

LSE-FEATHERSTONE SEXUAL ORIENTATION & GENDER IDENTITY MOOT
PROBLEM 2025

1. The Appellant is Jax James ('JJ'). JJ is a 25-year-old primary school teacher. JJ identifies as "*gender queer*" and uses she/her, they/them and he/him pronouns when JJ feels most associated with a particular gender. JJ does not identify as "*non-binary*" as it does not reflect the level of fluidity in JJ's gender identity.
2. On 20 April 2023, JJ entered 'Oxingham Cakes', a local cake shop. JJ spoke to the manager and asked for a cake to serve 100 people, with the inscription, "Non-Binary Awareness Day". The manager agreed to make the cake with the inscription.
3. The next day the manager phoned JJ and asked for the delivery address. JJ asked for the cake to be delivered to Oxingham Primary School. The manager asked whether the cake was for primary school students, and JJ confirmed it was for an event celebrating non-binary awareness day at the school.
4. The manager, whose nephew attended the primary school, raised concerns about JJ "*indoctrinating children*" into "*a contested gender ideology*". JJ replied stating that "*my gender is my identity, not an ideology*" and that it was none of the manager's business what the cake would be used for, and that a refusal would be discriminatory based on JJ's identity as being "*gender queer*". JJ explained what it means to JJ to be gender queer and that JJ uses he/him, she/her and they/them pronouns and that JJ's gender was fluid and changeable.
5. The manager stated that he had sincere concerns about the message on the cake in light of its intended audience. He stated that he would make a cake for JJ but would not include the text on the cake. The manager stated that he believed that there were only men and women and that anything else "*would confuse*".
6. JJ agreed (under protest) to the cake being sent without the writing on it stating that "*I have no choice as it is too late to order an alternative cake for so many people*". When the cake arrived at the school on 27 April 2023, it was addressed to a **Mr** Jax Jones. The box with the cake was seen by several pupils, who then referred to JJ as "Mr" jokingly thereafter. JJ felt humiliated by this.
7. JJ brought a claim in the County Court against Oxingham Cakes for breach of section 29 Equality Act 2010. In particular, JJ argued that Oxingham Cakes had:
 - i. Ground 1: Directly discriminated (section 13 Equality Act 2010) against JJ because of JJ's protected belief (section 10 Equality Act 2010) that non-binary identity is real and valid
 - ii. Ground 2: Harassed JJ by using 'Mr' on the cake box, in breach of section 26 Equality Act 2010, with the relevant protected characteristic being "*gender reassignment*" (section 7 Equality Act 2010).

8. Judge Garlick at Oxingham County Court dismissed both claims following a trial on 31 October 2024.

9. In his judgment, Judge Garlick held:

“In respect of Ground 1, I find that the Claimant’s belief that non-binary identity to be real and valid to be a protected belief as it satisfies the Grainger criteria. I am also prepared to accept that the refusal was because of a dislike for JJ’s protected belief. However, the manager of the shop also has the right not to be compelled to speak and appears to have had sincerely held concerns about the message on the cake being delivered to an audience of primary school pupils. I note that he originally agreed to provide the cake with the message, and it was only when he found out the intended audience for the message that he refused. He also did not deny the service outright but provided the cake without the message on it. Therefore, considering section 13 Equality Act 2010 read with Articles 9 and 10 ECHR, I find that the Claimant’s claim of direct discrimination is not made out.

In respect of Ground 2, I can deal with that quite quickly: “gender queer” does not come within the protected characteristic of “gender reassignment” under section 7 Equality Act 2010 and therefore there is no relevant protected characteristic for the purposes of the harassment claim. It fails at the first hurdle.”

10. JJ has been granted permission to appeal to the High Court on two grounds/issues:

Ground 1: Whether the Judge misapplied section 13 Equality Act 2010

Ground 2: Whether being ‘gender queer’ comes within section 7 Equality Act 2010

End of Problem