

Newcastle United Football Company Limited  
St James' Park  
Newcastle upon Tyne  
NE1 4ST  
AND BY EMAIL: [REDACTED]

Our ref: JH:14884  
24 April 2024  
[REDACTED]  
Please ask for Jon Heath

Dear Sir or Madam

### Our client Linzi Smith

This letter is sent pursuant to paragraph 6(a) of the [Practice Direction – Pre-Action Conduct and Protocols](#). Kindly acknowledge receipt. We consider that you ought to be able to provide a letter of response within one month of the date of this letter.

### The facts

1. Our client is a proud supporter of Newcastle United Football Club. She has been a member of the club for around three and a half years and has consistently attended the club's home games. She has never been spoken to by a steward or other club official regarding her behaviour at St James' Park.
2. Our client also uses the social media platform X (formerly Twitter). She has had an X account since August 2010. The account name was @linzi1989 until November 2023 when she changed it to @RightNUFC.
3. Our client is a lesbian, [REDACTED] and an advocate for LGB rights. She has no criminal convictions and has never been arrested.
4. On 12 May 2023 at 7.46pm, our client posted the following post on X quoting another post from a now suspended account, @stueymaco:



<https://twitter.com/RightNUFC/status/1657094866256420907>

5. The URL of @stueymaco's post is <https://twitter.com/stueymaco/status/1657072190389354515>. Although the post itself can no longer be viewed, replies to the post can still be seen, and it is apparent from quotations in some of the replies that Stuey was referring to, or quoting, a post from a transgender activist called India Willoughby, who in turn was commenting on a decision by Edinburgh comedy club The Stand to back down from cancelling an event with Joanna Cherry MP after Ms Cherry threatened a discrimination claim.
6. India Willoughby's post (<https://twitter.com/IndiaWilloughby/status/1657070469646778388>) reads as follows:



7. On 21 July 2023 at 10.47pm, our client posted the following on X (<https://twitter.com/RightNUFC/status/1682507638565634049>):



8. The context of this post is significant:

- It began with a video posted by our client in which she is singing a song about Fabian Schär: <https://twitter.com/RightNUFC/status/1682460902929448962>
- X user @rjb\_1998 then quote posted our client's post with the words 'LGB in the bio 🤔': [https://twitter.com/rjb\\_1998/status/1682482426105274370](https://twitter.com/rjb_1998/status/1682482426105274370).
- Another X user and Newcastle fan, @SCARFYyyy, then became involved, stating that our client has no self-respect <https://twitter.com/SCARFYyyy/status/1682486805092876289> and is 'a terrible person' <https://twitter.com/SCARFYyyy/status/1682487486252040193>
- @rjb\_1998 accused our client of 'parroting homophobic rhetoric from the 80s'
- Our client then replied to @rjb\_1998 (<https://twitter.com/RightNUFC/status/1682507638565634049>).
- The abuse towards our client in that thread also included: @rjb\_1998 described her as 'tragic', 'the most pathetic person on the planet as well as a bigot', 'rat', 'an awful person', 'a cunt to trans people', and @SCARFYyyy told her to 'eat shit linzi':  
[https://twitter.com/rjb\\_1998/status/1682499822094303233](https://twitter.com/rjb_1998/status/1682499822094303233)  
[https://twitter.com/rjb\\_1998/status/1682500294767149057](https://twitter.com/rjb_1998/status/1682500294767149057)  
[https://twitter.com/rjb\\_1998/status/1682500404817305602](https://twitter.com/rjb_1998/status/1682500404817305602)  
[https://twitter.com/rjb\\_1998/status/1682503836915695617](https://twitter.com/rjb_1998/status/1682503836915695617)  
[https://twitter.com/rjb\\_1998/status/1682505250509389826](https://twitter.com/rjb_1998/status/1682505250509389826)  
[https://twitter.com/rjb\\_1998/status/1682506978273243136](https://twitter.com/rjb_1998/status/1682506978273243136)  
<https://twitter.com/SCARFYyyy/status/1682509879645224964>
- Of particular significance is the post from @SCARFYyyy at 10.50pm in reply to our client's post in the screenshot above (<https://twitter.com/SCARFYyyy/status/1682508450155175941>):



9. At 11.51pm, the box office received the following complaint:

*Hello,*

*My name is [redacted] a Newcastle United fan and proud supporter of United with Pride and other such LGBTQ+ related people, organisations and general movements.*

*Recently, a fan by the name of "linzi" - assumed to be Lindsay, who has gone viral for her Newcastle related songs. This is of course not a problem at all, however it is her viral song tweets that have led to more discovery of her page, and therefore tweets.*

*Unfortunately, these tweets contain a lot of discriminatory behaviour, comments, words, and things of the same ilk. While this can be viewed at anyone's discretion and leasure, I have attached some examples. For your own research, her username on twitter is @linzi1989.*



*Exhibit A: this tweet is short and sweet and thus quite self-explanatory. Many of her tweets revolve around the "LGB" movement. A trans-exclusionary and discriminatory movement, for members of the Lesbian, Gay and Bisexual Community to deliberately exclude and aim to discourage / discriminate / target the Transgender community. This tweet specifically, compared the Trans ideology, to Naziism and a Nazi in particular, though she did not follow this up with supposed "evidence". Regardless of opinion, this is vulgar and makes a mockery of both the Trans movement, as well as those who suffered (and continue to do so) under Nazi occupation, rule, views, and thought.*



*EXHIBIT B: Another tweet here, in which she is engaging in a conversation with a prominent "TERF": a trans-exclusionary Radical Feminist. Here she makes ridiculous statements like "trying to trans the gay away", using a made-up attack on her own identity, to take aim at another.*



*EXHIBIT C: A tweet from May here, showing these views and radical opinions and views on Trans people stretches back. Here she describes Trans people as mentally ill.*



*Attached here is her picture. I believe she is either a Season ticket holder, or failing that an extreme frequenter of St. James Park. To have someone like this, who so openly discriminates, targets, harasses, and antagonises Trans people based solely on their Gender or Sexual Identity, be a member of the audience and crowd where family members of mine, friends of mine, and, especially with a crowd of 52,000+, many members of the LGBTQ+ community or those with LGBTQ+ family / friends etc will be present, I find this outrageous and unacceptable.*

*If I were Trans, I would feel extremely unsafe and incredibly discriminated towards had I had to share a space with someone openly transphobic. This is pure and blatant discrimination, and I hope the club would hold zero tolerance towards this type of person.*

*Thank you for taking the time to read this message, I hope it reaches you well.*

*Kind regards,*

*[redacted] concerned fellow fan*

10. On 22 July 2023, our client was tentatively identified in an internal email. On 23 July 2023, you asked the Premier League to investigate her.
11. On 25 July 2023, you received the Premier League's 'Online Investigation and Target Profile', which recognised that our client has been the victim of serious online abuse, including having her face photoshopped onto a person about to be hanged.
12. On the same date, an internal email was sent which stated, inter alia, that 'I think we can all agree that the comments are not supportive of the trans community and I think the use of the "#LGB" is a conscious choice to make [our client's] exclusionary attitude clear'. The reply listed 'the usual actions for social media cases' and stated '[W]hen you have a chance to review the below can you please advise if we are okay to go with a ban?'
13. On 28 July 2023, an internal email stated:

*Re Linzi Smith (and [redacted] for that matter) - whilst I know we're considering a ban for Linzi and have banned [redacted] has gotten back to us today to let me know that she's seeking advice from the Premier League as not sure we have the grounds based on social media – I know I mentioned this before we banned [long redaction] Will let you know what she gets back to us with as I've asked for her to forward their advice to us.*

14. On 4 August 2023, you emailed copies of the posts identified above to the Premier League. Later that day, the Premier League emailed you as follows:

*Hi [redacted]*

*I've spoken to colleagues internally and the attached the incident reports which have been sent to your safety and security team.*

*I've also spoken to [several words redacted] regarding the next steps and process.*

*Initially any incident would need, further discussions with your safety and security team. Determine whether an incident breaches your policies and then commence a process of tiered action which can be escalated to a ban. [Redacted] advice is that where possible Clubs should engage with the individual and give them an opportunity to discuss the incident, this would open options such as developing an acceptable behaviour contract or exploring options for restorative education, prior to escalating to suspension and bans.*

15. On 29 October 2023, you received a second complaint regarding our client, which read as follows:

*[Redacted] have brought to my attention an account on X which appears to be a genuine account of a regular match day goer who mixes her NUFC content with transphobic rhetoric. She should be easily identifiable as she posts videos of herself singing chants and even has a screenshot of a match day ticket. [Redacted] unfortunately had to sit next to her for the Man City game in the knowledge of her attitude towards the trans community.*

*I have attached 11 screenshots including:*

A screenshot of the account @linzi1989 which includes in her bio references to the fact she identifies as a TERF(trans exclusionary radical feminist) and supports LGBrights rather than LGBTQ+.

Some examples of her content in the last month, (she tweets a lot and I gave up sifting after a while). They include:

1. Claiming trans women are men
2. Attacking trans women on line and intentionally misgendering them
3. Mocking [several words redacted] for having the pronouns he/they in their bio
4. Comments attacking trans supportive organisations like Mermaids and LGBwiththeT
5. Supporting comments towards extremist views about trans people (eg its a mental disorder, they are groomers and encourage child body mutilation).
6. A comment that she is expecting to be banned for her openly transphobic content.
7. The screenshot of her ticket for the Man City cup game.

It is unusual to come across a transphobic account that is not a hidden or fake account. Hence why I thought I would make the club aware in the hope that in a time when social media platforms no longer regulate this type of individual, the inclusive institution that is NUFC will take action.

For the sake of [redacted] and other gender diverse NUFC followers I ask that the club investigate this individual.

I have cc'd in PC [redacted], who is the new LGBTQ+ community lead. She is keen to have a meeting with you. I have also reported it online through Northumbria Police as a hate incident. The incident reference number is RA1231029024

I am aware you may have to wait for the police to investigate first so your response may be delayed. However, if you can just respond to acknowledge you have received the complaint that would be appreciated.

16. Later that day an internal email stated that our client's posts were 'being investigated as Hate Crime by Northumbria [Police]. The reply stated as follows:

Personally, I think the right thing to do is to issue a 3 season ban (plus request her permission to refer to KIO), now that we will be able to identify her. The issue we had at the time was identifying her from our member records but now we can from those posts that specify her seat in the ground.

Given that she is under investigation by the police, I will advise her of her account being temporarily suspended until the police investigation has concluded, which is what has been done with the [redacted] Following the outcome, the view would be to implement a 3 season ban unless the court issues a Football Banning Order, which we could then rely on instead. Given the offence under investigation has not been committed in the ground or is specific to football or match days, I'm inclined to suggest that no such order would be placed.

The reason I suggest a 3 season ban is because this case is virtually identical in circumstance to that of [redacted] who is currently under a 3 season ban and has been engaging with Kick It Out - the context being a social media account visibly endorsing NUFC being responsible for content that contradicts our values as an organisation.

17. At 14.48 on 31 October 2023, you emailed our client stating as follows:

It has come to our attention that you are currently under investigation by Northumbria Police for a possible Hate Crime offence.



*Given that the nature of the offence contravenes our Ground Regulations, your account has been temporarily suspended pending the outcome of this investigation, as is standard practice here at NUFC.*

*A note to this effect has been made on your supporter file and you will be contacted via email when we receive confirmation of an outcome from Northumbria Police.*

18. Our client was extremely distressed to receive this email and made enquiries with the police, who told her that they had not received a complaint about her.
19. On 1 November 2023, our client contacted you to pass on what she had been told by the police. You in turn passed this information on to the police by email. Later that day, the police emailed you as follows:

*The officer allocated is on a late shift and I have asked them to make contact when they get in. It has been crime'd as Malicious Communications with a hate flag.*

*Out of interest what is the Clubs perception of the account and the comments made. Would you perceive them to be Transphobic?*

*If the police were unable to take any action due to our requirement to prove beyond doubt and the recent changes to Non crime Hate Incidents, would the club still apply a sanction?*

20. On 10 November 2023, our client voluntarily attended at a local police station to be interviewed in connection with alleged malicious communications. Later that day, she was told that no further action would be taken against her by the police.
21. On 11 November 2023, X user @JJTooner published the following post on X (<https://twitter.com/JJTooner/status/1723367860129415506>):



22. On 17 November 2023, the General Secretary of the Free Speech Union, Toby Young, wrote to your Chief Executive Officer, Darren Eales, stating that there were no grounds for the continued suspension of our client's membership and warning that to continue the suspension would likely amount to belief discrimination.
23. On the same date, you wrote to our client stating that you had received 'numerous complaints' in relation to three of our client's posts – those identified at paragraphs 4 and 7 above, and the following post:





24. Your letter stated that the posts were in breach of the Equality Policy, clause 7 of the Membership Terms and Conditions, and clause 12 of the Ground Regulations. It stated that you had terminated our client's membership and that she would be forbidden from purchasing a new membership or tickets for away games until the end of the 2025/26 seasons ('the ban').
25. On 24 November 2023, our client informed you that she wished to appeal against the ban.
26. On 13 December 2023, you wrote to our client advising her of the appeal arrangements and enclosing screenshots of other posts published by our client.
27. In her written appeal submissions, our client said, inter alia, that:
  - the outcome of the complaint was pre-judged;
  - you failed to respect her right of confidentiality/data privacy in asking the Premier League to conduct an investigation;
  - there was a delay of around three months between the complaint and the imposition of the ban;
  - you instigated the police investigation;
  - the scope of your Equality Policy greatly exceeds that of the Premier League's Commitment regarding Discriminatory and Abusive Content ('the PL Commitment'); and
  - she holds gender critical beliefs, which are protected in law, and the posts were lawful expressions of those beliefs.
28. On 26 January 2024, you wrote to our client informing her that the appeal panel had decided to uphold the ban, stating, inter alia, that:
  - the matter was dealt with impartially and our client was not targeted inappropriately;
  - there was no breach of confidence/data privacy by your communication with the Premier League or your trawl of our client's X account;
  - the matter was dealt with swiftly following the second complaint;
  - you did not instigate the police investigation;
  - the decision to impose the ban was based solely on the three posts identified at paragraph X above;
  - the appeal panel agrees that the scope of your Equality Policy exceeds that of the PL Commitment and makes no apology for that
  - the appeal panel approached the case on the assumption that our client's beliefs are protected
  - the appeal panel considered that the three posts were wholly offensive and inappropriate, and further that they were 'offensive and unwanted to Trans persons and ... intimidating, hostile, degrading, humiliating or offensive' and constituted harassment as defined in your Equality Policy.

## The law

### Philosophical beliefs

Philosophical beliefs are a protected characteristic for the purpose of the Equality Act 2010 (see sections 4 and 10).

Service-providers are required not to discriminate in the provision of services (section 29), and membership associations are required not to discriminate against members (section 101).

The provisions of the Act that relate to belief discrimination must be interpreted, as far as possible, consistently with Articles 9 and 10 of the European Convention on Human Rights: **Page v NHS Trust Development Authority [2021] ICR 941, CA**.

Article 9 of the European Convention on Human Rights provides:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.  
...
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Thus the right to hold a belief is absolute, but the right to manifest or express it is qualified. However, both the European Court of Human Rights and our domestic courts have stressed many times that the right of expression extends far beyond inoffensive expression. Two quotes will suffice to make the point:

Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things, that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued. – **Handyside v United Kingdom 1976 ECHR 5 [1976]**

Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having. What Speakers' Corner (where the law applies as fully as anywhere else)

demonstrates is the tolerance which is both extended by the law to opinion of every kind and expected by the law in the conduct of those who disagree, even strongly, with what they hear. From the condemnation of Socrates to the persecution of modern writers and journalists, our world has seen too many examples of state control of unofficial ideas. A central purpose of the European Convention on Human Rights has been to set close limits to any such assumed power. – per Sedley LJ, **Redmond-Bate v DPP [1999] EWHC Admin 733**

Heightened protection is afforded to political speech and the debate of questions of public interest: **Vajnai v Hungary [2008] ECHR 33629/06**.

Our client's beliefs were summarised in her written appeal submissions as follows:

- There are two sexes: female and male.
- Sex is immutable: a person cannot change their sex.
- It is unfair and unsafe for males to play in women's sport.
- Gender dysphoria is a mental disorder. This is acknowledged under the Gender Recognition Act 2004.
- It is morally wrong to tell gender non-conforming children, who in many cases will be gay, that they have been "born in the wrong body".
- It is wrong to place vulnerable children on a pathway to a medicalised model of gender affirming care, particularly given that the treatments are experimental and irreversible, and in many cases will leave them with permanent and profound side effects.

Your appeal panel was correct to proceed on the assumption that these beliefs are protected philosophical beliefs within section 10 of the Equality Act 2010 ('the Act'): **Forstater v CGD Europe & Ors [2022] ICR 1**.

The debate over sex and gender and the conflict between women's rights and trans women's rights is notoriously hostile and polarised. X is a fast-moving conversational medium that does not encourage lengthy exposition. With those general observations in mind, we turn to the three offending tweets.

### ***The 12 May 2023 post***

As identified above, the background to this post begins with Joanna Cherry KC and The Stand comedy club. Ms Cherry holds gender critical beliefs. She had been booked to appear at an event at The Stand. Members of staff and others who objected to Ms Cherry's beliefs successfully lobbied The Stand to cancel the whole event rather than have Ms Cherry take part in it. Ms Cherry's lawyers intimated a belief discrimination claim to The Stand, which caused The Stand to reinstate the booking, apologise to Ms Cherry, and pay her legal costs. India Willoughby reacted with a strident attack on the Employment Appeal Tribunal's decision in **Forstater v CGD Europe**, describing it as 'obscene and ridiculous' and demanding that the decision be overturned. India Willoughby also described gender critical beliefs as 'transphobic', which is offensive to our client and others who share her beliefs.

Our client's post did not come out of the blue – she was referring to a post by one of the UK's most prominent trans women demanding that the law be changed to suit their political beliefs. It was well within the bounds of protected expression for our client to describe that behaviour as narcissistic.

Your appeal panel considered that the reference to mental illness was 'capable of being offensive both to trans persons and those with mental illness'. Gender dysphoria is recognised as a mental disorder in the current edition of the Diagnostic and Statistical Manual of Mental Disorders. In order to be granted a gender recognition certificate, the applicant must satisfy a panel (which includes a medical professional) that they have or have had gender dysphoria. While there are ongoing and lively debates about the boundaries of trans as a category, and whether it should be 'depathologised', most people who identify as trans suffer from gender dysphoria, which is widely recognised as a mental illness by the majority of psychiatrists.

### ***The 21 July 2023 post***

Again, it is important to address the context of this post. Our client had published an innocuous video of her and a friend singing a song about Fabian Schär. @rjb\_1998 launched an attack on her because she had the words 'LGB' in her X bio. This was wholly unjustified: lesbian, gay and bisexual people have an absolute right to identify and organise as a class without referring to transgender people. Ironically, it appears that @rjb\_1998 is a heterosexual man.

The ensuing exchanges are unedifying, though hardly atypical of X, but it is notable that our client's antagonists resorted to a string of personal insults pertaining to her protected beliefs. The post in question was a reply to an assertion that our client was 'parroting homophobic rhetoric', which, needless to say, is a particularly offensive remark for a heterosexual man to make to a lesbian.

Our client's post was a reference to Josef Mengele's sterilisation experiments, which included the use of surgery and drugs. Infertility is widely recognised to be a common consequence of so-called 'gender affirming care', including the administering of puberty blockers, cross-sex hormones, and surgery.

Our client's post did not refer to transgender people or indeed any identifiable person – it was directed at the 'ideology' that considers the sacrifice of healthy sexual function to be the acceptable cost of alleviating gender dysphoria. While undoubtedly a strong and provocative comparison to draw, hyperbolic invocations of Nazism are common currency on X. This post was also a protected expression.

@SCARFY's reply clearly demonstrates his intention to instrumentalise your procedures to punish our client, and we infer that the complaint which was made around an hour later came either from him or one of his associates.

### ***The 6 October 2023 post***

This post refers to the charity Mermaids. Mermaids promotes youth transition. It has recently been involved in the following controversies:

- Mermaids has sent or offered to send breast binders to children as young as 13, in some cases against their parents' wishes. Breast binders have been described by Dr Hilary Cass, the author of the Cass Review, as 'painful and potentially harmful'. The Charity Commission began an investigation into Mermaids when this news was reported.
- In October 2022, a trustee of the charity Mermaids, Dr Jacob Breslow, resigned after it was revealed that he had given a presentation at a conference organised by the group B4U-ACT. B4U-ACT is a group that supports paedophiles and asserts their right to live 'in truth and dignity'. Dr Breslow's presentation used the term 'minor-attracted persons', which is a term designed to sanitise paedophilia.
- On 28 November 2022, the Charity Commission opened a statutory inquiry into Mermaids to consider, inter alia, the conduct of Dr Breslow. That inquiry has yet to conclude.

Contrary to the appeal panel's findings, the post did not 'refer to trans persons as groomers' – it referred to Mermaids as 'groomers'. Again, while that was a strong and provocative comment, it was also a protected expression.

### ***Your liability to our client***

You are a service-provider within the meaning of section 29 of the Act; alternatively, an association within the meaning of section 101; and as such, were obliged not to discriminate against our client by terminating the provision of the service or depriving her of membership or subjecting her to any other detriment.

You have directly discriminated against our client because of her posts, which were expressions of her protected beliefs. The ban is a wholly disproportionate interference with those beliefs. It is striking that you did not heed the Premier League's advice to 'engage with the individual and give them an opportunity to discuss the [posts]', and that from as early as 25 July 2023, your clear preference was to impose the most severe sanction available to you i.e. a ban.

You also directly discriminated against our client by encouraging Northumbria Police to escalate its action against our client. In the email dated 29 October 2023, the complainant stated that that they had 'reported it online through Northumbria Police as a hate incident. The incident reference number is RAI231029024'. Both the language used by the complainant and the reference number are consistent with a report of a non-crime hate incident. It was following your intervention that the police told you 'it has been crime'd as Malicious Communications with a hate flag' i.e. that the report was now being treated as a report of a criminal offence. As was verbally confirmed to our client by a police officer, you were the only person to complain that our client had committed an offence.

Our client is entitled to damages for injury to feelings and an order requiring you to reverse the ban.

### **The next steps**

We look forward to receiving your written response within one month of the date of this letter. In the event that liability is denied, we will require disclosure of all relevant documents, including the unredacted versions of those documents previously sent to our client pursuant to her data subject access request.

Yours faithfully



**Levins Solicitors**