



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: S/4105347/2017

Heard in Glasgow on 29 May 2018

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Employment Judge: Frances Eccles

Mr C McEleny

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**Claimant
In Person**

Ministry of Defence

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**Respondent
Represented by:-
Dr A Gibson –
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 The Judgment of the Employment Tribunal is that the claimant's belief in Scottish independence amounts to a philosophical belief within the meaning of Section 10(2) of the Equality Act 2010 & can be relied upon by the claimant as a protected characteristic for the purposes of claiming direct discrimination under Section 13 of the Equality Act 2010.

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REASONS

35 **BACKGROUND**

E.T. Z4 (WR)

1. The claim was presented on 23 October 2017. The claimant complains of direct discrimination in terms of Section 13 of the Equality Act 2010. He claims to have been treated less favourably by the respondents because of his philosophical belief. The claimant identified his philosophical belief as a belief in Scottish independence and the social democratic values of the Scottish National Party (“SNP”). In support of his belief in the social democratic values of the Scottish National Party, the claimant relied on the following extract from the SNP constitution;

“(a) *Independence for Scotland; that is the restoration of Scottish national sovereignty by restoration of full powers to the Scottish Parliament, so that its authority is limited only by the sovereign power of the Scottish People to bind it with a written constitution and by such agreements as it may freely enter into with other nations or states or international organisations for the purpose of furthering international co-operation, world peace and the protection of the environment.*

(b) the furtherance of all Scottish interests.”

2. The claim is resisted. The respondent disputes that a belief system in an independent Scotland is a philosophical belief in terms of Section 10(2) of the Equality Act 2010 and can be relied upon as a protected characteristic for the purposes of claiming direct discrimination under Section 13 of the Equality Act 2010.

3. The case was listed for a Preliminary Hearing to consider whether the claimant’s belief in Scottish independence and the social democratic values of the SNP are capable of being a philosophical belief within the meaning of Section 10 of the Equality Act 2010 and can therefore be relied upon as protected characteristic for the purposes of bringing proceedings under Section 13 of the Equality Act 2010.

4. At the Preliminary Hearing the claimant appeared in person. The respondent was represented by Dr A Gibson, Solicitor. I was provided with a Bundle which

included a written answer from the Right Honourable Alex Salmond to the question “*Is belief in Scottish Independence a belief worthy of respect in a democratic society?*” (P1) I allowed the respondent to add a copy email from the claimant dated 20 June 2017 (P3) to the Bundle. The claimant gave evidence and was cross-examined. The claimant provided me with a written statement which he had prepared for the Hearing and which I accepted as his evidence in chief.

FINDINGS IN FACT

5. I found the following material facts to be admitted or proved; the claimant believes that Scotland should be an independent country. His belief in independence for Scotland is passionate and very deeply held. He has believed in the right of the Scottish People to self-determination since childhood. He believes that this is best achieved through the social democratic values of the Scottish National Party (“SNP”). Independence for Scotland through the restoration of national sovereignty to the Scottish Parliament is a fundamental policy of the SNP. The claimant is a member of the SNP because achieving Scottish independence through the democratic process is its principal policy. The claimant believes that Scotland should be an independent country irrespective of the economic and social consequences of independence. Members of the SNP hold a variety of political opinions. Their common belief is in an independent Scotland. The claimant has been an active member of the SNP since 2006. Campaigning for the SNP has been a significant part of his life since he was a teenager. He dedicates most of his free time to promoting his belief in Scottish independence. This has a substantial impact on his life. He travels extensively to promote his belief in Scottish independence, meeting the associated costs from his own finances. Most of his annual leave is taken up with attending events concerned with Scottish independence including SNP and social activities. During the past two years he has spoken at over 60 different events across Scotland for which he has received no financial support. On occasions he has been subjected to hostility from others, in person and on line, who do not agree with his belief in an independent Scotland. The claimant’s belief that Scotland can be an

independent nation is informed by the experience of other countries that have gained independence including those that were formerly part of the British Empire.

5 6. The claimant has been an elected SNP councillor since 2012. He was elected leader of the local authority opposition groups in 2013. He has been a member of the National Executive Committee of the SNP since 2016 when he also stood for Deputy Leader of the SNP. In 2017 he was re-elected as a councillor representing the SNP. He stood again for Deputy Leader in 2018. He has
10 represented the SNP at local authority and European Union level through committee work.

7. The claimant is not alone in his belief in an independent Scotland. Elected SNP Members have represented constituencies in the Scottish Parliament and UK Parliament for many years. The SNP has been in government in
15 Scotland since 2011. The referendum held in Scotland in 2014 was concerned with the question of whether Scotland should be an independent country. The referendum was a constitutional and democratic process. More than 1.5 million of the Scottish electorate voted in favour of independence.

20 8. Shortly before his resignation from the respondent's employment, the claimant wrote to the respondent's HR by email dated 20 June 2017 (P3) stating that in Tribunal proceedings he would claim *inter alia* that the respondent's personnel urged that his security clearance be removed on
25 grounds that he is a member of the SNP.

SUBMISSIONS

CLAIMANT'S SUBMISSIONS

9. The claimant's submissions are contained in his written statement. The
30 claimant referred me to the guidance to be found on the meaning of philosophical belief in the case of **Grainger plc & others v Nicholson 2010 ICR 360**. He submitted that applying the key tests identified in **Grainger** to his

case leads to the inevitable conclusion that a belief in Scottish independence should be protected from discrimination. The claimant submitted that it is not in dispute that his belief in Scottish independence is genuinely held. It is a belief, submitted the claimant, as opposed to an opinion or viewpoint based on the present state of information available and has a substantial impact on his life. His belief, submitted the claimant, is serious, cohesive and important. He referred to the personal sacrifices that he has had to make in terms of his time, finances and social life because of his belief in Scottish independence. The claimant submitted that the Scottish referendum and the SNP's participation and success in local and national elections prove that his belief in Scottish independence is worthy of respect in a democratic society. The claimant referred me to the written representations provided by the Right Honourable Alex Salmond in support of the above submission.

10. The claimant described his belief in Scottish independence as congruous to his activities as a member of the SNP. The claimant submitted that his belief in the social democratic values of the SNP is comparable to a belief in the values of the Labour Party which he submitted were found to amount to a philosophical belief in the case of **Olivier v Department for Work & Pensions ET Case No.170140/13**. The SNP, submitted the claimant, is not just a political party, but the political party of the independence movement guided by the social democratic values contained in its constitution. The claimant submitted that applying the reasoning in the case of **Olivier**, I should find that his political belief in the social democratic values of the SNP merits protection under the Equality Act 2010 in the same manner as his belief in Scottish independence. The claimant submitted that he was not claiming to believe that Scottish independence could improve the lives and economy of Scottish people. His belief that decisions regarding Scotland should be made by the people of Scotland regardless of the outcome will never change, submitted the claimant.

11. The claimant also referred me to the case of **Hashman v Milton Park (Dorset) Ltd t/a Orchard Park ET Case No.3105555/09**. In **Hashman**, a

belief in the sanctity of life extending to a fervent belief in anti-fox hunting was found to amount to a philosophical belief within the meaning of the Religion & Belief Regulations 2003. The reasoning in **Hashman**, submitted the claimant support his case. The Tribunal had applied the tests set out in **Grainger**.
5 Similarly submitted the claimant, his Human Rights under the European Convention, in particular Articles 9,10 & 11 are consistent with the right to express his political views without fear of discrimination. The claimant submitted that his case should be distinguished from the case of **Readfern** in which the claimant was a member of the BNP. Referring to **Grainger** (at
10 paragraph 27), the claimant submitted it is not the case that to be protected a belief must be shared by others and impact upon everyone or for that matter govern the entirety of a person's life. In his case, however, submitted the claimant his belief in Scottish Independence has affected his "*entire life, the choices and actions and decisions he takes*" and amounts to a philosophical
15 belief meriting protection from discrimination.

RESPONDENT'S SUBMISSIONS

12. The respondent provided me with written submissions which Dr Gibson supplemented with oral submissions. Dr Gibson began his submission by emphasizing that the respondent fully accepts and acknowledges that support
20 for Scottish independence and the social democratic values of the SNP is a valid political opinion very much worthy of respect in the democratic forums of the UK, Scottish Parliament and amongst the UK electorate. Similarly, Dr Gibson sought to emphasise that the respondent fully respects and acknowledges that membership of the SNP is a valid political affiliation
25 entitled to the same respect as membership of any other democratic political party which stands for election to the democratic forums of the UK, Scottish Parliament and Scottish local authorities. It is the respondent's position however, submitted Dr Gibson, that there is a significant difference and distinction to be drawn in law between a political opinion or affiliation, such as
30 the one held by the claimant and a philosophical belief which the respondent submits the claimant has failed to identify.

13. Dr Gibson submitted that the claimant has raised the wrong type of claim. The claimant, submitted Dr Gibson, should have raised proceedings under Section 108(4) of the Employment Rights Act 1996 and complained of unfair dismissal for a reason relating his political opinion or affiliation. The right of the claimant to bring the above proceedings, submitted Dr Gibson, highlights the distinction made by Parliament and the courts between a political opinion or affiliation and a philosophical belief. The availability of the more suitable alternative claim, submitted Dr Gibson, also highlights that political opinion or affiliation and philosophical belief are mutually exclusive concepts and distinguishable in law.
14. I was referred to the legal position in Northern Ireland where, submitted Dr Gibson, the Fair Employment and Treatment (Northern Ireland) Order 1988 (“1988 Order”) contains a set of provisions in relation to protection against unlawful discrimination on the grounds of religious belief **or** political opinion (respondent’s emphasis), or lack thereof. Dr Gibson referred to the cases of **McKay v Northern Ireland Public Service Alliance & another 1994 NI 103 & McConkey v Simon Community 2009 UKHL 24** to illustrate the wide interpretation applied by the courts to the meaning of “political opinion” under the 1988 Order. The UK Parliament, submitted Dr Gibson, has at no time sought to introduce political opinion as a specific protected characteristic in England, Wales and Scotland. Protection in the Equality Act 2010 is provided for “religion or belief”. There is no similar provision for “political opinion”. Dr Gibson submitted that the above point is highly relevant to this case because one of the questions for the Tribunal is whether the claimant’s purported philosophical belief has “a similar status or cogency to a religious belief”. The case of **McKay** and the 1988 Order, submitted Dr Gibson, illustrate that religious belief and political opinion are not the same thing. If they were, submitted Dr Gibson, there would be no requirement to distinguish them in the 1988 Order. Support for Scottish independence and the social democratic values of the SNP submitted Dr Gibson is a political opinion. It does not have a similar status or cogency to a religious belief and is distinguishable from the meaning of religious belief in legislation passed by the UK Parliament.

15. Dr Gibson submitted that the UK Parliament has had a number of opportunities to provide employees working in England, Wales and Scotland with protection from discrimination on the grounds of their political opinion or affiliation. It is significant, submitted Dr Gibson, that following the case of **Redfearn** the UK Parliament chose not to adopt a suggestion made by the ECtHR (at paragraph 57 of **Redfearn**) that it create a free-standing claim of unlawful discrimination on the grounds of political opinion or political affiliation. Dr Gibson questioned why the ECtHR would have made the above suggestion if protection from unlawful discrimination because of political opinion or affiliation was already available under protection from discrimination because of philosophical belief. Dr Gibson submitted that the ECtHR clearly felt that the two concepts of political opinion and philosophical belief should be distinguished. In support of the above submission, Dr Gibson referred the Tribunal to paragraph 19 of the Judgment in **Redfearn** where the ECtHR stated; *“Properly analysed Mr Redfearn’s complaint is of discrimination in political grounds, which falls outside the anti-discrimination laws”*. This maintains the distinction between political opinion and philosophical belief, submitted Dr Gibson, and takes precedence over remarks made by the Tribunal in **Olivier** that the ECtHR did not go so far as to hold that Section 10 of the Equality Act 2010 is *“similarly deficient”*. The UK Parliament, submitted Dr Gibson did not follow the suggestion of the ECtHR to introduce anti-discrimination legislation for political opinion or affiliation as it was satisfied it could comply with Article 11 by introducing Section 13 of the Enterprise and Regulatory Reform Act 2013 which added Section 108(4) to the Employment Rights Act 1996. If the Tribunal decided to strike out his claim, submitted Dr Gibson, the claimant would not be denied his rights under Article 11 as the law has provided him with a potential remedy under Section 108(4) which he has not chosen to pursue. Referring to comments made before implementation of the Equality Act 2010 by a Government Equalities Office spokesperson, Dr Gibson submitted that it was not the government’s intention to introduce legislation covering opinions based on political theories. This remains the position, submitted Dr Gibson.

16. Dr Gibson referred me to the guidance in **Grainger**. Considering each of the tests identified by the EAT in turn, Dr Gibson began by confirming that the respondent does not doubt that the claimant genuinely holds an opinion (as opposed to a belief) that Scottish people would be better off politically and economically if they voted for Scottish independence and the SNP. As the claimant has an opinion as opposed to a belief, submitted Dr Gibson, he cannot meet the requirement of the second test identified in Grainger that a philosophical belief is “*not an opinion or viewpoint based on the present state of information available*”. This, submitted Dr Gibson, is what he described as the crux of the entire distinction between a political opinion and a philosophical belief. Whether Scottish people would be better off voting for independence and the SNP, submitted Dr Gibson, is a like any political viewpoint, very much up for debate. It is an opinion with which many agree and many disagree. It will very much depend upon the present state of information available. Dr Gibson submitted that, as in the case of **McLintock v Department of Constitutional Affairs 2008 IRLR 29**, the claimant’s “belief” is based on available evidence. The claimant’s opinion that Scottish people will be better off in an independent country is not a belief that he is incapable of changing in response to persuasive political debate. A political opinion cannot really be held as a matter of principle, submitted Dr Gibson, as it is by its very nature a matter of debate and discussion.

17. In relation to the third criterion in **Grainger**, Dr Gibson submitted that while support for Scottish independence and the social democratic values of the SNP is a weighty and substantial aspect of political discourse in the UK, the same cannot be said of “*human life and behaviour*”. Support for Scottish independence and the SNP does not, submitted Dr Gibson, extend far enough beyond Scotland to warrant the status of a philosophical belief. It does not impact on people in a general sense and provide a moral and ethical code by which people choose to live their lives. Regardless of its importance to the electorate of Scotland, submitted Dr Gibson, Scottish independence and the SNP have no substantial impact on the lives of

citizens in for example Tanzania, Peru or India; it is not a weighty and substantial aspect of human life and behaviour.

18. Similarly, submitted Dr Gibson, support for Scottish independence and the SNP does not have the “*level of cogency, seriousness, cohesion and importance*” required to meet the fourth test in **Grainger**. For the reasons previously advanced, submitted Dr Gibson, it does not have “*a similar status or cogency to a religious belief*”. Religious beliefs, submitted Dr Gibson, determine the moral codes by which people chose to live their lives, while political opinions determine rather more mundane matters such as how much tax we should pay. This is a very high test, submitted Dr Gibson, which the claimant’s political opinions fail to meet.

19. As regards the fifth criterion in **Grainger**, Dr Gibson submitted that Scottish independence and the democratic values of the SNP are not political opinions worthy of respect in any democratic society out with the UK. He described them as a constitutional matter of concern to the UK but that is as far as they go. It is not enough, submitted Dr Gibson, for the claimant to rely on Mr Salmond’s statement that the democratic process followed in the 2014 Referendum is worthy of respect in a democratic society. This rather goes without saying, submitted Dr Gibson. The claimant’s purported belief is not a belief in the democratic process but in Scottish independence which is not, submitted Dr Gibson, equivalent to a belief in a political doctrine or philosophy worthy of respect in any democratic society.

20. Dr Gibson reminded me that **Olivier** is not binding on this Tribunal. It can, in any event, submitted Dr Gibson be distinguished from the present case. The claimant’s purported belief, submitted Dr Gibson, is not a political philosophy but a political opinion or political goal. The claimant refers to the SNP constitution to demonstrate his belief and the extract he relies upon, submitted Dr Gibson, does not set out a political philosophy, nor does the claimant articulate any belief in a political philosophy. The claimant, submitted, Dr Gibson, has articulated support for the aims of the SNP as a political party. Support for Scottish independence is not on a par, submitted Dr Gibson, with

a belief in democratic socialism, free market capitalism, Marxism or similar political philosophy. Dr Gibson described his understanding of the SNP as a broad political church, welcoming politicians from across the political spectrum who only share the goal of Scottish independence.

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21. Even the most ardent supporters, submitted Dr Gibson, would have to concede that a belief in Scottish independence does not impact upon the whole of mankind in terms of how we lead our lives or at least should lead our lives according to those who hold the belief. It lacks the moral or ethical conviction required to amount to a philosophical belief which is why, submitted Dr Gibson, the claim must fail.

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ISSUE

22. The issue to be considered by the Tribunal is whether the claimant's belief in Scottish independence amounts to a philosophical belief within the meaning of Section 10(2) of the Equality Act 2010 and can be relied upon as a protected characteristic for the purposes of claiming direct discrimination under Section 13 of the Equality Act 2010.

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DISCUSSION & DELIBERATIONS

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23. The claimant complains that the respondent treated him less favourably than they treat or would treat others because of his belief in Scottish independence and the social democratic values of the Scottish National Party ("SNP"). It is the claimant's position that his belief in Scottish independence and the social democratic values of the SNP is a philosophical belief within the meaning of Section 10(2) of the Equality Act 2010 and that accordingly he has been subjected to direct discrimination under Section 13 of the Equality Act 2010 because of the protected characteristic of religion or belief. The less favourable treatment about which the claimant complains includes suspension of his security clearance and constructive dismissal.

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24. The respondent disputes that the claimant's belief in Scottish independence and the social democratic values of the SNP amount to a philosophical belief. It is the respondent's position that the belief articulated by the claimant is a political opinion which protects him from unfair dismissal during the qualifying period of employment under Section 108(4) of the Employment Rights Act 1996 but does not protect him from less favourable treatment under the Equality Act 2010. As referred to above however, it is not only his alleged dismissal that the claimant identifies as being less favourable treatment by the respondent because of his belief.

25. Section 10(2) of the Equality Act 2010 provides that;

“Belief means any religious or philosophical belief and reference to belief includes a reference to lack of belief”.

The parties agreed that, when considering whether the claimant's belief in Scottish independence and the social democratic values of the SNP amount to a philosophical belief, I should have regard to the guidance provided by the EAT in the case of **Grainger plc & others v Nicholson 2010 ICR 360**. The case of **Grainger** was brought under the Employment Equality (Religion or Belief) Regulations 2003 (as amended). The claimant's belief in **Grainger** was articulated as *“mankind is heading towards catastrophic climate change and therefore we are all under a moral duty to lead our lives in a manner which mitigates or avoids this catastrophe for the benefit of future generations and to persuade others to do the same”*. Justice Burton in the EAT held that the belief articulated in **Grainger** was capable of constituting a philosophical belief under the Religion & Belief Regulations 2003. When reaching the above decision, he identified the following as the essential criteria for a belief to qualify for protection as a philosophical belief;

(i) it must be genuinely held;

(ii) it must be a belief and not an opinion or viewpoint based on the present state of information available;

- (iii) it must be a belief as to a weighty and substantial aspect of human life and behaviour;
- (iv) it must attain a certain level of cogency, seriousness, cohesion and importance &
- 5 (v) it must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

26. I began by identifying the claimant's belief. It was articulated as a belief in
10 Scottish independence and the social democratic values of the Scottish National Party ("SNP"). At the close of submissions, Dr Gibson questioned whether the claimant has articulated two separate beliefs – a belief in Scottish independence and a belief in the social democratic values of the SNP. He submitted that unless they are a composite belief, both beliefs must
15 individually amount to a philosophical belief if the claimant is to proceed with his claim or, as Dr Gibson put it, if one fails, they both fail. In response, the claimant referred to his description of his belief in the social democratic values of the SNP as being congruous to his belief in Scottish independence. Having considered the claimant's evidence and the articulation of his belief, I have
20 concluded that the claimant's belief in the social democratic values of the SNP is what might be described as a manifestation of his belief in Scottish independence. He believes that independence for Scotland can best be achieved through the social democratic values of the SNP. He is a member of the SNP because of its principal policy of achieving Scottish independence through the democratic process. This is consistent with the claimant's reliance
25 on the extract from the SNP constitution which defines the SNP's meaning of "Independence for Scotland".

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27. I agree with the respondent that support or active membership of a political party does not of itself amount to a philosophical belief for the purposes of claiming direct discrimination under the Equality Act 2010. There must be

more than a preference for a particular political party to claim protection from less favourable treatment. I recognise that this can be contrasted with the situation in Northern Ireland where the Fair Employment and Treatment (Northern Ireland) Order 1998 prohibits discrimination on the ground of
5 “religious belief or political opinion”. I also recognise that following the case of **Redfearn v UK (Application no 47335/06)**, there is no qualifying period for claiming unfair dismissal where the reason for dismissal relates to the employee’s political opinions or affiliation but that a person’s political opinion is not identified as a protected characteristic for the purposes of protection
10 from discrimination in the Equality Act 2010.

28. I am not persuaded however that it must follow that a belief based on political theory is not capable of being a philosophical belief. Burton J observed in **Grainger** (paragraph 28), while it must surely be the case that “*support of a political party*” might not meet the description of a philosophical belief, “*that does not mean that a belief in a political philosophy or doctrine would not qualify*”. In the case of **Olivier** for example, an Employment Tribunal concluded that the claimant’s belief in democratic socialism can amount to a philosophical belief for the purposes of the Section 10 of the Equality Act
15 2010. Mr Olivier identified his belief as “Labour Party values namely democratic socialism”. In reaching its conclusion, the Tribunal found that Mr Olivier lived for the Labour Party and that his belief in democratic socialism went beyond being merely a “political animal” who chooses to support a particular party.

25 29. The same could be said of the claimant to the extent that such a significant part of his life is taken up with supporting the SNP. I am not persuaded however that the claimant’s belief in the social democratic values of the SNP meet the requirements to qualify as a philosophical belief. I have found that
30 the claimant supports the SNP because of its commitment to Scottish independence. The claimant supports the SNP as a means of achieving independence for Scotland through the democratic process. I am not persuaded that in the claimant’s case that his support for the SNP,

notwithstanding the time and effort he spends campaigning on its behalf, can be defined as philosophical in nature. It is a party-political attachment based on a belief in Scottish independence. If the SNP was to abandon its commitment to Scottish independence, something which I accept is unlikely,
5 I am in no doubt that it could no longer be guaranteed the claimant's support.

30. I do not agree with the respondent that my conclusions in relation to the claimant's belief in the social democratic values of the SNP prevent me from considering whether his belief in Scottish independence is capable of
10 amounting to a philosophical belief. I am satisfied that the claimant's belief in Scottish independence and the social democratic values of the SNP can be severed and considered separately. The claimant's belief in the social democratic values of the SNP flow from his belief in Scottish independence.

15 31. I therefore went on to consider whether the claimant's belief in Scottish independence is capable of being a philosophical belief within the meaning of Section 10(2) of the Equality Act 2010. I considered each of the criteria identified in **Grainger**.

20 32. Firstly, it is not in dispute that the claimant's belief in Scottish independence is genuinely held. It is a very deeply held belief. Secondly, I am satisfied that the claimant's belief in Scottish independence is not an opinion or viewpoint that he holds based on the present state of information available. The claimant was clear in his evidence that he does not believe in Scottish independence
25 because it will necessarily lead to improved economic and social conditions for people living in Scotland. It is a fundamental belief in the right of Scotland to national sovereignty. The claimant does not seek an independent Scotland to achieve power for a particular political party. I did not accept the respondent's submission that the claimant's belief in Scottish independence
30 is susceptible to change if challenged by empirical evidence that shows independence would, for example, be detrimental to the economy of Scotland. The claimant's belief is not, as in the case of **McClintock v Department of Constitutional Affairs 2008 IRLR 29**, an opinion based on some real or

perceived logic or the information or lack of information available. He describes his belief in Scottish independence as “*unshakeable*”.

33. As regards the third criterion in **Grainger**, it is not in dispute that the claimant’s
5 belief in Scottish independence has a substantial effect on his life and how he
behaves. When giving his evidence, the claimant described his belief in
Scottish Independence as having affected his “*entire life, the choices and
actions and decisions he takes*”. I must however be persuaded that a belief in
Scottish independence is a belief as to a weighty and substantial aspect of
10 human life and behaviour generally. While it is not necessary for others to
share the belief in question, it must have an impact on others. I am persuaded
that the claimant’s belief meets this requirement. Scottish independence is
concerned with fundamental questions about how people living in Scotland
are governed including where sovereignty lies and whether decisions
15 regarding the future of Scotland are to be taken in Scotland or elsewhere. It
is concerned with right to self- determination of the people of Scotland. I am
satisfied that these are weighty and substantial aspects of human life and
behaviour. I do not accept the respondent’s submission that because the
whole of mankind does not have a personal knowledge or interest in Scotland
20 gaining independence that the claimant’s belief lacks sufficient weight and
substance to amount to a philosophical belief. The belief in self-determination
is widely recognised across the world. Events in Catalonia are a recent
example. I also do not accept that because Scottish independence might not
impact on someone living in Tanzania, an example given by the respondent,
25 or that Scottish independence is not of concern to a Tanzanian prevents the
claimant’s belief from being philosophical in nature. I am in no doubt that
throughout a significant part of the last century national sovereignty and
independence from British rule were weighty and substantial aspects of life in
Tanzania, or Tanganyika as it then was. I am not persuaded that because the
30 claimant believes in independence for Scotland, as opposed to another
country, his belief is not as to a weighty and substantial aspect of human life
and behaviour.

34. Similar observations can be made about whether the belief in Scottish independence attains a sufficient level of cogency, seriousness, cohesion and importance to be a philosophical belief to satisfy the fourth criterion in **Grainger**. I am persuaded that how a country should be governed is sufficiently serious to amount to a philosophical belief. The question of whether Scotland should be independent was considered sufficiently important to be put to the Scottish electorate at a Referendum in 2014. During that process, the belief of those people who advocated Scottish independence, such as the claimant, was taken seriously. I am satisfied that the claimant's belief that Scotland should be independent is intelligible and capable of being understood. It is coherent. The claimant has persuaded me that his belief in Scottish independence has a sufficiently similar cogency to a religious belief as required by Justice Burton in **Grainger** (at paragraph 26) to qualify as a philosophical belief.

35. It is not in dispute that a belief in Scottish independence is worthy of respect in a democratic society and is not incompatible with human dignity and in conflict with the fundamental rights of others. As referred to above, I was not persuaded that it was necessary for the claimant to show that his belief in Scottish independence was a matter of concern to people living in other democratic societies to amount to a philosophical belief. The belief in independence is widely recognised and considered worthy of respect in democratic societies beyond Scotland. I am persuaded that this is sufficient for the claimant's belief in Scottish independence to satisfy the fifth criterion in **Grainger**.

CONCLUSION

36. In all the above circumstances, I am satisfied that the claimant's belief in Scottish independence amounts to a philosophical belief for the purposes of Section 10(3) of the Equality Act 2010 and can be relied upon by the claimant as a protected characteristic for the purposes of claiming direct discrimination under Section 13 of the Equality Act 2010.

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Employment Judge: Frances Eccles
Date of Judgment: 25 July 2018
Entered in register: 30 July 2018
and copied to parties

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