons sent to claimant on 6<sup>th</sup> March 2023.**

25

221. The Tribunal feels it appropriate to deal with these allegations together. In each case the respondent accepts the bare facts. The question for the Tribunal was as before whether these were acts of harassment on the grounds of the claimant's beliefs, whether they could amount to direct discrimination on the  
30 basis of a manifestation of the claimant's beliefs, whether they could amount to indirect discrimination or whether they disclosed no discrimination at all or, if indirect discrimination, whether or not that was justified.

The Tribunal's approach was first of all to consider whether or not each matter amounted to harassment. It was clear to us on the evidence that each incident had caused or contributed to creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant and that in each case the conduct was entirely unwanted. The questions which were more difficult to answer were whether this conduct had the purpose of creating such an environment and more fundamentally whether the conduct was related to the claimant's philosophical belief.

222. Logically the Tribunal required to consider first of all whether the conduct was linked to the claimant's beliefs.

223. With regard to the disciplinary process there were a number of flaws in this which appeared to be due to the inexperience of the disciplinary panel rather than acts related to the claimant's beliefs. We shall deal with these below when we consider the claim of constructive dismissal. That having been said there were other aspects of the way the case was dealt with which suggested that an inference of discrimination could be drawn. We did note that at the very outset of the process the 3 members of the panel decided that they were basically going to ignore the second part of Nico Ciubotariu's investigation in relation to the various remarks which the claimant had made. At first glance, this evidence suggests that they did not share the purpose of Mridul Wadhwa and Nico Ciubotariu which was to make life unpleasant for the claimant because they disapproved of her views. On the other hand the reason for not proceeding down this route which was given by Mhairi Roscoe did not show that there was an appreciation that there was anything untoward in seeking to discipline an employee for holding inappropriate beliefs. The reason given was that the remarks appear to have been made in what the claimant considered to be "safe spaces" where people were encouraged to talk freely. It was also clear to us from hearing Mhairi Roscoe's evidence that she was a strong adherent of gender identity theory and considered any other view to be wrong and transphobic. Although she was the only member of the disciplinary panel that we heard from all 3 of the decision makers who gave evidence also showed this tendency. Their view was very much that the claimant's gender

critical views were simply wrong. In the Tribunal's view the claimant's views were at the root of the way the process unfolded. We did not accept the explanation that they were simply exercising a normal disciplinary rule in respect of an employee who had sent an email which amounted to misconduct.

5 In our view the claimant's gender critical views were the reason behind her treatment and accordingly these acts would amount to harassment. There are ample points in the record of the various hearings which support the view that the claimant was being criticised for her beliefs and that her beliefs were regarded as equivalent to transphobia.

10

224. The Tribunal, however, did accept that on the basis of the evidence we could not make a general finding that the 3 decision makers had deliberately set out to harass the claimant because of her gender critical beliefs. There was however one exception to this. We did not accept that the treatment had the purpose of creating an offensive environment for the claimant with the exception of the original letter sent out which accused her of gross misconduct and the rather strange way Mhairi Roscoe dealt with the withdrawal of the gross misconduct allegation. Our view, based on the evidence was that we could not accept Mhairi Roscoe's explanation that this was an administrative oversight.

15 We considered this was conduct which set out with the deliberate purpose of harassing the claimant and this was due to her allegedly transphobic views.

20

225. With regard to the way the grievance was initially dealt with it was absolutely clear to us that the claimant found the process to be harassing. Reading the record of the proceedings it is absolutely clear that normal concepts of natural justice were being ignored. The Tribunal had no doubt that this process was informed by the view of the Grievance Manager that the claimant held views which were inherently hateful.

25

30 226. With regard to the disciplinary appeal the Tribunal found the dogmatic way in which Ms Horsburgh gave evidence to be extremely worrying. It is clear that Ms Horsburgh says that the appeal considered the investigatory process as well as simply the disciplinary hearing and indeed she appears to have worked closely with Nico Ciubotariu on this. There were clearly major issues with the



investigation process yet curiously she simply ignores them. The broadening of the investigation would have been fairly outrageous even in a non discriminatory context. She states she entirely accepted Nico Ciubotariu's explanation as to why the new witnesses came forward stating that the circumstances were set out in the meeting notes. The circumstances as set out beg a number of questions which she did not make any attempt to answer. The first person who came forward was LC and the explanation provided was that she had raised issues about the claimant's philosophical beliefs in supervision and that her supervisor had told her to speak to NC. The claimant's position was that apart from anything else the fact that LS came to NC would indicate a breach of the confidentiality of the process. It is hard to see how else it could have happened. Despite this Ms Horsburgh clearly saw nothing wrong.

227. She also saw nothing wrong with the fact that the disciplinary outcome was then stalled until such time as the grievance and grievance appeal outcome were known and yet the disciplinary outcome was then issued without the disciplinary panel seeing either the grievance outcome or the grievance appeal outcome. In addition to this she does not think it odd that the invitation to the disciplinary refers to a policy which was not referred to at all during the investigatory process.

228. Ms Horsburgh came across in her evidence as being perhaps the most hardline of the respondent's witnesses in respect of her adherence to gender identity theory and we have no doubt that this very much informed the way that she dealt with her part in the process.

229. The tribunal's view, on the evidence was that in each case the trustees who dealt with the process, apart from Elaine Cameron, were motivated by their view as to the claimant's beliefs and the view that those holding her beliefs must be transphobic.

230. If we are correct in our view that these matters amounted to harassment then it is not necessary for us to go on to consider whether or not they also

amounted to direct discrimination. If, however, we are incorrect in our assessment and have incorrectly drawn the inference that the claimant's gender critical views were the reason for her treatment then we require to consider whether the claimant's treatment in respect of these matters was still discriminatory either on the basis that it amounted to direct discrimination for a manifestation of the claimant's beliefs, namely the fact that the claimant had sent her emails on 15<sup>th</sup>-22<sup>nd</sup> June or indeed whether this treatment amounted to indirect discrimination.

5  
10 231. It was the respondent's position throughout that the respondent's behaviour should be seen as a direct result only of the series of emails which the claimant sent and that the prompt for the investigation was the potential guilt of misconduct by the claimant which arose from the terms of her email. It was the respondent's position that the respondent had properly applied the terms of their disciplinary process. It was their position that the treatment was due to the inconsistency between the claimant's actions in sending the emails and the relevant policies and that none of these resulted from the claimant's beliefs. It was their view that there was no direct nexus between the manifestation and the claimant's belief. Their position was that it was not an inherent expression of her beliefs in her private life rather that it was behaviour in the work place. They pointed out that there was no evidence that it was an inherent part of the claimant's belief that she must conduct herself in accordance with it all times and in particular in her manner in dealing with work place queries and complying with work place policies. It was also their view that even if the Tribunal were satisfied that there was such a direct nexus the claimant's manifestation was objectionable. It is also their position that the respondents were entitled to restrict the claimant's behaviour in terms of their policies and that such a restriction was justifiable based on preserving AB's Article 8 ECHR and other rights and maintaining trust and confidence between the respondent and AB and avoiding reputational damage that might arise as a result.

25  
30  
232. The Tribunal's view of the law is that it is accepted there are 2 strands to direct discrimination. Although both are called direct discrimination and both meet the statutory definition there is a difference between the 2. One type of

discrimination which is fairly straightforward conceptually is the mere fact of someone holding a particular religious or philosophical belief is the basis for the discrimination. An example of this would be where a job applicant is refused employment because of their religion or perceived religion. It is the mere fact that they hold the particular belief which is the basis of the discrimination against them. As discussed, that is what the Tribunal has found to have been the case here. If, however, we are wrong in this then we require to consider whether the respondent's actions may amount to unlawful discrimination under the second strand. This is where an employee carries out an act which is a manifestation of their underlying belief and they suffer detriment as a result of that manifestation. The correct approach in such a case has been the subject of some recent legal controversy. However, the Tribunal considered that the law as it is at present is correctly set out in the case of **Higgs v Farmor's Schools** [2023] EAT 89. The case was essentially the basis for the respondent's submission as to the approach we should take. Whilst we understand this case is the subject of an appeal our view is that we should approach the case in the manner set out. The first question, therefore, is whether there is in fact a sufficient nexus between the claimant's gender critical views and the behaviour which the respondents say was the reason for her treatment. The Tribunal's view was that it was. The claimant's view is that sex is real, biological and immutable. In her view she was faced with a situation where a service user was asking the question of whether AB was a man or a woman and that this was a reference to biological sex. The claimant's view is that biological sex is important. She holds the view, which appears to be shared by the respondent, that a woman who has been subject to sexual violence should be counselled by someone who is not a man which given her philosophical belief means that they are entitled to be counselled by someone who is a woman. It follows from this that in her world view the question is a simple one which has a right answer and a wrong answer. Either AB is a woman or they are a man. Given her world view then the draft answer which she prepared was entirely factually correct and absolutely the appropriate one to give. What is noteworthy, however, is that she did not simply send this out to the service user but sent this to her Line Manager as a proposal. It would be perfectly acceptable for her Line Manager to come up with another different

circumlocution which at the end of the day is what her Line Manager eventually did.

5 233. As noted above we entirely rejected the suggestion by the respondent that there was somehow already a clear process in place. The evidence was that there was not. The evidence was that many people in the claimant's team considered that AB's change of name would cause a fairly obvious problem and that the respondent required to work out a way of dealing with this. The claimant suggested a resolution that was entirely in line with her beliefs. In the  
10 view of the Tribunal there was a clear nexus between her beliefs and the manifestations. The second question is one of justification. In the **Higgs** case this was framed as the question of whether the claimant had manifested her beliefs in a way in which objection could justifiably be taken. This involved recognition in that case of the claimant's right to freedom of belief followed by  
15 a proportionality assessment.

20 234. As to the question of whether the claimant's right to freedom of speech was invoked the Tribunal considered it to be axiomatic that the claimant had a right to freedom of belief and freedom to express that belief.

25 235. It was clear from many of the comments made during evidence that the respondent's view was essentially that gender critical beliefs should not meet the test of being worthy of protection in a free society. Essentially it appeared that the view expressed by many employees of the respondents in the documents echoed that of the initial Employment Tribunal in the case of **Forstater v CGD Europe and others**. It was noteworthy, however, that the views held by the claimant were specifically stated as being worthy of protection when the EAT overturned the original Employment Tribunal ruling in the **Forstater** case. Whilst it appeared from some of the documents that some  
30 within the respondent organisation in the present case believed that the claimant's views equated to transphobia and should be regarded as equivalent to white supremacist or similar hateful belief systems that is not the view which the law takes. That having been said, we consider that we require to go on to look at the second part of the test set out in **Higgs** and, as set out in the

respondent's amendment which we allowed on the first day of the Hearing, consider the issue of whether there is a conflict between the claimant's right to freedom of expression and freedom of belief and other Convention rights.

- 5 236. The respondent has identified 3 matters. First of all, it is said that AB's gender identity engages their legal right to private life under Article 8 ECHR. They refer to the cases of **Goodwin v UK** and **YY v Turkey**. They have also identified the employer's duty to maintain trust and confidence with AB.
- 10 237. The respondent's position which appears to be informed by their view on gender identity theory, is that there was something intrinsically wrong in the claimant disclosing the factual position as she saw it regarding biological sex and gender identity. The claimant's view expressed in evidence was that she considered this to be wrong and to be potentially misleading service users if  
15 this was not done. She referred in evidence and in various documents to an "eggshell" feeling within the respondent when trying to discuss issues relating to gender identity. I note that in the initial **Forstater** case the Employment Tribunal observed that it was obvious how important it was to many transgender people to be accorded their preferred pronouns and that calling a  
20 trans woman a man was likely to be profoundly distressing and might amount to unlawful harassment. The Tribunal in this case accepts that as a matter of the general civilities of life it is entirely appropriate in a workforce to call colleagues by their preferred pronoun. The Tribunal does not, however, accept that this involves any breach of a Convention right. Similarly, the Tribunal's  
25 view is that whilst some individuals may be sensitive about having what the respondent's witnesses termed a person's "gender history" revealed this is not something which flows axiomatically from the existence of a right to privacy. The cases of **G v UK** and **YY v Turkey** were about much more basic concerns.
- 30 238. There would clearly be circumstances where the right to private life includes a right to confidentiality of one's gender history but it is not something which occurs in every case. In the vast majority of cases there will be absolutely no controversy whatever in asking someone their biological sex or sex at birth. There would also be no controversy whatsoever in asking someone their

gender identity. It will usually be fairly obvious. Given that it is not an absolute right one requires to look at the context in this case. The context in this case was that AB works at a Rape Crisis Centre. As noted above it is one of the few organisations which is exempt from the terms of the Equalities Act in terms of Schedule 9. When AB was employed it was a genuine occupational requirement that she be a woman. In the view of the Tribunal there is absolutely no breach of her right to privacy in those circumstances of telling a service user that she was assigned female at birth and now identifies as non binary. The Tribunal heard no evidence from AB and there was no evidence before us that there was any particular sensitivity around this matter. The evidence simply appeared to be that based on their strong adherence to gender identity theory all of the respondent's witnesses believed that this was something which could not be done. In the view of the Tribunal this is not something which the law recognises in the case of someone who works for a Rape Crisis Centre. The other point is that in any process of weighing together the 2 matters we find that the claimant's manifestation of her belief was not to actually tell the service user but merely to suggest to her Line Manager that this was something which should be done. The respondents also rely on the duty of trust and confidence. Once again, we make the point that AB worked in a Rape Crisis Centre. It is absolutely clear that they knew that changing their name to a name which sounded male was going to cause difficulties. Indeed, it appears that on the very day the claimant sent her email to her Line Manager AB was having a discussion with MW which, although we were given no details, appears to have upset AB. In the view of the Tribunal there would have been absolutely no breach of trust and confidence by the respondent in telling AB that they would respond to certain service user requests in the manner suggested by the claimant. The fact that the claimant's manifestation was not to actually send this answer out to a service user but to merely suggest that it should be sent puts the matter beyond any doubt. The Tribunal's view is that this manifestation of the claimant's beliefs was one deserving of protection and that the respondents unlawfully discriminated against her in the manner already referred to.

239. We were also asked by both parties to consider the issue of indirect discrimination even although, as noted above, we have already made our decision on harassment and direct discrimination in favour of the claimant. The claim was put on the basis that the respondents had a provision, criteria or practice of requiring treating manifestation of gender critical belief or lack of belief in gender identity theory as a disciplinary matter.

240. We considered that the PCP was established and this is certainly another way of looking at matters. Our view is that such a PCP would indirectly discriminate against the claimant as someone who held gender critical views and who manifested them. Our reasoning is as set out above.

241. With regard to the possibility of justification we note the objectives given by the respondent. These are essentially AB's right to privacy, their obligation to maintain trust and confidence with AB and additionally the risk of reputational damage. Taking the final point first we do not consider that the respondent's reputation was in any way likely to be damaged by them not imposing the PCP in question. We would agree with the claimant's representative's characterisation of the respondent's "institutional view as being at the very extreme end of gender identity theory". There is absolutely no need for a Rape Crisis Centre to be seen to take such a stance. We noted that the Centre now caters for male, female and trans and non binary service users without distinction. AB would not in any way be threatened by them failing to impose the PCP alleged. We certainly heard no clear evidence to this effect. With regard to the other issues we rely on our analysis above. So far as the weighing and balancing exercise is concerned the Tribunal's view is that it is absolutely clear that even if the PCP were objectively justified (which it is not) the means used were entirely disproportionate. If the claimant's proposed resolution was in breach of AB's privacy rights or whatever rights the respondents wished to give them in terms of their policies then all that was required was for the claimant's Line Manager to simply advise her of this. There was absolutely no need for the matter to be escalated. It was clear from the evidence that the claimant had been extremely careful and sensitive of the rights of others and their different points of view. The means adopted here

were entirely disproportionate even if one could accept that the respondents had a legitimate aim in seeking to impose their extreme views of gender identity theory on their employees.

5 242. With regard to the remaining 2 points these were:

10 **(g) “Failing to apologise to the claimant as recommended in the outcome of the claimant’s grievance appeal and (j) failing to reassure the claimant in response to a request of 17<sup>th</sup> March 2023 that NC and MW had been told that no evidence had been found in the disciplinary process that she was transphobic.”**

15 243. The Tribunal’s view on the facts was that both did occur. The respondents did not in fact dispute item (j). It was clear to the Tribunal that the grievance appeal outcome had suggested that an apology be made. It was common ground between the parties that no apology had in fact been made. The respondent’s representative made the point that by this time Tribunal proceedings had been instigated and this may have complicated matters. On the other hand, the respondent did not choose to put up any witness who could say why it was that

20 no apology had been issued. Given the Tribunal’s view that from the outset the purpose of these disciplinary proceedings had been the agenda of the respondent’s CEO to cleanse the organisation of those who did not follow her beliefs and that the respondent characterised the claimant’s beliefs as indeed transphobic, our view was that this was most likely to be the reason why no

25 apology was granted. Although the Grievance Appeal Manger (who is no longer with the organisation) had clearly decided that the claimant’s beliefs were not transphobic it is clear that this was not the view shared by the organisation as a whole and that this was at least one of the reasons why they failed to provide the claimant with the assurance which she sought.

30

244. For the avoidance of doubt, we have borne in mind the burden of proof provisions when approaching our analysis of the evidence in the above. As noted, there is not a great deal of dispute as to the basic facts in this case and we have set out our view on those factual matters which would appear to be in



dispute. We have not required to consider the burden of proof rules in terms of our primary finding which was that the respondent's motivation was due to the claimant's gender critical beliefs simply because on any analysis using the basic balance of probabilities it was clear to us that this was in fact the case. Clearly in those situations where we did not hear any evidence from the relevant decision maker at all we required to draw inferences such as those we have drawn from the apparent actings of MW and Nico Ciubotariu. Given that they did not give any evidence themselves we do not consider that once the balance of proof shifted to them there was any basis on which we could make any possible finding to the contrary. In summary, our findings are that in respect of matters (a) to (j) the respondents harassed the claimant in terms of the Equality Act because of her beliefs. If we are incorrect in that, our finding would be that the respondent directly discriminated against the claimant on the basis of her beliefs. If we are incorrect in that then the respondents unlawfully discriminated against the claimant on the basis of a manifestation of her beliefs. The respondents also indirectly discriminated against the claimant by having a PCP which placed her as the holder of her beliefs at a particular disadvantage and such PCP could not be objectively justified.

## **20 Constructive Dismissal**

245. The claimant's position was that the constructive dismissal claim to some extent stood or fell with the bulk of the discrimination claim. The legal test is whether or not the respondents were guilty of a repudiatory breach of contract and it was alleged that in this case they had breached the implied term of trust and confidence. The Tribunal considered there was absolutely ample evidence for this. We would agree that it would appear that the respondent's CEO had formed the view that the claimant was transphobic. This led to a completely spurious and mishandled disciplinary process. The investigation was deeply flawed. Nico Ciubotariu's response to the claimant's genuine request for further detail about the broadening of the investigation that "it is about things you are reported to have said at various times". It is unfortunately a classic of its kind, somewhat reminiscent of the work of Franz Kafka. The investigation should not have been launched in the first place and was clearly

motivated by a strong belief amongst the senior management and some of the claimant's colleagues that the claimant's views were inherently hateful. The disciplinary process itself was deeply flawed. It is clear that MW was involved in the process since she was the one who selected and contacted who would deal with the various stages of the disciplinary and grievance process. The claimant was initially told that one of the charges was gross misconduct. This charge was later re-categorised although the claimant was not told this at the time and has never received a satisfactory explanation as to how this occurred. The disciplinary charges as framed refer to a policy which had not been referred to in the investigation. The disciplinary panel then appeared to have decided that they will ignore part of the allegations against the claimant although they do not tell the claimant about this at the time. They then decide to delay telling the claimant the outcome until after her grievance and grievance appeal have been dealt with. Despite this they do not make any reference to the outcome of the grievance and critically the grievance appeal before issuing their judgment. The claimant's position at that stage is that if she is to remain in employment with the respondent she needs a clear statement that they do not consider her to be transphobic. It appeared to the Tribunal to be absolutely clear that the reason why this was not given was because, in an act of unlawful discrimination, the respondent's view was that the claimant was transphobic. It is also noted that the claimant is due an apology but no apology is given.

246. It is the respondent's position that the claimant delayed too long before resigning. The Tribunal did not accept this. There was no affirmation of the contract. The claimant was entitled to wait until the end of the processes to see what happened. When these processes ended she was entitled to see if the respondents were in any way prepared to change their view going forward and accept that she could hold the views she held and that that did not make her transphobic. When it became clear to her that they were not prepared to change then she felt she had no alternative but to resign. Her resignation was caused by the respondent's unlawful breach of contract. Their breach went to the very root of the contract. The claimant could have absolutely no confidence going forward that the respondents would comply with their obligation of trust and confidence towards her. This obligation had been comprehensively

breached by them up to that point. The Tribunal's view was that the claimant's claim of unfair constructive dismissal succeeds.

5 247. The parties were in agreement that should the claimant be successful the matter of remedy would be dealt with at a future Hearing. Date listing letters should be sent to the parties with a view to listing such a Hearing in early course.

10

**I McFatridge**

**Employment Judge**

**14 May 2024**

15

**Dated**

**14/05/2024**

**Date sent to parties**

20

**Appendix 1**

IN THE EDINBURGH EMPLOYMENT TRIBUNAL

5

CASES 1402236 &amp; 4103479/2023

Miss R D ADAMS

**Claimant**

10

against

EDINBURGH RAPE CRISIS CENTRE

**Respondent**

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DRAFT AGREED LIST OF ISSUES FOR FINAL HEARING COMMENCING 15 JANUARY  
2024 (treated as final following amendments)

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20

1 Does the Claimant hold the belief of sex realism and does she lack belief in gender identity theory as set out in Paragraph 5 of the Consolidated Particulars of Claim of 30<sup>th</sup> October 2023? – it is not disputed that the Claimant holds the former belief and lacks the latter. Both are referred to below for brevity as her belief.

25

2 Did the Claimant's belief amount to a protected belief under and in terms of section 10 of the Equality Act?

30

The Respondent accepts the said belief and is so protected in terms of section 10 of the Equality Act

**Harassment section 26 of the Equality Act**

35

3 Did the Respondent act in any of the following ways as set out in paragraph 37 CPOC namely did the Respondent?

40

a) assume in the absence of any proper investigation that the Claimant had been guilty of misconduct and had mistreated AB in the email of MW to AB of 22<sup>nd</sup> June 2022

45

b) commence a disciplinary investigation on 28<sup>th</sup> June 2022 comprising investigation meetings with the Claimant on 6<sup>th</sup> July and 10<sup>th</sup> August 2022 and interviews with other members of its staff. The Respondent accepts it did so act

50

c) decide to broaden its investigation to add new allegations as set out in its letter of 4<sup>th</sup> August 2022 – the Respondent accepts it did so act

d) reach conclusions of its investigation as contained in a report finalised on 26<sup>th</sup> August 2022 and sent to the Claimant on 18<sup>th</sup> September 2022

55

e) conduct a disciplinary hearing on 14<sup>th</sup> October 2022

f) conclude the Claimant's grievance with reasons contained in a letter sent to the Claimant on 13<sup>th</sup> December 2022

- 5 g) fail to apologise to the Claimant as recommended in the outcome of the Claimant's grievance appeal
- h) reach a disciplinary outcome with reasons sent to the Claimant on 6<sup>th</sup> February 2023
- 10 i) refuse to overturn the outcome of the disciplinary decision for reasons sent to the Claimant on 6<sup>th</sup> March 2023
- j) fail to reassure the Claimant in response to her request on 17<sup>th</sup> March 2023 that NC and MW had been told that no evidence had been found in the disciplinary process that she was transphobic
- 4 If the answer to any of the above is yes did any of that conduct amount to subjecting the Claimant to unwanted conduct related to her aforementioned beliefs or to the Respondent's perception of the Claimant's aforementioned belief?
- 15
- 5 If the answer is yes did that conduct have the effect of violating the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her in terms of section 26 of the Equality Act?
- 20

#### **Direct Discrimination section 13 Equality Act**

- 6 Did the Respondent treat the Claimant in any of the conduct above less favourably than it would have treated others because of the Claimant's protected belief or because of the Respondent's perception of the Claimant's protected belief?
- 25
- 7 If not because of the Claimant's protected beliefs or because of the Respondent's perception of the Claimant's protected belief did the Respondent treat the Claimant in any of the said conduct less favourably than it would have treated others because of a manifestation of the Claimant's protected beliefs?
- 30
- 8 If yes was there a close and direct nexus between the manifestation and the Claimant's belief?
- 35
- 9 If yes was there anything about the manifestation that would justify its restriction or limitation under article 9(2) or 10(2) ECHR?
- 10 If yes was the Respondent's treatment of the Claimant justified that is to say?
- 40
- a) was its objective sufficiently important to justify the limitation of a fundamental right?
- b) was it rationally connected to the objective?
- 45 c) could a less intrusive measure have been used?
- d) having regard to these matters and to the severity of the consequences did the Respondent's treatment of the Claimant strike a fair balance of her rights in the interests of the community?

#### **Indirect discrimination section 19 Equality Act**

- 50 13 Did R treat manifestations of gender critical belief or a lack of belief in gender identity theory as a disciplinary matter?

- 14 If yes was that a provision, criterion or practice which put employees who held a gender critical belief or did not hold a belief in gender identity theory at a substantial disadvantage compared to those who did not hold such a belief?
- 5 15 If yes to what aim was that directed? The Respondent relies upon the aim of preserving AB's Article 8 ECHR and other rights and maintaining the relationship of mutual trust and confidence between the Respondent and AB and avoiding reputational damage
- 10 16 Was that aim legitimate?
- 17 Was the PCP a proportionate means of achieving that aim?

**Constructive Dismissal**

- 15 18 Did R act in repudiatory breach of the implied term of mutual trust and confidence in C's contract of employment?
- 19 If R did so act did C resign in response to that breach?
- 20 20 If yes was C's dismissal unfair?
- 18a If R did so act did C affirm the continuation of the contract of employment?

IN THE EDINBURGH EMPLOYMENT TRIBUNAL

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CASES 1402236 & 4103479/2023

Miss R D ADAMS

**Claimant**

10

against

EDINBURGH RAPE CRISIS CENTRE

**Respondent**

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A bundle for the Hearing included certain excerpts from Tribunal tweet coverage together with certain other tweets. Essentially it was the Respondent's representative's position that the Tribunal tweets had incorrectly reported certain testimony of Ms Roscoe and that this had been adversely commented upon by others. The tweet from Tribunal Tweets in question stated:

“NC: Any training on the Forstater Judgment?”

MR: No

25 NC: Have you heard of it?

MR: I don't know

NC: You need to tell the truth [describes the Judgment]

MR: No.”

30 The respondent's representative indicated that his notes of the exchange which is set out in his email to Jenny Smith of Tribunal Tweets dated 21<sup>st</sup> January 2024 stated:

“Q: Have you had any training on the EAT Judgment of Forstater?”

A: No

Q: Have you heard of the case?

A: No I don't know

5 Q: (Explains Forstater ratio)

A: I'm aware what happened but not the name

Q: Did you have training touching on that?

A: No not before or after.”

10 He stated in his email that he had no recollection of Ms Cunningham admonishing Ms Roscoe to tell the truth or otherwise suggesting Ms Roscoe was being untruthful. He also stated that his understanding was that the important bit of the evidence was that once Ms Roscoe had the decision of Forstater explained to her she indicated she was aware of the case albeit she did not recollect the name.

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Mr Hay's position was that the tweet from Tribunal Tweets was incorrect and had been viewed over 100,000 times. It had also formed the basis of a number of other tweets where the exchange had been retweeted. One of these unfavourably compared Ms Roscoe's evidence with statements which she had made at the time  
20 of the Forstater Judgment. Mr Hay's view was that whilst having discussed the matter with Ms Cunningham he understood that she did recollect that she may well have used the word truthful at some stage in her questions. His view was that the tweet from Tribunal threads bore an inaccurate account and created a misleading impression. He referred specifically to a number of tweets, the text of which were  
25 lodged. In his view it was a serious inaccuracy and it was also his position that it



was difficult to understand how the evidence could have been misinterpreted in the way that it was by the Tribunal tweets. In his view there were serious consequences in that it was relied upon by Twitter users that he knew of, one of whom was a professional journalist to form the basis of their own views or opinions upon Ms Roscoe and the respondent. It was his view that the Tribunal should prefer the approach of the Scottish Courts and Tribunals Service which was that live tweeting is reserved to journalists who are registered in some way. He referred in his extract from the Scottish Courts and Tribunals Service Media Guide and also provided extracts from the Judicial Office for Scotland protocol on recording in the High Court of Justiciary and the Court of Session.

Ms Palmer for Tribunal Tweets had also lodged various documents. She referred to the history of what had happened after Mr Hay made his complaints and noted that clarification and apology statement had been lodged. It was the Tribunal Tweet's position that they had become aware of the respondent's view on the morning of Sunday 21<sup>st</sup> January. They received their email from Mr Hay and that at 2.43 they issued a statement both in the form of a snapshot so as to allow it to be read as a whole and also as a thread to allow it to be searchable online. They stated that they had made a statement and pinned it. It was their position that this was one tweet and that they had made 630 posts during the Hearing. It was their position that a normal day of court results in 180-200 tweets. They indicated that they had only once before been asked to make a correction correcting spelling errors and the like. They stated that 8 of their tweets in the Hearing had had more engagement than the tweet in question. They also confirmed that they had no control at all over

what anyone else chooses to say as a reaction to anything they tweet. They pointed out that they avoid commentary themselves.

The Tribunal was also addressed shortly by Ms Cunningham. She accepted that  
5 there was one error in the tweet in that it failed to record that the witness subsequently admitted that she had heard of the case even if she had forgotten the name. It was her position that she had indeed said “You need to tell the truth”. It was her position that this was not evidence that Tribunal tweets were any more fallible than any other court reporter.

10

The Tribunal adjourned for a time and then gave their Judgement orally to the parties. The Tribunal Judge checked his note of the evidence with the Tribunal members. Our joint recollection was that Ms Cunningham had said something along the lines of ‘she should tell the truth’. It is probably as well to state that although the  
15 transcript was not available to the Tribunal at the time the transcript of the proceedings which was taken from the live recording of the proceedings stated:

“.... have you ever had any training from any source that has included anything touching on the implications of the Employment Appeal Tribunal’s  
20 Judgment in Forstater of June 2021?”

A: No

Q. Have you heard of that case?

25

A: No I don't know. You looked surprised when I didn't.

Q: Your job was simply to give truthful answers to my question. I am surprised that you have not heard of Forstater v CGD. That is the case where a think tank worker lost her job because colleagues had objected to what they regarded as transphobic tweets and it was held at first instance that a gender critical belief was not worthy of respect in a democratic society and then it was held on appeal that it was and was subject to the protection of the Equality Act so you may not remember the name.

A: Mm.

Q: Do you remember that that happened?

A: I'm aware that that happened.

A Yes I did not recognise the name.

Q: Okay so that was what my question was about. Have you ever had any training touching on that.

A: No."

The Tribunal noted Mr Hay's points regarding the guidance issued by the Scottish Courts and Tribunals Service in respect of Courts and Tribunals over which they

have jurisdiction which does not include the Employment Tribunal which is a non devolved Tribunal. It was noted that the protocol on the use of live text based communication for the High Court and Court of Session does state that the use of LTBC is restricted to journalists but then goes on to state that only journalists who

5 are registered with SCTS may use LTBC without first obtaining permission from the Presiding/Chairing Judge for each separate case. It is clear that journalists not registered with SCTS may live tweet provided they apply to the Presiding Judge which is what happened in this case. The Media Guide does state that “It is also intended that registered journalists will be able to use text based communication

10 such as tweeting from our Court rooms and access a secure online media portal which will provide limited information about Court cases for planning purposes. This document appears to be a guide for staff. It does not in any way prohibit live tweeting by non registered journalists. The Tribunal considered that, as with the original decision to allow live tweeting, the question of whether or not to continue to permit

15 it should be approached in light of the overriding objective. The Tribunal’s view put shortly was that so far as the interests of justice were concerned there was absolutely nothing in what had happened which interfered with the Tribunal’s ability to do justice between the parties. If Ms Roscoe felt aggrieved about the way that she had been reported then she has the remedies open to her in law then that is not

20 the concern of this Tribunal.

In general terms the Tribunal were also of the view that Tribunal Tweets had responded with considerable alacrity when the issue was raised with them. Mr Hay’s email was sent just after 11 in the morning and they had printed an extremely

25 generous and full retraction before 3 o’clock that afternoon. It is within judicial

knowledge that many mainstream media outlets take much longer to issue corrections or retractions. The Tribunal's view was that mistakes can happen. Inevitably when live tweeting is occurring there will be some exchanges where the full nuance is missed. It seemed clear to us that this may have been what happened

5 here. There did not seem to be any evidence that the report of Ms Roscoe's position had been deliberately manipulated. We agreed that Tribunal Tweets were not responsible for the comment which was made by others. It is not in any way uncommon for comments on legal proceedings to be based on error or misunderstanding. In short there appeared to be absolutely no reason in what had

10 occurred to revoke Tribunal Tweets' consent. We have set out our reasoning in this matter since the parties did raise it and it formed part of the Hearing. It has been put in a separate Appendix as the matter was not in any way germane to our decision regarding the outcome of the case.

**Employment Judge: I McFatrige**  
**Date of Judgment: 14 May 2024**  
**Entered in register: 14 May 2024**  
**and copied to parties**