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Free Speech Union Press Release

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FOR IMMEDIATE RELEASE

Victory for free speech and pluralism

Maya Forstater Successful Appeal

The Employment Appeal Tribunal today issued a [ground-breaking judgment](#) reversing the previous judgement of the Employment Tribunal which had found that Maya Forstater's gender-critical beliefs were not protected free speech.

Unless appealed to the Court of Appeal by her former employers CGD Europe, the case will now be remitted back to a freshly constituted Employment Tribunal for a determination as to whether Maya Forstater was in fact discriminated against because of her gender-critical beliefs.

The significance of the judgment is wide-ranging because in it Mr Justice Choudhury (who is the President of the Employment Appeal Tribunal) carefully enunciates the proper parameters for the exercise of free speech in a democratic society, basing his legal analysis on a review of the relevant European Convention on Human Rights case law as it informs English law.

Most fundamentally, he makes clear that the freedom to hold whatever belief one likes goes hand-in-hand with the State remaining neutral as between competing beliefs, refraining from expressing any judgement as to whether a particular belief is more acceptable than another, and ensuring that groups opposed to one another tolerate each other.

To maintain plurality of views is the hallmark of a functioning democracy and the range of beliefs and convictions that must be tolerated is very broad.

The Appeal Tribunal held that the fact that a belief or a statement has the potential to "offend, shock or disturb" a section (or even most) of society was not enough for it to be deprived of protection under Article 9 (freedom of thought conscience and belief) or Article 10 (freedom of expression).

It is clear from Convention case law that a person is free in a democratic society to hold any belief they wish, subject only to some "modest objective minimum requirements" and it is only in extreme cases involving the gravest violation of other Convention rights that the belief would fail to qualify for protection.

The case law makes clear that only extreme beliefs such as a belief involving "torture or inhuman punishment" should be prohibited under Article 17, the provision that forbids the use of any Convention right as a weapon to destroy rights and freedoms.

Applying this correct analysis of the law, “the only possible conclusion is that [Maya Forstater’s gender-critical belief] does fall within Section 10 of the Equality Act” and is therefore free speech protected from discrimination.

“Most fundamentally, [her] belief does not get anywhere near to approaching the kind of belief akin to Nazism or totalitarianism that would warrant the application of Article 17” and therefore fail to be a protected belief.

The Employment Tribunal erred in law in finding that gender-critical belief was not protected because it was not one worthy of respect in a democratic society.

Mr Justice Choudhury went on to note two further factors which it found upon analysis were wholly at odds with the view that gender-critical beliefs should not be protected from discrimination in a democratic society.

First, there is evidence that the gender-critical belief in question was not unique to Maya Forstater but is in fact widely shared, including by respected academics. While the popularity of the belief does not necessarily insulate it from being one that gravely undermines the rights of others (and therefore makes it vulnerable to an attack under Article 17), nonetheless that fact that it is widely shared demands particular care before it can be condemned as being unworthy of respect in a democratic society.

Secondly, Maya Forstater’s belief that sex is immutable and binary is consistent with the law. Therefore, it is “all the more jarring that it should be declared as one not worthy of respect in a democratic society”.

The Employment Appeal Tribunal acknowledged that some transgender people will be disappointed by the judgment but went on to emphasise that its judgment did not mean that it had expressed any view on the merits of either side of the transgender debate.

Further, the judgment did not mean that those with gender-critical beliefs can “misgender transpersons with impunity”.

Everyone will continue to be subject to the prohibitions on discrimination and harassment under the Equality Act 2010 and whether or not conduct in a given situation does amounts to harassment or discrimination within the meaning of that Act will depend on the facts. It is therefore possible that the Employment Tribunal may still find that CGD Europe was not acting unlawfully when it failed to renew Maya Forstater’s employment contract; it just won’t be able to fall back on the defence that Maya Forstater’s beliefs are not worthy of respect in a democratic society and therefore do not qualify for protection.

Toby Young, General Secretary of the Free Speech Union, said:

“This is a carefully reasoned and clear judgement. We applaud the careful analysis and clarification of the law by the Employment Appeal Tribunal and are grateful to Maya Forstater for having the courage to stand up for free speech.

“As the Judge made clear, it doesn’t mean that the expression of gender critical beliefs will be permitted in the workplace in all circumstances and we wouldn’t want any of our members to think

they can now express gender critical beliefs with impunity. In some circumstances, the expression of those beliefs will still constitute 'harassment' as defined in the Equality Act. But by making it clear that those beliefs are worthy of respect in a democratic society, and therefore entitled to protection under Articles 9 and 10 of the European Convention on Human Rights, this judgment makes it harder for employers to silence gender critical feminists, but in my view not hard enough. There is still a good deal of work to be done."