



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Corby

**Respondent:** Advisory, Conciliation and Arbitration Service

**Heard in Leeds**

**On: 4, 5 and 6 September 2023**

**Before:** Employment Judge Ayre  
Ms BR Hodgkinson  
Mr M Taj

## Representation

**Claimant:** Mr J Holbrook, counsel

**Respondent:** Mr A Tinnion, counsel

# JUDGMENT ON PRELIMINARY ISSUE

The unanimous decision of the Employment Tribunal is that the claimant's beliefs on race and racial equality fall within section 10(2) of the EQA and are a protected philosophical belief, but the claimant's views on sex/feminism do not.

# REASONS

## Background

1. This judgment was delivered orally to the parties on 6 September 2023. The claim is ongoing and is, at the date upon which this judgment is sent to the parties, part

heard. At the request of the claimant, however, and in the absence of any objection from the respondent, this written judgment is being promulgated and sent to the parties now.

2. On the 23 September 2022 the claimant issued this claim following a period of early conciliation that started on 2 August 2022 and ended on 13 September 2022. The claim form included complaints of discrimination on the grounds of religion and belief.
3. Following a Preliminary Hearing on 14 February 2023, the case was listed for a final hearing on 4 to 7 September 2023. It was agreed at the start of that hearing that the question of whether the claimant's beliefs fall within section 10(2) of the Equality Act 2010 would be considered as a preliminary issue.
4. We heard evidence from the claimant on that issue. There was an agreed bundle of documents running to 1021 pages, and an additional bundle, referred to as 'Bundle C' which was admitted, by consent, at the start of the hearing. Both parties made submissions, and Mr Holbrook submitted a written opening submission.
5. On the first day of the hearing the Tribunal considered applications from the claimant to amend his claim and to introduce a supplemental witness statement. For reasons which have already been provided orally to the parties, and which will be set out in writing in the judgment on the substantive issues in the claim, the application to amend the claim was refused. The claimant was allowed to rely upon part of his supplemental witness statement, which included a section providing more information about the beliefs he relies upon for the purposes of this claim.

### **Issues**

6. The issues that fell to be determined in relation to the question of philosophical belief were the following:
  1. Did the claimant hold a philosophical belief falling within section 10(2) of the Equality Act 2010? The claimant alleged that his philosophical belief is a challenge to critical theory in general and, on the issue of race, a belief in the importance of character over race, and specifically that:
    - i. The 'woke' or 'critical theory' approach to racism is misconceived in that its belief in structural racism is divisive because it sees white people as a problem that can result in separatism, segregation and ethnocentrism;
    - ii. The better approach is that of Martin Luther King which desires a society where people are judged by the content of their character rather than the colour of their skin, and which emphasises what people of all races have in common;
    - iii. It is unhelpful to view social problems through feminist eyes, such as the view that high male suicide rates are unimportant.

2. Are the claimant's beliefs:
  - i. A belief, ie more than a view or an opinion?
  - ii. A belief on a weighty and substantial aspect of human life and behaviour;
  - iii. Sufficiently cogent, serious, cohesive and important; and
  - iv. Worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others.
3. The respondent admits that the claimant's views are genuinely held and is neutral on issues (ii) and (iv) above. It contends however that the beliefs are views or opinions, and do not attain the necessary level of cogency and cohesiveness.

### **Findings of fact**

7. We make the following findings of fact on a unanimous basis.
8. The claimant is employed by the respondent as an individual conciliator, and his employment is ongoing. The claimant describes his race as white, and the race of his wife and children as black.
9. In his claim form to the Tribunal, the claimant described his philosophical beliefs as being an opposition to critical theory in general, and, on the issue of race, as the importance of character over race:
  1. In relation to race, he believes that the 'woke' approach to racism is misconceived in that its belief in structural racism is divisive because it tends to see white people as a problem that can result in separatism, segregation and ethnocentrism. The Claimant prefers the approach of Martin Luther King which he says desires a society where people are judged by the content of their character, rather than the colour of their skin. This approach, in the claimant's view, emphasises what people of all races have in common, namely their humanity and capacity to support a shared national culture.
  2. Sex/feminism: the claimant believes that it is unhelpful to view social problems through feminist eyes, such as the initial view of at least one feminist that high male suicide rates were unimportant.
10. The claimant was questioned in detail about his beliefs and was able to explain them with some clarity to the Tribunal, save in relation to the question of sex and feminism. Although in his witness statements he at times referred to his beliefs on race as being views or opinions, this was in our view merely semantics, and we find that the claimant does hold a genuine belief which is an important part of his identity and affects the way in which he lives his life. The words 'view' and 'opinion' could indeed

be considered in some circumstances as synonyms for the word 'belief'.

11. The claimant has clearly thought carefully about the question of race, which is an important part of his life, given in particular his experience being married to a black woman and the father of black children. He has read widely on the subject of race and discrimination, and his beliefs arise not just from his own personal experience, but also from what he has read.
12. During his teens the claimant lived for a period with a black woman who people still refer to as his 'other mother'. He studied the trumpet in America, was previously a professional musician and regularly plays with black musicians. Earlier in his life he worked as a youth worker in Brixton and his role involved working with many black young people. In 2019 he married a black woman in a West Indian style wedding, and he describes his children as black. Throughout his life therefore the claimant has spent large amounts of time with black people and formed close relationships with them.
13. It is apparent from the claimant's evidence, and in particular from the posts that the claimant placed on Yammer, that his beliefs are the result of careful consideration and much thought. The claimant's beliefs are heavily influenced by the teachings of Martin Luther King who is widely considered by many to be a leading figure in the anti-racism movement.
14. In his Yammer posts the claimant quoted from and referred to the teachings of a number of black people including Howard Thurman, who he described as a Theologian, Philosopher, Civil Rights and Social Justice Leader, Author and Mystic; Chimamanda Ngozi Adichie, a leading Nigerian author and activist, and Ayishat Akanabi.
15. The claimant's belief on the question of race can best be summarised as the view that the cause of racial equality is best advanced not through separatism and segregation but by valuing people based on character rather than race. The claimant does not believe that immutable characteristics such as race should be used to pit one group against another.
16. The claimant is strongly opposed to ethnocentrism, which he describes as the view that any person has an overarching allegiance or innate kinship with an ethnic group, and that that is the most important and overriding prism through which they see themselves and others. He is also opposed to ethnonationalism, which he describes as a belief that the ethnic group that one belongs to is superior to other ethnic groups. He describes himself as a 'traditional anti-racist' who is opposed to what he calls 'wokism'.
17. In contrast with his views on race and racism, the claimant was unable to explain coherently, when asked during the course of his evidence, his views on sex and feminism. Those views appear to be a response to an article written by a particular feminist which the claimant interpreted as suggesting that male suicide rates were not important. The claimant admitted that could not say whether he considered

himself to be a feminist or not and that he had not read much on the subject.

18. The claimant told the Tribunal that the claim he is bringing is not about feminism, but rather about his overall opposition to what he describes as identity politics, which pits groups against each other based upon immutable characteristics such as race or gender. It is clear to us, from the evidence before us, that the focus of the claimant's case is about race and racism.

## The law

### Philosophical belief

19. Section 10 of the Equality Act 2010 ("**the EQA**") defines the protected characteristic of religion or belief as follows:

*"(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.*

*(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.*

*(3) in relation to the protected characteristic of religion or belief –*

*(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;*

*(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief."*

20. Article 9 of the European Convention on Human Rights (Freedom of thought, conscience and religion) provides that:

*"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

*2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

21. Article 10 (Freedom of expression) states that:

*"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...*

*2. The exercise of these freedoms, since it carries with it duties and responsibilities,*

*may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention or disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

22. In **Gray v Mulberry Co (Design) Ltd [2020] ICR 715**, the Court of Appeal held that, before deciding whether a belief is protected by the Equality Act, it is essential that the Tribunal defines exactly what the belief is. In **Forstater v CGD Europe and others [2022] ICR 1**, however, the EAT noted that in many cases it is not possible to encapsulate a belief in a few words, and that consideration of the core elements of a belief is sufficient.
23. In **Grainger plc and ors v Nicholson [2010] ICR 360**, the EAT found that a belief in climate change and the need to avoid climate change was a protected belief. It issued guidance to Tribunals on determining questions of philosophical belief and identified five criteria that must be met in order for a belief to fall within section 10(2) of the EQA. Those criteria are that the belief:
  1. Is genuinely held;
  2. Is not merely an opinion or viewpoint based on the present state of information available;
  3. Concerns a weighty and substantial aspect of human life and behaviour;
  4. Attains a certain level of cogency, seriousness, cohesion and importance; and
  5. Is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others.
24. The **Grainger** criteria have been incorporated in the Equality and Human Rights Commission’s Code of Practice on Employment.
25. When considering the question of whether a belief is protected by section 10 of the EQA the Tribunal should not fall into the error of deciding the merits or validity of the claimant’s beliefs (**Forstater**) and the Tribunal should remain neutral on that issue.
26. The Tribunal is required, when interpreting section 10 of the Equality Act 2010, to do so in line with the European Convention on Human Rights, and in particular, Articles 9 and 10 of the Convention.
27. We were referred by the parties in their submissions to the following cases, which we have considered when reaching our decision:
  1. **Grainger plc and ors v Nicholson [2010] ICR 360**
  2. **Gray v Mulberry [2020] ICR 715**

3. **McLintoch v Department of Constitutional Affairs [2008] IRLR 29**
4. **R v Secretary of State for Education and Employment ex parte Williamson [2005] HRLR 14**
5. **Forstater v CGD Europe and others [2022] ICR 1**
6. **Page v NHS Trust Development Authority [2021] EWCA 255**
7. **Higgs v Farmor's School [2023] EAT 89**

#### The Grainger tests

28. The first of the Grainger tests is that the belief must be genuinely held by the claimant. That is not in dispute in this case.
29. The second test is that the belief must be more than just an opinion or a viewpoint. In **McClintock v Department of Constitutional Affairs [2008] IRLR 29**, the EAT held that a Justice of the Peace who objected to hearing cases involving adoptions by same sex couples did not have a protected belief because his belief was not based upon a religious or philosophical viewpoint. It was not sufficient for the claimant to have 'an opinion based on some real or perceived logic or based on information or lack of information available'.
30. The third of the Grainger tests is that the belief must concern a weighty and substantial aspect of human life and behaviour. In **R (Williamson and others) v Secretary of State for Education and Employment**, Lord Nicholls held that the belief must relate to matters that are 'more than merely trivial', must 'possess an adequate degree of seriousness and importance' and must be 'a belief on a fundamental problem'. The belief must therefore be of general importance.
31. The fourth test is that the belief has cogency, seriousness, cohesion and importance. In **Grainger** Mr Justice Burton appeared to suggest that cogency means that beliefs possess consistent internal logic and structure. In **Williamson** Lord Nicholls held that 'cohesion' means that the belief must be 'intelligible and capable of being understood', which is not a high burden.
32. In the first instance case of **Charalambous v Barnsley College 1802552/2021** the Employment Tribunal held that the criteria of cogency and coherency were not satisfied in relation to the claimant's lack of belief in the Black Lives Matter movement ("BLM"), which the claimant maintained was a Marxist movement. The Employment Judge's focus in reaching the decision was on whether a belief in BLM was protected by section 10 of the EQA, and the Judge concluded, on the evidence, that BLM is 'an umbrella description of an amorphous and undefined set of political opinions broadly concerning the question of racism and how it should be tackled'.
33. The final **Grainger** criterion is that the belief is worthy of respect in a democratic society, is not incompatible with human dignity and does not conflict with the

fundamental rights of others. In *Williamson* Lord Nicholls interpreted this as meaning that the belief should be 'consistent with basic standards of human dignity or integrity'. In *Forstater* the EAT held that the types of belief that are excluded by the fifth principle are limited to the 'most extreme' beliefs similar to Nazism or totalitarianism, or which incite hatred or violence, and that beliefs which are merely offensive or shocking can still qualify for protection.

34. The Grainger criteria have been described as 'modest, objective minimum requirements' and the bar should not be set too high, so as to deprive the holders of beliefs that are considered 'minority beliefs' of the protection of Convention rights.

### **Conclusions**

35. The following conclusions are reached on a unanimous basis, having considered carefully the evidence before us, the submissions of the parties and the relevant legal principles.

36. In reaching our conclusions we have reminded ourselves that it is not for us to form any view on the merits or otherwise of the claimant's beliefs, and we do not do so.

37. We have no hesitation in finding that the claimant's beliefs are genuinely held. His evidence was consistent, and backed up by his own lived experience, by careful thought and consideration and by considerable research and reading. He clearly believes strongly in what he describes as his philosophical beliefs. Indeed the respondent accepted as much and did not seek to argue that the claimant's beliefs were anything other than genuinely held. We therefore find that the claimant passes the first of the Grainger tests in relation to both his views on race and on sex/feminism.

38. Turning now to the second of the Grainger criteria – were the beliefs merely opinions or viewpoints or can they best be characterised as beliefs. Mr Tinnion submitted on behalf of the respondent that the claimant's views were just that, and were not beliefs. He referred in support of this argument to the fact that the claimant had used the word 'view' in his witness statements.

39. Mr Holbrook submitted that the beliefs were based on principle, and anchored in a belief system that satisfies the other Grainger criteria. The claimant's beliefs were, he said, grounded in a philosophical system, and his comments and posts all stemmed from that system.

40. We prefer the submissions of Mr Holbrook on this issue, save in relation to the question of sex/feminism.

41. Based on the evidence before us, we find that the claimant has a deeply held and carefully considered belief that can be summarised as being that the cause of racial equality is best advanced not through separatism and segregation but by valuing people based on character rather than on race. His beliefs are based on the teaching and writings of a number of individuals, including Martin Luther King.



42. The claimant's beliefs on race therefore satisfy the second Grainger criteria.
43. On the question of sex/ feminism however, they do not. We find that the claimant's response to the article in question, whilst genuine and understandable in light of his personal experience, was an opinion rather than based on an underlying philosophical belief. It relates to a very narrow issue – comments made by one particular individual about male suicide, and the claimant was not able to articulate more generally his views on sex and feminism. We do not accept Mr Holbrook's submission that the claimant's views on sex form part of the same underlying belief system as those on race.
44. The views that the claimant objects to are the views of one particular author, as expressed in an article referred to by the claimant in a Yammer post. Those views cannot in our view be said to be those of feminists in general or part of a general belief that male suicide is not important. They are the personal views of one individual.
45. The claimant's views on race and racial equality therefore pass the second of the Grainger tests, but his views on sex/feminism do not.
46. The third of the Grainger tests is whether the beliefs relate to a weighty and substantial aspect of human life and behaviour. We have no hesitation whatsoever in finding that his views on race and racial equality do, and indeed the respondent did not seek to argue the contrary.
47. Questions of race and racial equality are clearly important as they affect large proportions, if not all of the population, and relate to equality and justice. Parliament has seen fit to pass legislation outlawing race discrimination in employment and other areas of life, and there are many organisations that have been set up to fight racism. It would be difficult to conceive of the possibility that questions of race and racial equality would not be considered as weighty and a substantial aspect of human life and behaviour. They are clearly more than 'trivial'. The claimant therefore passes the third Grainger test.
48. Turning now to the fourth of the Grainger tests, we have considered whether the claimant's beliefs attain the required level of cogency, seriousness, cohesion and importance.
49. Mr Tinnion did not seek to argue that the claimant's beliefs were not serious or important, and indicated that the respondent was neutral on those questions. In light of our findings on the third Grainger test, we also find that the claimant's beliefs were serious and important. They strongly influence how he lives his life and relate to important matters of human behaviour that affect society, namely race and racial equality. There can be no doubt that the claimant's beliefs are serious, in light of the amount of time and effort he has spent in considering and expressing them.
50. On the question of cogency, Mr Tinnion suggested that the beliefs lacked cogency, and contrasted the claimant's belief with a belief in Marxism, which he said was

cogent and coherent because, amongst other things, the belief addresses many features of human society.

51. Applying the approach taken by Mr Justice Burton in **Grainger**, we have considered whether the claimant's beliefs possess consistent internal logic and structure. We find that they do. There was no inconsistency in the beliefs as expressed to us during the claimant's evidence, and the beliefs are in our view logical and structured, being based upon considerable thought and research as well as lived experience.
52. We also find that the beliefs on race were coherent. The claimant has expressed them clearly and they are capable of being understood. The claimant has therefore satisfied the fourth Grainger principle also.
53. The final question is whether the claimant's beliefs are worthy of respect in a democratic society, are not incompatible with human dignity and do not conflict with the fundamental rights of others. This is not a high hurdle to overcome and, following the **Forstater** decision, it is only "*those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms, that should be capable of not worthy of respect in a democratic society. Beliefs that are offensive, shocking or even disturbing to others, and which fall into the less grave forms of hate speech would not be excluded from the protection*" (para 79 of the EAT judgment).
54. The claimant's beliefs relate, in essence, to the best way of eliminating racism in society, and are clearly worthy of respect. They cannot be described as incompatible with human dignity or conflicting with the fundamental rights of others, even if they are not universally shared and were objected to by some of the claimant's colleagues.
55. For these reasons we find that the claimant's beliefs on race and racial equality are protected by section 10 of the Equality Act 2010 as a philosophical belief, but that his beliefs on sex/feminism are not.



Employment Judge Ayre

Date: 11 September 2023

JUDGMENT SENT TO THE PARTIES ON  
13 September 2023



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