

# Protection of belief: the case of Kristie Higgs



Kristie Higgs<sup>1</sup> (pictured, right) is a Christian, and was employed in a high-performing Academy school as pastoral care and work experience manager.

On her personal Facebook page, she posted numerous comments criticising sex and relationship education in primary schools especially as it concerned LGBTB people and relationships. Some her posts related to American literature and practise on the subject. On one such reposted entry, asking people to sign a petition, she added “Please read this! They are brainwashing our children!” Following a complaint, the school suspended and then dismissed her. This took place in late 2018 and early 2019. She then took legal proceedings, supported by the Christian Legal Centre (CLC) (part of Christian Concern), where she was represented by Pavel Stroilov<sup>2</sup> (pictured, right). A tribunal judgement was issued on 6<sup>th</sup> October 2020.<sup>3</sup> This found that she was *not* a victim of unlawful discrimination and harassment due to her beliefs.



The UK conservative news website Unherd carried this report by Niall Gooch (pictured, below)<sup>4</sup>:

In late 2018, a woman called Kristie Higgs was sacked from her job at a school in Gloucestershire because of comments made on her private Facebook page, in her own time, concerning sex education in schools. Last month, an Employment Tribunal upheld her dismissal, on the grounds that her employer believed that her posts “might reasonably lead people...to conclude that she was homophobic and transphobic”. The Tribunal flatly denied any link between her Christian convictions and the school’s decision to sack her, a remarkable piece of sophistry clearly intended to avoid the finding that Ms Higgs had been dismissed because of her religious beliefs — which she quite plainly had been.<sup>5</sup>



This case, it said, was evidence of ‘a new soft totalitarianism’ spreading in the west.

There are two disputable claims in Unherd’s account. The first is that the ‘Employment Tribunal upheld her dismissal.’ This may be taken to imply that the case she brought was for unfair dismissal. She could have done that, and in fact this was the track she initially took. However, she withdrew

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<sup>1</sup> The tribunal judgment refers to ‘Mrs Higgs’ and the Unherd report to ‘Ms Higgs.’ I have used both ‘Ms’ and ‘Mrs’ relating to these contexts.

<sup>2</sup> Pavel Stroilov is the author of several books include ‘Inglorious Revolution’, about the ‘subversion of the English constitution’ and ‘how we are now living in an illegally constituted state’, written with Gerard Batten, the leader of the United Kingdom Independence Party whose association with Tommy Robinson prompted Nigel Farage to resign from that party. A judge in another case, of Alfie Evans, [described](#) Mr Stroilov as ‘fanatical and deluded’.

<sup>3</sup>[https://assets.publishing.service.gov.uk/media/5f86f3e3e90e07415b7c9de5/Mrs\\_K\\_Higgs\\_V\\_Farmor\\_s\\_School\\_-\\_1401264.2019\\_-\\_Judgment.pdf](https://assets.publishing.service.gov.uk/media/5f86f3e3e90e07415b7c9de5/Mrs_K_Higgs_V_Farmor_s_School_-_1401264.2019_-_Judgment.pdf)

<sup>4</sup> A [self-described](#) ‘conservative blogger born a century too late’

<sup>5</sup> <https://unherd.com/2020/11/how-to-resist-the-new-totalitarianism/>

this claim, a withdrawal accepted at a preliminary hearing on 13<sup>th</sup> December 2019<sup>6</sup>. Instead, with the tribunal's permission, she amended her claim to one of discrimination on grounds of religion or belief under section 10 of the Equalities Act. John Allman (a passionate supporter of Ms Higgs' position on the teaching of sex and relationships in primary schools) expressed grave concern about this choice: it was, he warned CLC, 'likely to muddy the waters to your client's cost and ultimately to come between Kirstie (sic) and justice.'<sup>7</sup> When the tribunal ruled on Ms Higgs' revised claim, it was careful to record that it had not been asked to consider the fairness of her dismissal. It went so far as to canvass a route that could have enabled it to find in her favour had the original claim been pursued:

It might be contended that there was a different course of action the School could have taken, in the light of the position made clear by Mrs Higgs in the disciplinary process. Since she denied being homophobic or transphobic, a reasonable employer might have taken the view that justice would be served by her (or the School) making it clear that if anyone thought she held those views they had got "the wrong end of the stick" – that pupils and parents should not be concerned that she would demonstrate any sort of hostility to gay or trans pupils (or indeed gay or trans parents).<sup>8</sup>

The second disputable claim published by Unherd is that 'quite plainly' Ms Higgs was 'dismissed for her religious beliefs' and to say otherwise was 'sophistry.' The tribunal said, in para 29, that 'Mrs Higgs is a Christian but it was not her case that she had been directly discriminated against or harassed for her Christianity per se (and clearly she had not been).' In fact Ms Higgs claimed that the protected characteristic against which her employer discriminated was not religion, but belief. The law gives protection against belief separately from religion, and Ms Higgs told the tribunal she held a number of specific beliefs, set out by the tribunal in para 30:

(a) Lack of belief in "gender fluidity". (b) Lack of belief that someone could change their biological sex/gender. (c) Belief in marriage as a divinely instituted life-long union between one man and one woman. (d) Lack of belief in "same sex marriage". Whilst she recognises the legalisation of same sex "marriage", she believes<sup>9</sup> that this is contrary to Biblical teaching. (e) Opposition to sex and/or relationship education for primary school children. (f) A belief that she should "witness" to the world, that is when unbiblical ideas/ideologies are promoted, she should publicly witness to Biblical truth. (g) A belief in the literal truth of the Bible, and in particular Genesis 1v 27: "God created man in His own image, in the image of God He created him; male and female He created them".

Some of these beliefs arise from Christianity alone, and would likely be shared by all or most Christians. Some are deductions or developments from Christianity that some Christians would share and some not. Some would be passionately held by some non-Christians. A study of the Mackereth and Forstater cases<sup>10</sup> explains this distinction between a claim based on 'religion' and one based on 'belief'. Ms Forstater, who is not a Christian, is strongly opposed to the idea of 'gender fluidity' and

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<sup>6</sup>[https://assets.publishing.service.gov.uk/media/5e14a157ed915d3b07ed0332/Mrs\\_K\\_Higgs\\_v\\_Farmor\\_s\\_School\\_1401264.2019.pdf](https://assets.publishing.service.gov.uk/media/5e14a157ed915d3b07ed0332/Mrs_K_Higgs_v_Farmor_s_School_1401264.2019.pdf)

<sup>7</sup> John Allman is a former parliamentary candidate for the Christian People's Alliance. He holds a master's degree in law. His warning to CLC, dated 21<sup>st</sup> September 2020, was published on twitter on 13<sup>th</sup> October 2020.

<sup>8</sup> Para 65 of the judgement issued on 6<sup>th</sup> October 2020

<sup>9</sup> sic

<sup>10</sup> <http://www.theican.org/antitransgenderism.pdf>

claimed this as a protected belief which resulted in the non-renewal of her consultancy deal.<sup>11</sup> The courts rejected both their claims of protection for their beliefs, holding these ‘not worthy of respect in a democracy.’ Intriguingly, buried in the decision on Kristie Higgs’ case, is a finding that her beliefs are, in fact, worthy of respect<sup>12</sup>, and therefore a protected belief under section 10.

The question before the tribunal was not whether the dismissal was fair or not – the claimant had decided they should not review this – but whether, because of her beliefs, she was treated less favourably than she would otherwise have been had she not held the beliefs which, the tribunal agreed, were protected against such unfavourable treatment. The judge considered this under two heads: first, whether the disciplinary action was taken because of her beliefs. The answer was not – any employee making public<sup>13</sup> such statements would have faced the same consequences, whatever the underlying beliefs may have been. The second was whether there was anything in the disciplinary proceedings that was exceptional in a way disfavoured to her as the holder of the protected beliefs. The tribunal found not. Her claim to relief for discrimination under section 10 of the Equalities Act was there dismissed.

It is impossible not to feel sympathy for Kristie Higgs. It is particularly sad to read, in the Tribunal findings, that she was alone in the stressful conditions of the disciplinary proceedings – she was not a member of union and found no colleague prepared to be her supporter in the hearings. But it was her choice to withdraw the claim of unfair dismissal and proceed instead on the less certain path of proceeding under the Equality Act. It was her choice to be represented in court, not just by the Christian Legal Centre which had already lost a similar claim in respect of Dr Mackereth<sup>14</sup>, but specifically by the controversial political figure of Pavel Stoilov. I do not know if either Unherd or its correspondent has even read the tribunal judgment or looked into the basis of the derogatory claims it makes about the court. It would be good to hear why Kristie Higgs made the choices she did in her legal strategy, and whether Unherd, having reflected on the facts of this case, still thinks it can maintain that the result promotes totalitarianism.

Paul Lusk

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Note: both Christian Concern and Unherd have been invited to comment on this article. No reply has been received.

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<sup>11</sup> Unlike Dr Mackereth and Ms Forstater, Ms Higgs was an employee and could claim (though chose not to claim) relief for unfair dismissal.

<sup>12</sup> Para 45

<sup>13</sup> Ms Higgs said that the statements were made to a private Facebook group under her maiden name so were not public. The court agreed with the employer that the statements were easily copied and traced to her as the Academy’s employee, so could not reasonably be kept private.

<sup>14</sup> Similar in sharing the claim that ‘antitransgenderism’ is a protected belief under section 10. Dr Mackereth would not obey an employer’s instruction to comply with a transgender person’s rights under section 7 of the Equality Act. Kristie Higgs did not follow Dr Mackereth in this step.