

# THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL

CASE REFS: 83/23FET  
17/25FET  
14943/25

CLAIMANT: Sara O’Gorman (Morrison)  
RESPONDENT: Belfast Film Festival Limited

## JUDGMENT

The unanimous judgment of the tribunal is that the claimant’s claims are dismissed in their entirety.

### CONSTITUTION OF TRIBUNAL

Employment Judge: Employment Judge Sturgeon  
Member: Mr M McKeown

### APPEARANCES:

The claimant was represented by Mr Sean Doherty, Barrister-at-Law, instructed by Ms Gráinne Rice, Solicitor, of Worthingtons Solicitors.

The respondent was represented by Ms Naomi Cunningham, Barrister-at-Law and Ms Charlotte Elves, Barrister-at-Law, instructed by Mr Simon Chambers, Solicitor, of Russell & Co. Solicitors.

### BACKGROUND

1. The respondent is a non-profit company set up in the mid-90s to promote and advance the art of film and education. It runs the annual Belfast Film Festival, Docs Ireland and offers year-round film screenings, community outreach and workshops.
2. The claimant began working for the respondent on 12 February 2020 as an Inclusion/Audience Development Co-ordinator. The claimant resigned from this position on 26 November 2024.

3. The claimant lodged proceedings in the tribunal office, on 26 October 2023, against the respondent, in which she claimed discrimination on the ground of political opinion (namely gender critical beliefs) and harassment. The claimant lodged a second claim, on 28 January 2025, for constructive dismissal, alleging that she was forced to resign as a result of an investigation carried out, by the respondent, into the claimant's actions. In this claim, the claimant also claimed detriment on the ground of having made a qualified protected disclosure and further harassment and discrimination on the ground of her political opinion. At a CMPH on 28 October 2025, the claimant withdrew her protected disclosure claim.
4. The respondent lodged a response to the first claim on 15 January 2024 and to the second claim on 17 April 2025. The respondent contended that the claimant was not constructively unfairly dismissed, harassed or discriminated against on the ground of her political belief. The respondent submitted that the claimant resigned, of her own volition, and denied that the respondent breached the claimant's contract of employment in any respect. The respondent contended that it was entitled to investigate the actions of the claimant in circumstances where it was receiving complaints in relation to her speaking at a Let Women Speak rally on 16 April 2023.

### **Procedure**

5. Two CMPHs took place in this matter, one on 30 May 2024 and one on 28 October 2025. These Preliminary Hearings issued standard case management orders for the hearing. The tribunal was made aware, at the second CMPH, that an application would be made, at the outset of the hearing, for permission to live Tweet proceedings.
6. The hearing was listed for ten days. The evidence, in this case, was heard over eight days from 10-19 November 2025. The first day was a reading day and the hearing of evidence commenced on 11 November 2025. Submissions were heard on the final day of hearing on 21 November 2025.

### **Restricted Reporting Order/Anonymity Order**

7. An application was made for a Restricted Reporting Order on the first day of the hearing. The Restricted Reporting Order was initially granted but the tribunal subsequently reconsidered the Order of its own volition. The tribunal set aside the Order, on the second day of the Hearing, for reasons given orally at the Hearing. The tribunal made an Anonymity Order, in respect of the claimant's relative, with no objection from either party. As it transpires, there has been no need to refer to this relative in the judgment.

### **Public Access to the Hearing**

8. The Hearing was conducted in two tribunal rooms. Members of the press as well as witnesses and members of the public attended. A copy of the hearing bundle and witness statements were available in both tribunal rooms. At the outset of the hearing, a request was made by a journalist for permission to live Tweet the proceedings which was granted.

9. On each day of the hearing, attendees were reminded that recording of the evidence and the taking of photos was prohibited.
10. On occasion, witnesses had to remain under oath overnight. When that happened, each witness was reminded that they were under oath and were not to discuss their evidence with anyone. The claimant gave evidence on the first day and remained under oath overnight. It was brought to the tribunal's attention, on the third morning of the Hearing, that the claimant had posted a message on Facebook about the case though not about her evidence specifically. The claimant was reminded again of the importance of not discussing her evidence with anyone. While the respondent raised the issue, they made no further application in respect of this at the Hearing.

### **Recusal Applications**

11. On the fifth day of the hearing, the claimant's representatives did not attend the Hearing which was due to start at 11.30 am. An email was received from the claimant's Solicitor purporting to inform the tribunal that the claimant's legal representatives would not be able to attend that day until 2.00 pm. Given the failure of the legal representatives to attend the Hearing, the tribunal directed that the claimant's legal representatives attend the tribunal immediately to explain. The claimant's Counsel did not attend but her Solicitor, Mr Chambers, did attend and indicated that the claimant's legal representatives wished to make a recusal application for a panel member. The tribunal directed that the claimant's Counsel attend to advance any such application.
12. Ms Cunningham duly attended and applied for one of the panel members, Professor Deborah Boyd, to be recused on the grounds of actual bias and for the other two panel members (i.e. Employment Judge Sturgeon and Mr McKeown) to be recused on the grounds of perceived bias. The application was strongly opposed by the respondent.
13. Having considered the representations on behalf of the parties, the panel rose to consider the application. Professor Boyd voluntarily decided to stand down on health grounds. The application for Employment Judge Sturgeon and Mr McKeown to recuse themselves, on the ground of apparent bias, was refused. Full reasons were given orally at the Hearing. The tribunal directed that the matter resume again on day six (i.e. Monday morning, 17 November 2025, at 10.00 am).
14. On day six of the Hearing, a second recusal application was advanced on behalf of the claimant. The application was for panel member, Mr Michael McKeown, to recuse himself, on the ground of apparent bias, arising from his former membership of the NIPSA union. The claimant applied for the Hearing to proceed with an Employment Judge sitting alone. The application for recusal was strongly opposed by the respondent's legal team. For the reasons given orally at the hearing on that day, the application for Mr McKeown to recuse himself was refused and the tribunal determined that the hearing continue with Employment Judge Sturgeon and Mr McKeown hearing the case.

## **Bundles**

15. The tribunal was provided with two lever arch files of an agreed bundle and a witness statement bundle.

## **Witnesses**

16. The tribunal was provided with witness statements on behalf of each witness.
17. The claimant gave evidence on her own behalf.
18. The tribunal heard evidence, on behalf of the respondent, from the following witnesses:-

|                |                                                    |
|----------------|----------------------------------------------------|
| Michele Devlin | Chief Executive Officer/Director of the respondent |
|----------------|----------------------------------------------------|

|                  |                                                     |
|------------------|-----------------------------------------------------|
| Lisa Barros D'Sa | Co-Chairperson of the Belfast Film Festival Limited |
|------------------|-----------------------------------------------------|

|                        |                                                     |
|------------------------|-----------------------------------------------------|
| Marie Thérèse McGivern | Co-Chairperson of the Belfast Film Festival Limited |
|------------------------|-----------------------------------------------------|

|                     |                                                          |
|---------------------|----------------------------------------------------------|
| Dr Laurence McKeown | Former Board Member of the Belfast Film Festival Limited |
|---------------------|----------------------------------------------------------|

|              |                                                   |
|--------------|---------------------------------------------------|
| Mark Cousins | Board Member of the Belfast Film Festival Limited |
|--------------|---------------------------------------------------|

|            |                                                  |
|------------|--------------------------------------------------|
| Moyra Lock | Bookkeeper for the Belfast Film Festival Limited |
|------------|--------------------------------------------------|

|                |                                                              |
|----------------|--------------------------------------------------------------|
| Keara Paterson | Senior HR Professional with Think People Consulting Limited. |
|----------------|--------------------------------------------------------------|

19. The tribunal was also provided with a witness statement of Mr Owens of ThinkPeople Consulting Limited. However, Mr Owens did not attend as a witness and was not cross-examined. The tribunal therefore attached no weight to his evidence.

## **Video Recording**

20. On joint application of the parties, the tribunal viewed the content of video evidence of the claimant making a speech at a Let Women Speak rally on 16 April 2023.

## **Legal and Factual Issues**

21. Agreed legal and factual issues were presented to the tribunal, in advance of the hearing, on 30 October 2025.
22. On the second day of the hearing, Ms Cunningham indicated to the tribunal that the claimant wished to rely on a further act of unlawful direct discrimination on the ground of the claimant's political opinion. This new allegation was as follows:- *"Did Michele Devlin send an email to LGBTQI+ friends, on 3 July 2023, copying in the claimant, despite the claimant having already voiced concerns about being visible to recipients in the sending of that email."*
23. Ms Cunningham's submission was that no amendment application was necessary to incorporate this issue, as it was already pleaded, but that there was simply a need to tweak the list of issues.
24. Mr Doherty objected to the additional allegation being included. It was his submission that the evidence of the claimant, given on day one, was that she agreed, under cross-examination, that Michele Devlin would send her the email and "cc" her into the email. Accordingly, Mr Doherty's position was that, given the evidence of the claimant, and her acceptance under cross-examination that she had agreed to the email being sent, there was no requirement for an amendment.
25. After considering the representations made by the parties and taking into consideration the evidence adduced on the allegation, the amendment was permitted for reasons given orally at the hearing.
26. While a legal and factual issues document was presented as an agreed document to the tribunal, the tribunal found that the issues needed further refining to accurately represent the case presented to the tribunal. The tribunal therefore sets out below the refined issues based on the case presented at hearing:-

### **(1) Direct Discrimination**

Was the claimant subjected to unlawful direct discrimination on the ground of her political opinion contrary to Article 19 of the Fair Employment and Treatment Northern Ireland Order?

The acts of discrimination relied upon by the claimant were as follows:-

- a) Mark Cousins' email of 25 June 2023 to Michele Devlin, Lisa Baros D'Sa and Marie Thérèse McGivern.
- b) The claimant raising concerns about being copied into Michele Devlin's email, of 3 July 2023, to LGBTQI+ Friends, which the claimant alleges was sent to deliberately provoke complaints against her in order to launch an investigation of her conduct.

- c) The Respondent's post on X/Twitter on 4th July 2023 that there had been an incident and the Respondent was *"currently reviewing concerns raised relating to diversity matters."*
- d) Michele Devlin's email of 7 July 2023 to an external body.
- e) Engaging directly with individuals who the claimant states were harassing her.
- f) The decision to initiate an investigation into the claimant's speech at the "Let Women Speak" rally following complaints received.
- g) Conducting a disciplinary investigation in a biased and hostile manner.
- h) Paying the claimant SSP.
- i) Failing to refer the claimant to OHS.
- j) Failing to ensure a fair, independent and impartial process for hearing the claimant's grievance.
- k) Removing the claimant from the Belfast Film Festival programme November 2023 on 12th October 2023.
- l) Restricting the claimant's access to her laptop, her email, shared drive and calendar drive.
- m) Requesting the claimant return her work keys.

## (2) Comparator

The claimant relied on Michele Devlin as an actual comparator. In the alternative, the claimant relied upon a hypothetical comparator not having or manifesting the claimant's political beliefs but whose circumstances are the same or not materially different from those of the claimant who would not be subjected to the treatment detailed above.

## (3) Harassment

- (i) Did the respondent's acts, referred at 1(a)-(m) above, constitute harassment on the ground of political opinion?
- (ii) If so, was that conduct unwanted by the claimant?
- (iii) If so, did it have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

(4) Remedy

- (i) What remedy is the claimant entitled to?
- (ii) Is the claimant entitled to an uplift for failure to follow the LRA Code of Practice on Disciplinary and Grievance Procedures?

(5) Unfair constructive dismissal

- (i) Did the following acts individually or cumulatively amount to a breach of the trust and confidence implied term?
  - a) The claimant's line manager, Michele Devlin, "liking" a post on X from Queerspace that formed part of the campaign against the claimant on 4 July 2023.
  - b) On 4 July 2023, Michele Devlin publishing a post from the respondent's X account saying that the claimant was being investigated in response to the Queerspace post in (a) above.
  - c) On 6 July 2023, the staff page on the respondent's website being replaced with a page focusing on "LGBT inclusion."
  - d) On 6 July 2023, Michele Devlin sending an email to Outburst Arts telling them that the claimant would not be working on LGBTQ events until the investigation into her conduct had concluded.
  - e) On 7 July 2023, Michele Devlin sending a further email to Outburst Arts telling them that the Board member, who highlighted the Let Women Speak event the claimant had attended, should have requested an emergency Board meeting at the time.
  - f) From 6 July 2023, the claimant being denied access to her work email and calendar, and the respondent's shared drive.
  - g) On 6 July 2023, Michele Devlin sending the claimant home and instructing her to work from there.
  - h) On 24 July 2023, the claimant receiving an email from Think People, HR consultants engaged by the Respondent, informing her of a disciplinary investigation against her.
  - i) From 25 July 2023, the claimant being put on a statutory sick pay.
  - j) On 29 July 2023, Michele Devlin publicly sharing photographs of herself attending Belfast Pride wearing a "trans-inclusive feminist" t-shirt.
  - k) On 3 August 2023, Michele Devlin texting the claimant to ask for the return of her office keys.

- l) On 12 October 2023, the respondent publishing its Festival programme for November 2023 omitting any mention of the claimant's name.
  - m) On 4 July 2024, the claimant receiving the outcome of her grievance. The outcome did not uphold her grievance to any meaningful extent.
  - n) On 21 November 2024, the claimant receiving the outcome of her grievance appeal.
  - o) The respondent's delay in determining the claimant's grievance and grievance appeal.
  - p) The respondent failing to make any referral of the claimant to its Occupational Health provider until November/December 2023.
- (ii) Was the claimant entitled to consider herself constructively dismissed as a result of the respondent's actions?
  - (iii) If the respondent was in fundamental breach of the claimant's contract of employment, did the claimant resign in response to that breach?
- (6) Remedy for unfair dismissal
- (i) What is the applicable basic award for unfair dismissal?
  - (ii) What compensatory award should be made?

## THE LAW

### 27. The Claimant's Authorities

The claimant's representative referred the tribunal to the following cases in its oral and written submissions:-

- (i) ***Fahmy v Ards Council England 6000042/22***
- (ii) ***Phoenix v Open University 3322700/21 and W323841/21.***
- (iii) ***Meade v Westminster City Council and Social Work England – 2200179/22 and 2211483/22***
- (iv) ***Pitt v Cambridgeshire County Council – 3300060/23***
- (v) ***Adams v Edinburgh Rape Crisis Centre – 4102236/23***
- (vi) ***Bailey v Stonewall Equality Limited and Garden Court Chambers – 2202172/20***
- (vii) ***Francis v DCMS and DSIT (no citation provided)***

- (viii) ***Higgs v Farmor's School – Farmor's School and Others – [2025] EWCA Civ 109.***
- (ix) ***Forstater v CGD Europe and Others – UKEAT/0105/20/JOJ.***
- (x) ***Greasley-Adams v Royal Mail Limited – [2023] EAT 86.***

28. With the exception of ***Higgs v Farmor's School***, all the above authorities are either first instance employment tribunal cases in England or Employment Appeal Tribunal cases in England.

29. **The Respondent's Authorities**

The respondent's representative referred the tribunal to the following cases in its oral and written submissions:-

- (i) ***In the matter of an application by the Northern Ireland Electricity Service [1987] NI271.***
- (ii) ***McKay v Northern Ireland Public Service Alliance [1994] NI 103.***
- (iii) ***Gill v Northern Ireland Council for Ethnic Minorities [2001] NIJB 299.***
- (iv) ***McConkey and Others v Simon Community [2009] UKHL 24; [2009] NI 297.***
- (v) ***Ryder v Northern Ireland Policing Board [2008] NIJB 252.***
- (vi) ***Page (Appellant) v NHS Trust Development Authority (Respondent) [2021] IRLR 391.***
- (vii) ***Higgs v Farmor's School [2025] EWCA Civ 109; [2025] ICR 1172.***
- (viii) ***Owen and Briggs v James [1982] ICR 618.***
- (ix) ***Nagarajan v London Regional Transport [2001] AC501.***
- (x) ***R (on the application of E) v Governing Body of JFS and Others [2010] 2AC 728.***
- (xi) ***Western Excavating (ECC) Limited v Sharpe [197\_ QB761].***
- (xii) ***Mahmud and Mallick v Bank of Credit and Commerce [1998] AC 20.***
- (xiii) ***Hutchings v Coinseed Limited [1998] IRLR 190.***
- (xiv) ***Mayer v British Broadcasting Corporation [2004] All ER (D, 34 Nov)***
- (xv) ***Kaur v Leeds Teaching Hospitals [2018] 4 All ER 238.***
- (xvi) ***Igen Limited v Wong [2005] EWCA Civ 142; [2005] 3 All ER 182.***

- (xvii) *Madarassy v Nomura International PLC* [2007] IRLR 246.
- (xviii) *Laing v Manchester City Council* [2006] IRLR 748.
- (xix) *Nelson v Newry and Mourne District Council* [2009] NICA 24; [2010] NIJB 49.
- (xx) *Curley v Chief Constable* [2009] NICA 8.
- (xxi) *Sahin v Turkey* [App No. 44774–98] – [2007] 44 EHRR 5.
- (xxii) *McConnell v PANI* [1997] NI 244.

### **The Relevant Law**

30. The prohibition of discrimination on grounds of political opinion is set out within Article 3 of ***Fair Employment and Treatment (Northern Ireland) Order 1998 (“FETO”)***. Article 3 (2)(a) states:-

(2) *A person discriminates against another person on the ground of religious belief or political opinion in any circumstances relevant for the purposes of this Order if—*

(a) *on either of those grounds he treats that other less favourably than he treats or would treat other persons; .....*

31. Article 2 of FETO does not define political opinion. Article 2 contains general interpretive provisions. It states as follows:

“(3) *In this Order references to a person’s religious belief or political opinion include references to—*

(a) *his supposed religious belief or political opinion; and*

(b) *the absence or supposed absence of any, or any particular, religious belief or political opinion.*

(4) *In this Order any reference to a person’s political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.”*

32. Article 19 of FETO further states as follows:-

#### ***“Discrimination against applicants and employees***

**19.—(1)** *It is unlawful for an employer to discriminate against a person, in relation to employment in Northern Ireland,—*

.....  
(b) *where that person is employed by him—*

- (i) *in the terms of employment which he affords him; or*
- (ii) *in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them; or*
- (iii) *by dismissing him or by subjecting him to any other detriment.”*

33. Article 3(A) of FETO states as follows:-

***“Harassment” and “unlawful harassment”***

**3A.—***(1) A person (“A”) subjects another person (“B”) to harassment in any circumstances relevant for the purposes of any provision referred to in Article 3(2B) where, on the ground of religious belief or political opinion, A engages in unwanted conduct which has the purpose or effect of—*

- (a) violating B’s dignity, or*
- (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

*(2) Conduct shall be regarded as having the effect specified in subparagraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.*

34. Article 38A deals with the Burden of Proof which is as follows:-

***Burden of proof: Tribunal***

**38A.** *Where, on the hearing of a complaint under Article 38, the complainant proves facts from which the Tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—*

- (a) has committed an act of unlawful discrimination or unlawful harassment against the complainant, or*
- (b) is by virtue of Article 35 or 36 to be treated as having committed such an act of discrimination or harassment against the complainant, the Tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act.*

**POLITICAL OPINION**

35. ***In the Matter of an Application by the Northern Ireland Electricity Service (1987) NI 271***, a case which concerned the Fair Employment (Northern Ireland) Act 1976, Nicolson J said at 285H:-

*“... the words “on the ground of religious belief or political opinion” are capable in their own or ordinary meaning of covering any cause or reason for an action based on religious belief or political opinion, whether it is the belief or opinion of the person affected by the action or of the person doing the act or of another person.”*

36. The meaning of the term political opinion was further dealt with in the case of **McKay v Northern Ireland Public Service Alliance (1994) NI 103**. At paragraph 117, Kelly LJ dealt with the issue of the meaning of the term political opinion. He stated:-

*“There can be no difficulty as to the meaning of the word ‘opinion’ and none as to the word ‘political’. When they come together in the phrase ‘political opinion’ it means, in broad terms, and without attempting any exhaustive definition, an opinion relating to the policy of government matters touching the government of the state. The word ‘political’ is defined in the Shorter Oxford Dictionary as:*

*‘Of, belonging or pertaining to the state, its government policy; public, civil; of or pertaining to the science or art of government.’*

*It seems to me clear that a person who holds an opinion on matters relating to any of the elements of this definition, holds a political opinion.”*

37. The term political opinion also includes a person’s supposed, perceived or assumed, political opinion. The point was emphasised, by Girvan LJ, in the case of **Ryder v Northern Ireland Policing Board [2008] NIJB 252**, at paragraph 22 who stated:-

*“Discrimination, whether it is on grounds of gender, sexual orientation, religion, race or political opinion, is something which may be subtle, insidious or hidden... What is central to the enquiry is the working and thought processes of the alleged discriminator, what is to be examined is whether that person acted in the way he did on grounds of political opinion. That may be the opinion of the respondent discriminator or the opinion of the claimant or it may be based on the respondent’s perception of the claimant’s political opinion or lack of them...”*

## **COMPARATOR**

38. Direct discrimination requires a comparison between the treatment of different individuals; that is, different individuals who do not share the protected characteristic in issue. As **Harvey** states at (**Division L paragraph 246**):

*“the cases of complainant and comparator must be such that there must be .....such that the relevant circumstances in the one case are the same, or not materially different, in the other.....In either case, because direct discrimination occurs if the complainant is treated less favourably than the employer treats or ‘would treat’ another person, the comparator may be real or hypothetical.....”*

39. In relation to the distinction between actual and hypothetical comparators, **Harvey** states as follows (**Division L paragraph 246.01**)

*“The fact that a claimant is unable to point to a real-life, flesh and blood comparator in the workforce (or in the pool of rival candidates for employment) will not prevent their bringing a claim of unlawful discrimination; they can instead rely on a hypothetical comparator whose hypothetical circumstances are the same, or not materially different, to those of the claimant.”*

*“..... it will always be important to ensure that all relevant circumstances are the same as between the claimant and the comparator. In consequence, the claimant will often have to rely on a hypothetical comparator. Indeed, discrimination cases have long shown how the concept of the 'hypothetical' comparator is crucial to the operation of our anti-discrimination laws,.....”*

**(Harvey on Industrial Relations and Employment Law L [246.02]).**

*“It is for the claimant to show that the hypothetical comparator would have been treated more favourably. In so doing the claimant may invite the tribunal to draw inferences from all relevant circumstances, but it is still a matter for the claimant to ensure that the tribunal is given the primary evidence from which the necessary inferences may be drawn. It would appear that there is a duty on the tribunal to have regard to how a hypothetical comparator would be treated even where the claimant has only identified real comparators in the claim, at least where there is prima facie evidence of discrimination” (civ **Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting [2001] EWCA Civ 2097, [2002] IRLR 288, [2002] ICR 646**). Potentially, this could impose a heavy burden on the claimant and the tribunal, but the courts are anxious to keep this within reasonable limits.”*  
**(Harvey on Industrial Relations and Employment Law L [246.03]).**

40. Following an analysis of the decisions in the **Eweida, Drew** and **Ladele** cases **Harvey** states as follows under the heading: “The use of comparators and the ‘reason why’ test”:-

**“[259]**

*As already observed, it will sometimes be helpful to approach a situation where direct discrimination is said to exist by adopting a two-stage test: first, to ask whether there was less favourable treatment, and secondly to ask whether it was on the grounds of sex. In other words, to ask ‘the reason why’ question after less favourable treatment has been proved to exist. In simple cases where a flesh and blood comparator in the workforce can be identified this will often be a sensible approach. But it will not always be the correct approach. It was pointed out by Lord Nicholls in **Shamoon v Chief Constable of the RUC [2003] UKHL 11, [2003] IRLR 285, [2003] ICR 337** (at paras 7–12) that sometimes it will not be possible to decide whether there is less favourable treatment without deciding ‘the reason why’. This is particularly likely to be so where a hypothetical comparator is being used. It will only be possible to say with any confidence that a hypothetical comparator would have been treated differently once it is known what the*

*reason for the treatment of the complainant was. If the complainant was treated as they were on the ground of the relevant protected characteristic, then it is likely that a hypothetical comparator without that protected characteristic would have been treated differently. But that conclusion can only be reached once the basis for the treatment of the complainant has been established”.*

## **LESS FAVOURABLE TREATMENT**

41. Harvey, at Division L, deals with the issue of less favourable treatment as follows:-

*“To be treated less favourably necessarily implies some element of comparison: the complainant must have been treated differently to a comparator or comparators, be they actual or hypothetical ... More than that, however, the complainant must have been treated less favourably than the comparator; but what level of difference of treatment amounts to less favourable treatment?” (Harvey on Industrial Relations and Employment Law L [235]).*

*“An early decision of the Court of Appeal suggest that trivial differences in treatment may be disregarded on the principle that de minimis non curat lex ...” (Harvey on Industrial Relations and Employment Law L [236]).*

*“Who is the judge of what constitutes less favourable treatment? It will not simply be enough for a complainant to say that they see a particular treatment as disadvantageous. Whether it is capable of amounting to ‘less favourable treatment’ is a question for the tribunal to decide:-*

*“Burrett v West Birmingham Health Authority [1994] IRLR 7, EAT: a nurse objected to having to wear a cap at work because she found it demeaning. Held (a) the tribunal was entitled to find this was not less favourable treatment within the meaning of SDA 1975 s1(1)(a), since male nurses also had to wear uniform, albeit not a cap: (b) the fact that she thought she was being less favourably treated did not mean that she was within the section.”*

**(Harvey on Industrial Relations and Employment Law L [237]).**

*“On the other hand, the case law suggests that the test for determining what constitutes less favourable treatment should not be too onerous and should not disregard the perception of the complainant ...” (Harvey on Industrial Relations and Employment Law L [238]).*

*“The issue, then, is one of less favourable treatment, not merely different treatment. In Burrett, the treatment of male and female nurses was broadly comparable, albeit different. There is no requirement to treat all employees identically, Schmidt v Austicks Book Shop Limited [1977] IRLR 360, [1978] ICR 85, EAT. To succeed, a complainant must go further and adduce evidence that demonstrates that the difference in treatment is indeed less favourable. Sometimes what appears at first to be the same treatment may, on a more careful analysis, be seen as less favourable treatment.” (Harvey on Industrial Relations and Employment Law L [238.01]).*

## **“ON THE GROUND OF”**

42. A person discriminates against another directly on the ground of political opinion where the person’s political opinion is the reason for the less favourable treatment. It may not be the only reason for the treatment; it is enough that the political opinion is a material factor in the decision that is taken.
43. The case of **Owen & Briggs v James (1982) ICR 618** dealt with the claim of discrimination under the Race Relations Act 1976 which prohibited discrimination on racial grounds. At page 623E, it was stated:

*“This seems to be a contention that there can be no discrimination under section 4 unless the racial factor is the sole reason for not employing the applicant for employment. I reject any such proposition as being quite unwarranted by the language of the Act.”*

44. The question of whether treatment is on the ground of a protected characteristic was further considered in the case of **Nagarajan v London Regional Transport [2000] 1 AC 501**, a case that dealt with a claim of racial discrimination. Lord Nicholls stated at 511 :

*“Thus, in every case it is necessary to enquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.*

*The crucial question just mentioned is to be distinguished sharply from a second and different question: if the discriminator treated the complainant less favourably on racial grounds, why did he do so? The latter question is strictly beside the point when deciding whether an act of racial discrimination occurred. For the purposes of direct discrimination under section 1(1)(a), as distinct from indirect discrimination under section 1(1)(b), the reason why the alleged discriminator acted on racial grounds is irrelevant. Racial discrimination is not negated by the discriminator's motive or intention or reason or purpose (the words are interchangeable in this context) in treating another person less favourably on racial grounds. In particular, if the reason why the alleged discriminator rejected the complainant's job application was racial, it matters not that his intention may have been benign. For instance, he may have believed that the applicant would not fit in, or that other employees might make the applicant's life a misery. If racial grounds were the reason for the less favourable treatment, direct discrimination under section 1(1)(a) is established.*

.....

*Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out."*

### **Manifestation of Political Belief**

45. Harvey has summarised **Page v NHS Trust Development Authority (2021) IR LR 391** at 213.03, as follows:-

*"In **Page v NHS Trust Development Authority** [2021] EWCA Civ 255, [2021] IRLR 391 the Court of Appeal spelled out at [67], [68] and [76] that the distinction between (1) a case where the reason for less favourable treatment is the fact that the claimant holds and/or manifests the protected belief, and (2) a case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken, is a reflection of the law in arts 9 and 10 of the ECHR on freedom of religion and belief and freedom of expression – including the law on when that freedom can be restricted. In **Page v NHS Trust Development Authority** the Court of Appeal upheld the judgment of the ET that the claimant's non-renewal as a Non-Executive Director was not because of his beliefs, but because of the manner in which he had expressed them. Mr Page held the faith-based belief that it was preferable for a child to be adopted by a man and a woman rather than a same-sex couple and appeared widely on national media saying so. The trust took the view that this would cause damage to its provision of health care to gay people (detering those with mental illness from coming forward) and so his directorship was not renewed. The Court of Appeal upheld the ET's finding that the reason for the non-renewal was not Mr Page's beliefs, nor his manifestation of those beliefs; rather it was the objectionable circumstances of his manifestation of those beliefs – as a director of an NHS Trust. The non-renewal was because of manifestation of the belief 'in a way to which objection could reasonably be taken' – the word 'manner' not being limited to things like intemperate or offensive language. Underhill LJ drew a parallel with those cases, for example **Morris v Metrolink RATP Dev Ltd** [2018] EWCA Civ 1358, [2018] IRLR 853, [2019] ICR 90, where an employee is dismissed for things said in the course of trade union activities which are held not to amount to dismissal for trade union activities because they are 'wholly unreasonable, extraneous or malicious'.*

46. Underhill LJ stated at paragraph 68, of **Page**, as follows:-

*"68. I start with a point which is central to the analysis on this issue. In a direct discrimination claim the essential question is whether the act complained of was done because of the protected characteristic, or, to put the same thing another way, whether the protected characteristic was the*

reason for it: see para. 29 above. It is thus necessary in every case properly to characterise the putative discriminator's reason for acting. In the context of the protected characteristic of religion or belief the EAT case-law has recognised a distinction between (1) the case where the reason is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of. Of course, if the consequences are not such as to justify the act complained of, they cannot sensibly be treated as separate from an objection to the belief itself.

69. The distinction is apparent from three decisions in cases where an employee was disciplined for inappropriate Christian proselytization at work – **Chondol v Liverpool City Council [2009] UKEAT 0298/08**, **Grace v Places for Children [2013] UKEAT 0217/13** and **Wasteney v East London NHS Foundation Trust [2016] UKEAT 0157/15**, [2016] ICR 643. In essence, the reasoning in all three cases is that the reason why the employer disciplined the claimant was not that they held or expressed their Christian beliefs but that they had manifested them inappropriately. In *Wasteney* HH Judge Eady QC referred to the distinction as being between the manifestation of the religion or belief and the “inappropriate manner” of its manifestation: see para. 55 of her judgment. That is an acceptable shorthand, as long as it is understood that the word “manner” is not limited to things like intemperate or offensive language.”

47. The decision in **Page v NHS Trust Development Authority** was endorsed by the Court of Appeal in **Higgs v Farmor's School and the Archbishops' Council of the Church of England [2025] EWCA Civ 109**, [2025] IRLR 368. The Court of Appeal judgment contains important guidance on the law in this field and Harvey, at 213.06, has summarised a number of factors which are relevant to proportionality in a case involving things said or written by an employee:

*“First, there is the subject-matter: a statement of the employee's views about matters which have nothing to do with the employer's business is self-evidently less likely to damage its reputation than a statement about matters which are central to it ([140]). A second consideration ([141]) is the way in which the employee expresses their beliefs. An employer may suffer reputational harm from being associated with an employee who expresses a view publicly in an inappropriate way. The paradigm of such a case will be where the views are expressed in egregiously offensive or insulting language. The judgment of Underhill LJ emphasises that the threshold of offensiveness should be high: protection should not be lost merely because the employee has expressed themselves intemperately. A third consideration ([142]) is whether it is clear that the views expressed are personal to the employee. It is one thing to be entitled to express one's own views on sensitive topics, but another to risk them being imputed to one's employer, to whom it may be important to maintain institutional neutrality on the issue in question. This consideration may be particularly (though not only) important in the case of senior employees. Fourth, the location in which written comments by an employee were published – for example in a forum which*

*had nothing to do with the employer – would be highly relevant to the extent and gravity of any reputational damage ([154]).*

*[213.07]*

*Finally, in relation to assessing the degree of reputational damage to the employer, both Underhill LJ (at [148]–[152]) and Falk LJ (at [178]–[181]) stated that only the objective meaning of the words could be taken into account, and any subjective but unjustified inferences that some people might draw should be discounted. An example given was that someone expressing the view that homosexuality is a sin does not necessarily to the reasonable listener or reader connote that the person who expressed that view would discriminate against a homosexual person. This, it was explained, is the reason for the formulation 'words to which objection could justifiably be taken'. This is an important fetter, in the interests of upholding freedom of expression, on an employer's ability to discipline employees because of fears about the employer's reputation. It means that an employer cannot rely on any impact on its reputation that might be caused by unjustified assumptions or stereotyping on the part of those who hear or read the views expressed, even though the employer's fears may be well-founded that such assumptions or stereotyping will do real damage to its reputation.*

48. Underhill LJ provided a useful summary of his judgment, at paragraph 175, as follows:-

- “(1) The dismissal of an employee merely because they have expressed a religious or other protected belief to which the employer, or a third party with whom it wishes to protect its reputation, objects will constitute unlawful direct discrimination within the meaning of the Equality Act.*
- “(2) However, if the dismissal is motivated not simply by the expression of the belief itself (or third parties’ reaction to it) but by something objectionable in the way in which it was expressed, determined objectively, then the effect of the decision in **Page v NHS Trust Development Authority** is that the dismissal will be lawful if, but only if, the employer shows that it was a proportionate response to the objectionable feature – in short, that it was objectively justified: see para. 74 above. (Tribunal Emphasis)*
- “(3) Although point (2) modifies the usual approach under the Equality Act so as to conform with that required by the European Convention of Human Rights, that “blending” is jurisprudentially legitimate: see paras. 81-97.*
- “(4) In the present case the Claimant, who was employed in a secondary school, had posted messages, mostly quoted from other sources, objecting to Government policy on sex education in primary schools because of its promotion of “gender fluidity” and its equation of same-sex marriage with marriage between a man and a woman. It was not in dispute, following the earlier decision of the EAT in **Forstater v GCD Europe**, that the Claimant’s beliefs that gender is binary and that same-sex marriage cannot be equated with marriage between a man and a woman are protected by the Equality Act.*

- (5) *The school sought to justify her dismissal on the basis that the posts in question were intemperately expressed and included insulting references to the promoters of gender fluidity and “the LGBT crowd” which were liable to damage the school’s reputation in the community: the posts had been reported by one parent and might be seen by others. However, neither the language of the posts nor the risk of reputational damage were capable of justifying the Claimant’s dismissal in circumstances where she had not said anything of the kind at work or displayed any discriminatory attitudes in her treatment of pupils: see paras. 159-163 above.*”

## **SHIFTING THE BURDEN OF PROOF - DISCRIMINATION CASES**

49. The approach to be taken in applying the burden of proof provisions has been fully considered in the case of ***Igen Limited v Wong [2005] IRLR 258 CA*** and subsequent cases such as ***Madarassy***. It was reviewed by the Northern Ireland Court of Appeal in the case of ***Nelson v Newry and Mourne District Council [2009] NICA 3*** April 2009.

“22. This provision and its English analogue have been considered in a number of authorities. The difficulties which tribunals appear to continue to have with applying the provision in individual cases indicates that the guidance provided by the authorities is not as clear as it might have been. The Court of Appeal in ***Igen v Wong [2005] 3 ALL ER 812*** considered the equivalent English provision and pointed to the need for a tribunal to go through a two-stage decision-making process. The first stage requires the complainant to prove facts from which the tribunal could conclude in the absence of an adequate explanation that the respondent had committed the unlawful act of discrimination. Once the tribunal has so concluded, the respondent has to prove that he did not commit the unlawful act of discrimination. In an annex to its judgment, the Court of Appeal modified the guidance in ***Barton v Investec Henderson Crosthwaite Securities Ltd [2003] IRLR 333***. It stated that in considering what inferences and conclusions can be drawn from the primary facts the tribunal must assume that there is no adequate explanation for those facts. Where the claimant proves facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex then the burden of proof moves to the respondent. To discharge that onus, the respondent must prove on the balance of probabilities that the treatment was in no sense whatever on the grounds of sex. Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to be adduced to discharge the burden of proof. In ***McDonagh v Royal Hotel Dungannon [2007] NICA 3*** the Court of Appeal in Northern Ireland commended adherence to the ***Igen*** guidance.

23. In the post-***Igen*** decision in ***Madarassy v Nomura International PLC [2007] IRLR 247*** the Court of Appeal provided further clarification of the tribunal’s task in deciding whether the tribunal could properly conclude from the evidence that in the absence of an adequate explanation that the respondent had committed unlawful discrimination. While the Court of

Appeal stated that it was simply applying the **Igen** approach, the **Madarassy** decision is in fact an important gloss on **Igen**. The court stated:-

*‘The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient matter from which a tribunal could conclude that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination; ‘could conclude’ in Section 63A(2) must mean that ‘a reasonable tribunal could properly conclude’ from all the evidence before it. This would include evidence adduced by the claimant in support of the allegations of sex discrimination, such as evidence of a difference in status, difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent in contesting the complaint. Subject only to the statutory ‘absence of an adequate explanation’ at this stage, the tribunal needs to consider all the evidence relevant to the discrimination complaint such as evidence as to whether the act complained of occurred at all, evidence as to the actual comparators relied on by the claimant to prove less favourable treatment, evidence as to whether the comparisons being made by the complainant were of like with like as required by Section 5(3) and available evidence of all the reasons for the differential treatment.’*

*That decision makes clear that the words ‘could conclude’ is not be read as equivalent to ‘might possibly conclude’. The facts must lead to an inference of discrimination. This approach bears out the wording of the Directive which refers to facts from which discrimination can be ‘presumed’.*

24. This approach makes clear that the complainant’s allegations of unlawful discrimination cannot be viewed in isolation from the whole relevant factual matrix out of which the complainant alleges unlawful discrimination. The whole context of the surrounding evidence must be considered in deciding whether the tribunal could properly conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. In **Curley v Chief Constable of the Police Service of Northern Ireland [2009] NICA 8**, Coghlin LJ emphasised the need for a tribunal engaged in determining this type of case to keep in mind the fact that the claim put forward is an allegation of unlawful discrimination. The need for the tribunal to retain such a focus is particularly important when applying the provisions of Article 63A. The tribunal’s approach must be informed by the need to stand back and focus on the issue of discrimination.”

50. In **S Deman v Commission for Equality and Human Rights & Others [2010] EWCA Civ 1279**, the Court of Appeal referred to **Madarassy** and the statement in that decision that a difference in status and a difference in treatment ‘without more’ was not sufficient to shift the burden of proof. In his judgment, Lord Justice Sedley stated:-

*“We agree with both counsel that the ‘more’ which is needed to create a claim requiring an answer need not be a great deal. In some instances it will*

*be furnished by a non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred.” (Sedley L J at paragraph 19).*

## **Human Rights Act**

51. Section 3 and Section 6 of the **Human Rights Act 1998** require courts and tribunals to read and give effect to statutory provisions in a way which is, so far as possible, compatible with the rights conferred by the European Court of Human Rights. Article 9, freedom of thought, conscience and religion, and Article 10, freedom of expression, are likely engaged in the present case. Both of those rights are qualified rights.
52. In **Sahin -v- Turkey (App No 44774/98) (2005) 19 BHRC 590, (2005) 44 EHRR 5**, the European Court of Human Rights provided guidance on the nature of the rights in Article 9 as well as the basis for limitations that may be placed on those rights. It held:-

*“105...Article 9 does not protect every act motivated or inspired by a religion or belief.*

*106. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on freedom to manifest ones religion or belief in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected...this follows both from para 2 of Article 9 and the state’s positive obligation under Article 1 of the convention to secure to everyone within its jurisdiction the rights and freedoms defined in the convention.*

*107...Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other...*

*108. Pluralism, tolerance and broadmindedness are hallmarks of a “democratic society”. Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of the dominant position...pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society...where these rights and freedoms are themselves among those guaranteed by the convention or its protocols, it must be accepted that the need to protect them may lead state’s to restrict other rights or freedoms likewise set forth in the convention. It is precisely this constant search for a balance between the fundamental rights of each individual which constitutes the foundation of a democratic society.”*

## **Constructive Dismissal**

53. Article 127 (1) (c) of the Employment Rights (NI) Order provided as follows:-

*“(1) For the purposes of this Part an employee is dismissed by his employer if .....*

*(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”*

54. **Harvey** states at Division D1 at 403 as follows:-

*“In order for the employee to be able to claim constructive dismissal, four conditions must be met:-*

*(1) There must be a breach of contract by the employer. This may be either an actual breach or an anticipatory breach - see **Western Excavating (ECC) Ltd v Sharp 1978 IRLR 27***

*(2) That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his leaving. Possibly a genuine, albeit erroneous, interpretation of the contract by the employer will not be capable of constituting a repudiation in law.*

*(3) He must leave in response to the breach and not for some other, unconnected reason.*

*(4) He must not delay too long in terminating the contract in response to the employer’s breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract.”*

55. If the employee resigns in circumstances in which these conditions are not met, he will be held to have resigned and there will be no dismissal within the meaning of the legislation at all.

56. There is an implied term in the employment contract that the employer will not conduct itself in a manner likely to damage the relationship of trust and confidence between the employer and the employee. This is known as the implied duty of trust and confidence. If the employer breaches that term, it can amount to a repudiation of the contract – see **Woods v WM Car Services (Peterborough) Ltd 1983 IRLR 413 & Malik v BCCI HL 1997 IRLR 462**.

57. A breach of the implied duty of trust and confidence always amounts to a fundamental breach of contract and will entitle the employee to resign in response to that breach – **Morrow v Safeway Stores plc 2002 IRLR 9**.

58. Any breach must be repudiatory to allow a claimant to treat the employment contract as at an end, see **Hutchings -v- Coin Seed Ltd (1998) IRLR 190**. In fact, the breach must, on an objective analysis, go to the very root of the contract, see **Mayer -v- British Broadcasting Corporation (2004) All ER (STE 34) (NOV), EAT**.

59. In ***Kaur -v- Leeds Teaching Hospital (2018) IRLR 833***, at paragraph 75, it was stated:-

*“In short, I believe that the Judge was right to find, as he did at paragraph 25, that what occurred in this case was “the following through, in perfectly proper fashion on the face of the papers, of a disciplinary process.” Such a process, properly followed, or its outcome, cannot constitute a repudiatory breach of contract, or contribute to a series of acts which cumulatively constitutes such a breach.” (Tribunal’s Emphasis)*

## **RELEVANT FINDINGS OF FACT AND CONCLUSIONS**

60. The tribunal considered all the evidence and documentation presented to it. The representatives of the parties provided written submissions which were supplemented by oral submissions on the final day of hearing. The tribunal took account of all submissions. The tribunal made the following findings of fact and conclusions, in so far as relevant and material to the determination of the claimant’s claims, and applied the relevant principles of law.
61. The claimant commenced employment with the respondent on 12 February 2020. Her job title was Inclusion/Audience Development Coordinator. Alongside the director, Michele Devlin, the claimant was the only other full-time employee.
62. The claimant’s role of Inclusion/Audience Development Coordinator required her to contribute towards the respondent’s overall audience development goals. The claimant was required to work with partner organisations, engage with community groups, educational organisations, arts and film organisations. One of the claimant’s key responsibilities, as set out in her job description, was to:-

*“Maintain current relationships and build positive new relationships with BFF’s audience, participants and stakeholders.”*

63. Within the claimant’s job description, the respondent is described as follows:-

*“Belfast Film Festival is a vibrant and energetic organisation, which plays a central role in the cultural life of Belfast. The organisation delivers the annual Belfast Film Festival and Docs Ireland, promoting a year-long programme of film events that is entertaining, provocative and inclusive, attracting a diverse and growing audience.*

*The respondent outreach programme aims to entertain, inform, engage and empower local communities through the medium of film and film related art forms. The festival strives to enhance a sense of strong community through a celebration of film and culture, people and place, creating a stronger presence and profile, and increasing the range and engagement of audiences, in Belfast and beyond.”*

64. The claimant’s contract of employment, at paragraph 22, provides as follows:

*“You shall not without the express permission of management engage in any paid or unpaid activity which may directly conflict with the business interest of the employer or its members or which may interfere with your normal work.*

*Employees are requested to notify the employer of any secondary employment they undertake to ensure compliance with the requirements of the Working Time Regulations in relation to average working hours and daily rest.”*

65. The claimant confirmed, under cross-examination, that she was fully aware of this clause within her contract. She accepted and the tribunal finds that the claimant was required to seek permission if carrying out any unpaid activity directly in conflict with the business interest of her employer.

### **The Claimant's beliefs**

66. The claimant holds what are referred to as “*gender critical beliefs*”. In the claimant's evidence to the tribunal, she confirmed that she does not like this term but prefers to use the term “*sex realist*”.
67. The representatives of the parties agreed that the claimant's beliefs constitute a political opinion for the purposes of the Fair Employment and Treatment (Northern Ireland) Order 1998.

### **The Claimant's comparator**

68. In the present case, the claimant relies on Michele Devlin as an actual comparator or, alternatively, on a hypothetical comparator who did not hold or manifest the claimant's political beliefs but whose circumstances were otherwise the same or not materially different. The tribunal finds that Michele Devlin is not an appropriate comparator because, although she did not share the claimant's political opinion, she did not occupy the same or a materially similar role. The claimant's role is a material circumstance for the purposes of comparison. The appropriate hypothetical comparator is therefore an employee, who occupied the same role as the claimant and whose circumstances were otherwise the same or not materially different, save that they did not hold or manifest the claimant's political opinion.
69. For the purposes of the remainder of this judgment, the tribunal will apply this comparator throughout its consideration of the alleged acts of discrimination and will not rehearse the comparator analysis when considering each act individually. In considering the reason for any treatment, the tribunal has not treated the claimant's public expression of her political opinion as analytically separate from the political opinion itself. The question throughout is whether the treatment occurred because of the claimant's political opinion or manifestation of that opinion, or whether it occurred because of the employer's reaction to operational consequences, including concerns relating to stakeholder relationships, fulfilment of the claimant's role and organisational reputation. The tribunal has approached each allegation on that basis.

### **Let Women Speak Event - 16 April 2023**

70. It is common case that Michele Devlin was aware of the claimant's gender critical views prior to the event at which the claimant spoke on 16 April 2023. The event took place in Belfast, at Donegal Quay, and was led by activist Kellie-Jay Keen (also known as Posey Parker). There is no dispute that the event was a demonstration of

women's rights particularly concerning gender identity. The event generated a large counterdemonstration by LGBTQIA+ groups and allies.

71. There is no dispute between the parties that the claimant spoke at this event. It is common case that the claimant had a role, at this event, as a marshal and that she voluntarily chose to wear a high visibility jacket. The claimant accepted that speaking at the event was likely to lead to her identification online and that she should have sought permission to speak at the event.
72. The claimant's speech, at the event, was as follows:-

*'Thank you everyone, every single woman, every single man that has turned up today. I know so many people who have not been able to turn up today because they are frightened.*

*Today however the women of Belfast have gathered here and they are saying, no, we do not consent.*

*I am going to tell you a quote. "Every great cause begins as a movement, becomes a business and eventually degenerates into a racket. Do you need me to repeat it? Every great cause begins as a movement, becomes a business and eventually degenerates into a racket."*

*So apparently there's no place for hate. Let me tell you a story. The same tactics that are being used by the anti-abortion campaign across Ireland are being used now by Alliance For Choice. Then it was a deliberate campaign of harassment and intimidation against women. This resulted in women being shamed and silenced. And this is currently being repeated by those in Writer's Square and those over right over there.*

*.....*

*Again, every great cause begins as a movement, becomes a business and eventually degenerates into a racket. Do these so-called women's organisations speak for you? Do these self-styled messiahs represent us? These organisations are paid thousands of pounds through the public purse to sing songs to silence woman speaking. Is that where you want your money going? These organisations, these women's organisations WRDA, Alliance For Choice, Women's Policy Group Northern Ireland, the Women's Sector Lobbyist, Rape Crisis NI.*

*I started this new iteration of Rape Crisis NI, this is not the rape crisis I wanted. We need to keep men out of women's spaces.  
....." (SIC)*

73. Given the express requirement at paragraph 22 of the claimant's contract, while also taking into account the claimant's job title, the tribunal finds that the claimant was required to and ought to have sought Michele Devlin's permission to speak at this event. The claimant did not seek any such permission.

74. It is common case that Michele Devlin was involved in the 2022 Northern Ireland Assembly election campaign posting a video actively supporting a Sinn Fein candidate. However, the tribunal finds that, unlike the claimant, Michele Devlin discussed this with the respondent's Board, in advance, and sought their approval before doing so.

### **Aftermath of the Let Women Speak Rally**

75. Following the Let Women Speak event, the claimant became the target of online harassment. The claimant was accused of being transphobic, a Nazi, a fascist and a bigot.
76. It is common case that the claimant informed Michele Devlin of the backlash that she was suffering as a result of speaking at the event. There is no dispute that Michele Devlin was very supportive to the claimant. She offered to print off any tweets for the claimant that may be relevant to her. There is also no dispute that Michele Devlin suggested to the claimant that she should stay away from social media, particularly Twitter, to ease the stress and upset the claimant was suffering.
77. There is no dispute that April 2023 was an extremely busy time for the respondent organisation and, in particular, Michele Devlin. At this time, the respondent was planning, organising and programming towards the delivery of its annual documentary festival 'Docs Ireland.' In addition, Michele Devlin had been overseeing the delivery of the British Council Good Friday Agreement film screening events for a cohort of international delegates. April 2023 was the 25<sup>th</sup> anniversary of the Good Friday agreement and the anniversary attracted a lot of media coverage.
78. After the Good Friday agreement screening event, Michele Devlin was particularly delighted with its success and she tweeted an audience picture, on her personal Twitter account, on 18 April 2023 at 8:15 AM, thanking the funders and those who had helped with the event. Michele Devlin tagged the claimant's personal account as the claimant had also worked on the event. Later that day, Ms Devlin was verbally alerted by the Head of Marketing that her tweet had been tagged with a comment about the claimant and a video of her speaking at the Let Women Speak rally on 16 April. A number of other tweets appeared underneath Michele Devlin's original tweet, many of which tagged the British Council, one of the respondent's key funders. An example of one of the tweets was as follows:-

*"This is your inclusion officer... speaking against the women's community sector in NI and taking part in and stewarding/organising an anti-trans event" and " if @BelfastFilmFes1 is anti-trans it should come out and say so... Having their "inclusion" staff member Sara Morrison saying the women's sector is a racket and trying to prevent trans women and men being offered equality and help is the opposite of inclusive..." (Sic)*

79. Michele Devlin decided that the best course of immediate action was to hide her original tweet from a timeline and look into it later. When she started to look into the tweets further that same day, she became aware of the Let Women Speak rally which took place on 16 April 2023. The tribunal finds that Michele Devlin was quite taken aback as she had no knowledge of the claimant's intention to attend or publicly address the Let Women Speak event. She had been working quite closely with the claimant on the Good Friday Agreement film events in the run-up to it. The

tribunal finds the claimant had ample opportunity to inform Michele Devlin that she would be attending/involved in the rally.

### **Board Meeting on 4 May 2023**

80. A Board meeting took place on 4 May 2023. Board member Lucy Baxter raised the matter of the claimant's attendance at the Let Women Speak rally under the AOB of the agenda. Michele Devlin's minute of the meeting read as follows:-

*"LB brought up the issue of SM (Sara Morrison) the BFF Inclusion/Audience Development Co-ordinator speaking at a controversial "Let Women Speak" public rally at the Big Fish in the city centre on April 16. LB stated that several friends had mentioned this to her. It was expressed that the rally was shouty and boorish in its tone, with anti-trans, anti-LGBTQI+ sentiment throughout. The input from BFF I&AD coordinator was a criticism of many groups in the women's sector ....."*

81. The following day, Michele Devlin wrote to the two co-chairs, Lisa Barros D'Sa and Marie Thérèse McGivern, as follows:-

*"In your capacity as chairs I want to inform you both of an issue that came up a few weeks ago. I managed the initial fallout from it and then parked it until I could get some headspace, specifically get the Docs Ireland program finalised and away to the printer.*

*(18/04/23) this (below) was tagged to one of the tweets I had put out about a BFF GFA 25 anniversary event. I immediately removed it ... from my Twitter timeline. Sara Morrison (Inclusion/Audience Development) explained to me she had spoken at a Let Women Speak rally; she said she was now being harassed/trolled/stalked on social media and had contacted the police; she got very upset; I calmed her down and decided to wait until she was less wound up before I spoke with her further on it. It seems she has personal issues which are connected.*

*Yesterday at the Board meeting Lucy Baxter mentioned it to me, that a few people she knew had asked her "what is going on that a BFF employee speaking at an anti-trans, right-wing event".....*

*05/05/23 I was at a meeting today and ..... the owner of the ..... said to me what is going on with Sara Morrison-a number of people had said to him 'What is the BFF inclusion officer doing speaking at a rally with this far right-wing crowd. He added that the reputation of BFF as a progressive LGBT group supportive organisation was at risk.....*

*.....*

*I thought I would check in with the Equality Commission on this, and read through our policy documents to see if we have reference to this type of thing. If you would like to chat next week? Or email me your thoughts?*

Thanks a million

Michele” (SIC)

82. Marie Thérèse McGivern replied to both Michele Devlin and Lisa Barros D’Sa on 5 May 2023 as follows:-

*“Hi Michele*

*I am happy to catch up with you when I return next week. Consultation with the Equality Commission is a good idea. Useful to also check our own docs in relation to where we might stand in terms of objectives etc would there be anything in our contract of employment around employees speaking etc at outside events? ....”*

83. On 18 May 2023, Marie Thérèse McGivern and Michele Devlin had a telephone call. Michele Devlin updated Marie Thérèse McGivern on the advice that she had received from the Equality Commission and, in light of that advice, it was agreed that the respondent needed to review its contracts of employment and update its policies.
84. Marie Thérèse McGivern updated Lisa Barros D’Sa on matters by email of 19 May 2023 as follows:-

*“Dear Lisa*

*.....*

*I had planned to see Michele before I got in touch with you again and I succeeded yesterday afternoon. We had a really good chat and I feel in the loop now. We thought through a lot of issues and made a number of plans. I want to share those with you and then perhaps we can get a chat next week?*

- 1. In relation to the situation Michele has gotten good advice from the Equality Commission. This advice .... Michele has spoken to the person at length and in a supportive way. The person remains upset (though as a complete Luddite where social media is concerned even I am aware of the positive and negative potentials and so I am surprised at the person’s reaction to the social media reaction). Michele has worked through a number of issues with her. Overall I think we need to do a couple of things – firstly we need to review our contracts of employment just to check that they are in keeping with our value framework and also we need to review and update our employment policies – the world of HR moves quickly especially on certain issues and we just need to make sure we are creating a workplace that aligns with our stated aims around diversity and inclusion. Michele has already found some good examples, e.g. BFIs which we can definitely incorporate.*

*My view is that we should get these pieces of work carried out by individual/org with competence in this quite technical area. I further think this should be tied in with a piece on potential pay rises. I know this all seems a little bureaucratic but I think there are certain things we need to have right on paper which will strengthen the BFF. Michele is up to her*

*eyes anyway and I think this will take pressure from her and keep us all right .....*" (SIC)

**Mark Cousins' Email of 25 May 2023**

85. On 25 May 2023 at 16:55, Board member and previous chair, Mark Cousins, messaged Michele Devlin indicating that he was aware that the claimant had attended the Let Women Speak event and the situation was more serious than he initially thought. He said he would like to email the two Co-Chairs and did so at 17:22 that same afternoon expressing his support to Michele Devlin and the fellow Board members. Insofar as is relevant, he said as follows:-

*"Dear Marie Thérèse and Lisa*

*...*

*I am writing about the Let Women Speak rally in Belfast.*

*Michele kindly briefed me, and I have seen correspondence between you all, which looks great and I can see how seriously you are taking this.*

*.....*

*As a Board member I'd like to back you in whatever investigation or process is happening .....* I like her a lot.....-, but the principle is clear. Cultural festivals are, amongst other things, acts of solidarity with our fellow citizens, especially those whose rights are still contested.

*...." (SIC)*

86. In response, on 26 May 2023, the following day, Marie Thérèse McGivern emailed:-

*"It will take a bit of work to sort this completely but we are already on the right track."* (SIC)

87. The claimant was not copied into any of these messages/emails. They were private messages/emails between Michele Devlin, the CEO, the two Co-Chairs (Marie Thérèse McGivern and Lisa Barros D'Sa) and the previous Chair, Mark Cousins.

88. The claimant relies upon the following acts as acts of direct discrimination and harassment on the ground of political opinion:-

**(a) Mark Cousins' Email of 25 June 2023**

89. On 25 June 2023, Mark Cousins sent an email to Michele Devlin, Marie Thérèse McGivern and Lisa Barros D'Sa following an interaction with the claimant in a bar on the evening of 23 June 2023.

*"On Friday night, in a bar, our staff member Sara Morrison raised the subject to me of her speech at the trans-rally. She said that she knew that Michele*

*had talked to me, that she is standing up for the rights of women, that she's "not anti-anything"...*

*I told her that this was not the right time to discuss it-we were surrounded by festival guests.*

*I found the whole thing troubling for several reasons. (1) there seemed to be the suggestion that Michele of spreading false information; I told Sara that I had heard reports of her speech from several sources including other board members. (2) there was no hint of regret for, or doubt about, what she did. As you'll know "I'm standing up for the rights of women" is the argument used by conservatives and religious people in several countries, and a new staple of the anti-LGBTQ anti-Islamic right.....*

*If Sara is saying this to me-a board member, vocal supporter of trans rights and friend of Michele-I think it's possible to imagine that she is being less careful elsewhere.*

*I therefore feel that we need to accelerate the process by which this is sorted, if possible. Michele, as you know, on Friday, I'm supposed to present with you our pitch for the big Hearth project. Sara is named as part of the team for that project. I think her name should be removed pending the resolution of this. We can't have an Inclusion/Diversity Officer who, many weeks after making such an ill-advised speech, still stands by her actions completely.*

*Sorry to bother you with this." (Sic)*

90. The tribunal finds that the claimant became aware of this email during her grievance process. The tribunal finds that the email expresses concern about the claimant's speech at a public rally, her continued adherence to the views expressed within that speech, the potential reputational impact of those views on the respondent organisation and the perceived incompatibility between those matters and the claimant's role as Inclusion/Diversity Officer. The tribunal further finds that the email suggests that the claimant be removed from a particular project pending the outcome of an investigation. The tribunal also finds that the email was sent only to the CEO and Co-Chairs involved in addressing the issues arising from the claimant's speech and was not disseminated more widely.
91. The claimant's case advanced is that, at its height, the email amounted to a call for her dismissal and that such treatment was because of her political opinion. The respondent denies the allegation and contends that the email expressed concerns regarding the claimant's public conduct and its perceived implications for the organisation and her role within it.
92. The tribunal does not accept the claimant's characterisation of the email. The email must be read objectively and in its entirety. The language used does not advocate termination of employment. The email seeks acceleration of a process already underway and proposes that the claimant's participation in a particular project be discontinued pending resolution of the matter. The words used are expressly temporary in nature. The proposal is that the claimant's name be removed from the project "*pending the resolution of this*". Accordingly, the tribunal rejects the claimant's contention that the email constituted a call for her dismissal.

93. The tribunal has considered whether the claimant was treated less favourably than the hypothetical comparator identified at paragraph 68, namely an employee occupying the same role as the claimant whose circumstances were the same or not materially different save that they did not hold the claimant's political opinion. The tribunal accepts that the email arose directly from the claimant's public speech and the views expressed within it. The question for the tribunal is whether the treatment complained of occurred because of the claimant's political opinion or because of concerns arising from the perceived impact of the public controversy upon the respondent organisation and the claimant's role within it.
94. The tribunal finds that a hypothetical employee occupying the position of Inclusion and Diversity Officer who had publicly expressed a different political opinion, but whose public comments had generated a similar level of concern among stakeholders and Board members regarding the organisation's reputation, stakeholder relationships and confidence in the employee's ability to fulfil the role, would have been likely to attract similar discussion. In particular, the tribunal finds that consideration would similarly have been given to whether that employee should continue to participate in a specific project pending resolution of the matter. The tribunal is satisfied that the focus of the email was not the claimant's political opinion as such but the perceived consequences arising from the public controversy and its potential impact upon the organisation.
95. In reaching that finding, the tribunal takes account of the fact that the email expressly criticised the views advanced by the claimant and referred to her continued adherence to those views. However, having considered the email as a whole, the tribunal finds that Mr Cousins' concern was not that the claimant held a particular political opinion but that the public expression of those views had, in his perception, created reputational and stakeholder difficulties for the respondent and raised questions regarding her ongoing participation in a project connected to her role. The tribunal accepts Mr Cousins' evidence that he would have expressed similar concerns regarding an employee in the same role whose public expression of a different political opinion had given rise to comparable concerns. The tribunal therefore concludes that the claimant has not established that she was treated less favourably than the hypothetical comparator and any treatment was not on the ground of her political opinion.
96. The tribunal has also considered whether the email of 25 June 2023 constituted harassment on the ground of political opinion. The tribunal accepts that the claimant regarded the contents of the email as unwelcome and that she may have found its contents upsetting when she subsequently became aware of it. However, on the facts found above, the tribunal concludes that Mr Cousins' conduct was not on the ground of the claimant's political opinion. The essential causal link required is therefore absent. Even if the tribunal is wrong in its conclusion regarding causation, it does not find that the conduct had the purpose or effect required by Article 3A for the reasons set out below.
97. Having regard to the claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect, the tribunal does not consider that the email could reasonably be regarded as having the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The email was a communication

between Board members and senior personnel concerning an issue already under consideration. The claimant was not a direct recipient of the email. While the language used was critical of the claimant's actions and views, it did not contain intimidating, hostile, degrading, humiliating or offensive language directed at the claimant personally.

98. Accordingly, the tribunal concludes that the claimant has failed to establish that the conduct amounted to harassment within the meaning of Article 3A of the 1998 Order.

**(b) The claimant raising concerns about being copied into Michele Devlin's email, of 3 July 2023, to LGBTQI+ Friends, which the claimant alleges was sent to deliberately provoke complaints against her in order to launch an investigation of her conduct.**

99. The claimant contends that an email sent by Michele Devlin on 3 July 2023 formed part of a deliberate strategy to provoke complaints against her, thereby providing a basis upon which to initiate an investigation into her conduct. She asserts that this strategy was devised during a telephone discussion on 28 June 2023 between Michele Devlin, Marie Thérèse McGivern and Lisa Barros D'Sa. The claimant submits that this amounted to less favourable treatment on the ground of her political opinion.
100. The tribunal finds that, on 27 June, Lisa Barros D'Sa responded to Mark Cousins' email of 25 June 2023 saying:-

*"We can't leave things as they are."*

101. She proposed "a chat" with Michele Devlin and Marie Thérèse McGivern the following day.
102. There is no documentary evidence of exactly what form that "chat" took. However, based on their evidence, the tribunal finds that Michele Devlin, Lisa Barros D'Sa and Marie Thérèse McGivern agreed that some sort of event should be arranged to try and reassure funders. On Thursday, 29 June, Michele Devlin emailed the claimant at 13:20 asking her for the respondent's LGBTQ+ list of groups/contacts from the respondent's inclusion database. She followed up the email at 16:49 the same day saying *"it should only take 10- or 15-minutes cut-and-paste. Tomorrow would be great."* The claimant responded the same evening at 19:06 sending a list of 11 contacts.
103. On 29 June 2023, Michele Devlin emailed Belfast City Council asking as follows:-

*"Hi .....*

*I just wanted to check if it might be possible for us to host another screening on our big screen on the Belfast story site as part of Pride on Sunday 30 July. There will be no alcohol sold on site .... We are billing it as chill out after the big party day type of event ... There was a tight turnaround on this, and we aren't in the Pride brochure so it would be great if you could let me know asap if this is possible so we can get publicity out.*

*Look forward to hearing from you.*

*Michele”*

104. It is common case that, on 3 July 2023, Michele Devlin initially asked the claimant to send an email to a number of community and LGBTQIA+ activist groups inviting them to collaborate on a proposed “Pride on the Big Screen” event.
105. The tribunal finds that the claimant refused to send the email stating that some of the intended recipients might not be well disposed towards her following her participation in the Let Women Speak rally.
106. The tribunal accepts that Michele Devlin indicated to the claimant that sending such communications fell within her role as Inclusion/Audience Development Co-Ordinator. The tribunal is satisfied that this was within the scope of the claimant’s duties.
107. The tribunal further finds that, notwithstanding her dissatisfaction with the claimant’s refusal, Michele Devlin proceeded to send the email herself as a gesture of support to the claimant. This occurred on 3 July 2023 at 17:51.
108. The email was sent to 49 email addressees. The claimant was included as the first named addressee. The second addressee was a local business proprietor, with the remaining recipients copied. The tribunal finds that the list of recipients had been compiled by the claimant.
109. The email proposed an event entitled “Pride on the Big Screen” to take place on 30 July 2023 and invited collaboration in designing the event.
110. The email read as follows:-

*“Dear LGBTQI+ friends*

*We are looking forward to Pride 2023 and are currently planning a Pride on the Big Screen chill-out day at the new Belfast stories site – opposite the Sunflower (Union Street/Kent Street)..... Unfortunately, in June we were chock-a-block so didn’t get time to submit to the Pride brochure .... It would be great if you could give us a ring/drop us a note with your thoughts/ideas. Please share to group/individuals we may have missed ...*

*Michele Devlin (Director)”*

111. The tribunal finds that the content of the email makes no reference to the claimant, makes no reference to the claimant’s political opinion and was directed towards engagement with stakeholders in connection with a forthcoming event. It is common case, following the circulation of the email, complaints were received from certain stakeholders concerning the claimant.
112. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The claimant’s case is not simply that she was copied into the email of 3 July 2023 but that she was deliberately included in that communication in order to provoke complaints against

her and thereby create a basis for further action concerning her conduct. The tribunal must therefore consider whether the hypothetical employee, identified at paragraph 68, would have been treated differently.

113. The tribunal rejects the claimant's contention that the email formed part of a deliberate strategy to provoke complaints against her for the following reasons:-
- (i) The tribunal finds, as a fact, that the respondent was seeking to organise and promote a specific public event connected to Pride 2023, and to engage relevant stakeholders in that process. This included the use of existing contact lists and outreach groups whose participation would be necessary for the event's success. The contact list was provided by the claimant herself.
  - (ii) The request made of the claimant to circulate the email was consistent with her role and responsibilities and ordinarily included stakeholder engagement of this kind. Her refusal to undertake that task did not result in any disciplinary action or other adverse treatment in this context. Instead, Michele Devlin undertook the task herself to ensure that the work was completed.
  - (iii) The tribunal finds that Michele Devlin's purpose in copying the claimant into the email was to reflect her position as the staff member with responsibility for stakeholder engagement in the relevant area and the originator of the contact list used. It was not to encourage, facilitate or generate complaints about her.
  - (iv) The tribunal is satisfied that the complaints received following the email were attributable to the pre-existing controversy concerning the claimant's public statements rather than to anything contained within the email itself. The tribunal has considered the content of the complaints received and finds that they referred to the claimant's participation in the Let Women Speak rally and her publicly expressed views rather than to any matter contained within Michele Devlin's email. The email made no reference to the claimant or her views, the rally or any controversy. It was sent for the purpose of engaging stakeholders in relation to a proposed event.
  - (v) The tribunal considers it significant that Michele Devlin initially asked the claimant herself to send the email. The tribunal finds this inconsistent with the claimant's contention that the communication was devised for the purpose of generating complaints against her.
114. The tribunal accepts that the claimant's political opinion and the controversy arising from it formed part of the factual background against which these events occurred. However, background context must be distinguished from the reason for the treatment complained of. The tribunal finds that the decision to organise the proposed Pride event and communicate with relevant stakeholders was taken for operational reasons connected with that event. The tribunal further finds that the claimant's inclusion in the email resulted from her professional responsibilities and prior involvement in the stakeholder engagement process. The tribunal does not find that her political opinion influenced the decision to include her in the email. Had an employee, who did not hold the claimant's political opinion, occupied the same role and been involved in the event in the same way, that employee would likewise have been included in the communication.

115. The tribunal therefore finds that the alleged treatment relied upon by the claimant, namely deliberate exposure to complaint or criticism because of her political opinion, did not occur. In those circumstances, the tribunal concludes that the claimant was not treated less favourably than the hypothetical comparator and that her political opinion was not the reason for her inclusion in the email.
116. The tribunal has also considered whether Michele Devlin's email of 3 July 2023 amounted to harassment on the ground of political opinion.
117. For the reasons set out above, the tribunal is not satisfied that the conduct complained of was on the ground of the claimant's political opinion.
118. Even if the tribunal is wrong in its finding that the conduct was not on the ground of political opinion, it would nevertheless conclude that the conduct did not have the purpose or effect required by Article 3A. The email was a routine stakeholder communication concerning a proposed public event. As stated, it contained no criticism of the claimant, made no reference to her political opinion, her participation in the rally or any controversy arising from it. The claimant was merely copied into the communication alongside other recipients.
119. The tribunal accepts that the claimant genuinely perceived her inclusion in the email as objectionable. However, having regard to the content and purpose of the communication and all the surrounding circumstances, the tribunal does not consider that it was reasonable for the conduct to be regarded as having the effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
120. Accordingly, the tribunal concludes that the claimant has failed to establish that the conduct complained of was harassment within the meaning of the 1998 Order. The complaint of harassment therefore fails.

(c) **The respondent posting on X/Twitter an announcement that “there had been an incident” and the respondent’s statement that “it was currently reviewing concerns relating to diversity matters.”**

121. As a result of Michele Devlin's email, the respondent received a number of communications from stakeholders raising concerns in relation to the claimant's prior attendance and speech at a public rally.
122. The first email read as follows:-

*“Dear Michele*

*Thank you for the kind invitation to this event. Pride is a very special time for queer people and we thank you for trying to organise something. We think that arts and film are exceptional ways to inspire and engage LGBTQIA+ people.*

*Queerspace is this year celebrating 25 years of collective organising and queer solidarity. We are a volunteer led organisation which is inclusive and intersectional.*

*We take the safety of our members seriously and are very concerned by one aspect of this event. We have trans people in our group, as well as a strong history of trans inclusion. In your email, you have copied a member of the Belfast Film festival staff who spoke at the Posey Parker rally in Belfast. Her speech is available online and the content is distressing. She spoke openly against Trans rights.*

*Queerspace, as a trans-inclusive organisation, is part of Belfast Pride, whose theme is stand by your trans-would like to know one simple question:*

*Will trans people be treated with dignity and respect your event?*

*It is a matter for you who you employ to organise events. However, if trans people are not welcome, I'm afraid we are not welcome.*

*We look forward to hearing from you.*

*.....”(SIC)*

123. Queerspace also tweeted the following in relation to the respondent's invitation:

*“Evening @BelfastFilmFest1*

*We got your kind invitation for your event. We noticed that the first person copied was an employee of yours who spoke against trans rights at a recent event. We owe our members a duty to ensure that they are safe. An image was also attached which stated “Stand by Your Trans.”*

124. At 9:28 that morning, another stakeholder, Outburst Arts, replied, also copying all addressees as follows:-

*“Dear Michele*

*In April this year, Sara Morrison, Equality and Inclusion officer for Belfast Film Festival who you have copied in here, spoke openly at an anti-trans-event in Belfast. She spoke on the same platform as Jolene Bunting, a Britain First fascist who is proudly anti-gay, anti-abortion, anti-Catholic and anti-migrant.....*

*.....Posey Parker is an anti-queer crusader who has been touring her circus around the world and building anti trans sentiment that has caused and continues to cause massive damage, not only to trans people but to LGBT people across the Board and especially those living in the most precarious economic and political circumstances.....*

*.....*

*To receive an email with Sara included as someone we are invited to organise an LGBT event with on behalf of Belfast Film Festival feels deeply inappropriate.*

*We unreservedly applaud Pride's decision this year to centre trans rights.*

*We are in this together or we are lost.*

*Things have become too dangerous and if we are not part of the solution, not part of intelligently building trust, kindness and solidarity instead of firing up division like Sara has done, then we are part of the problem.*

*Yours sincerely"*

125. At 10:59 that morning, Michele Devlin emailed Marie Thérèse McGivern and Lisa Barros D'Sa. She said as follows:-

*"Hi Marie Thérèse and Lisa,*

*Yesterday we sent this email to all LGBTQ+ groups on our database, I worked with Sara to draw up the list and we jointly wrote this email.*

*Sara was concerned about sending it from her email address, because of an issue she had with .....I told her it was her job as inclusion officer that it should come from her but if it would help I would send it from my email address and cc her in."*

126. She then embedded the text of her 3 July email and the message and concluded as follows:-

*"We have had a few positive emails back. And we have had two others which I will forward to you separately. We have also had some Tweets from ..... which I will send to you FYI."*

127. At 11:16 the same morning, another stakeholder replied echoing what had been said:-

*"Dear Michele*

*Thank you for your invitation. As an employee in an organisation that aims to support all young people, and as a volunteer in two groups that include LGBTQI+ members, I would like to echo ..... emails.*

*I don't doubt your own support for all LGBTQI+ people, but I hope this is being addressed by BFF. I would really like to be able to recommend this event wholeheartedly to our members and all those on my mailing lists.*

*Best to you and the family*

*....."*

128. At 13:05 the same day, another stakeholder made her views known to the respondent. She wrote to Michele Devlin as follows:-

*"Hi Michele*

*.....*

*Your email and invitation to connect with colleagues across the LGBT sector of Belfast is of course wonderful and indeed welcomed. Working collegiately is at the core of everything I do, and is a value I hold dear. In different circumstances, I would welcome the opportunity to help co-create something which would add value to the experience of the Belfast Pride weekend. So in light of this, I am writing to you as a colleague in the sector.*

*It is no surprise to you, to know that a member of your team holds, and publicly shares, negative opinions about trans people. To invite us to co-create an event for Belfast Pride with this team member came as quite a shock. Trans rights is a central theme to the Pride celebrations this year and to invite trans-inclusive organisations to work with this individual, without addressing the very public and very dangerous opinion she holds while in the position of being your Inclusion Officer, is not something I can be part of or endorse.*

*As individuals, we all of course hold our own opinions on all matters and difference of opinion is never something I shy away from. And sometimes agreeing to disagree with mutual respect is achievable. But when such opinions quite literally impact the health and well-being of people I hold dear, I cannot come to the table unless there is a willingness to acknowledge the damage caused by your Inclusion Officer, not only at the Posey Parker public event, but also the instances of trans-phobic comments and behaviour in her capacity as a team member of the Film Festival.*

*I appreciate that this is a delicate and difficult issue to balance as the leader of your organisation. Please know that what I am sharing here is coming from a place of care and respect for the work you and your team do.*

*....."*

129. As a result of those communications, Michele Devlin contacted ThinkPeople, the respondent's external HR advisers, to seek advice on how to address the concerns that had been raised.
130. On 5 July 2023, a draft communication for social media was prepared and circulated to members of the Board. The tribunal finds that the wording of the communication was considered and approved at Board level.
131. The claimant accepted under cross-examination, and the tribunal finds, that she agreed that some form of public statement was necessary to protect the respondent's reputation and that she contributed to the drafting of the wording of the statement.
132. The communication ultimately issued by the Michele Devlin on X (formerly Twitter) stated:-

*"@Queerspace\_NI: We have been made aware of the incident and are investigating. We want to reassure you that Belfast Film Festival passionately supports your values. We will celebrate and defend them."*

133. When replying, Michele Devlin liked the tweet. The tribunal finds that her liking the tweet was not intended to endorse criticism of the claimant but rather to acknowledge receipt of the communication.

134. On the same date, Michele Devlin also emailed the Board to notify them of the emerging issue and the intention to issue a public statement:-

*"I am sending you a note to flag up an issue which has emerged over the past few days, regarding a member of our staff speaking at a rally in Belfast in April this year. I have been liaising with the Chair/s to resolve this matter - I know some of you are aware from social media and conversations you have had with your own friends and colleagues. The Chair/s and I are drafting a statement which will go out today. I will run it by you all in advance so would appreciate it if you could cast your eye over it before it goes public."*

135. The respondent subsequently published a more detailed public statement online, affirming its commitment to inclusivity and LGBTQI+ support, and stating that it was reviewing concerns relating to diversity matters:-

*"Belfast Film Festival hold central the values of inclusivity and have a highly respected track record of support for the LGBTQI+ community throughout our 25+ year history.*

*We fully support Belfast Pride's focus on trans rights for the 2023 Pride celebrations. We are currently reviewing concerns raised relating to diversity matters. Please be assured we take all concerns relating to inclusivity issues very seriously.*

*We are looking forward to delivering the Pride on the Big Screen event with our usual commitment to inclusivity and solidarity; and we want to assure our audience that everyone will be treated with the utmost respect and dignity at this day of screenings, and that any events we hold in the future. We passionately support, and will continue to celebrate and defend, the LGBTQI+ community."*

136. Michele Devlin sent the claimant a screenshot of the statement that was posted on the respondent's website to which the claimant replied *"That's so good!Xx"*

137. The tribunal finds that the statement was framed in general terms, did not name the claimant, did not describe her views as transphobic, or otherwise unacceptable, and did not prejudge the outcome of any investigation. Its purpose was to reassure stakeholders that concerns had been received and would be reviewed. The tribunal finds that this was a limited communication directed to organisational reassurance, of the respondent's values and processes, rather than singling out or criticising the claimant. The tribunal finds that the statement did not invite adverse treatment of the claimant and did not suggest that any conclusion had been reached regarding the matters under review. In light of the stakeholder communications summarised at

paragraphs 121–128, the tribunal finds that the purpose of the statement was to reassure stakeholders.

138. The tribunal also finds that neither statement identified the claimant by name nor referred expressly to her political opinion.
139. The issue for the tribunal is whether the respondent published the X/Twitter post and the online statement because of the claimant's political opinion, or whether it did so because stakeholder concerns had arisen which required a public response.
140. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The tribunal finds that the respondent's decision to issue public statements was driven by the existence of stakeholder concerns and the perceived need to reassure stakeholders and protect organisational relationships. The tribunal further finds that, had an employee occupying the same role publicly expressed a different political opinion and thereby attracted a comparable volume of stakeholder concern affecting the respondent's reputation, audience engagement and stakeholder relationships, the respondent would likewise have sought advice, considered the matter at Board level and issued a similar public reassurance statement. The tribunal therefore concludes that the claimant was not treated less favourably than the hypothetical comparator.
141. The tribunal has also considered the reason for issuing the social media statement and related communications. The tribunal accepts that the stakeholder concerns arose following publicity concerning the claimant's attendance and speech at the rally. However, the tribunal finds that the respondent's reason for issuing the statements was not disagreement with, or opposition to, the claimant's political opinion. Rather, the respondent acted because multiple stakeholders had raised concerns regarding her participation in the event and confidence in the respondent's ability to deliver it. The tribunal therefore finds that the respondent's focus was the management of stakeholder relationships and reputational issues rather than the claimant's political opinion itself.
142. The tribunal also places weight on the claimant's acceptance that some form of public statement was necessary and her participation in the drafting process. Whilst not conclusive, this supports the respondent's case that the publication of a statement was a necessary response to an acknowledged reputational and stakeholder-relations issue rather than an act motivated by hostility towards the claimant's political opinion.
143. The tribunal therefore concludes that the respondent published the X/Twitter post and subsequent online statement because of the stakeholder concerns that had arisen and the need to address their implications for the respondent's activities and relationships, and not because of the claimant's political opinion. It follows that the claimant was not subjected to less favourable treatment on the ground of political opinion.
144. The tribunal has also considered whether the X/Twitter announcement and the statement amounted to harassment on the ground of political opinion. For the reasons already given, the tribunal is not satisfied that the publication of either statement was on the ground of the claimant's political opinion. Rather, the statements were issued in response to stakeholder concerns and for the purpose of

providing organisational reassurance. The necessary causal connection is therefore absent.

145. Even if the tribunal is wrong in its conclusion regarding causation, it does not find that the conduct had the purpose or effect required by Article 3A on account of the following. The tribunal has considered the claimant's perception of the statements, the surrounding circumstances and whether it was reasonable for the conduct to have the alleged effect. The statements were limited in scope, neutral in tone and directed towards reassuring stakeholders that concerns raised would be addressed through appropriate processes. They did not identify the claimant, expressly refer to her political opinion, or prejudge any issue under consideration. The tribunal also notes, as part of the overall context, that the claimant responded to the draft website statement by stating, *'That's so good! Xx'* In those circumstances, the tribunal is not satisfied that the statements had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, nor that it would be reasonable to regard them as having that effect.
146. The Tribunal therefore concludes that the publication of the X/Twitter statement and the subsequent online statement did not constitute harassment on the ground of political opinion. The complaint of harassment fails.

(d) **Michele Devlin's email of 7 July 2023 to Outburst Arts**

147. The tribunal finds that the correspondence between the respondent and Outburst Arts arose from the respondent's email of 3 July 2023 concerning a proposed "Pride on the Big Screen" event.
148. Outburst Arts replied to that email on 4 July in the terms set out above at paragraph 124.
149. Michele Devlin replied on 6 July 2023 as follows:-

*"Dear Friends*

*Apologies for the delay – you may have seen our statement on social media – I wanted to inform you directly that the staff member connected to this discussion will not be working on LGBTQ events, including PRIDE ON THE BIG SCREEN until the investigation has been concluded and the matter is resolved in line with our organisational ethos."*

150. Outburst Arts replied later that same day as follows:-

*"Thank you for the update.*

*We kindly request that Outburst Arts is not tagged or copied into any posts on this matter on social media. We prefer not to engage with organisational matters on social media as it is not a suitable platform for constructive and compassionate discussion."*

151. Michele replied as follows:-

*I appreciate your reply. Apologies we should not have tagged you in social media. Agreed – Twitter is not a good forum for discussion....*

152. Outburst Arts sent a further reply:-

*“For clarity, our issue was being invited to work with Sara as BFF inclusion Officer when her involvement with ant trans groups and altercations with individual trans people were public knowledge, and when BFF was aware of this.*

*We respect that this is an internal BFF staffing matter and will be resolved appropriately through the BFF executive and board, so we will not be getting involved in any public discussion about the specifics of the issue.....*

*I wish you and the BFF the best in resolving the issue firmly and with compassion.”*

153. Ms Devlin sent the following reply on the morning of 7 July:-

*“ .....*

*The only thing BFF was aware of was Sara’s participation in the rally on April 16<sup>th</sup>. The difficulties of having a voluntary board made it problematic for me to get a fully quorate board meeting being pulled together whilst in the run-up to delivering Docs Ireland – my workload took over. We are a small under resourced organisation – only Sara and I are full time, and we have a part-time Marketing Manager who becomes F/T at festival periods, and a P/T administrator. In hindsight the board member who flagged the rally up to me should have requested an emergency board meeting at the time.*

*Regarding altercations with individual trans people – I have now knowledge of this. If you know of someone please ask them to submit a complaint to me in writing, detailing the altercations.*

*Also, a direct email to me at the time of the rally complaining about our staff member’s participation in that would have immediately escalated the matter as a key priority for us.*

*If the LGBTQ community do not wish us to go ahead with the planned screening day we will cancel it. It was planned as a gesture of solidarity “for” the community not “against” it.”*

154. The tribunal has considered whether Michele Devlin's email of 7 July 2023 amounted to less favourable treatment on the ground of the claimant's political opinion.

155. The tribunal has considered whether the hypothetical comparator, identified at paragraph 68, would have been treated more favourably. The treatment complained of is Michele Devlin's email of 7 July 2023 responding to concerns raised by Outburst Arts regarding the claimant's participation in a public rally and the

respondent's handling of that issue. The tribunal must therefore consider whether the respondent would have responded differently had a comparable employee, who did not hold the claimant's political opinion, become the subject of stakeholder concerns arising from that employee's public conduct or public expression of views.

156. The tribunal finds that Michele Devlin's email was a response to matters expressly raised by Outburst Arts. The references to the claimant's participation in the rally, the respondent's knowledge of events and the invitation for complaints to be submitted arose because Outburst Arts had raised those matters and requested clarification. The tribunal notes that the references contained in the email mirror the matters raised by Outburst Arts in the preceding correspondence. The tribunal finds that the purpose of the email was to respond to questions raised by Outburst Arts concerning the respondent's knowledge of events, the steps being taken by the respondent, and the process by which concerns could be raised and considered. The tribunal is satisfied that, had a comparator occupying the same role become the subject of stakeholder concerns of a similar seriousness requiring explanation and reassurance, the respondent would likewise have responded to the stakeholder organisation by outlining the respondent's understanding of the position, explaining the steps being taken and identifying the means by which relevant information could be formally provided.
157. The tribunal accepts that the stakeholder concerns arose because of the claimant's participation in the rally and the views attributed to her as a consequence of that participation. The claimant's political opinion therefore formed part of the factual context in which the correspondence arose. However, the existence of a political opinion as part of the background does not of itself establish that subsequent treatment occurred on the ground of that opinion.
158. Having considered the correspondence as a whole, the tribunal finds that Michele Devlin's purpose was not to express disagreement with the claimant's political opinion, nor to endorse the criticisms made of her by Outburst Arts. Rather, her purpose was to answer questions raised by that organisation concerning the respondent's handling of the matter, to explain the respondent's understanding of events, and to identify the process by which concerns could properly be raised and investigated. Rather, the email was sent because concerns had been raised by an external stakeholder organisation requiring a response.
159. For those reasons, the tribunal concludes that Michele Devlin's email of 7 July 2023 did not constitute less favourable treatment on the ground of political opinion and this complaint is dismissed.
160. The tribunal is not satisfied that Michele Devlin's email of 7 July 2023 constituted conduct on the ground of the claimant's political opinion. Rather, for the reasons set out above, the tribunal finds that the email was sent in response to stakeholder concerns and for the purpose of explaining the respondent's handling of those concerns. Accordingly, the necessary causal connection required for harassment has not been established.
161. Even if the tribunal is wrong in that conclusion, the tribunal has also considered the claimant's perception of the email, the surrounding circumstances and whether it was reasonable for the conduct to have the alleged effect. The tribunal concludes that the email did not have the purpose or effect of violating the claimant's dignity or

creating an intimidating, hostile, degrading, humiliating or offensive environment. Rather, it was a measured response to concerns raised by an external stakeholder. Having regard to all the circumstances, the tribunal does not consider that it would be reasonable to regard the email as having the effect of violating the claimant's dignity or creating such an environment.

162. The tribunal therefore concludes that Michele Devlin's email of 7 July 2023 did not constitute harassment on the ground of political opinion. This complaint also fails.

(e) **Engaging directly with individuals who the claimant states were harassing her**

163. The claimant contends that the respondent's engagement with Outburst Arts amounted to less favourable treatment on the ground of her political opinion. The claimant's case is that Outburst Arts had made hostile and critical comments concerning her participation in the Let Women Speak rally and that the respondent's decision to engage with that organisation constituted inappropriate endorsement of those views.
164. The tribunal has carefully considered that contention. The tribunal finds that Outburst Arts was an established stakeholder organisation with which the respondent had ongoing professional relationships and that it was necessary for the respondent to engage with concerns raised by such organisations regardless of whether those concerns were ultimately well-founded. The tribunal finds that the respondent's engagement with Outburst Arts was prompted by concerns raised by that organisation regarding the claimant's participation in the rally and the implications of that participation for collaborative work with the respondent. The correspondence arose because Outburst Arts chose to communicate those concerns to the respondent and because the respondent considered it necessary to address matters relevant to its stakeholder relationships and planned activities.
165. The tribunal accepts that the communications received from Outburst Arts were critical of the claimant and of her participation in the rally. The tribunal does not consider it necessary to determine whether Outburst Arts' communications themselves amounted to harassment of the claimant. The issue before the tribunal is whether the respondent's decision to engage with Outburst Arts constituted discrimination or harassment on the ground of political opinion.
166. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The treatment complained of is the respondent's decision to engage in correspondence with Outburst Arts concerning concerns that had been raised about the employee's public activities and their perceived implications for the respondent's stakeholder relationships and planned activities. The tribunal finds that, had a comparator occupying the same role, but not holding the claimant's political opinion, become the subject of comparable concerns from a significant stakeholder organisation regarding matters perceived to affect the respondent's stakeholder relationships, reputation or collaborative activities, the respondent would likewise have engaged with that organisation, responded to the concerns raised and sought to maintain constructive stakeholder relationships.

167. The tribunal accepts that the concerns raised by Outburst Arts arose from the claimant's participation in the rally and the views associated with that participation. The claimant's political opinion therefore formed part of the factual context in which the correspondence occurred. However, having considered the correspondence as a whole, the tribunal finds that the reason for the respondent's engagement with Outburst Arts was not disagreement with the claimant's political opinion, nor endorsement of the criticisms advanced by Outburst Arts, but the need to respond to concerns raised by a significant stakeholder organisation and to manage the respondent's ongoing stakeholder relationships. The tribunal therefore concludes that the respondent's engagement with Outburst Arts was not on the ground of the claimant's political opinion.
168. Accordingly, the tribunal concludes that the respondent's engagement with Outburst Arts did not amount to less favourable treatment on the ground of political opinion. This complaint is dismissed.
169. The tribunal has also considered whether the respondent's engagement with Outburst Arts amounted to harassment on the ground of political opinion. The claimant contends that Outburst Arts subjected her to criticism and hostility because of her participation in the Let Women Speak rally and that the respondent's decision to engage with Outburst Arts amounted to participation in, or endorsement of, that hostile treatment.
170. The tribunal accepts that the claimant regarded the communications from Outburst Arts as unwelcome and that she may have found the views expressed within those communications upsetting or offensive. The tribunal further accepts that the respondent's decision to correspond with Outburst Arts concerning those matters was unwelcome from the claimant's perspective.
171. For the reasons already given, the tribunal is not satisfied that the respondent's engagement with Outburst Arts constituted conduct on the ground of the claimant's political opinion. The tribunal finds that the respondent engaged with Outburst Arts to address concerns raised by an external stakeholder and to maintain stakeholder relationships. Accordingly, the necessary causal connection between the conduct complained of and the claimant's political opinion has not been established.
172. However, if the tribunal is wrong in that conclusion, the tribunal has considered the claimant's perception of the respondent's engagement with Outburst Arts, the surrounding circumstances and whether it was reasonable for the conduct to have the alleged effect. As stated, the respondent's conduct consisted of responding to concerns raised by an external stakeholder with whom it maintained an ongoing professional relationship. Having regard to all the circumstances, the tribunal is not satisfied that the respondent's engagement with Outburst Arts had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, nor that it would be reasonable to regard it as having had that effect.
173. The tribunal therefore concludes that the claimant has failed to establish that the respondent's engagement with Outburst Arts constituted conduct on the ground of political opinion or conduct having the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The complaint of harassment is dismissed.

(f) **Initiating an investigation into alleged misconduct relating to the claimant's attendance/speaking at the Let Women Speak rally**

174. The tribunal has found above that, following the respondent's communication with stakeholders on 3 and 4 July 2023, a number of external organisations raised concerns regarding the claimant's participation in the rally and its perceived incompatibility with her role as Inclusion/Audience Development Co-Ordinator. The tribunal accepts that complaints were not directed merely to the content of the claimant's beliefs but raised questions regarding whether stakeholder organisations would continue to engage with the claimant in the performance of her duties. The tribunal finds that these concerns were directly relevant to a role which expressly required the claimant to maintain and develop stakeholder relationships. The tribunal therefore finds that the respondent had a genuine and non-discriminatory basis for considering whether the controversy had impaired the claimant's ability to perform aspects of that role.
175. In light of these matters, Michele Devlin took the decision to initiate a fact-finding investigation. There is no written note of that decision but the tribunal finds, based on the timing of the correspondence, that the decision was made sometime in or about 24 July 2023. The tribunal finds that Michele Devlin decided an investigation was necessary because of stakeholder concerns regarding the claimant's ability to fulfil the relationship-building elements of her role.
176. On 25 July 2023, Think People, the respondent's HR advisers, emailed the claimant a letter inviting her to an investigation meeting the following day.
177. The invite letter to the investigation was as follows:-

*"On 3 July 2023, an email was sent by Michele Devlin, Festival Director, to a variety of LGBTQI+ groups regarding the Pride on Film event. A number of responses received to this email, containing allegations that a staff member of Belfast Film Festival, Sara Morrison, Inclusion/Audience Development Co-ordinator had spoken at a Posey Parker rally in Belfast on 16 April 2023. In addition to these emails, a number of comments were posted on Twitter tagging the Belfast Film Festival account and the Festival Director, in relation to the rally and the staff members involvement. Additionally, concern was brought to the attention of the Festival Director by a Board member concerning a discussion with Sara Morrison at a work-related event on 23 June 2023 regarding her involvement in the rally.*

*Concerns have therefore alleged that Sara's involvement in such an event is contrary to the following specific areas of the role of Inclusion/Audience Development Co-ordinator in Belfast Film Festival, namely:-*

*"The purpose of the role, to contribute towards BFFs overall audience development goals, in delivering events to engage local communities in a range of film activities in their localities, year-round and during the two annual festivals; working with partner organisations, community leaders, community participants and young people prior to and during events, to encourage their participation and attendance.*

*A responsibility to maintain current relationships and build positive new relationships with BFF's audience, participants and stakeholders.*

*The allegations are related to the actions and behaviours of Sara Morrison, Inclusion/Audience Development Co-ordinator, in carrying out her role and any potential damage to BFF's reputation as an inclusive organisation and service provider."*

178. The claimant responded the same afternoon to say that she would not be able to attend the proposed meeting because she had been advised by her doctor to take time off work because of stress.
179. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The treatment complained of is the respondent's decision to commence a fact-finding investigation concerning the employee's public participation in an event and the impact of that participation upon stakeholder relationships, audience engagement and organisational reputation. The tribunal finds that, had an employee occupying the same role, but not holding the claimant's political opinion, publicly expressed different views which gave rise to comparable concerns among stakeholders regarding the employee's ability to perform the stakeholder-facing aspects of the role, the respondent would likewise have initiated enquiries to establish the facts and assess any implications for its operations and stakeholder relationships. The tribunal therefore finds that the decision to commence the investigation was not influenced by the claimant's political opinion itself but by concerns regarding the impact of the situation upon matters central to the claimant's role.
180. Accordingly, the tribunal concludes that the decision to initiate the fact-finding investigation did not constitute less favourable treatment on the ground of political opinion. This complaint therefore fails.
181. The tribunal has also considered the claimant's contention that the initiation of the fact-finding investigation constituted harassment on the ground of political opinion contrary to the Fair Employment and Treatment (Northern Ireland) Order 1998.
182. The tribunal accepts that the commencement of a fact-finding investigation was not welcomed by the claimant and therefore constituted conduct which she did not invite, and which may properly be regarded as unwanted from her perspective.
183. However, the tribunal is not satisfied that the conduct in question was on the ground of the claimant's political opinion. For the reasons already set out in relation to the complaint of less favourable treatment, the tribunal finds that the respondent initiated the investigation because concerns had been raised by external stakeholders regarding the impact of the claimant's public conduct upon stakeholder relationships, stakeholder engagement and the claimant's ability to perform the responsibilities of her stakeholder-facing role.
184. Accordingly, the tribunal is not satisfied that the requisite causal connection between the claimant's political opinion and the impugned conduct has been established. The investigation was a management response to concerns which had been raised and which the respondent considered required examination.

185. If the tribunal is wrong on the causation conclusion, the tribunal has further considered the claimant's perception of the investigation, the surrounding circumstances and whether it was reasonable for the conduct to have the alleged effect. As stated, the tribunal accepts that the commencement of an investigation may have been unwelcome and upsetting from the claimant's perspective. However, the tribunal is not satisfied that the investigation had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The tribunal finds that the purpose of the investigation was to ascertain the facts surrounding matters which had been brought to the respondent's attention and to assess their potential impact upon the respondent's operations and stakeholder relationships. The investigation was a management response to concerns which the respondent considered required examination. Having regard to all the circumstances, the tribunal does not consider that it would be reasonable to regard the initiation of the investigation as having the effect of violating the claimant's dignity or creating such an environment.

186. The tribunal therefore concludes that the initiation of the fact-finding investigation did not constitute harassment on the ground of political opinion. Accordingly, this complaint is not well founded and is dismissed.

(g) **Causing or permitting the disciplinary investigation to be conducted in a biased and hostile manner**

187. The tribunal finds that, although a fact-finding investigation was initiated, it did not proceed beyond an initial stage. The process was paused following the claimant's grievance and was not resumed due to the claimant's resignation. The tribunal further finds that no investigation meeting took place, no findings were made and no substantive investigative steps were undertaken beyond the initial decision to commence an investigation.

188. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The treatment complained of is the alleged conduct of the investigation in a biased and hostile manner. However, the tribunal has found as a fact that no investigation meeting took place, no findings were made, no witness evidence was gathered, and no substantive investigative process occurred before the investigation was paused and ultimately overtaken by the claimant's resignation. In those circumstances, the tribunal finds that there is no evidential basis upon which it could conclude that the investigation was conducted in a biased or hostile manner. The tribunal further finds that, had an employee occupying the same role and whose circumstances were otherwise the same save that they did not hold the claimant's political opinion been in the same position, that employee would not have been treated differently. The tribunal therefore concludes that the claimant was not treated less favourably than the hypothetical comparator.

189. The tribunal has also considered whether the matters complained of amounted to harassment on the ground of political opinion. In the absence of any substantive investigation or investigative conduct, the tribunal concludes that there was no unwanted conduct on the ground of the claimant's political opinion. Further, there is no evidential basis upon which the tribunal could conclude that the respondent engaged in conduct having the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

190. Accordingly, the tribunal concludes that the complaints of direct discrimination and harassment arising out of the alleged biased and hostile conduct of the investigation are not well founded and are dismissed.

**(h) Putting the claimant on Statutory Sick Pay (SSP)**

191. It is common case that the claimant commenced a period of sickness absence on 25 July 2023. The tribunal finds that the claimant's contract of employment provided that she would receive Statutory Sick Pay ("SSP") during periods of sickness absence. Under cross-examination, the claimant accepted, and the tribunal so finds, that SSP was her contractual entitlement.
192. The tribunal further finds that, on 21 August 2023, the respondent's bookkeeper informed the claimant that she would receive SSP in accordance with her contract. On 25 August 2023, the claimant was informed that, as she had already received a full month's salary on 25 July 2023, an overpayment had arisen which would be recovered in due course.
193. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The tribunal is satisfied that such a comparator would have been treated in the same manner as the claimant in relation to the matters complained of. The tribunal has found that the claimant's entitlement during sickness absence was governed by the express terms of her contract of employment, which provided for payment of SSP. The claimant accepted this in evidence and the tribunal so finds.
194. The tribunal also finds that any employee who was absent through illness and whose contractual entitlement was limited to SSP would have received SSP in accordance with the contractual provisions applicable to them. Likewise, where a salary overpayment had arisen because an employee had previously received remuneration in excess of their contractual entitlement during a period of sickness absence, the respondent would have taken steps to recover that overpayment as part of its ordinary payroll administration.
195. The claimant relied upon the fact that she had previously received full pay during a period of sickness absence which occurred during the Covid-19 pandemic. The tribunal accepts that this occurred. However, the tribunal has found, as a fact, that the arrangement in question was exceptional and introduced in response to the circumstances prevailing during that period. The tribunal is satisfied that it did not confer any ongoing entitlement to enhanced sick pay and does not provide a proper basis for comparison.
196. The tribunal has been provided with no evidence that an employee, in similar circumstances, would have received treatment more favourably than that afforded to the claimant. Nor has the claimant identified any basis upon which the tribunal could conclude that a hypothetical comparator would have been permitted to retain an overpayment or would have received enhanced sick pay contrary to the terms of their contract.

197. In those circumstances, the tribunal concludes that the claimant was not treated less favourably than the hypothetical comparator relied upon. The payment of SSP and the recovery of an overpayment were measures which would equally have applied to any employee in similar circumstances.
198. The tribunal has also considered the reason for the treatment. The tribunal finds that the payment of SSP was made because that was the claimant's contractual entitlement during sickness absence. The decision to pay SSP was the application of the contract of employment rather than the exercise of any discretion directed towards the claimant personally. The tribunal further finds that the recovery of the overpayment arose because the claimant had already received a full month's salary at a time when she was contractually entitled only to SSP. The recovery of that overpayment was a routine administrative and payroll measure designed to rectify an identified overpayment of wages.
199. The tribunal is therefore satisfied that the respondent's actions were because of contractual obligations and ordinary payroll practice. The evidence does not support any inference that the respondent's treatment of the claimant was influenced by her political opinion or by her participation in the Let Women Speak rally.
200. Accordingly, the tribunal concludes that the claimant's political opinion was not the reason, nor any part of the reason, for the payment of SSP or the recovery of the overpayment. The reason for the treatment was the application of the claimant's contractual entitlement and the correction of a payroll overpayment. The tribunal therefore concludes that the claimant has failed to establish either that she was treated less favourably than the appropriate hypothetical comparator or that the treatment complained of was on the ground of her political opinion.
201. The tribunal has separately considered the claimant's complaint of harassment. The tribunal is not satisfied that the payment of SSP during the claimant's sickness absence, or the subsequent recovery of a salary overpayment, constituted unwanted conduct on the ground of political opinion. The tribunal has found that the payment of SSP resulted from the claimant's contractual entitlement and that the recovery of the overpayment arose from the respondent's routine payroll processes. The tribunal further finds that those actions would have been taken in relation to any employee in comparable circumstances irrespective of political opinion. Accordingly, the tribunal is not satisfied that the conduct complained of occurred on the ground of the claimant's political opinion.
202. If the tribunal is wrong on the causation conclusion, the tribunal has considered the claimant's perception of the conduct, together with all the surrounding circumstances. The tribunal accepts that the claimant may have been upset by the payment of SSP and the recovery of the overpayment. However, having regard to its findings that those actions were taken pursuant to the claimant's contractual entitlement and formed part of the respondent's ordinary payroll administration, the tribunal concludes that the actions did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Having regard to all the circumstances, the tribunal does not consider it reasonable for the conduct complained of to be regarded as having had that effect.

203. The tribunal therefore concludes that the payment of SSP and the recovery of the salary overpayment did not constitute harassment on the ground of political opinion. This complaint is dismissed.

(i) **Failing to refer the claimant to OHS**

204. The tribunal has found that the claimant was referred to Occupational Health approximately five months after the commencement of her sickness absence. The respondent is a small organisation with limited administrative resources and no dedicated HR function. No evidence was adduced of any Occupational Health referral policy or any established practice requiring referrals to be made within a shorter period.

205. The tribunal has considered whether the hypothetical comparator, identified at paragraph 68, would have been treated more favourably. Having regard to its findings concerning the respondent's size, limited administrative resources and absence of a dedicated HR function, together with the absence of any evidence of a policy or practice requiring earlier Occupational Health referrals, the tribunal finds that a hypothetical employee in materially similar circumstances would have been referred to Occupational Health within substantially the same timeframe. The tribunal is satisfied that the factors affecting the timing of the referral were organisational and administrative in nature and were not attributable to the claimant's political opinion.

206. The tribunal further finds that there is no causal connection between the claimant's political opinion and the timing of the Occupational Health referral. There is no evidence that the referral was delayed because of the claimant's political opinion.

207. The tribunal finds that the timing of the Occupational Health referral arose from the respondent's size, resources and administrative capacity and not from the claimant's political opinion. The tribunal further finds that a hypothetical comparator would have been treated no differently. Accordingly, the delay in making the referral did not constitute less favourable treatment on the ground of political opinion.

208. The tribunal has also considered whether the delay in referring the claimant to Occupational Health amounted to harassment on the ground of political opinion. For the reasons already given, the tribunal is not satisfied that the timing of the referral constituted conduct on the ground of the claimant's political opinion. If the tribunal is wrong on that, the tribunal has considered the claimant's perception of the delay, the surrounding circumstances and whether it was reasonable for the conduct to have the alleged effect. Whilst the claimant may have been dissatisfied by the timing of the referral, the tribunal finds that it arose from administrative and organisational factors associated with the respondent's resources and operating arrangements. The tribunal concludes that the delay did not have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, nor that it would be reasonable to regard it as having had that effect.

209. The complaint of harassment arising from the timing of the Occupational Health referral is not well founded and is dismissed.

(j) **Failing to ensure a fair, independent and impartial process for hearing**

210. The claimant submitted a detailed grievance on 31 July 2023 raising concerns about alleged discriminatory treatment and the initiation of a disciplinary investigation as follows:-

*“Dear Lisa,*

*I wish to raise a formal grievance about matters of significant concern which have arisen to my role with Belfast Film Festival.*

*The background to my grievance is that on 16 April 2023 I attended, in a personal and private capacity, an event in Belfast, Let Women Speak, and spoke at the same.*

*As indicated above, my attendance was entirely in a personal capacity and at no time did I reference the fact or nature of my employment, nor did I reference Belfast Film Festival.*

*Since my attendance at that event, I have been the subject of an ongoing campaign of online harassment which has resulted in more than one reference by myself to PSNI.*

*I consider that a number of the comments which have been directed to me are profoundly defamatory in nature.*

*I informed my manager, Michele Devlin, of the difficult circumstance that I was operating under following my attendance at the event in April 2023.*

*By letter of 25 July 2023, I was notified that my employer had engaged an outside HR consultancy firm to “investigate” my “conduct” and “behaviours” with a view to establishing whether or not this was in conformity with the terms and conditions of my employment and my role and responsibilities.*

*I consider that the decision to instigate an investigation and the subsequent publicising of the fact of that decision amounts to unlawful and discriminatory treatment visited upon me on account of a perception of my views.*

*I re-emphasise that at no stage have I ever referenced the fact of my employment with Belfast Film Festival and I believe I am entitled to hold lawful views and to speak about those in a purely private and personal capacity and that I should not be deterred from doing so and I certainly should not be subjected to less favourable treatment in the manner in which I have on account of having expressed those views.*

*.... I also wish to seek clarification of the rationale behind the decision to instigate an investigation and to have sight of any and all communications and documentation referencing myself which was relied upon in determining that an investigation should be commenced....*

*....*

Yours Sincerely,

Sara”

211. On 10 August 2023, Ms O'Neill, of Thinkpeople, proposed that she and Lisa Barros D'Sa should hear the claimant's grievance instead of conducting the investigation.
212. On 15 August 2023, the claimant was sent an invitation to a grievance hearing on 17 August 2023. However, the matter could not proceed as the claimant was on sick leave.
213. On 27 November 2023, the respondent appointed Keara Patterson of ThinkPeople to hear the claimant's grievance. With the agreement of both parties, it was agreed to conduct it as a paper exercise as the claimant would not attend.
214. Keara Patterson sent the claimant a list of questions on 9 January 2024 which the claimant answered on 30 January 2024. Keara Patterson wrote to the claimant on 15 February 2024, seeking the claimant's patience given the extensive documentation provided and the need to segregate and sequence the documents.
215. Lisa Barros D'Sa and Keara Patterson concluded their interviews with Mark Cousins and Michele Devlin on 15 March 2024 and with Head of Marketing on 28 March 2024. They also obtained written answers to questions from the payroll administrator on 22 April 2024.
216. The claimant provided considerable evidence which the grievance panel took considerable time to review and assess. A grievance outcome letter and report was issued to the claimant on 4 July 2024 rejecting the claimant's grievance as follows:-

*“After careful consideration of your grievance, the facts, the evidence collected during the investigation and the explanations you have provided via email, I have concluded the following:*

- *In regard to your claim that the decision to instigate an investigation and publicising of this decision amounts to unlawful and discriminatory treatment on account of a perception of your views, this point is not upheld.*
- *In regard to your claim that you should be able to speak about your views and believe you have been subjected to less favourable treatment, on account of having expressed those views and that unlawful deductions have been made, this point is not upheld.*
- *In regard to your claim that you believe that the employer has instigated an investigation against you, with no specific allegations, this point is not upheld.*
- *In regard to your claim that you believe your employer has acted in a way that makes your workplace a hostile environment for you, this point is partially upheld. Whilst the evidence does not suggest that BFF had acted in a manner to make the environment hostile, the*

*decision to post information regarding an internal investigation publicly on Twitter, can be viewed as a violation of GDPR restrictions.*

- In regard to your claim that Mr Mark Cousins was critical towards you and “did nothing to help” you this point is not upheld.*
- In regard to your point that you believe you have been subjected to disciplinary punishments, outside the employer’s disciplinary rules, this point is not upheld.*
- In regard to your point that you have received no communication, formal or informal, to provide assistance to Occupational Health, this point is not upheld.”*

217. The claimant was given a right of appeal to the grievance.

218. The claimant’s grievance appeal was heard by Marie Thérèse McGivern and Emmett Owens of ThinkPeople at a meeting on 30 September 2024. The grievance appeal outcome was sent to the claimant on 21 November 2024 in which the claimant’s appeal was rejected. The appeal concluded as follows:-

*“It should be noted that there is no evidence to support claims that Sara Morrison’s beliefs could be considered transphobic, fascist etc as implied by some of her critics. However, the evidence supports the argument that Sara Morrison’s decision to speak at the event was the catalyst to the events that followed, and the criticism and abuse that she has received. It is not unreasonable to conclude that some of this abuse would have been present regardless of her role at Belfast Film Festival , but that her critics used the fact that her role at Belfast Film Festival includes “audience” and “inclusion” as a factor to suggest that her participation in the Let Women Speak event conflicted with her role at Belfast Film Festival, noting that Sara Morrison’s contract of employment states that her role is to:*

*“to maintain current relationships and build positive new relationships with BFF’s audience, participants and stakeholders, increasing the range and engagement of audiences, in Belfast and beyond, working partnerships with these key organisations, identify community needs and aspirations and create opportunities for communities to engage actively in all our activities, festival and programmes.”*

*It is also noted that while Sara Morrison stated that she had not planned to speak at the event, the video shows that she is wearing a hi-vis vest and has a speech prepared on her mobile phone. This suggests a level of disingenuousness regarding her involvement in the event.*

*Sara Morrison is entitled to speak at such events if she wishes however it should also be considered that where any employer receives complaints about the actions of an employee outside of the workplace, and there is potential that such actions could have a negative impact on the reputation of the organisation or the ability of the employee to fulfil the duties of their role, the employer is entitled to investigate. Investigations are fact finding*

*exercises to determine if further action should be considered. In this case, Belfast Film Festival did not have the opportunity to investigate the matters.*

*The evidence gathered as part of the original grievance process supports that Belfast Film Festival were placed in a position where they had no choice but to instigate an investigation into a situation that arose from the social media backlash versus the role that Sara Morrison was required to fulfil within Belfast Film Festival. This was an unusual and unexpected situation, and with limited resources available, the evidence does suggest that Belfast Film Festival's attempts to mitigate against any negative impact was at times misjudged, and that this has been perceived by Sara Morrison as Belfast Film Festival aligning with those that had abused her and in contrast with her own protected beliefs. There is no evidence to support this perception, which can only be considered as subjective.*

*... As per the original grievance outcome, the evidence supports it is reasonable to conclude that Belfast Film Festival did not instigate the investigation in order to violate Sara Morrison's dignity or create an intimidating, discriminatory, humiliating or offensive environment for her. But that Belfast Film Festival's concerns were that Sara Morrison's participation in the Let Women Speak event may have caused some reputational damage whereby some external parties considered her participation to be transphobic, with the potential for a negative impact in relation to various groups that Belfast Film Festival worked with.*

*...”*

219. The tribunal places particular weight on the involvement of external HR consultants. The tribunal finds that the substantive investigation and assessment of the grievance was carried out with significant involvement from external HR professionals who were independent of the events complained of. Their role in managing the process, collating and analysing evidence, and contributing to the decision-making (as set out above) provided a substantial safeguard against bias or internal influence.
220. The tribunal further finds that the claimant was afforded a full opportunity to articulate her complaints in considerable detail. Although the grievance was ultimately conducted by way of a paper exercise due to the claimant being on sick leave, her written submissions were received, considered and addressed. The claimant was also afforded a right of appeal, which she exercised. While the claimant disagreed with the conclusions reached, the tribunal finds that dissatisfaction with the outcome does not, without more, demonstrate procedural unfairness or bias.
221. The tribunal is not satisfied that the grievance or appeal processes lacked independence or impartiality. There is no evidence that the external consultants acted under improper influence, that the outcomes were predetermined or that the decision-makers approached the matter with bias against the claimant because of her political opinion. The fact that the claimant disagreed with the conclusions reached is insufficient to establish procedural unfairness.

222. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The treatment complained of is the alleged failure to provide a fair, independent and impartial grievance and appeal process. The tribunal finds that an employee occupying the same role, whose circumstances were otherwise the same or not materially different save that they did not hold the claimant's political opinion, would have had their grievance investigated and determined through substantially the same procedures, including the involvement of external HR consultants, the opportunity to submit evidence, the provision of a reasoned outcome, and a right of appeal. The tribunal is satisfied that the structure and conduct of the grievance and appeal processes were not influenced by the claimant's political opinion. The claimant was therefore not treated less favourably than the hypothetical comparator.
223. The claimant also alleges that the grievance and appeal processes constituted harassment on the ground of political opinion. The tribunal has considered this complaint separately. The tribunal has already found that the grievance and appeal processes were concerned with considering and determining the claimant's complaints, were conducted by external HR professionals and were not influenced by the claimant's political opinion. The tribunal concludes that there is no causal connection between the claimant's political opinion and the way those processes were conducted.
224. Even if the tribunal is wrong in its conclusion regarding causation, it still would not find that the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Rather, the evidence demonstrates that the respondent sought to address the claimant's complaints through independent procedures involving external advisers. The tribunal finds that these measures were directed towards addressing the claimant's complaints rather than subjecting her to adverse treatment.
225. While the claimant may have perceived the processes and their outcomes to be unfair, dissatisfaction with the conclusions reached does not of itself establish harassment. Having regard to all the circumstances, the tribunal does not consider it reasonable to conclude that the conduct complained of had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
226. The tribunal therefore concludes that the claimant has failed to establish that the grievance and appeal processes constituted harassment.

**(k) Removal from the Belfast Film Festival Programme (November 2023)**

227. It is not in dispute that, on 12 October 2023, the claimant's name was removed from the Belfast Film Festival programme scheduled for November 2023. The tribunal accepts the respondent's evidence and finds that the claimant was on sick leave at the relevant time and had not contributed to the preparation, organisation, or delivery of the event. The tribunal further finds that responsibility for progressing the programme during this period was undertaken by other members of staff in the claimant's absence.

228. The tribunal accepts the respondent's evidence that the reason for the claimant's removal from the programme was her absence from work and consequent lack of involvement in the event. The tribunal finds that this was an operational decision taken to ensure the accurate presentation and effective delivery of the festival programme.
229. The tribunal has considered whether the hypothetical comparator, identified at paragraph 68, would have been treated more favourably. The tribunal finds that, had such an employee been absent from work on long-term sickness absence and not participated in the planning, preparation or delivery of the Belfast Film Festival programme, that employee would likewise have been removed from the published programme. The tribunal is satisfied that the decision was based upon the employee's non-involvement in the event and not upon the content of any political opinion held by the employee.
230. Accordingly, the tribunal concludes that the claimant's removal from the Belfast Film Festival programme did not amount to less favourable treatment on the ground of political opinion and the complaint is not well founded.
231. The tribunal has also considered whether the claimant's removal from the Belfast Film Festival programme amounted to harassment on the ground of political opinion.
232. The tribunal has considered the harassment complaint separately. As set out above, the tribunal has found that the claimant was removed from the programme because she was absent on sick leave and had not been involved in the preparation or delivery of the event. The decision was an operational one taken to ensure the accurate presentation and effective delivery of the programme. The tribunal is not satisfied that the conduct complained of was on the ground of the claimant's political opinion and that no causal connection has been established between that opinion and the conduct complained of.
233. If the tribunal is wrong on the above conclusion, the tribunal has also considered the claimant's perception of the conduct together with all the surrounding circumstances. The tribunal is satisfied that the decision was not taken for the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Nor is the tribunal satisfied that it had that effect. Having regard to all the circumstances, the tribunal does not consider it reasonable to regard the removal of the claimant's name from the programme, in circumstances where she was absent from work and had not been involved in the preparation or delivery of the event, as having had such an effect.
234. Accordingly, the tribunal concludes that the claimant's removal from the Belfast Film Festival programme did not constitute harassment on the ground of political opinion and the complaint is not well founded.

(I) **Restricting claimant's access to her laptop, Gmail Account, Shared drive and calendar**

235. The tribunal finds that on 24 July 2023 the claimant requested assistance from Ms Devlin in accessing her work email account. The tribunal further finds that Ms Devlin reset the password but sent the new password to the claimant's work email account, which the claimant was unable to access.

236. On 28 July 2023, the claimant informed Ms Devlin via WhatsApp that she remained unable to access her email, stating:-

*“The log in is in my emails – I still can’t get logged into it, I can’t remember my password.”*

237. The tribunal finds that no response was provided to this message.

238. On 25 October 2023, the respondent provided the claimant with a Data Subject Access Response which included, within a larger body of material, an earlier communication containing a password. The tribunal finds that no attempt was made to draw this information to the claimant’s attention.

239. It was not until 26 November 2023 that Ms Devlin raised again the issue of email access and provided a replacement password, stating:

*“I have recently been made aware that you haven’t been able to access your work email, I had sent a password to you in July and again in October. Could you advise me as soon as you get this and all works for you okay. The previous password is now defunct—see above new password.”*

240. The claimant replied on 11 December 2023:-

*“I am very poorly. I have been medically advised not to engage in work-related matters. I intend to follow this advice. I remain under medical care/review.*

*I have had needed considerable assistance to set out the facts below:*

*I have no record of receiving an email from you in either July 2023 or October 2023 providing a new password.” (SIC)*

241. The tribunal finds that the respondent’s handling of the claimant’s access to her work systems was deficient for the following reasons:-

- sending a reset password to an inaccessible email account was ineffective;
- the failure to respond to the claimant’s WhatsApp message of 28 July 2023 compounded the problem; and
- the inclusion of password information within a lengthy Data Subject Access Response, without any clear notification or signposting, was inadequate.

242. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The tribunal finds that the difficulties experienced by the claimant arose from administrative failings in the handling of password resets and communication regarding access to work systems. The tribunal is satisfied that an employee in the same position who did not hold the claimant’s political opinion, but who required assistance in regaining access to work systems, would have been dependent upon the same administrative processes and would not have been treated more favourably. The tribunal therefore concludes that the claimant was not treated less favourably than the hypothetical comparator.

243. The tribunal has also considered whether the claimant's political opinion played any part in the treatment complained of. It finds that there is no evidential basis for such a conclusion. The tribunal finds that the failures identified arose from administrative error, oversight and inadequate follow-through rather than from any deliberate, targeted or politically motivated conduct.
244. The tribunal has also considered whether the respondent's actions amounted to harassment. The tribunal has found above that the respondent's handling of the matter was deficient. However, it has also found that those failings arose from administrative error, oversight and inadequate follow-through rather than any deliberate or targeted conduct towards the claimant.
245. For the reasons already given in relation to the complaint of less favourable treatment, the tribunal is not satisfied that the conduct complained of was on the ground of the claimant's political opinion. The evidence does not support a finding that the claimant's political opinion played any part in the respondent's actions and no causal connection between the two has been established.
246. Even if the tribunal is wrong on this conclusion regarding causation, it still finds that the conduct was not undertaken for the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. The evidence demonstrates that the respondent was attempting, albeit ineffectively, to restore the claimant's access rather than deny it.
247. The tribunal has considered the claimant's perception of the respondent's conduct together with all the surrounding circumstances. Whilst the claimant may reasonably have been frustrated by the respondent's administrative failings, the tribunal does not consider, having regard to all the circumstances, that those failings had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment on the ground of her political opinion.
248. The tribunal therefore concludes that the respondent's handling of the claimant's access to her laptop, Gmail account, shared drive and calendar did not constitute harassment on the ground of political opinion and the complaint is not well founded.

**(m) Asking the claimant to return her work keys**

249. The tribunal finds that, on 3 August 2023, Ms Devlin sent a WhatsApp message to the claimant requesting the return of her office keys in the following terms:-

*"We have an inclusion event on the 7th August....I will need your keys for the technician working at it. Let me know what's best for you.....I can arrange for them to be picked up/or you can get someone to drop them to my house or the office."*

250. The tribunal accepts Ms Devlin's evidence that there were only two sets of office keys in circulation at the relevant time. It further finds that, in circumstances where the claimant was absent from work, it was necessary for the respondent to obtain access to the additional set to facilitate access to the premises for operational purposes, including the preparation for and delivery of an event scheduled for 7 August 2023.

251. The tribunal finds that the request for the return of the keys was made in a practical and routine manner and was directly connected to the respondent's operational requirements arising from the claimant's absence.
252. The tribunal has considered whether the hypothetical comparator identified at paragraph 68 would have been treated more favourably. The tribunal finds that, had such an employee been absent from work, retained one of only two sets of office keys, and the respondent required access to its premises for operational purposes connected with an upcoming event, that employee would likewise have been asked to return the keys. The tribunal is satisfied that the request arose solely from the respondent's operational need to access its premises during the employee's absence and was not influenced by the claimant's political opinion.
253. Accordingly, the tribunal concludes that the request for the return of the claimant's office keys did not amount to less favourable treatment on the ground of political opinion and the complaint is not well founded.
254. The tribunal has also considered whether the request that the claimant return her office keys amounted to harassment on the ground of political opinion. For the reasons already set out, the tribunal has found that the request was made for a legitimate operational purpose. The tribunal is not satisfied that the request was made on the ground of the claimant's political opinion. There is no evidence of any causal connection between the claimant's political opinion and the conduct complained of.
255. Even if the tribunal is wrong in its conclusion regarding causation, the tribunal is further satisfied that the request was not made for the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. It was a routine managerial request arising from operational necessity.
256. The tribunal has considered the claimant's perception of the request together with all the surrounding circumstances. Whilst the claimant may have regarded the request as unwelcome, the tribunal does not consider, viewed objectively and having regard to all the circumstances, that the request had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The request was communicated in a practical and courteous manner and was limited to the respondent's need to obtain access to one of only two sets of office keys.
257. The tribunal therefore concludes that the request for the return of the claimant's office keys did not constitute harassment on the ground of political opinion and the complaint is not well founded.

### **Direct Discrimination Summary**

258. Having considered each of the complaints advanced by the claimant individually and in the context of all the evidence, the tribunal concludes that the claimant was not treated less favourably than the hypothetical comparator identified at paragraph 68. The tribunal has considered whether the respondent acted because of the claimant's political opinion or because of objectively identified issues arising within the claimant's stakeholder-facing role. The tribunal has found that the acts

complained of arose from operational requirements, stakeholder concerns, contractual obligations, payroll administration, organisational resources, grievance procedures, sickness absence or administrative errors. The tribunal therefore concludes that the claimant's political opinion was not the reason, nor any part of the reason, for the treatment complained of. Accordingly, the claimant has failed to establish unlawful direct discrimination on the ground of political opinion contrary to the Fair Employment and Treatment (Northern Ireland) Order 1998.

## **Harassment Summary**

259. The tribunal has also considered each complaint relied upon as an act of harassment. The tribunal accepts that a number of the matters complained of arose in the context of the claimant's publicly expressed political opinion and that criticism of the claimant's views was communicated by stakeholders on multiple occasions. The tribunal has therefore considered carefully whether the respondent's own conduct amounted to unwanted conduct on the ground of political opinion. The tribunal concludes that it did not. The respondent's actions consisted of investigating complaints, communicating with relevant stakeholders, addressing reputational concerns, administering contractual matters and operating grievance procedures. The tribunal does not find that these actions themselves amounted to hostility towards the claimant's political opinion. Further, having considered the claimant's perception, the surrounding circumstances and the reasonableness of the alleged effect in each instance, the tribunal is not satisfied that any of the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Accordingly, the claimant has failed to establish harassment on the ground of political opinion contrary to Article 3A of the Fair Employment and Treatment (Northern Ireland) Order 1998.

## **Constructive Dismissal**

260. The claimant contends that she was constructively dismissed and that she was forced to resign because of the respondent's conduct, which she alleges amounted to a breach of the implied term of mutual trust and confidence.

261. The acts relied upon by the claimant are those set out in the response to the respondent's Notices for Additional Information dated 6 October 2025. These acts are recorded at paragraph 26(5) above.

262. With regard to the acts relied upon by the claimant for her constructive dismissal claim, the tribunal makes the following findings of fact and conclusions:-

- a) **The claimant's line manager, Michele Devlin, "liking" a post on X from Queerspace that formed part of the campaign against the claimant on 4 July 2023.**

As set out in the findings above, there is no dispute that Michele Devlin liked a post from Queerspace on X. However, the tribunal has found that she did so simply as an acknowledgement of the communication and not as an endorsement of the criticism contained within it. The tribunal has found that the respondent's conduct, at the relevant time, was directed towards addressing stakeholder concerns and maintaining stakeholder confidence, rather than

participating in any campaign against the claimant. There is no evidence that the act of liking the post formed part of any concerted effort to target, undermine or disadvantage the claimant. Accordingly, the tribunal concludes that Michele Devlin's liking of the Queerspace post did not amount to, and was not capable of amounting to, a breach of the implied term of trust and confidence.

- b) **On 4 July 2023, Michele Devlin publishing a post from the respondent's X account saying that the claimant was being investigated in response to the Queerspace post in (a) above.**

As per the findings of fact, the tribunal has found that the purpose of this statement was to reassure stakeholders and explain that concerns were being reviewed. The tribunal accepts that publication of the statement carried some risk that readers might infer concerns had arisen regarding a member of staff. The tribunal has nevertheless found that the statement did not identify the claimant, did not state misconduct had occurred, did not prejudice any issue and was issued in response to stakeholder concerns requiring a public response. The statement was measured, non-accusatory and directed to protecting organisational relationships. Accordingly, it was not conduct likely to destroy or seriously damage trust and confidence.

- c) **On 6 July 2023, the staff page on the respondent's website being replaced with a page focusing on "LGBT inclusion."**

As set out in the findings above, the tribunal finds that the staff page on the respondent's website was removed at some point between the end of July and mid-September 2023. The tribunal was not satisfied on the evidence that the page was removed on 6 July 2023. The tribunal has also found that, on 5 July 2023, the respondent published a public statement affirming its commitment to inclusivity and LGBTQI+ support and confirming that concerns relating to diversity matters were under review. There was no evidence before the tribunal that the removal of the staff page, or any subsequent alteration to the website, was directed at the claimant, intended to criticise her, or formed part of any campaign against her. Nor was there evidence that any replacement content was designed to disadvantage the claimant or undermine her position within the organisation. Viewed objectively, the tribunal is not satisfied that the removal of the staff page, or any subsequent amendment to the website, was conduct likely to destroy or seriously damage the relationship of trust and confidence between the parties. Accordingly, the tribunal concludes that this matter did not amount to breach of the implied term of trust and confidence.

- d) **On 6 July 2023, Michele Devlin sending an email to Outburst Arts telling them that the claimant would not be working on LGBTQ events until the investigation into her conduct had concluded.**

As set out in the findings above, Michele Devlin informed Outburst Arts that the claimant would not be involved in LGBTQ-related events pending the conclusion of the respondent's investigation. Having regard to the stakeholder concerns that had been raised and their direct relevance to that area of the claimant's work, the tribunal finds that the respondent had reasonable and proper cause for taking that temporary precautionary step. Rather, it was imposed pending investigation and was not punitive in nature. Accordingly, the tribunal concludes

that the respondent's conduct was not likely to destroy or seriously damage the relationship of trust and confidence and therefore did not amount to a breach of the implied term.

- e) **On 7 July 2023, Michele Devlin sending a further email to Outburst Arts telling them that the Board member, who highlighted the Let Women Speak event the claimant had attended, should have requested an emergency Board meeting at the time.**

As set out in the findings above, Michele Devlin sent a further email to Outburst Arts on 7 July 2023 stating that the Board member who had highlighted the Let Women Speak event attended by the claimant ought to have requested an emergency Board meeting at the time. The tribunal finds that this communication was made in the context of ongoing discussions with stakeholders concerning concerns that had been raised and the respondent's handling of those concerns. The email did not contain any criticism of the claimant, nor did it seek to attribute blame to her for the matters under discussion. Rather, it reflected Michele Devlin's view regarding the manner in which concerns had been escalated within the respondent's governance structures. The tribunal is satisfied that the communication formed part of the respondent's attempts to address stakeholder concerns and explain its internal processes. Viewed objectively, it was not conduct directed at the claimant and was not conduct likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. Accordingly, the tribunal concludes that this matter did not amount to a breach of the implied term of trust and confidence.

- f) **From 6 July 2023, the claimant being denied access to her work email and calendar, and the respondent's shared drive.**

As set out in the findings above, the tribunal finds that any restriction on the claimant's access to her work email, calendar and the respondent's shared drive resulted from administrative error, oversight and inadequate follow-through, rather than any deliberate decision to deny her access. While the failures persisted over a substantial period and were unsatisfactory, the tribunal is satisfied that the difficulties experienced by the claimant arose from operational failings and not from any intention to marginalise, punish or exclude her. Such administrative shortcomings are not, in the circumstances of this case, conduct likely to destroy or seriously damage the relationship of trust and confidence. The tribunal therefore concludes that this matter did not amount to a breach of the implied term of trust and confidence.

- g) **On 6 July 2023, Michele Devlin sending the claimant home and instructing her to work from there.**

There is no dispute that the claimant did not attend work on 6 July 2023, having been unable to sleep the previous night. However, the tribunal was presented with no evidence that Michele Devlin sent the claimant home or instructed her to work from home. In the absence of any such evidence, the tribunal is unable to find that the alleged conduct occurred. Accordingly, the tribunal concludes that this allegation is incapable of establishing conduct likely to destroy or seriously damage the relationship of trust and confidence between employer and

employee and therefore cannot amount to a breach of the implied term of trust and confidence.

- h) **On 24 July 2023, the claimant receiving an email from Think People, HR consultants engaged by the Respondent, informing her of a disciplinary investigation against her.**

As set out in the findings above, the claimant received an email from Think People on 24 July 2023 informing her of a disciplinary investigation. The tribunal has found that the respondent had received a number of stakeholder concerns and had sought external HR advice regarding the appropriate way to address those concerns. In those circumstances, the respondent had reasonable and proper cause to initiate an investigation and to inform the claimant accordingly. The email was procedural in nature, did not amount to a finding of wrongdoing, and merely notified the claimant of the process that was to follow. The tribunal finds that such conduct was not likely to destroy or seriously damage the relationship of trust and confidence between the parties. Accordingly, the tribunal concludes that it did not amount to a breach of the implied term of trust and confidence.

- i) **From 25 July 2023, the claimant being put on a statutory sick pay.**

As set out in the findings above, the claimant was placed on statutory sick pay from 25 July 2023 during a period of sickness absence. The tribunal is satisfied that the respondent acted in accordance with its contractual and statutory obligations when administering the claimant's sick pay entitlement. There is no evidence that the decision was punitive, targeted at the claimant, or intended to undermine her position. In those circumstances, the tribunal finds that the respondent had reasonable and proper cause for its actions. The conduct was therefore not likely to destroy or seriously damage the relationship of trust and confidence between the parties and did not amount to a breach of the implied term of trust and confidence.

- j) **From 29 July 2023, Michele Devlin publicly sharing photographs of herself attending Belfast Pride wearing a “trans-inclusive feminist” t-shirt.**

There is no dispute that Michele Devlin attended Belfast Pride on 29 July 2023 wearing a t-shirt bearing the slogan “Stand By Your Trans” and subsequently posted a photograph on X/Twitter. The tribunal finds that the post was removed shortly afterwards. The tribunal does not consider this conduct, viewed objectively and in context, to have been likely to destroy or seriously damage the relationship of mutual trust and confidence. The post did not refer to the claimant, criticise her, or invite any adverse treatment of her. Rather, it reflected Ms Devlin's attendance at a public Pride event and was consistent with the respondent's stated commitment to LGBTQI+ inclusion. There is no evidence that the conduct was directed at the claimant or intended to undermine her position. In the circumstances, the tribunal concludes that it did not amount to a breach of the implied term of trust and confidence.

- k) **On 3 August 2023 Michele Devlin texting the claimant to ask for the return of her office keys.**

As set out in the findings above, the tribunal finds that Michele Devlin requested the return of the claimant's office keys because the claimant was absent from work, there were only two sets of keys available, and the respondent required access to the premises for operational purposes. The request was made in a practical and routine manner and was limited to securing access for an upcoming event. In those circumstances, the respondent had reasonable and proper cause for making the request. The tribunal therefore finds that the request was not conduct likely to destroy or seriously damage the relationship of trust and confidence between the parties. Accordingly, the tribunal concludes that it did not amount to a breach of the implied term of trust and confidence.

- l) **On 12 October 2023, the respondent publishing its Festival programme for November 2023 omitting any mention of the claimant's name.**

As per the findings of fact above, the tribunal finds that the claimant's name was omitted from the November 2023 festival programme because she was absent on sick leave and had not been involved in the preparation or delivery of the event. The respondent required the programme accurately to reflect those actively engaged in the festival's organisation. The decision was therefore an operational and administrative one for which the respondent had reasonable and proper cause. There is no evidence that the omission was motivated by hostility towards the claimant, was punitive in nature, or was intended to undermine her position. The tribunal finds that the publication of the programme without reference to the claimant was not conduct likely to destroy or seriously damage the relationship of trust and confidence between employer and employee and therefore did not breach the implied term of trust and confidence.

- m) **On 4 July 2024, the claimant receiving the outcome of her grievance. The outcome did not uphold her grievance to any meaningful extent.**

The tribunal does not accept that the grievance outcome of 4 July 2024, which rejected the claimant's grievance in all material respects, was conduct likely to destroy or seriously damage the relationship of mutual trust and confidence.

The tribunal has found that the grievance was investigated with involvement from independent external HR consultants, that extensive evidence was gathered and considered, that the claimant was afforded a full opportunity to present her complaints, and that a reasoned outcome was provided. The claimant was also afforded, and exercised, a right of appeal.

Whilst the claimant was dissatisfied with the outcome, an employer does not breach the implied term of trust and confidence merely because it rejects an employee's grievance. The tribunal has already found that the grievance and appeal processes were conducted independently and impartially, that there was no evidence of bias, predetermination or improper influence, and that the claimant's political opinion played no part in the manner in which the processes were conducted.

The grievance outcome represented the conclusion of an internal process established to investigate and determine the claimant's complaints. The fact that the claimant's allegations were largely not upheld is insufficient, without more, to amount to conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence. Accordingly, the tribunal concludes that the grievance outcome of 4 July 2024 did not constitute a breach of the implied term of mutual trust and confidence.

**n) On 21 November 2024, the claimant receiving the outcome of her grievance appeal.**

For the reasons given above, the tribunal concludes that the grievance appeal outcome of 21 November 2024 did not constitute a breach of the implied term of mutual trust and confidence.

**o) The respondent's delay in determining the claimant's grievance and grievance appeal.**

As per the findings of fact above, the tribunal accepts that there were delays in determining both the claimant's grievance and subsequent appeal. The original grievance hearing could not proceed due to the claimant's sickness absence. Thereafter, the respondent appointed independent external HR consultants and, with the agreement of the parties, the grievance proceeded by way of a paper-based process. The grievance involved extensive documentation, detailed submissions from the claimant, multiple witnesses and a substantial evidential review.

The tribunal has already found that the grievance and appeal processes were conducted independently and impartially, with involvement from external HR professionals, and that there was no evidence of bias, predetermination or improper influence. The claimant was afforded a full opportunity to present her complaints and was provided with a right of appeal, which she exercised.

While the delays were regrettable, the tribunal is satisfied that the delays arose from the claimant's sickness absence, the volume and complexity of the issues under consideration, and the respondent's efforts to conduct a thorough and independent investigation. They did not arise from any intention to disregard, undermine or frustrate the claimant's complaints.

Accordingly, the tribunal concludes that the delay in determining the claimant's grievance and grievance appeal did not amount to conduct likely to destroy or seriously damage the relationship of mutual trust and confidence and did not constitute a breach of the implied term.

**p) The respondent failing to make any referral of the claimant to its Occupational Health provider until November/December 2023.**

The tribunal accepts that the claimant was not referred to Occupational Health until approximately five months after commencing sickness absence. However, it does not consider that delay to be conduct likely to destroy or seriously damage the relationship of mutual trust and confidence. As per the findings of fact, the respondent was a small organisation with limited administrative

resources and no dedicated HR function. There was no evidence of any policy or established practice requiring an earlier referral.

Whilst the delay may have caused frustration, there is no evidence that it was motivated by hostility towards the claimant. The tribunal therefore concludes that the delay did not amount to a breach of the implied term of trust and confidence.

263. While the tribunal has made individual conclusions on each act relied upon, the tribunal also has considered the matters cumulatively. The tribunal has not treated the individual rejection of each allegation as determinative of the cumulative case. It has considered whether the total course of conduct, including the public statement, stakeholder communications, investigation, systems-access failures, sickness-pay position, removal from the programme, grievance process and delay, cumulatively amounted to conduct calculated or likely seriously to damage or destroy mutual trust and confidence.
264. Viewed cumulatively, the tribunal accepts that these matters would reasonably have caused the claimant considerable distress and may have contributed to her perception that the respondent was not adequately supporting her. However, the tribunal finds that the respondent's actions were largely directed towards addressing stakeholder concerns, maintaining organisational operations and responding to issues which had arisen unexpectedly within a very small organisation. While certain aspects of the respondent's conduct were imperfect, the tribunal is not satisfied that, either individually or cumulatively, the respondent acted without reasonable and proper cause or conducted itself in a manner likely to destroy or seriously damage trust and confidence.
265. The claimant relies upon the grievance appeal outcome of 21 November 2024 as the "last straw" giving rise to her resignation and claim of constructive dismissal. The tribunal does not accept that contention.
266. The tribunal has found (at paragraphs 219-221) that both the grievance and appeal were conducted by independent external HR consultants. The claimant was afforded a full opportunity to present her complaints and supporting evidence. Her submissions were considered in detail and she was provided with reasoned written outcomes at both stages.
267. The tribunal has further found that the grievance and appeal processes were independent, impartial and free from bias. There is no evidence that the decision-makers acted under improper influence, approached the matter with a closed mind or was motivated by the claimant's political opinion.
268. While the claimant disagreed with the conclusions reached, dissatisfaction with the outcome of a grievance or appeal is not, without more, capable of amounting to a breach of the implied term of mutual trust and confidence. The tribunal accepts that certain observations contained within the appeal outcome were critical of the claimant's account of events. However, those comments formed part of the appeal panel's assessment of the evidence and do not demonstrate hostility, bias or bad faith. The appeal outcome also expressly acknowledged that there was no evidence to support allegations that the claimant's beliefs were transphobic or fascist and recognised her entitlement to participate in lawful public events.

269. Viewed objectively, the grievance appeal outcome represented a genuine and reasoned determination of the claimant's complaints following an extensive investigation. Further, the tribunal finds that there was no earlier conduct amounting to a repudiatory breach of contract which could be revived by the grievance appeal outcome. As the tribunal has found that none of the matters relied upon by the claimant, whether considered individually or cumulatively, amounted to a breach of the implied term of trust and confidence, the grievance appeal outcome could not operate as a "last straw" capable of transforming non-repudiatory conduct into a repudiatory breach.
270. For the reasons set out above, the tribunal finds that the claimant has not established that the respondent committed a repudiatory breach of contract.
271. Accordingly, the claim of constructive dismissal fails and is dismissed.

## **CONCLUSION**

272. For all the reasons set out above, all the claimant's claims are therefore dismissed.



**Employment Judge:**

**Date and place of hearing: 10-21 November 2025, Belfast.**

***This judgment was issued to the parties on: 17 July 2026***

***This judgment will be entered in the register within 21 days.***