



EMPLOYMENT TRIBUNALS

Claimant: Mr B Pearce

Respondents: (1) Pantmawr Care Limited t/a TLC Domiciliary Care Agency
(2) Mrs Gladys Perks

Heard at: Wrexham **On:** 13th January 2020

Before: Employment Judge R F Powell

Members: Mrs Judith Kiely
Mrs Lynda Owen

Representation:

Claimant: In person

First Respondent: Not present and not represented
Second Respondent: Mr Hanratty, solicitor

RESERVED JUDGEMENT

The unanimous judgment of the tribunal is:

The respondent did not indirectly discriminate against the claimant. The claim is not well founded and is dismissed.

REASONS

Introduction

1. The first respondent is a care agency. It employed the claimant as a domiciliary care worker from January 2018 until the 8th June 2018 when he was dismissed for gross misconduct.

2. On 9 August 2018, the claimant presented an ET1 claim form to the tribunal, alleging unfair dismissal and discrimination due to his religious belief. The claimant is an Apostolic Christian whose religious belief requires him to share his faith with others. The respondent resists the claim.
3. The claimant did not have sufficient service to bring an unfair dismissal claim, and his claim had not identified the type of discrimination he asserted occurred. At a preliminary hearing on 6 December 2018 Employment Judge Sharp explored the nature of his claim and explained the various types of discrimination. The claimant confirmed that his complaint was about his inability to express his religious belief which led to his dismissal, which in his view, and that of the tribunal, was best described as a claim of indirect discrimination.

The issues

4. The issues between the parties to be determined by the Tribunal are as set out below.
5. *EQA, section 19: indirect religious discrimination*
 - a. A "PCP" is a "provision, criterion or practice". Did the respondent have or apply the PCP that employees were not to express their religious belief to clients or in the workplace?
 - b. Did the respondent apply the PCP to the claimant at any relevant time?
 - c. Did the respondent apply (or would the respondent have applied) the PCP to persons with whom the claimant does not share the characteristic, namely those who are not Apostolic Christians?
 - d. Did the PCP put Apostolic Christians at one or more particular disadvantages when compared with those who are not Apostolic Christians in that the PCP restricted Apostolic Christians from sharing their faith (restriction on freedom of expression of religious belief) or could lead to dismissal?
 - e. Did the PCP put the claimant at that/those disadvantage(s) at any relevant time?
 - f. If so, has the respondent shown the PCP to be a proportionate means of achieving a legitimate aim? The respondent relies on the following as its legitimate aim(s):

The evidence

6. Mr Pearce gave evidence and was cross examined.
7. Mrs Perks, a director of the first respondent who dismissed the claimant with notice, gave evidence and was cross examined.
8. Mr Hugh Morgan, OBE, who provided consultancy support to the first respondent in 2018 gave evidence and was cross examined.
9. We considered the majority of a bundle of documents of 150 pages.

10. We record that, after the conclusion of the evidence and the respondent's submissions, the claimant asked the tribunal to listen to a covert recording he made of a meeting which took place between the witnesses on the 8th June 2018. The claimant had not disclosed the existence of the recording nor disclosed a copy of the recording in accordance with the order of EJ Sharp on the 6th December 2018 and its existence was not confirmed until this hearing.
11. The claimant was asked for an explanation for his failure to disclose the recording and accepted that it was a conscious decision, albeit under guidance from God. The claimant had also brought along a copy of this recording on his laptop computer. We noted that the claimant had disclosed to the respondent another covert recording he had made of a colleague and in that case the respondent had prepared an agreed transcript and the respondent's witnesses had been allowed an adequate opportunity to address its content.
12. We considered the claimant's failure to disclose one of his recordings to be wilful and knowingly in breach of the order of the 6th December 2018. The timing of the disclosure was too late to allow a transcript or for any disputes over the content to be resolved. The evidence in the case had been completed and the closing submissions made prior to the claimant's application. The respondent did not agree to its inclusion.
13. Taking all of the above into account and considering the overriding objective when exercising our discretion, the tribunal considered that to allow the application to admit a recording which the claimant had consciously withheld, and after the evidence had been completed, would not be in the interests of justice. Nor would it be proportionate to allow the parties time to try and agree a transcript or agree the provenance of the recording; which would have required an adjournment of the proceedings and possible recall of witnesses; all of which could have been avoided had the claimant decided to comply with the said order for disclosure.

Findings of fact

14. The respondent was a business providing domiciliary care to people (referred to in these proceedings as service users) who are affected by significant adverse physical and mental health conditions. Such is their level of incapacity that they require personal care of some intimacy and are very restricted in their mobility.
15. We accepted the evidence of Mr Morgan and Mrs Perks that one of the common effects of the services users' physical circumstances was a significant degree or social isolation and often a degree of distress arising from their incapacity and loneliness.
16. We accept that service users with mental health impairments may be vulnerable to suggestion or manipulation.
17. We accept that the respondents' service users were, in different ways, persons who suffered from long term physical and/or mental impairments which made them vulnerable to physical and mental abuse. We further accept that the respondents

were duty bound to be responsible for the safeguarding of their services users when providing care.

18. We noted from the training record of the claimant that he had undertaken courses relating to “Safeguarding Vulnerable Adults” and “Deprivation of Liberty Safeguards and the Mental Capacity Act” [page 51 of the bundle].
19. The respondent provided care to the services users through its care workers; employed staff who, according to the terms of individuals’ care packages (the terms and scope of the agreed provision of support), travelled to the home of the service user on a regular basis. The care workers will, when fully trained, often work alone, in the service user’s home and may work without any third party being present. It is a role of substantial responsibility and necessarily relies on the trust of the service user and the respondents.
20. The claimant is a person of strong religious faith. He is Christian and identifies himself as a person of the New Apostolic Christian Faith. For the purposes of this case, the pertinent characteristic of the claimant’s faith is the manifestation of aspects of his belief; the promotion of his faith to others. In his evidence and in his pleaded case he referred to Matthew 4.19 of the King James Bible; “Follow me, and I will make you fishers of men”. That guidance addressed, to the Apostles, is part of the claimant’s faith.
21. It is clear from the claimant’s initial oral evidence in cross examination that he considered that God was guiding him to take up work as a care worker to further God’s purpose. Later in his evidence the claimant stated that his purpose was to help Mrs Perks.
22. In our judgment, the claimant’s intentions certainly included helping vulnerable people. It also included promoting his faith to service users and, later on to promote his faith to the respondents, through Mrs Perks.
23. The claimant was interviewed by Mrs Perks in December 2017 and offered employment which commenced on the 19th January 2018 [11]. He commenced training in early February 2018. His training included some observations of the work and supervised working alongside an experienced care worker. Subsequently, in late February, he commenced working without supervision. On the 26th February he visited a service user “M.”
24. M later telephoned the respondent to complain that the claimant had voiced his personal religious views which M had found to be offensive. At that time M was not asked for a statement but, for this hearing, M set out his account in an email which he prepared for consideration by the respondent and the Employment Tribunal.
25. M’s account, which the claimant denies, is stated thus:

“... He said please tell me to shut up if I go too far about religion and I replied I wouldn’t allow him to, then whilst he was washing up and I was eating my meal he went on to say that it’s god’s way that he has put me in a wheelchair unable to walk because I must have done something bad in my life. I was shocked at the time and laughed it off telling him I know exactly why I am in a wheelchair and it’s because I

have a Genetic Neurological Disease.....but it cut deep into my feelings and then I was angry at how dare this man come into my home to care for me, showing compassion and empathy and then effectively tell me it is my own fault I'm stuck in a wheel chair because I have done something bad in my life and this is god's way of punishing me effectively."

26. This account is consistent with information the first respondent states it received and which caused it to call the claimant to discuss the complaint with Ms E Platek, manager, on the 5th March 2018.
27. Before setting out our findings on the meeting with Ms Platek, we have addressed a dispute between Mr Morgan and the claimant. Mr Morgan's evidence states that he met with the claimant in March 2018. The claimant states he has no recollection of such meeting. Mr Morgan does not recall the date but is certain a meeting took place.
28. The tribunal notes that the respondent's report to the Disclosure and Barring service [95-101] sets out a chronology which records Mr Morgan being involved in a "Risk Assessment" about "Mr Peace's imposed religious views onto service users". The date is given as the 5th February 2018. Ms Platek's email to the claimant of the 13th June 2018 also states that she and Mr Morgan met with the claimant on the 5th March.
29. The claimant challenged Mr Morgan that he had not been part of the meeting which imposed restrictions of him; Mr Morgan agreed this and pointed out that Ms Platek's account was not one to which he had been privy. He did assert that he had met the claimant to discuss the same issue: his expression of religious views to service users.
30. The claimant also questions Ms Platek's reference to Mr Morgan as the "R.I."; the registered individual. Again, Mr Morgan agreed; he was not the registered individual but, in anticipation of Mrs Perk's retirement he was, at that time, the person who was designated to take up the role in August 2018.
31. On balance we accept Mr Morgan's evidence that he met with the claimant in March 2018 and consider it more likely than not that his meeting took place on the 5th March, given Mr Morgan's evidence stated that his contact with the claimant was prompted by Ms Platek and the aforesaid complaint.
32. We accept Mr Morgan's account of the meeting with the claimant as set out in paragraphs 8 to 13 of his witness statement. In short, the claimant was told he must not try to impose his religious views on service users and to do so demonstrated a lack of respect for service users. Mr Morgan was not entirely confident that, despite the simplicity of the message, the claimant had accepted it because the claimant expressed the wish to return to the service user and discuss the issue further.
33. Ms Platek's conclusions were unambiguous and set out in a letter to the claimant [68]:

"Management Direction to you: You must not convey and impose your personal belief system upon service users.

Management direction to you: You must respect service-users privacy, treat them with dignity and respect at all times.”

34. The claimant was also informed that he would not be allowed to work unsupervised until further notice and would have weekly supervision from then on.
35. In cross examination the claimant was asked about his response to the instructions. In part his response was to repeat that which was set out in his claim form; that he did not “impose” his views because he had no authority to make people obey him. When asked about “convey” his initial response was less clear. He did accept that his faith required him to communicate with other people and to invite them to take the opportunity to accept Jesus into their lives and he referred to the “fishers of men” analogy. The claimant was clear that his duty to God’s purpose was more important than his duty to his employer’s instruction.
36. The period of supervised work passed without incident and the claimant subsequently returned to unsupervised work. However, there were occasions when he would work with colleagues.
37. On the 17th May 2018 the claimant completed a pro forma Personal Development Plan [85-6] which was somewhat enigmatic. In response to the question “What would you like to achieve?” He replied “The purpose or reason I have been sent”. In answer to the question “what can we do to help?” he wrote “Be willing to open up to the truth”. In cross examination it was put to the claimant that these answers were references to his faith, God’s purpose and a later reference to “work miracles + save lives” was a sincere reference to God’s miracles.
38. On the 19th May 2018 the claimant recorded a conversation with a colleague “AP” as they drove home from an appointment with service user. An agreed transcript was provided in the bundle [147-50]. The transcript reflects AP’s concern that the claimant had been praying in the kitchen of the service user’s house rather than working, whilst AP went through a “do not resuscitate” (“DNR”) instruction with the service user. She describes his conduct as “not acceptable.
39. The conversation progressed to a point where the claimant stated that he needed to work with “someone who is honest and truthful”; a reference to AP.
40. AP goes on to re-iterate, in much less formal language, the Management Directions of Ms Platek and the claimant expresses his lack of understanding of what he had done wrong, to which AP states three service users’ names who have requested that the claimant did not visit them and one of whom had raised a complaint.
41. The recording ends with AP cautioning the claimant not to discuss religion because of the risk that, even unintentionally, he was making people feel uncomfortable. She states: “... to be honest you are this close to not having work, and that’s not a good thing is it...”
42. It is evident from the claimant’s statement [paragraph 14] that his response was not positive:

“ I invited her to make a choice; do what is right at the time, don't try to tell me what I can or cannot say or do, or simply don't travel with me, she went on to choose the latter.”

43. The claimant was aware, that by refusing to give AP a lift to service users home he effectively prevented her from going to that appointment. We find that this recording and transcript is evidence that the claimant was quite unwilling to accept guidance from those who were more experienced than he was or to accept limitations on what he could do, or say, to service users in their homes.
44. The claimant's recording lends some corroboration to the respondent's case that, during the claimant's period of unsupervised working, six service users raised verbal complaints about the claimant's manifestation of his faith in their homes.
45. The last of these complaints is recorded as having taken place on the 3rd June 2018 (albeit Ms Platek's June email states it was the 2nd June). The incident was recorded by Mr Thomas, an employee of the first respondent. He recorded as follows [89]:

“Service User complained that Brett walked into home and said what is wrong with you, service user replied it doesn't matter you are not medically trained Brett said If you tell me we can talk about it. Family member also said that Brett and been preaching about god, exact words were keep that bible punching bastard away from us.”

46. Mr Morgan was asked to speak to the claimant on the 6th June 2018. There is a considerable degree of consensus between the claimant and Mr Morgan's account and where there is disagreement we find Mr Morgan's account more reliable.

47. Mr Morgan stated:

“ I had a long discussion with him about his continuing to seek to impose his religious and spiritual beliefs after the earlier incident and the first service-user complaint made against him. I again asked him to understand that there was an absolute need to safeguard service users from what could be construed as emotional abuse. I also stressed to him that he needed to protect himself from complaints, as he was obviously attracting negative reactions from service-users who were objecting to his expressions of his religious beliefs.

Apart from his initial denial which he did not repeat, once again I was left with the feeling that Mr Pearce had failed to empathise with the very vulnerable position in which service-users find themselves.

During this meeting I was also concerned that he spoke in derogatory and demeaning terms to me of his perceptions of the qualities of other carers and of senior staff. He told me that he felt that he was superior to them and that they had a lot to learn. The reality was somewhat different as Mr Pearce was himself a very inexperienced carer, displaying a sustained lack of insight into his own failings, and this continued to trouble me.”

48. During the meeting Mrs Perks came in for a moment and received a letter from the claimant [69- 72]. The document set out a list of criticisms of the respondent's

function most of which were single words: TEACHING, CHANGE, INTERACTION.
Top of the claimant's list was:

"THE HEAD OF TLC NEEDS TO DECIDE... FOR OR AGAINST JESUS"

49. The "head of TLC" is a reference to Mrs Perks.
50. In the context of Mr Morgan's assessment of the claimant and the reports from the service users Mrs Perks was alarmed that the claimant's criticism of her was a personal slight; a judgment on her own faith; a matter which was, objectively, irrelevant to the provision of domiciliary care to standards set by statute, regulation and the funders of that social care.
51. In the context of the 5th March letter, and the most recent complaint, the claimant's critique suggested that his approach to expressing opinions on faith in the workplace had not altered.
52. The claimant was called to a meeting on the 8th June held with Mrs Perks and Mr Morgan. There has been some dispute between the parties as to what was said at the meeting. In cross examination the claimant put it to both of the respondents' witnesses that he did not use the word "bidding" and nor was Mr Morgan asked to leave the room.
53. Mr Morgan was clear that he was asked to leave, he agreed, in the context of the claimant only being willing to speak to Mrs Perks, that it was she who asked him to leave. The tribunal notes that in the claimant's ET1 [17] asserts that Mrs Perks asked Mr Morgan to leave the room.
54. With respect to the word "bidding" both Mrs Perks and Mr Morgan accepted that the claimant may not have used that exact word. The claimant's pleaded case was: "I formally introduced myself saying,....I am a servant of Jesus Christ, I have been sent here to you as His messenger, He has found favour with you and wants to offer His salvation to her¹ company and those in her care." [18].
55. The tribunal notes that the claimant's introduction, to a meeting concerned with his unwillingness to restrain his references to faith, was not likely to reassure Mrs Perks or Mr Morgan.
56. After Mr Morgan had left the room, on the claimant's case, he said the following to Mrs Perks:
57. "He has favour in you, and wants to bless you, use you and your company with all the gifts he has given you, the talents He has given and will answer all your questions & wants to use this organisation, to use the people to offer salvation to all those that are connected with you. I am not here under my own steam, I am a servant of God, He knows your heart, He has given you a pure heart and you will see if you agree".

¹ A reference to Mrs Perks.

58. The unambiguous desire expressed by the claimant, appeared to be to use the respondent's business as a channel for the salvation of all those connected with the organisation; which would naturally include the service users.
59. On the claimant's case, Mrs Perks reply was:
- ".... Let me stop... stop you there 'cause I can't ok. ...not with this work I'm doing with people that I'm dealing with clients and everything. I cannot do it because it is against every rule in the book."
60. The claimant went on to say words to the effect that God can remove every obstacle to which Mrs Perks replied:
- "He can't, he cannot remove the rules and regulations against the CIW [Care Inspectorate Wales] and the Powys County Council.
61. The claimant went on to tell Mrs Perks that God could do so, and that was God's offer to Mrs Perks.
62. A moment or two later the claimant's account records Mrs Perks:
- "Hugh !!, Hugh!!... I want Hugh back in here..."
63. On the claimant's own account there was a further series of exchanges in which he repeated God's command and that "the command is for you to answer God not to the government" and Mrs Perks replied that she and the company had to stick to the rules and regulations.
64. The clear conclusion to be drawn from the claimant's insistence in telling the respondents that God's command trumped rules and regulations and that God would remove every obstacle in the way using the business as a means of bringing salvation, was the claimant's intention to persuade the respondent to subvert its compliance with its duties and prefer to become a channel of salvation.
65. We have no doubt that Mrs Perks and Mr Morgan were convinced that the claimant had no intention of restraining his message of salvation to service users. They had received credible complaints that the claimant had upset service users by his references to religion and they were aware that he had done so in breach of the management instruction. Despite a most recent restatement of that instruction on the 6th June, the claimant's behaviour on the 8th was in a similar vein and indicated that the formal and informal approach had failed to curb his enthusiasm. There was no apparent alternative to dismissal as a method of preventing the claimant from behaving in a similar manner in future.
66. Mrs Perks informed the claimant that he was dismissed with one week's notice.

The legal Matrix

67. The relevant provisions of the Equality Act 2010 (“2010 Act”) are therefore as follows:

“... **10 Religion or belief**

(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. ...

Chapter 2 Prohibited conduct

19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

...

...

...

Religion or belief

67 Section 19 is part of the domestic statutory frame work which implements Article 9 of the European Convention on Human Rights:

“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. The 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.”

Decisions of the European Court of Human Rights, interpreting the right under Article 9, have shown that the freedom to manifest religion or belief can extend, in principle, to the right to attempt to convince others of the tenets of that religion or belief (Kokkinakis v Greece [1993] 17 EHRR 397); to bear witness in words and deeds (Eweida v UK [2013] 57 EHRR 8).

68. That said, the freedom to manifest one's religion or belief as guaranteed by Article 9 is qualified and may be limited in accordance with Article 9.2. Seeking to translate that principle into the language of domestic law, in **Grace v Places for Children** UKEAT/0217/13/GE the EAT (Mitting J presiding) observed:

“6. We agree ... there is no clear dividing line between holding and manifesting a belief and ... an unjustified unfavourable treatment because an employee has manifested his or her religion may amount to unlawful discrimination. ...” (original emphasis).

69. The parties' submissions did not make any reference to authorities or the elements of section 19. Each submission focused on the factual conclusions the tribunal should reach on the evidence before it. For these reasons the tribunal provided a brief oral summation of the principles it considered applicable to the case and allowed the parties an opportunity to make any further comment on matters of law². None were made.

Conclusions

70. We approached our application of our findings of fact by adopting the structure set out by EJ Sharp.

Did the respondent have or apply the following PCP: that employees were not to express their religious belief to clients or in the workplace?

With the benefit of the hearing the evidence, we have concluded that the correct PCP is slightly different to that stated in December 2018. It is close to that which was set out in the respondent's 5th March letter, with one variation of that wording. “You must not convey or impose your personal belief system upon service users”.

Did the respondent apply the PCP(s) to the claimant at any relevant time?

71. We are satisfied the PCP was applied to the claimant.

Did the respondent apply (or would the respondent have applied) the PCP to persons with whom the claimant does not share the characteristic, namely those who are not Apostolic Christians?

72. As the basis for the application of the PCP was the protection of vulnerable service users from emotional distress, we are satisfied that the PCP was one applied to all staff.

² Reference was made to a number of case which predated the Equality Act 2010 but reflected the correct approach to the qualified right to manifest faith: *Kuteh v Dartford & Gravesham NHS Trust* [2019] EWCA Civ 818, *Drew v Walsall Healthcare NHS Trust* UKEAT/0378/12/SM and more directly on point; *Page v NHS Trust Development Authority* UKEAT/0183/18/DA.

Did the PCP put Apostolic Christians at one or more particular disadvantage³ when compared with those who are not apostolic Christians in that the PCP restricted Apostolic Christians from sharing their faith (restriction on freedom of expression of religious belief) or could lead to dismissal?

73. We are satisfied that it was a tenet of the claimant's faith that he should engage in promoting Christianity and, as is evident from our findings of fact, for the claimant evangelism transcended considerations earthly rules and restrictions.

Did the PCP put the claimant at that/those disadvantage(s) at any relevant time?

74. The claimant was warned, his probationary period was extended by six months and he was eventually dismissed because he conveyed his beliefs to service users. We find that he was clearly put at a disadvantage.

If so, has the respondent shown the PCP(s) to be a proportionate means of achieving a legitimate aim?

75. There are two discrete question for the tribunal to determine but before doing so we considered the following guidance.

76. In **R (Elias) v Secretary of State for Defence** [2006] IRLR 934 it was stated that "... the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end."

77. In **Age Concern (R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills**, [2009] IRLR 1017, the ECJ held (at [51]):

"mere generalisations concerning the capacity of a specific measure to contribute to employment policy, labour market or vocational training objectives are not enough... and do not constitute evidence on the basis of which it could reasonably be considered that the means chosen are suitable for achieving that aim."

78. The legitimate aim being relied upon must in fact be the purpose of the PCP.

79. In **MacCulloch v ICI** [2008] IRLR 846, EAT, set out three additional legal principles with regard to justification:

80. The burden of proof is on the respondent to establish justification.

81. The tribunal must be satisfied that the measures must "correspond to a real need and are appropriate with a view to achieving the objectives pursued and are necessary to that end". This involves the application of the proportionality principle.

³ Hextall v Chief Constable of Leicestershire Police [2018] IRLR 605, claimant does not have to show a particular threshold of disparate impact to establish that a PCP has a disproportionate adverse effect' and McNeil v Revenue and Customs Commissioners [2019] EWCA Civ 1112 the phrase 'particular disadvantage' simply makes clear that it was persons with the relevant protected characteristic who were disadvantaged.

82. The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: **Hardys & Hansons plc v Lax** [2005] IRLR 726 .
83. It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable response" test in this context: *Hardys & Hansons plc v Lax*.

The legitimate aim

84. The second respondent and Mr Morgan evidenced that protecting the emotional well-being of vulnerable people was a legitimate aim. We noted and accepted their many years of professional practice and Mr Morgan's standing and professional reputation in the field of health care. The claimant did not dispute this and we find that the respondents have discharged the burden of proof which lies upon them.
85. The aim of the PCP was clearly focused on achieving the legitimate aim.

A proportionate means

86. The tribunal noted that the respondents counselled the claimant informally, then gave the claimant formal management instructions, cautioned the claimant by extending his probationary period, then provided support through extended supervision and further informal guidance via a colleague; AP. There was further quite formal discussion on the 6th June. All of the above informal and formal steps failed to inhibit the claimant's conduct to the extent that vulnerable service users were safe from being upset and distressed by the claimant discussion of faith. Indeed, the claimant was apparently more determined to continue his behaviour by the meeting on the 8th June 2018.
87. Looking at the number of steps taken by the respondents during the four months of the claimant's active employment, the tribunal was unable to conceive of another measure which would have effectively inhibited or substantially ameliorated the claimant's behaviour.
88. In these circumstances the decision to dismiss the claimant was a proportionate means of protecting service users such as M or the June service user (who was suffering from dementia), from the significant distress which was consequent to the claimant's conduct.
89. For the above reasons we have concluded that the respondent did not indirectly discriminate against the claimant. The claim is not well founded and is dismissed.

Employment Judge R Powell
Dated: 9th February 2020

REASONS SENT TO THE PARTIES ON 10 February 2020

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS