



Freedom of expression is central to the health of a democratic society. It allows us to seek truth and object to injustice.

Without free speech, a society effectively closes the door to the exchange of ideas that can lead to positive change. So we need to be vigilant to protect this vital freedom for future generations.

In recent years a 'progressive' consensus has formed on issues like the sanctity of life, sexuality and the family. Along with this has come growing intolerance of

those who dissent. Disagreeing with someone is often seen as attacking their identity and is labelled hatred.

Our culture encourages us to think it's profoundly wrong – or even illegal – to openly disagree on certain ethical matters. There is a chilling effect on free speech.

Christians are not alone in feeling pressure to keep quiet well-established beliefs that are now misunderstood or misrepresented as hateful or extreme. As one witness in the *Miller* case (see overleaf) commented, there is "confusion among the wider population

about what is and is not legal speech".¹

It is crucial to realise that our laws on free speech are still excellent. We remain free to disagree. This briefing highlights court cases that demonstrate this, as well as pointing out how recent low-level decisions inhibiting free speech are wrong and likely to be overturned.

Our freedom should be used boldly as we stand for truth and the good of our neighbour in a confused and needy world.



Harry Miller



"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."


Lord Justice Sedley

High Court emphasises free speech

MILLER V COLLEGE OF POLICING, EWHC 225 (ADMIN), HIGH COURT, 14 FEBRUARY 2020

Facts

Harry Miller tweeted against proposals to make it easier to change legal sex. His tweets were sometimes crude, but not targeted at any person. A typical comment was:

 ***"I was assigned Mammal at Birth, but my orientation is Fish. Don't mis species me. [Expletive]."***

Someone complained to the police that the tweets were transphobic. The police recorded it as a hate incident and the officer responsible went to visit 'the suspect'

at his workplace – a machinery company in Lincolnshire. Since Mr Miller was not there, the policeman left his number with a director of the company.

When Mr Miller phoned back, the officer said his tweets had offended many members of the transgender community and, if they escalated, could lead to criminal prosecution. Mr Miller says the officer told him he was calling to "check your thinking".³

Mr Miller felt deeply humiliated as well as anxious for his family and business.



Harry Miller



Decision

The police action was an unlawful interference with Mr Miller's right to free expression under the European Convention on Human Rights.

Mr Justice Julian Knowles emphasised that free speech is a "cardinal democratic freedom", and political speech is specially protected. We must not underestimate the seriousness of the police turning up at Mr Miller's work and warning of criminal prosecution, the judge said. It "had a chilling effect on his right to freedom of expression".⁴

The interference with Mr Miller's rights was not according to law or necessary in a democratic society.

"In this country we have never had a Cheka, a Gestapo or a Stasi."

There was "not a shred of evidence" he was at risk of committing a crime. The tweets were "not grossly offensive" and he "did not intend to cause anyone anxiety or distress".⁵

Mr Miller's "right to speak on transgender issues as part of an ongoing debate was extremely important".⁶ It is

"the nature of free speech in a democracy" for people to profoundly disagree, but the police effectively gave the person who complained a "heckler's veto".⁷



Lower court decisions get it wrong

FORSTATER V CGD EUROPE, UNITED KINGDOM EMPLOYMENT TRIBUNAL, 18 DECEMBER 2019

Facts

Maya Forstater was a consultant for an economic think tank. She posted online messages against proposals for gender self-identification, for example:

"I don't think people should be compelled to play along with literal delusions like 'transwomen are women'".

Staff at the think tank raised concerns, which led to an investigation. Shortly afterwards, it was decided not to renew her contract. She claimed this was discrimination on grounds of her philosophical belief, under the Equality Act 2010.

Decision

The Employment Tribunal rejected her claim because her 'gender-critical' views were not a protected belief.

Maya Forstater believed "sex is biologically immutable" and there are "only two sexes, male and female."⁸ She maintained that no one should be compelled to use preferred pronouns.

The judge found that her belief failed the test of being "worthy of respect in a democratic society" even though UK law "still treats sex as binary".⁹

Stating that "enormous pain" "can be caused by misgendering", the judge said Maya Forstater's "absolutist" belief denied "the right of a person with a Gender Recognition Certificate to be the sex to which they have transitioned".¹⁰

He agreed that requiring her to refer to a biological man as a woman interfered with her free speech, but said this was necessary "to avoid harassment" of transgender persons.¹¹

An appeal is expected.



DR DAVID MACKERETH V THE DEPARTMENT FOR WORK AND PENSIONS, UNITED KINGDOM EMPLOYMENT TRIBUNAL, 2 OCTOBER 2019

Facts

Dr Mackereth was recruited to do medical assessments for the Department for Work and Pensions (DWP). During induction it emerged that he would not refer to transgender service users by their preferred name/pronouns. His managers decided to end his employment to avoid offence to

transgender individuals.

Dr Mackereth claimed the DWP discriminated against him on grounds of his beliefs, and that his dismissal was incompatible with his human rights. Unlike Maya Forstater, Dr Mackereth's beliefs were based on his faith. He was supported by Christian Concern.

Decision

DWP did not discriminate because Dr Mackereth's belief was not protected.

The Employment Tribunal said his views, including belief in Genesis 1:27, were "incompatible with human dignity and [in] conflict with the fundamental rights of... transgender individuals".¹²

Dr Mackereth refusing to refer to a transgender

person by their new "birth sex" or relevant pronouns "would constitute unlawful discrimination or harassment".¹³



QC'S "CRITICAL APPRAISAL" OF THE FORSTATER JUDGMENT

Karon Monaghan QC disagreed with the Tribunal's conclusion that Maya Forstater's beliefs were "not worthy of respect in a democratic society".¹⁴

The equality expert said that Maya Forstater's belief that sex is binary and immutable is assumed in UK law:



“ It is somewhat surprising – and bold – for an [Employment Tribunal] to conclude that a ‘view’ held by the senior courts and reflected in judgments spanning 40 years are not worthy of respect in a democratic society.... ”

Karon Monaghan said the Tribunal was too critical of the “absolutist” nature of her belief. After all, she argued:

“ Most or at least many protected beliefs are absolutist – typically religious belief but also many political and other beliefs. ”

She saw “nothing scandalous or reprehensible” about Maya Forstater's beliefs. They are “certainly offensive to some”, but:

“ the right to freedom of expression ‘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 QC agreed with the High Court in the *Miller* case that the police actions were unjustified and had the “capacity to impede and deter him from expressing himself on transgender issues”.



LORD SUMPTION ON DISAGREEING WITH THE LAW

Former Supreme Court Justice Lord Sumption also questioned the *Forstater* decision.¹⁵

He observed that Maya Forstater “was not proposing to interfere with the statutory rights of trans people. She merely believed they should not have such rights”.

Lord Sumption thought it “hard to see” why “a genuine belief that the law is wrong-headed” could not qualify as a philosophical belief.

The “weasel words”, “worthy of respect in a democratic society” should not require universal agreement: “In a democratic society we have to live with each other. That includes living with each other's beliefs.”

He concluded:

“in a liberal society the law does not exist to force us into conformity, but to protect us from actual harm. It is not obvious that being offended by someone else's beliefs counts as actual harm”.

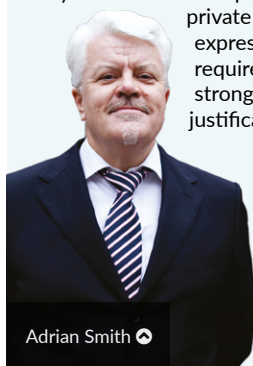




FREE SPEECH AT WORK

Few people expect the same free speech at work as at home or on the street. They are being paid to do a job. Employers are entitled to limit expression during work time to protect the company's reputation or productivity. But people are entitled to answer questions from colleagues, for example. And any restriction on employees'

private
expression
requires
strong
justification.



Adrian Smith

In *Smith v Trafford Housing Trust* the High Court ruled the employer was wrong to demote Adrian Smith after he called same-sex marriage in churches 'an equality too far' on his personal Facebook page.¹⁶

Similarly, in *Ngole v Sheffield University* (a Christian Concern case) the Court of Appeal said it was unlawful for the university to exclude Felix Ngole from his social work course in the way it did. He had expressed opposition to homosexual lifestyles on social media.¹⁷

Employment cases often involve a delicate balance. Sometimes employees' rights must be weighed against those of customers or clients, as in the Mackereth case. Some employers are more

limited by discrimination law, such as the Public Sector Equality Duty.

But it is still wrong to say that someone's belief is not worthy of respect because it may offend another person or goes against prevailing opinion. It seems clear that the Employment Tribunal made errors on this point in *Mackereth* and *Forstater*.



Felix Ngole

ARE THERE LIMITS TO FREE SPEECH?

Free speech is essential but is not an end in itself. To provide full benefit, it needs to be used to express words and ideas that are themselves good. And some restrictions on speech are needed to ensure the space for people to be heard. Anarchy is not a recipe for genuine free speech.

Speaking the truth in love

THE NEED FOR TRUTH

The *Miller* case and reactions to the *Forstater* ruling show that many have seized on the crucial issues at stake. This is encouraging.

The importance of discussion and debate is perhaps especially obvious when it comes to transgenderism. Its confused thinking and harmful consequences are coming to light more and more, for example in the threat it poses to

the safety of women and the mental health of children.

Room for dissent is equally necessary in many other areas where popular opinions are wrongheaded and damaging, not least on sexual ethics and the sanctity of life. Christians must use our immense freedom to speak the truth wisely in love.



GENTLENESS AND RESPECT

We must be respectful when we disagree, because even fervent opponents of God's truth are made in his image. The apostle Peter tells us to be ready to give a reason for our hope, "yet do it with gentleness and respect" (1 Peter 3:15).

Respect is due to all lawful authorities instituted by God. Citizens and employees are to live and speak within the limits set, provided they do not require them to sin. We should also tactfully and

wisely avoid unnecessary confrontation: "If possible, so far as it depends on you, live peaceably with all." (Romans 12:18).

The books of Proverbs and James highlight the power of the tongue for good or evil (Proverbs 12:18; James 3:5-10). Jesus teaches that we will give account for every careless word (Matthew 12:36). God's people may need to rein in their tongues (James 1:26).

The Apostle Paul is a model of bold but respectful and

wise speech. In Athens he reasoned in the marketplace and his address was courteous and respectful. He used great wisdom in pointing to the 'unknown God' and quoting their own poets (Acts 17:22-31).

Jesus is our ultimate pattern. He often deftly sidestepped traps set by the religious leaders and avoided mob mania (e.g. Mark 11:33; 7:36). But at other times people were offended (Matthew 13:57).

REFERENCES

christian.org.uk/freetodisagree-ref



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