

Employment Tribunal: Social Work England seriously abused its power as a regulatory body, violating a Social Worker's Convention rights and unlawfully discriminating against her

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In [Meade v \(1\) Westminster City Council & \(2\) Social Work England](#) (Case Numbers: 2201792/2022 and 2211483/2022 - judgments dated 8 January 2024 and 26 March 2024) a Social Worker succeeded in claims of harassment against her professional regulator.

In its remedy judgment sent to the parties on 26 March 2024, the Employment Tribunal ('ET') awarded Ms Meade over £50,000 and, in addition, ordered Social Work England to pay exemplary (punitive) damages. The ET also recommended that Social Work England ensures all its triage staff, investigations staff and case examiners receive training on freedom of expression and protected belief. In paragraph 86 of its remedy judgment, the ET held that:

We consider that the Second Respondent's actions constituted a serious abuse of its power as a regulatory body. We accept Ms Cunningham's argument that the Second Respondent has allowed its processes to be subverted to punish and suppress the Claimant's lawful political speech, and to do so on grounds of her protected beliefs. In doing so it has violated her Convention rights to freedom of belief and expression and combined that violation with unlawful discrimination.

The case involved discrimination on the ground of a protected belief in the context of the gender self-identification/gender critical debate and concerned fitness to practise proceedings arising from social media posts expressing gender critical beliefs. In a nutshell, the ET concluded that Social Work England '*had a pre-ordained view as to the Claimant's beliefs being unacceptable*'; Social Work England had '*an institutional view to favour one side of the debate i.e. that gender self-identification was a legitimate expression of belief whilst gender critical beliefs were unacceptable*' (see paragraph 87 of the remedy judgment). However, more generally, this case serves as a useful reminder of the ET's jurisdiction to hear claims brought by practitioners against their professional regulators about discriminatory treatment in connection with fitness to practise

investigations.

In *Michalak v General Medical Council & Others* [2017] UKSC 71, the Supreme Court confirmed that the ET has jurisdiction to consider claims against professional regulators, unless a complaint about the matter in question may be pursued via a statutory appeal. For example, an MPTS decision to erase or suspend a medical practitioner from the register, or to impose conditions on their registration, may be appealed to the High Court under s. 40 Medical Act 1983 and therefore no Equality Act 2010 claim in respect of such a decision may be brought. Whilst the limitation on claims explained in *Michalak* is clear, *Meade v Social Work England* helpfully provides examples of matters which may fall within the jurisdiction of the ET.

In paragraph 251 of its 8 January 2024 judgment, the ET held that Social Work England's overarching objective is '*subject to the protection enjoyed by the Claimant pursuant to [the Equality Act 2010]*'. The ET went on to make significant criticisms of Social Work England, including finding there was a lack of rigour in its investigation and an apparent willingness to accept a complaint from one side without appropriate objective balance (paragraph 252).

Moreover, at paragraph 255 the ET held as follows:

We consider that the Case Examiners initial investigation was defective in various ways to include:

- a) Their failure to ascertain whether the Claimant's Facebook was private and assumed it was not.*
- b) Their use of up to 70 of the Claimant's Facebook posts in the decision without appropriate and consistent differentiation of those which were considered to go beyond the mere manifestation of the Claimant's gender critical beliefs.*
- c) They continuing [sic] inclusion of references to the petitions the Claimant had signed even though they did not form part of the decision.*
- d) There are [sic] implicit acceptance of the complainant's position because he was a social worker.*
- e) The title of the investigation a document as "transphobic".*
- f) Their reformulation of the charges at Statement of Case stage.*

The ET found that Social Work England had unlawfully harassed Ms Meade for a reason related to her protected belief (contrary to s.26 Equality Act 2010) by way of the following (see paragraphs 256 to 265):

(a) Being the subject of a prolonged investigation into her beliefs from November 2020 to June 2021.

(b) Being sanctioned by the 2nd Respondent's Case Examiners on 8 July 2021.

(h) The Second Respondent referring the complaint against the Claimant to a Fitness to Practice hearing, communicated to her on 31 January 2022.

(i) The Second Respondent putting forward a statement of case dated 6 July for the Fitness to Practice hearing

While regard must be had to the detailed facts, the judgment in *Meade* indicates that ETs may, depending on all the circumstances of a particular case, uphold complaints in relation to:

- (a) the length of fitness to practise investigations and the way they are conducted;
- (b) Case Examiners' decisions; and
- (c) charges/statements of case drafted for the purpose of fitness to practise hearings.

While the list above is not exhaustive, it appears to cover several aspects of the fitness to practise process practitioners often feel aggrieved by. Given that claims may be brought in relation to any of the protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation, it is unclear why relatively few such claims have been brought to date. However, it is possible that greater awareness of the ET's jurisdiction in this area could lead to an increase in discrimination claims against professional regulators in the future.

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