

# Can teachers personal and political views amount to misconduct?

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The Employment Tribunal has recently ruled that it can in the case of *Lister v New College Swindon*.

Mr Lister was employed as a teacher at the college. Mr Lister holds gender critical beliefs. It is his belief that sex is binary and immutable and should not be confused with gender identity.

Whilst in his role as a teacher, a pupil asked Mr Lister to call him by a male name and to use male pronouns as that is how they wished to be identified. However, the College received a complaint from another pupil that he was not using preferred name and pronouns as requested. The complaint alleged that his conduct had also been inappropriate in several ways, such as repeating negative comments about gender reassignment and gesticulating to avoid using the name of the pupil.

The pupil's complaint was investigated and upheld. A disciplinary investigation followed; it was alleged that Mr Lister had failed to follow the College's policy on gender reassignment.

Mr Lister was dismissed because of his treatment towards the pupil.

As a result, an employment claim was lodged by Mr Lister. Mr Lister alleged that his gender critical beliefs were protected beliefs under the Equality Act 2010 which was accepted by the College. He further alleged that he was subjected to unfavourable treatment for having the belief and manifesting these beliefs. It was his position that he had attempted to protect the pupil from a serious and imminent risk presented using cross-sex hormones.

The Tribunal found that the College's policy on gender reassignment had sought to protect the pupil and that Mr Lister had manifested his belief in an **objectionable** manner which ought to be prohibited to ensure the protection of others. Further, it found that the pupil's own rights and freedoms had been violated.

Since his dismissal, Mr Lister has been banned by the Disclosure Barring Service (DBS) from participating in regulated activities with a child.

This decision highlights the duty of educational bodies to ensure that pupils rights and freedoms are protected. That if teachers have beliefs that are manifested in a manner that may be considered harmful to pupils, it can be reasonable to dismiss the employee following an investigation.

Conversely, it is important that the rights of the teacher to have personal and political beliefs are also taken into consideration.

The Teaching Regulatory Agency (TRA) has guidance on conduct that is incompatible with being a teacher who includes **actions or behaviours that promote extremist political or religious views or attitudes**. The guidance considers the influential role that a teacher can play in the formation of pupils' views and behaviours as well as the level of trust and responsibility.

The TRA does exercise their ability to prohibit individuals from teaching due to their political and/ or personal views. A further recent example is the banning of a teacher for calling Westernised girls 'lunatics' as well as other extreme views on marriage and having children.

If educational institutions have concerns about teachers personal and political views, appropriate referrals to the TRA should be made.

We are seeing an increase of Employment Tribunal cases that deal with protected beliefs, in particular gender critical beliefs and will continue to support clients navigate these claims.

## Key contact

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