

# TCW *Defending Freedom*

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By **Dr Frederick Attenborough** February 17, 2025



AFTER a six-year legal battle, Kristie Higgs has been vindicated. Last week the Court of Appeal ruled in favour of the 49-year-old administrator who was dismissed by Farmor's School in Gloucestershire in 2019 for expressing traditional Christian views about marriage and sexuality on her personal Facebook account.

The Free Speech Union (FSU) intervened in the case and successfully persuaded the Court to adopt several key arguments, reinforcing vital protections for freedom of belief in the workplace.

*Higgs v Farmor's School* may well be the most significant belief discrimination ruling since Maya Forstater's 2019 victory over the Centre for Global Development Europe established that gender-critical views are protected under the Equality Act 2010.

Beyond its immediate outcome, the Higgs case marks a pivotal moment in the debate over how employers handle third-party complaints about lawful speech. The court's ruling makes clear that individuals cannot be dismissed simply because others take offence at their views, setting an important precedent against employers outsourcing disciplinary decisions to ideologically driven woke activists.

The story began in October 2018 when a parent at Farmor's, a secondary school with academy status, complained about 'prejudiced' posts on Ms Higgs's Facebook page. In them she criticised the introduction of LGBT-inclusive education in primary schools and warned against 'indoctrinating' children to believe 'that same-sex marriage is exactly the same as traditional marriage, and that gender is a matter of choice, not biology, so that it's up to them what sex they are'.

While these words were not her own, she amplified them with urgent calls to action, stating 'PLEASE READ THIS! THEY ARE BRAINWASHING OUR CHILDREN!' and closing with the entreaty: '\*\*\*Please sign this petition, they have already started to brainwash our innocent wonderfully created children and it's happening in our local primary school now\*\*\*.'

After the parent's complaint, Ms Higgs became the subject of an internal school investigation. Although she had used her maiden name on Facebook and did not identify her employer, the school decided that her posts could damage its reputation. According to her lawyers, she was subjected to a long interrogation during which her Christian views 'were described as akin to that of a pro-Nazi right-wing extremist'.

She was subsequently dismissed for bringing the school into disrepute, setting the stage for a protracted legal battle. Ms Higgs argued that she was discriminated against because of her Christian beliefs. The school countered that she was not dismissed for her beliefs per se but for how she expressed them.

This exemplifies a growing trend in employment disputes, whereby individuals are sacked for the way their views are perceived by third parties, with employers citing 'reputational damage' as a justification for taking action against people who express ideas that some find controversial.

In the first stage of the legal process, an Employment Tribunal (ET) ruled against Ms Higgs on precisely these grounds. While it accepted that her religious beliefs were protected under the Equality Act 2010, it held that her dismissal was lawful because of how her resulting views might be regarded by other people.

An Employment Appeal Tribunal (EAT) found that the ET had erred in several ways, particularly in failing to ask whether her Facebook posts were in fact a manifestation of her beliefs, and therefore protected by law. UK law recognises that the right to religious and philosophical beliefs includes the right to express them. As the EAT

noted, the manifestation of belief is often inseparable from the belief itself. The Lord's Prayer, for instance, is a direct manifestation of Christianity. Punishing an employee for saying it would be tantamount to penalising them for being Christian.

The EAT also ruled that the ET had failed to consider whether the school's concerns about reputational harm were well-founded or purely notional.

Despite these positive developments, the EAT declined to make a final judgment. Instead, it sent the case back to the ET for reconsideration, leaving unresolved the central issue of whether or not Ms Higgs's dismissal had been lawful.

It was at this stage that she went to the Court of Appeal, joined by the FSU as an intervener. Now the Court has found in favour of both her and the FSU's key submissions.

The FSU's intervention played a crucial role in shaping the Court's approach to central legal questions, ensuring that the principles underpinning freedom of belief and expression were rigorously examined. A panel of three senior judges concluded unanimously that Ms Higgs's sacking was 'unquestionably a disproportionate response'.

A return to the original tribunal was also deemed unnecessary (except for determination of remedy), as the court concluded that 'the ET would be bound to find that the claimant's dismissal was not objectively justified and accordingly that it constituted unlawful discrimination'.

In reaching its decision, the Court relied on the precedent set in *Page v NHS Trust Development*, which established that dismissal for expressing a belief is lawful only if the manifestation of that belief is objectively objectionable and the employer's response is proportionate. This means employers must assess what was actually said rather than relying on how third parties may misinterpret or subjectively perceive it.

On this point, the court endorsed the reasoning of Lady Justice Laing, who, in granting Ms Higgs permission to appeal, stated: 'Where the objection is based on the words used by the employee, it is arguable that the defence should only be available if, objectively, the employer can legitimately complain about the meaning of those words, and that it should not be available because of the reaction to those words of a person which derives, not from the objective meaning of the words, but from subjective inferences some people might draw, or which the complainant has drawn, from those words.'

The outcome of the case also confirms another vital point made by the FSU: that ‘reputational damage’ can’t be merely hypothetical, based on vague fears of controversy or public backlash. Instead, there must be demonstrable evidence of actual harm – such as a loss of clients, funding or operational functionality. On this basis, the Court determined that any risk to the school’s reputation from Ms Higgs’s Facebook posts was ‘speculative at best’.

Needless to say, this is a major correction to the overly broad way in which reputational risk has often been weaponised against employees with lawful but dissenting views.

Finally, the ruling reinforced a high threshold for when speech can justify dismissal. Robust, forthright or even unpopular views do not, in themselves, constitute grounds for terminating employment. The Court confirmed that, for speech to fall outside legal protection, it must be ‘grossly offensive’ or amount to a direct attack on a specific group. This is a critical clarification, given the growing tendency to conflate legitimate expressions of belief with ‘hate speech’ based purely on perceived offensiveness. Ms Higgs’s posts, the Court decided, were not objectionable in the legal sense since they were neither ‘grossly offensive’ nor ‘primarily intended to incite hatred or disgust for homosexuals or trans people’.

Taken together, these clarifications represent a significant victory for those who value free speech and intellectual diversity in the workplace. The ruling establishes a more objective, evidence-based framework for handling belief discrimination cases and makes it harder for employers to act as enforcers of political orthodoxy at the expense of fundamental rights.

While the legal battle may not be over – an appeal to the Supreme Court remains possible – last week’s judgement provides an essential layer of protection for those who dare to express ‘heretical’ views. In an era where ideological conformity is increasingly demanded in professional settings, *Higgs v Farmor’s School* stands as a vital reaffirmation of the right to speak freely.