



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Powell

**Respondent:** Marr Corporation Limited

**Heard at:** Bristol

**On:** 1 & 2 February 2018

**Before:** Employment Judge Maxwell  
Ms Ramsaran  
Mr Hancox

## **Representation**

**Claimant:** Mr Stroilov, Advice Centre Representative

**Respondent:** Mr Lomas, Consultant

# JUDGMENT

1. The claimant's claim of harassment related to her religion or belief is dismissed on withdrawal.
2. The claimant's claims of direct discrimination because of her religion or belief, with respect to the matters identified at paragraph 4.2.2 of the order of EJ Livesey on 4 April 2017, are dismissed on withdrawal.
3. The claimant's claim of direct discrimination because of religion or belief, with respect to dismissal, is not well founded and is dismissed.

# REASONS

## Introduction

4. The claimant's claims were presented by a claim form on 16 December 2016 and clarified in further and better particulars on 20 March 2017. The issues arising thereunder were identified by EJ Livesey in his order following a telephone case management hearing on 4 April 2017.
5. In closing submissions, Mr Stroilov for the claimant withdrew the claims of harassment and direct discrimination with respect to alleged procedural default. The claimant still, however, relied upon the factual complaints set out a paragraph 4.2.2 of EJ Livesey's order as evidential matters from which the employment tribunal might draw an inference that the decision to dismiss was tainted by discrimination on grounds of the claimant's religion or belief.
6. We heard evidence from the following witnesses:
  - 6.1. Mrs Svetlana Powell, the claimant;
  - 6.2. Ms Elizabeth Barker, the respondent's former Academy Manager;
  - 6.3. Ms Stacy Preston, the respondent's Human Resources Officer and disciplinary decision-maker;
  - 6.4. Mrs Sian Prigg, the respondent's Head of Human Resources and Talent.
7. We received an agreed bundle of documents, running to page number 223.
8. In his closing submissions, Mr Stroilov provided a copy of **Eweida v United Kingdom [2013] ECtHR 37**.

## Facts

### Background

9. The respondent teaches English, maths and 'employability' to 16 to 24 year olds with challenging behaviour. The claimant was employed from 9 May 2016 as a tutor.

Contract

10. The claimant's terms and conditions provided that her first six months of employment would be a probationary period and during this time the respondent's disciplinary procedure did not apply.

25 July 2016

11. On 25 July 2016, the claimant provided cover for a lesson that was ordinarily taught by another tutor, Andrew Spargo. At some point in the early afternoon, Elizabeth Barker, formerly the Academy Manager, was alerted to an altercation taking place in the claimant's classroom. When Ms Barker arrived the claimant and a learner, K, were having a heated discussion. Ms Barker asked the claimant to leave and she proceeded to speak to 5 of the 8 learners (3 had already left, it was unclear whether their departure was a 'walk out' or simply because break time had arrived).
12. Shortly after speaking with the learners, Ms Barker recorded events in an email at 3.26pm on 25 July 2017:

**I was called to a disturbance in the classroom where Svetlana was covering today. There was shouting match between a learner and Svetlana. I pulled a group of 5 learners out of the classroom to fact find about the events of the day as I had been informed minutes earlier there was a potential issue.**

**These are the statements the learners made to me in private;**

**They have been preached at all day about Christianity, they feel brainwashed**

**In 1;1 sessions [K] has had there were always religious talks, he knows Svetlana is divorced and details about her children**

**[K] stooped[sic] attending 1;1's as Svetlana told him he was a bad Christian for believing in homosexuality**

**Told all of the learners today they will never be happy until they accept god All other religions are wrong and made up**

**[R] (openly gay) will be going to hell if she does not repent her sins**

**Her opinions are always right because she is the teacher**

**Compared homosexuality to murder**

**Said all learners have been brainwashed by atheist teachers**

**Made [H] repeat the prayer of repentance before he was allowed to leave his 1;1 sessions with her.**

**There is quite a bit more but I had heard enough to send everyone home at that point.**

**Please advise!!**

13. Ms Barker also received complaints by telephone from R's mother and K's grandfather.

14. Whilst Ms Barker said in her evidence the respondent did not have a copy of the lesson plan, we are satisfied that at the time of these events it must have done. Stacey Preston, the respondent's Human Resources Officer and the person who decided to dismiss the claimant, did have sight of it, since she read from it at the disciplinary hearing. The lesson plan included "employability" and "any important or relevant topics".

26 July 2016

15. The following morning Ms Barker called the claimant into a meeting to ask her about the events of the day before, and in particular to put to her the learners' accounts. Ms Barker summarised her meeting with the claimant in an email at 9.04am, on 26 July 2016:

**So I discussed the concerns I had about how the day went yesterday in terms of feedback I have received from learners after walking in on a shouting match between Svetlana and [K] (learner). I had taken notes after meeting with the learners and addressed each point with Svetlana. I explained by the time I met with the learners they were angry and frustrated with the way the day had gone and they felt they had been brainwashed and preached to all day. Svetlana said that had never been her intention, but also agreed that the conversations all day about religion were inappropriate. Learners are here to learn maths, English and employability and any personal opinions are not suitable for classroom discussions.**

**I addressed each point the learners had made with Svetlana, the general feeling from Svetlana was that [K] had deliberately set out cause trouble, I agreed that whilst this MAY have been the case, as a professional teacher you should never allow yourself to be drawn into that. Svetlana agreed.**

**I pointed out that a vulnerable young person had gone away today with the idea in her head that she was going to burn in hell if she was gay and that another learner that they would never be happy in life until they accepted God. Svetlana agreed this was distressing. I also explained that if parents call to explain [complain] I would inform them that as the learners had made a complaint I would be investigating further.**

**I left it with Svetlana that I would be re contacting HR and that I would let her know what's going to happen next. She is not teaching that group today, Nicola Lace is as the learners made it quite clear they would walk out if Svetlana was teaching.**

16. Whilst Ms Barker has produced a separate note of her meeting with the claimant on the morning of 26 July 2016, which she has given the heading "Investigatory Meeting with Svetlana Powell 26/06/07", we find the claimant was not told this was an "investigatory meeting" at the time, rather the she was asked for her comments on the 'feedback' from the learners.

17. Ms Barker approached HR in connection with this matter and was advised to suspend the claimant, which she did later day. The suspension was confirmed in a letter (sent by email) of 26 July 2016:

**I refer to your conversation of 26 July 2016 in which Liz Barker suspended you from your employment pending investigations into allegations of inappropriate conduct during a lesson in which you are alleged to have made inappropriate comments regarding religion and sexual orientation.**

**We have considered whether suspension is a necessary step in the circumstances of this case. Following consideration of alternatives to suspension, we have concluded that this is the most appropriate action at this time, subject to ongoing reviews. It does not mean that you have been, or will be found guilty of any particular offence or act of misconduct**

18. In a further letter (sent by email) of 26 July 2016, the claimant was required to attend a disciplinary hearing:

**[...] you are now required to attend a formal Disciplinary Hearing to be held on 27th of July 2016 at 11am at the Bristol Centre. The hearing will be conducted by myself. A member of management will also be present and will take notes of the hearing. The purpose of the Hearing is to consider an allegation of inappropriate conduct during a lesson in which you are alleged to have made inappropriate comments regarding religion and sexual orientation.**

**Enclosed with this letter please find the following documents:  
Minutes of your investigatory meeting**

**[...]**

**You are advised that if the allegation is believed to be proven, it will be considered Gross Misconduct under the company disciplinary rules and your employment maybe some early terminated.**

### Disciplinary Hearing

19. The claimant attended a disciplinary hearing on 27 July 2016, with Ms Preston as decision maker.
20. Ms Preston began by asking the claimant for her account of 25 July 2016. The claimant spoke of a discussion which began when learner K asked for her opinion on evolution versus creationism (albeit the latter term was not used expressly). K then proceeded to ask the claimant for her opinion on homosexuality. The notes include:

**[K] asked "what do you think about homosexuals?" I answered that according to the bible it is against God's will. He asked "What do you believe?" I replied that I believe the bible. I didn't know that one of the girls in class was gay [R], he knew this and that she was sensitive. I said that it doesn't matter but [K] kept saying "tell me, tell me" said that it is up to each person that I'm telling you what the bible says. [K] said "see, she**

thinks it is wrong" I replied again that it is up to her what she does and that God loves everyone. [R] then asks "so, if I'm gay, does that mean I will go to hell?" I replied "according to the Bible, we are all sinners, no difference who is what." [K] kept talking over me so I couldn't explain the balance. I said "God loves everyone, there are things God doesn't accept, for these we must repent, that's what the Bible says" I didn't want to continue the conversation any more. One of the girls then said "I want to have money, car, house and be happy" I said that material things don't make you happy there are more important things like peace and joy.

ST - did you say that you will burn in Hell?

SV - no not at all, I didn't mention Hell, that it is not God's will and we must repent if we don't follow the commandments, repentance is to admin[sic] we are doing something wrong.

ST - when you spoke to Liz (centre manager) on Monday, she said you admitted saying [R] would go to hell

SV - I said nothing about Hell during the comments and discussions. I believe it was [R's] assumption because everyone knows about heaven and hell. She was asking because she is gay, I'm a sinner to and I have to repent, everyone is doing different things, doesn't have to be specific.

21. Ms Preston then sent the claimant away whilst she spoke to the various learners. Their accounts varied, although there was support for the claimant having said: Christianity was the one true religion; they would not be happy until they accepted God; and that a discussion had begun on the subject of evolution before moving on to homosexuality. With respect to the latter topic, R did not recall the claimant saying she would go to Hell because she was lesbian, although K told her the claimant said this. The other learners variously reported: not hearing the claimant speak of homosexuality; understanding the claimant indirectly to have said or agreed that homosexuals would go to Hell if they did not repent; the claimant having said R would go to Hell because she was a lesbian.
22. Having obtained the learners' accounts, Ms Preston met again with the claimant. Ms Preston asked the claimant whether she felt she was in control, suggesting that K had manipulated the situation and she had lost control. The claimant replied that K had spoken over her and interfered. Asked how much experience she had as a teacher, the claimant said 16 years. Asked if she had anything else to add, the claimant said:

**I think that it is appropriate for me to share Christian views, I would like to say that teachers believe in different things and learners would ask to them and they would tell them what they believed by answering questions. So me answering questions is appropriate, if people don't believe in Christianity then they shouldn't be upset and people don't have to share my views. Why people felt this way was because one person wanted payback and if he wasn't there then this situation wouldn't have happened as he was pin pointing out my views.**

23. After an adjournment, Ms Preston informed the claimant of her decision to dismiss and the reasons for that, which included:

23.1. the claimant was dealing with vulnerable learners, had lost control and her comments hurt the learner's feelings;

23.2. the claimant admitted that K manipulated her and she failed to "descale";

23.3. The claimant had said she would still answer questions in the same situation and pull the learner aside and still make comments.

24. In response to Ms Preston's rationale, there was a further exchange, which included:

**SV - But they asked about my Christian view on that if I did believe, I won't lie**

**ST - It would be more appropriate to say not prepared to discuss.**

**[...]**

**ST - I know it's not easy but with 16 years experience you should have handled it better**

**SV - It was one person who started this**

**ST - It was your job to manage the situation**

**SV - I thought it was a genuine conversaron[sic]**

**ST - But at that opportunity you should have closed the conversation.**

**SV - But they were asking questions. If I was another religion I could have answered the questions**

**ST - No, this isn't about religion, not any religion. Voices were raised in your class, people walked out because they were uncomfortable, asked to drop it and still continued. You should have taken control and stopped the conversation. It escalated out of control.**

25. The claimant's dismissal was confirmed in a letter of 28 July 2016:

**Following our discussions, I have decided to dismiss you with effect from 27 July 2016. The reason for your dismissal is your failure to maintain control of the classroom, where a discussion you were facilitating resulted in raised voices and learners walking out of your lesson as a direct result of your comments. I feel that your following comments:**

**- That learners views are as a result of being taught by atheist teachers**

**- That learners will never be happy until they accept God**

- That the Bible states that homosexuality is a sin and sinners will go to hell unless they repent

Significantly strayed from the lesson plan that was set and I do not believe that the discussion you held falls within the remit of employability skills in relation to Diversity as you stated. I would have expected discussions of this nature to have centred on equal opportunities and discrimination within the workplace. The Company strongly refutes your claim made during our meeting that you have been dismissed for expressing your Christian beliefs. You have not been dismissed for holding any religious belief but for comments that you made during the discussion that have caused offence and resulted in both learner and parent complaints.

26. Reading the dismissal letter in light of the note of the disciplinary hearing, and having heard her evidence, we find Ms Preston decided to dismiss because:
- 26.1. the claimant allowed herself to be drawn into a conversation whereby she expressed her personal religious views;
  - 26.2. these views, in particular that on homosexuality, caused the learners, especially R, to become upset;
  - 26.3. the claimant allowed the situation to escalate and lost control of the class;
  - 26.4. complaints were made by learners and parents.
27. Whilst the respondent did not allow a formal appeal, the matters raised by the claimant in her letter of 3 August 2016 were considered by Sian Prigg, the respondent's Head of Human Resources and Talent. This consideration included a telephone meeting with claimant on 12 September 2016. Ms Prigg's decision was set out in her letter of 16 September 2016; she did not support the complaints made.

#### Comparator

28. The claimant relies upon Andrew Spargo as a comparator. Mr Spargo was the tutor she covered for on 25 July 2016, Mr Spargo's probationary period had been extended following the identification of concerns about his expression of political views and other conduct. In an email of 15 December 2015, Ms Barker wrote:

**When Andrew fist[sic] started with us, he made a comment that he is very politically minded at that it has "got him in trouble before". I was mindful of this going forward. Andrew has become more and more opinionated as the months have passed, he often gets into very heated debates with other members of staff over things such as why Christmas is just a commercial waste of time and why England is such a terrible country that kills thousands of civilians each year.**

Last week Andrew told a learner who he was struggling to manage to "get the fuck out of my classroom" twice, in front of the group.

To start with the learners found Andrews strong views quite amusing, but over time and after me conducting a focus group with them yesterday they are deeply unhappy and feels he preaches to them on a daily basis about how terrible England is and how many innocent people the government has killed, as well as why Jesus never existed. They feel this takes up more time than their maths and English sessions. The learners stated that he never lets them talk and belittles them if they try to have an opinion about anything.

Andy bought in his work last week for the learners to look at and it appears there was a sketch of a naked lady with her vagina showing (legs open) which the learners are currently talking about non-stop.

After meeting with Andy last Thursday, I told him his behaviour was unacceptable and referred to radicalisation, he said it "was his moral responsibility to educate these young people about the atrocities the English government is committing" and that they have been "brainwashed" to date. Andrew also stated that he wasn't happy to reinforce in a positive light any British culture.

29. In an email of 18 December 2015, Ms Barker confirmed that she had recent meetings with Mr Spargo, she would be extending his probation by three months, monitoring his classroom activity, conducting regular focus groups, and:

"Andrew now agrees that he talks about these subjects too often and in too much detail. He has agreed to leave his opinions at the door and purely focus on delivering maths, English and employability to the learners.

## Law

30. In the employment field and so far as material, section 39(2) of the **Equality Act 2010** ("EqA") provides:

(2) An employer (A) must not discriminate against an employee of A's (B) -

[...]

(c) by dismissing B [...]

31. Section 13(1) of the Equality Act 2010 provides:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

32. In this case the detriment of dismissal is admitted. We must, therefore, consider whether the claimant's dismissal was less favourable treatment than that which was or would have been received by an actual or hypothetical comparator. In making this comparison we must be sure to

compare like with like and particular to apply Section 23(1) of the **Equality Act 2010**, which provides:

**(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.**

33. Evidence of the treatment of an actual comparator who is not close enough to satisfy the statutory definition may nonetheless be of assistance since it may help to inform a finding of how a hypothetical comparator would have been treated.
34. The final question is whether any less favourable treatment was because of the claimant's protected characteristic:
  - 34.1. direct evidence of discrimination is rare and it will frequently be necessary for employment tribunals to draw inferences from the primary facts;
  - 34.2. if we are satisfied that the claimant's protected characteristic was one of the reasons for the treatment complained of, it will be sufficient if that reason had a significant influence on the outcome, it need not be the sole or principal reason;
  - 34.3. In the absence of a real comparator and as an alternative to constructing a hypothetical comparator, in an appropriate case it may be sufficient to answer the "reason why" question - why did the claimant receive the treatment complained of.
35. The burden of proof is found to be addressed in EqA section 136, which so far as material provides:
  - (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**
  - (3) But subsection (2) does not apply if A shows that A did not contravene the provision concerned.**
5. Although decided under the former legislative provision, the guidance appended to the decision of the Court of Appeal in **Igen v Wong [2005] IRLR 258** may still be of assistance.
6. When considering whether C has satisfied the initial burden of proving facts from which an ET might find discrimination, the ET must consider the entirety of the evidence, whether adduced by C or R; see **Laing v Manchester City Council [2006] IRLR 748 EAT**.
7. Furthermore, a simple difference in treatment as between C and his comparators and a difference in protected characteristic will not suffice to shift the burden; see **Madarassy v Nomura [2007] IRLR 246 CA**.

8. The burden of proof provisions will add little in a case where the ET can make clear findings of a fact as to why an act or omission was done or not; see **Martin v Devonshires Solicitors [2011] IRLR 352 EAT**, per Underhill P:

39. This submission betrays a misconception which has become all too common about the role of the burden of proof provisions in discrimination cases. Those provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination generally, that is, facts about the respondent's motivation (in the sense defined above) because of the notorious difficulty of knowing what goes on inside someone else's head "the devil himself knoweth not the mind of man" (per Brian CJ, YB Pas 17 Edw IV f1, pl 2). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law[...]

9. The approach in **Martin** echoes the approach adopted by Elias p in **Laing**:

75. The focus of the tribunal's analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, 'there is a nice question as to whether or not the burden has shifted, but we are satisfied here that even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race'.

76. Whilst, as we have emphasised, it will often be desirable for a tribunal to go through the two stages suggested in Igen, it is not necessarily an error of law to fail to do so. There is no purpose in compelling tribunals in every case to go through each stage. They are not answering an examination question, and nor should the purpose of the law be to set hurdles designed to trip them up. The reason for the two stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the Employer. But where the tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever."

36. The employment tribunal is also under a duty, so far as it is able, to construe domestic legislation in accordance with the **European Convention of Human Rights** ("ECHR"). Section 3(1) of the **Human Rights Act 1998** ("HRA") provides:

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

37. In the present case, the claimant relies upon ECHR Article 9:

Freedom of thought, conscience and religion

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.

## Conclusion

### Protected Characteristic

38. The parties agree that the claimant is a person of the Christian religion and has the religious belief of Christianity within EqA section 10(3)(a).

### Lesson Plan

39. We do not draw an adverse inference from the respondent's failure to disclose the lesson plan, which is most likely the result of the document being lost. In particular, we were not persuaded that the respondent had deliberately sought to conceal the lesson plan so as to strengthen its case before the employment tribunal; whilst the letter of dismissal refers to the claimant straying from the lesson plan, little of substance turns on the precise wording of that document.

### Comparator

40. We are not satisfied that Mr Spargo is a comparator falling within EqA section 23, rather there are the following material differences:

40.1. Mr Spargo did not lose control of a class in the way the claimant did, with a heated discussion spilling over into an altercation which required and attracted immediate intervention by the respondent's management;

40.2. no complaint in connection with Mr Spargo's lessons was made until Ms Barker proactively sought feedback from learners in a focus group;

40.3. whilst Mr Spargo initially asserted that he was obliged to express his views, fairly soon thereafter he agreed to "leave them at the door";

40.4. his views were not directed toward any particular individual in his class or their protected characteristics;

40.5. no particular individual felt that the comments were directed toward them;

40.6. there were no parental complaints.

Procedural Default

41. The claimant complains about the absence of a fair procedure in connection with her dismissal, in particular she takes issue with:
  - 41.1. the lack of an indication that her meeting on 26 July 2016 was investigatory;
  - 41.2. having insufficient time to prepare for a disciplinary hearing on 27 July 2016;
  - 41.3. failing to provide her with the complainants' accounts;
  - 41.4. failing to afford her a right of appeal.
42. Given the express non-applicability of the respondent's disciplinary procedure to the claimant during her probationary period, it does not follow that the fact of the respondent not following that procedure, or otherwise complying with the ACAS code, is evidence that she was treated less favourably because of her religious belief. This consideration would only assist in drawing an inference of discrimination where there was evidence that a comparator who did not have the claimant's religious belief would have been afforded more procedural protection.
43. Dealing with each specific complaint in turn:
  - 43.1. whilst we preferred the claimant's evidence that Ms Barker did not say it was an investigatory meeting, this seems to us a small matter and does not indicate less favourable treatment on the grounds of religious belief;
  - 43.2. as above, the respondent was not obliged to follow any disciplinary procedure and there was no evidence that a comparator called to a disciplinary hearing whilst on probation would have been afforded more time to prepare, and the claimant in this case did not ask for any more time;
  - 43.3. once again, there is no evidence a comparator would have been provided with the learners' accounts;
  - 43.4. once again, there is no evidence a comparator would have been provided with a right to appeal, or any greater right of appeal (the claimant was afforded a form of post dismissal review of that decision).
44. We did not, therefore, find that the procedural complaints supported an inference that the claimant was dismissed because of her religious belief.

Dismissal

45. The central issue is why did Ms Preston decide to dismiss the claimant and did this include, to any material extent, the claimant's religious belief.
46. We have looked carefully at the notes of the disciplinary meeting and dismissal letter. We also take into account our impression of Ms Preston as a candid witness, for example in accepting contrary to her earlier evidence that she must have had a copy of the lesson plan, when she was referred to a passage in the notes of the disciplinary which suggested this was read from. As set out above under the sub-heading "Facts", we find the claimant was dismissed because Ms Preston believed:
- 46.1. the claimant had allowed herself to be drawn into a conversation whereby she expressed her personal religious views;
  - 46.2. these views, in particular that on homosexuality, caused the learners, especially R, to become upset;
  - 46.3. the claimant allowed the situation to escalate and lost control of the class
  - 46.4. the claimant's conduct provoked complaints not only from learners but also parents.
47. Accordingly, we are able in this case to go directly to the reason why question and answer that. Ms Preston's reasons for deciding to dismiss did not include the claimant's religious belief.

Hypothetical Comparator

48. Although we have already answered the reason why question, we have gone on to test our conclusion by reference to a hypothetical comparator.
49. We are satisfied that if Ms Preston had presided over a disciplinary hearing involving a tutor who had discussed their strongly held political or religious views with learners, had allowed this to escalate into a shouting match with the result that a learner (or learners) became upset, in particular because those views were understood to be hostile to an individual learner's protected characteristic, that complaints were received from parents as well as learners, and at the disciplinary the tutor maintained their right to respond honestly in this regard during lessons, then they too would have been dismissed.

Article 9

50. We are satisfied that EqA section 13 is compatible with ECHR Article 9 of the ECHR. Firstly, we note that EqA section 13 is not the totality of domestic protection with respect to religion and belief, EqA sections 19 and 26 also apply. Secondly, Article 9(1) and the right to manifest a religious belief is not

absolute, it is subject to and qualified by Article 9(2). A reasonable limitation may be placed upon the manifestation of religious belief in the workplace, in particular for the protection of the rights and freedoms of others. Proselytisation in the workplace is an area where it has been recognised that it may be legitimate to limit the manifestation of religious belief, since there is obvious scope for that to impact adversely on colleagues or service users. The claimant did not have an unfettered right under Article 9 to seek to persuade her colleagues and learners to her religious belief.

**Conclusion**

51. The reason for the claimant's dismissal did not include her religion or belief and she was not treated less favourably on that ground. Accordingly, her claim is not well founded and is dismissed.

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Employment Judge Maxwell

Date: 3 February 2018

JUDGMENT SENT TO THE PARTIES ON

21<sup>st</sup> February 2018

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FOR THE SECRETARY TO THE TRIBUNALS