EMPLOYMENT TRIBUNALS

Claimant: **Mr S Sophal**

Respondent: **The commissioners for Her Majesty's Revenue and Customs**

Heard at: **Cardiff in person and by video (non legal members)** **On: 14 and 15 July 2022**

Before: **Employment Judge R Harfield**
Members **Mr P Collier**
Mr C Stephenson

Representation:
Claimant: The claimant represented himself
Respondent: Ms Williams (counsel)

RESERVED JUDGMENT

It is the unanimous decision of the Tribunal that the claimant's complaints of direct race discrimination and direct belief discrimination are not well founded and are dismissed.

REASONS

Introduction

1. The claimant is an employee of the Respondent, working as a Compliance Officer. Early conciliation started on 13 August 2021 and ended on 24 September 2021. The claim form was presented on 2 October 2021. The claimant brings complaints of direct race discrimination and direct belief discrimination. The respondent defends the claim.

2. The case was case managed by EJ Harfield on 28 March 2022. EJ Harfield clarified the issues with the parties, working with the claimant as a litigant in

person, and produced a list of issues for the final hearing within the case management order.

3. The hearing took place on 14 and 15 July 2022. The Tribunal panel were able to complete their deliberations but did not have sufficient time to deliver an oral judgment. EJ Harfield apologises for the delay in delivering this reserved Judgment. It has been caused by the summer break combined with sitting in a series of long cases.

4. We had before us a bundle extending to 494 pages. References in brackets [ ] are references to those pages in the bundle. We heard evidence from, and had witness statements from, the claimant and from Stephen Crockett for the respondent. Both parties provided oral closing submissions which are not set out in detail within this Judgment but which were taken fully into account in our decision making and some material parts are referenced below. The respondent's counsel also provided a bundle of authorities. We explained to the claimant at the start of the hearing that where his witness statement referenced documents that were not in the bundle but referred to via a hyperlink, we had not read those documents. This is because the tribunal is not able to undertake research of our own or click on hyperlinks; the documents we are going to be referred to/ are being asked to take into account need to be within the joint bundle and directions were made at the case management stage to allow that process to happen. That said, it seems unlikely the additional documents would change the outcome in this case, as it would appear they mostly relate to the claimant's belief system, rather than the specific events relating to the deletion of his Yammer posts, and we have found (for the reasons set out below) that his belief is a protected belief.

5. In the course of closing submissions the claimant sought to argue that he had been subject to indirect belief discrimination as well as or instead of direct discrimination. We explained to him at the time that an indirect discrimination claim was not before us to determine because it was not how he had set out his complaint in his claim form as further clarified with him, as a litigant in person, at the case management hearing. The evidence we heard, and our decision making was focused on the issues as set out in the list of issues which are direct discrimination complaints. The claimant also observed in closing submissions that he was facing complicated law and legal submissions from the respondent. It is a complicated area of law. We offered the claimant more time again if he needed it before making his closing comments, but he said he was content to proceed. We have of course also made our decisions based on all the evidence before us, and applying the law as we understand it to be, and not solely on what was said by way of closing comments from either party.

The issues to be decided

6. The List of Issues is set out as follows:

1. ***Direct race discrimination (Equality Act 2010 section 13)***

1.1 The Claimant is British Indian.

1.2 Did the Respondent do the following things:

1.2.1 Delete the Claimant's Yammer comment on 18 May 2021;

1.2.2 Delete the Claimant's follow up Yammer comment on 18 May 2021;

1.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who he says was treated better than he was. He says that a non British Indian person would not have had the same comments deleted, but would instead have been contacted about the posts, with dialogue about it, rather than it simply being deleted.

1.4 If so, was it because of race?

1.5 Did the Respondent's treatment amount to a detriment?

2. ***Direct philosophical belief discrimination (Equality Act 2010 section 13)***

2.1 Did the Claimant hold a protected characteristic of a philosophical belief of the right to protest? In particular, applying, Grainger Plc and others v Nicholson [2010] ICR 460 (as further clarified in Forstater v CGD Europe and others UKEAT/0105/20/JOJ)

2.1.1 What exactly is the Claimant's belief. The Claimant said it was that: "Vaccinations for Covid 19 are the preparatory

stages of the Mark of the Beast in the Book of Revelations";

2.1.2 Is the belief genuinely held;

2.1.3 Is the belief a belief and not an opinion or a viewpoint based on the present state of information available;

2.1.4 Is it a belief as to a weighty and substantial aspect of human life and behaviour;

2.1.5 Has the belief attained a certain level of cogency, seriousness, cohesion and importance;

2.1.6 Is the belief worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others?

2.2 Does the Claimant hold the protected philosophical belief?

2.3 Did the Respondent do the following things:

2.3.1 Delete the Claimant's Yammer comment on 18 May 2021;

2.3.2 Delete the Claimant's follow up Yammer comment on 18 May 2021;

2.4 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated in the same circumstances. The Claimant has not named anyone in particular, of a different philosophical belief or of no philosophical belief who he says was treated better than he was in the same circumstances. He says that the Respondent deleted his comments because they knew he did not support their narrative that was in favour of the vaccination process.

2.5 If so, was the less favourable treatment because of the Claimant's philosophical belief?

2.6 Did the Respondent's treatment amount to a detriment?

3. ***Remedy for discrimination***

3.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

3.2 What financial losses has the discrimination caused the Claimant (if any)?

3.3 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

3.4 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

3.5 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.6 Did the Respondent or the Claimant unreasonably fail to comply with it?

3.7 If so is it just and equitable to increase or decrease any award payable to the Claimant?

3.8 By what proportion, up to 25%?

3.9 Should interest be awarded? How much?

The legal principles

The European Convention on Human Rights (ECHR)

7. The employment tribunal does not have jurisdiction to determine self-standing European Convention on Human Rights ("ECHR") claims. However, the tribunal has a duty under section 3 of the Human Rights Act 1998 to interpret and give effect to domestic legislation in a way which, so far as possible, is compatible with ECHR rights. The ECHR Articles become relevant, for reasons explained below, when assessing whether the claimant had a protected belief, and in assessing the reason why the claimant was treated in the way that he complains about for the purpose of the direct belief discrimination complaint.

8. Article 9(1) ECHR provides that 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. Under Article 9(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.

9. Article 10(1) provides that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Under Article 10(2) the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

10. Article 17 prohibits the use of the ECHR to destroy the rights of others. It was explained in Forstater v CDG Europe and others UKEAT/0105/20/JOJ that for example one cannot rely on the right to freedom of expression to espouse hatred, violence or for a totalitarian ideology that is totally incompatible with the principles of democracy.

Protected Characteristics Under the Equality Act 2010

11. Section 4 of the Equality Act 2010 sets out a list of "protected characteristics" which include religion or belief and race. Section 9 says that race includes colour, nationality, and ethnic and national origins. Section 10 contains further provisions about religion or belief saying:

> *"(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."

Establishing the protected characteristic of belief

12. The Court of Appeal in Gray v Mulberry Co (Design) Ltd [2020] ICR 715, confirmed that the starting point is to define exactly what the belief is. The question is then whether it is capable of amounting to a "philosophical belief" for the purpose of section 10.

13. In R (Williamson) v Secretary of State for Education and Employment [2005] 2 AC 246, HL, Lord Nicholls provided the following guidance:

"23. Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of 'manifestation' arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention ….

24. This leaves on one side the difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious. This question will seldom, if ever, arise under the European Convention. It does not arise in the present case. In the present case it does not matter whether the claimants' beliefs regarding the corporal punishment of children are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs

as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a nonreligious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. …."

14. In Grainger plc and ors v Nicholson [2010] ICR 360 The Employment Appeal Tribunal drew on a body of domestic and European Court of Human Rights case law to set out some threshold criteria for establishing what is a philosophical belief:

"(i) The belief 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.
(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 …."

15. In Forstater v CGD Europe [2022] ICR1, the Employment Appeal Tribunal ("EAT") set out some principles from the case law about the importance given by the European Court of Human Rights to diversity and pluralism of thought, belief, and expression, and their role within a liberal democracy. In particular it was said:

15.1 In assessing any belief it is not for the tribunal to inquire into its validity: "*Each individual is at liberty to hold his own religious beliefs, however irrational or inconsistent they may seem to some, however surprising;"*

15.2 That said, when issues of manifestation arise a belief must satisfy some modest, objective minimum requirements;

15.3 Freedom to hold any particular belief goes hand-in-hand with the State remaining neutral as between completing beliefs, refraining from expressing any judgment as to whether a particular belief is more acceptable than another, and ensuring that groups oppose to on another tolerate each other;

15.4 A belief that has the protection of Article 9 is one that only needs to satisfy very modest threshold requirements and those requirements "*should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention".*

16. The EAT in Forstater then gave further guidance about Grainger criteria (v) and how rare it will be for a belief not to meet the threshold. The EAT said:

> "*it is only a conviction that e.g. challenges the very notion of democracy that would not command such respect. To maintain the plurality that is the hallmark of a functioning democracy, the range of beliefs and convictions that must be tolerated is very broad. It is not enough that a belief or a statement has the potential to "offend, shock or disturb"… a section (or even most) of society that it should be deprived of protection under Articles 9 (freedom of thought conscience and belief) or Article 10 (freedom of expression). The stipulation that the conviction or belief must not be in conflict with the fundamental rights of others must also be viewed with regard to Article 17. The conflict between rights in this context of satisfying threshold requirements is not merely that which would arise in any case where the exercise of one right might have an impact on the ECHR rights of another; in order for a conviction or belief to satisfy threshold requirements to qualify for protection, it need only be established that it does not have the effect of destroying the rights of others."*

17. The EAT said that only a belief that involved a very grave violation of the rights of others, tantamount to the destruction of those rights would be one that was not worthy of respect in a democratic society. The EAT said "*it is important that in applying Grainger V, Tribunals bear in mind that it is only those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms, that should be capable of being not worthy of respect in a democratic society. Beliefs that are offensive, shocking or even disturbing to others, and which fall into the less grave forms of hate speech would not be excluded from the protection. However, the manifestation of such beliefs may, depending on the circumstances, justifiably be restricted under Article 9(2) or Article 10(2) as the case may be."*

Direct Discrimination

18. Section 13(1) of the Equality Act provides that:

> "*A person (A) discriminates against another (B) if, because of a protected characteristic (A) treats (B) less favourably that (A) treats or would treat others."*

19. The concept of treatment being less favourable inherently suggests some form of comparison and in such cases section 23(1) applies:

"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."

20. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparator can be with a hypothetical person. Moreover, the Employment Appeal Tribunal and appellate courts have also emphasised in a number of cases including Amnesty International v Ahmed [2009] IRLR 894, that in most cases where the conduct in question is not overtly related to disability, the real question is the "reason why" the decision maker acted as he or she did. Answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator. It may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator.

21. In order to satisfy the "because of" test, it is not necessary for the protected characteristic to be the whole of the reason, or even the principal reason, for the treatment. In Nagarajan v London Regional Transport [1999] ICR 877 Lord Nicholls said, in the context of a complaint of race discrimination:

"*Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others…If racial grounds…had a significant influence on the outcome, discrimination was made out."*

Religion / belief discrimination and the impact of the European Convention on Human Rights

22. Article 9 ECHR does not just protect the right to hold a particular belief but also to manifest it. It was observed by the Employment Appeal Tribunal in Wasteney v East London NHS Foundation Trust UKEAT/0157/15/LA that "*This is obviously right: without the right to express and practise beliefs, the freedom of religion guaranteed by Article 9 would be rendered hollow."* 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.

23. The Tribunals and courts have grappled with how these principles affect the assessment, under domestic law, of direct discrimination claims

because of religion or belief. It is trite to say that under the Equality Act there is no statutory means of "justifying" direct discrimination.

24. In particular, it was said in Wasteney that:

"If the case is one of direct discrimination then the focus on the reason why the less favourable treatment occurred should permit an ET to identify those cases where the treatment is not because of the manifestation of the religion or belief but because of the inappropriate manner of the manifestation (where what is "inappropriate" may be tested by reference to Article 9.2 and the case-law in that respect)."

25. Underhill LJ explained the distinction in the following way in the Court of Appeal's judgment in Page v NHS Trust Development Authority [2021] EWCA Civ 255:

"*In the context of the protected characteristic of religion or belief the Employment Appeal Tribunal case law has recognised a distinction between (1) the case where the reason is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of. Of course, if the consequences are not such as to justify the act complained of, they cannot sensibly be treated as separate from an objection to the belief itself.*

The distinction is apparent from three decisions in cases where an employee was disciplined for inappropriate Christian proselytisation at work – Chondol v Liverpool City Council [2009] UKEAT 0298/08, Grace v Places for Children [2013] UKEAT 0217/13 and Wasteney v East London NHS Foundation Trust [2016] UKEAT 0157/15, [2016] ICR 643. In essence, the reasoning in all three cases is that the reason why the employer disciplined the claimant was not that they held or expressed their Christian beliefs but that they had manifested them inappropriately. In Wasteney HH Judge Eady QC referred to the distinction as being between the manifestation of the religion or belief and the "inappropriate manner" of its manifestation: see para. 55 of her judgment. That is an acceptable shorthand, as long as it is understood that the word "manner" is not limited to things like intemperate or offensive language."

26. The Court of Appeal held that this distinction, applied by the tribunal to the facts of Page, was plainly correct. They said: "*It conforms to the orthodox analysis deriving from Nagarajan: in such a case the "mental processes" which cause the respondent to act do not involve the belief but only its objectionable manifestation*. *An analogous distinction can be found in other areas of employment law – see paras. 19-21 of my judgment in Morris v*

Metrolink RATP DEV Ltd [2018] EWCA Civ 1358, [2019] ICR 90. Also, and importantly, although it gets there by a different route (because the provisions in question are drafted in very different ways), the recognition of that distinction in the application of section 13 achieves substantially the same result as the distinction in article 9 of the Convention between the absolute right to hold a religious or other belief and the qualified right to manifest it. It is obviously highly desirable that the domestic and Convention jurisprudence should correspond."

27. As to the balancing act, the Court of Appeal also said:

"*Mr Diamond would say that even if that is the issue the implications for Christians remain serious: they should not be expected to remain silent about their beliefs simply because they may be unpopular with, or even offensive to, others – in particular, in this context, gay people – and therefore potentially embarrassing to the institution for which they work. That is true up to a point, and the Courts have shown themselves astute to protect the freedom of Christians to manifest their beliefs in relation to matters of traditional Christian teaching about these matters. I have already referred to the decisions in Smith v Trafford Housing Trust and R (Ngole) v University of Sheffield on which Mr Diamond relies. But I say "up to a point" because the freedom to express religious or any other beliefs cannot be unlimited. In particular, so far as the present case is concerned, there are circumstances in which it is right to expect Christians (and others) who work for an institution, especially if they hold a high-profile position, to accept some limitations on how they express in public their beliefs on matters of particular sensitivity. Whether such limitations are justified in a particular case can only be judged by a careful assessment of all the circumstances of the case, so as to strike a fair balance between the rights of the individual and the legitimate interests of the institution for which they work. As I acknowledge at para. 59 above, striking the balance in this case is not entirely straightforward; but I have concluded that, in particular for the reasons given at paras. 60-62 above, the Employment Tribunal was entitled to conclude that the Authority did not act unlawfully in taking the action that it did against the Appellant. This is a decision on the facts of a particular case, and wider conclusions should not be drawn from it."*

<u>Burden of Proof</u>

28. Section 136 of the Equality Act sets out the burden of proof. In particular it states:

"(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

sub section (2) does not apply if (A) shows that (A) did not contravene the provision."

29. In Efobi v Royal Mail Group Ltd [2021] ICR 1263 the Supreme Court confirmed that the two stage approach identified in relation to the previous anti-discrimination legislation in the cases of Igen v Wong [2005] ICR 931 and Madarassy v Nomura [2007] ICR 867 remained valid under the Equality Act. At the first stage, the burden is on the claimant to prove, on the balance of probabilities, facts from which the Tribunal could properly conclude, in the absence of an adequate explanation, that an unlawful act of discrimination had occurred. If such facts were proved, the burden moved to the respondent at the second stage to explain the reason(s) for the alleged discriminatory treatment and satisfy the tribunal that the protected characteristic had played no part in those reasons. Reference was, however, also made to the observation in Hewage v Grampian Health Board [2012] ICR 1054 that it is important not to make too much of the role of the burden of proof provisions and that:

"They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Findings of fact

The claimant's beliefs

30. The claimant explains in his witness statement:

"*My belief is that there is a battle/war between the forces of light and darkness. I believe that humanity belongs to the light side but each individual has been given free will to decide individual destiny. The dark forces can and do manifest into our plane of existence to trick and manipulate our free will to take the wrong path. I have held this belief my whole life and it has been taught to me from a very young age and from various sources to be very careful about how you live your life and what information you do listen to and act upon because the Devil is amongst us and is continually trying to corrupt us and take us away from God. The Great Spirit is the only source of truth in my PB. I believe in a Supreme Being (something Free Masons also worship), and that this supreme being will one day return to earth and rid us of all the Evil."*

31. The claimant further says: "*I believe we as human beings are divine and that we have been created by a Great Spirit and that this GS is set to return, and therefore, I must live my life as closely to the true teachings of the GS as possible, which is not easy."*

32. The claimant says he has believed this his cogent life and has lived his life as best he can following the teachings of his ancestors. He says he has, during his life, done his best to rid his life of all the known poisons and toxins that he believes "dark forces" have introduced into our lives.

33. He says his belief system incorporates all ancestral teachings from all ancient cultures, including the Christian bible and his own ancestral book the Bhagavad Gita.

34. The claimant says: "*I believe that our creator will return one day and so it is very important that we as humans and children of the Great Spirit, do not take part in anything that will label us as property of the Dark forces."*

35. The claimant further believes that mankind are in the last days as described by the Book of St John and that he has believed we are in the last days for most of his life. He believes that: "*Currently, people like me are lost in a world that is now without any doubt, completely under the control of darker forces. One day I have faith that our promised land will be granted and so we can return to our ancestral ways and be even closer to the Great Spirit. To live in peace and harmony as we were before the Evil took control of all our institutions and global leaders."*

36. The claimant then says: "*I believe, that this so called vaccine is the culmination of the darker forces agenda to own humanity and as many human souls as it can. I believe that there is a battle going on between darker forces and those loyal to the GS. This war was started a very long time ago and it is essentially between the creator and the Devil. The creator did not elevate the devil to a position he deemed worthy and the GS instead elevated humanity to the top. This angered the Devil and so for thousands of years he and his 100 army have been manipulating the human race to become his children. The only way this has been ultimately possible is to hack the human DNA – to remove the GOD Gene and humans ability to believe.*

It's interesting that the so called vaccine is purported to also switch off the B-map 2 Gene which controls your ability to believe. That is very concerning. They are creating a world that will no longer believe in the creator. As prophesised. That's what this is really about."

37. The claimant believes the dark agenda deceiving many people was warned about in the book of Revelation which he quotes as:

"*14 And he deceived them that dwell on the earth by the signs which were permitted to him to do in the sight of the beast, saying to them that dwell on*

the earth that they should make the image of the beast which had the wound of a sword, and did live.
15 And it was permitted to him to give a spirit unto the image of the beast, so that the image of the beast should speak and should cause that as many as would not worship the image of the beast should be killed.
16 And he made all, both small and great, rich and poor, free and bond, to receive a mark in their right hand or in their foreheads
17 And that no man might buy or sell save he that had the mark or the name of the beast or the number of his name,"

38. The claimant believes that the mark of the beast has started to materialise in the mRNA DNA editing tools (i.e. what the claimant terms the "so-called vaccination"). He goes on to say "*My PB sees that the so called vaccines are delivery mechanisms for the gene editing tools that are making humans ready to be augmented. Without the nano-lipid molecules or gene editing tools, the human body would readily reject the Nano-technology being proposed for human augmentation. Therefore these so called vaccines are the pre-curser to the actual mark, if they are not the mark itself."* The reference to human augmentation is a reference to the claimant saying that a neural brain chip has been designed that will allow humans to directly interact with technology. He says *"I believe that the evil dark forces have forced the gene editing tools onto humanity because they now know how to incorporate technology into humans but there are certain genes that need to be turned off."*

39. He further believes that the DNA altering tool is getting people ready for the Metaverse (an augmented reality, virtual world). He says: "*I believe that humanity is now being bio-engineered to be creations of the dark forces and so will own their souls. These souls will then be transplanted into the Metaverse, which has been created to trap human souls. The technology and advances that have been made by the darker sources have now put the human race in great peril – as foretold by scripture."* He also believes that the "so called vaccine" has caused over 40 mechanisms of injury including death, anaphylactic shock, blood clotting, organ damage, neurological damage and infertility. He believes that such physical damage means that people will be offered the "solution" of immortality in the Metaverse.

40. The claimant, as we have said, believes in free will. He believes the right to follow the light or dark forces is each individual's choice. He says that he does not want to interfere with the workings of the devil, but simply wanted to use his voice to raise concerns about what they are up to in the hope that anyone who is undecided and has not had the jab "*can gain the light of the Lord and seek truth and free will."* He says that he calls it a "so called vaccine" because as a public servant he wishes to stay impartial and not discriminate against anyone who sees it as or as not a vaccine.

41. We accept the above is the claimant's genuinely held belief system.

The events in question

42. The claimant has worked for the respondent since January 2009. At the time of the events in question Mr Crockett was assistant private secretary to Nicole Newbury, the director of "Wealthy and Mid-size Business Compliance" ("WMBC") in the Customer Compliance group. Mr Crockett had also been appointed the moderator of a Yammer group, with Yammer at the time being a relatively new phenomenon in HMRC. It was rolled out in HMRC at around the same time Mr Crockett joined Ms Newbury's office. Yammer is a social media platform for businesses.

43. Ms Newbury decided to have a Yammer group as a channel to keep in touch with staff in the division through a range of short blog style updates periodically, and to give others in the directorate the chance to share non sensitive news of potential interest such as sharing information around team events, leadership updates or leadership visits. There were approximately 6000 staff in WMBC. A post to Yammer could be seen by everyone who is member of the Yammer group.

44. Part of Mr Crockett's role as Yammer moderator was to enforce the Yammer terms of use and check that what was published met the terms. He was not given detailed training. He had access to a Yammer moderators' group, access to the guidance on it, and the contact details for the overall HMRC moderator/communications team who he could consult. Mr Crockett had also previously attended standard HMRC training on unconscious bias and discrimination.

45. On 18 May 2021 Ms Newberry posted the following:

*"**The importance of our wellbeing** – good morning everyone, with huge thanks to our WMBC Wellbeing Group (in particular [X] (WMBC Wealthy) for sharing his experience), I'm delighted to be able to launch the first edition of our WMBC Monthly Mindfulness Sway.*

We find ourselves, once again, in a period of change as we edge out of lockdown across the UK. I hope you have seen the Working from our offices: Our Conversation and the way ahead - HMRC message from Esther Wallington, our Chief People Officer, yesterday. As well as the individual conversations with your manager, we are asking every team to have a discussion about how you are feeling about starting to spend more time in the office when the government guidance changes and how we can

work together to deliver in our teams whilst moving to more flexible working under the Pay and Contract Reform (PACR) deal. The material for that discussion will be shared through managers in the coming days. There will also be more detail on the implementation of PACR over the coming weeks ahead of some important changes from 1st June.

There will therefore be some really important information to take in and I'd like to encourage you to take the time to read the material, discuss across your teams and support your colleagues as we adapt to the changes. From the conversations I have had with teams across WMBC, I know these changes will evoke a mix of reactions and emotions and it's important we work together in a supportive way through this transitional period. I also know this all comes on top of demanding and important roles and against that backdrop and Mental Health Awareness Week last week, I want us all to make space to look after our own wellbeing and continue to prioritise our mental and physical health. With that in mind, please do take some time to actively use the Sway material and make sensible choices about what work to prioritise, and deprioritise, to allow you to adapt to the changes over the coming weeks.

This first edition of the Monthly Mindfulness Sway has excellent features on subjects which resonated with me and, I'm sure will also chime with many of you: Carers, Avoiding Burnout and an excellent Wellbeing Calendar (in particular I'm looking forward to 23rd and 29th!). I do hope you enjoy and see the benefit of this first edition and would love to hear any comments on the thread below.

Nicole"

46. The claimant saw the post and decided to open up about what was troubling him. He posted a reply that said [88]:

- Sohpal, Sukhvinder (WMBC Wealthy)

  26m ago

  Dear Nicole,

  In the spirit of Mental Health awareness week I would like to share with you what has been making me quite anxious. The messages I've been getting (and rightly so) over the last year is that we should not suffer in silence and 'speak up' without fear of retribution if we have a concern. Well, I don't know if you've heard but there are some serious reservations about the so called Vaccine. I say so called, because it has still has not been approved as a vaccine and is in the experimental phase of a global clinical study, which will test the safety of said jab until 2023.

  This untested experimental technology has never been used on humans before. Sadly for those that aren't aware, the number of deaths from this jab already number in the thousands – likely estimated 20k plus. In fact the FDA/CDC has admitted that the number of deaths from this experiment are already more than all deaths from any other vaccine over a number of years. That's concerning. There have also already been serious side effects which are life changing, and this number is anything from over a hundred thousand and probably much higher, closer to a million! The more learned amongst us will know that reports of adverse reactions are only around 1-10% of actual events. This is very concerning.

  As your post is about wellbeing, please can you tell me how you are going to ensure the safety of those who have chosen not to take part in this global experiment? The data so far is showing that there is a serious side effect which could very well be causing infertility in females. Worse, once you have taken the experimental jab, you then become like a 'spike protein factory' and in effect contaminate all those around you causing similar side effects (potential infertility) to those who have not been jabbed. This is also very concerning. Even the companies creating this jab have admitted that transmission of the 'spike protein' is possible through the skin and the breath. So if you are in the same room as someone who has been jabbed, you will also be effected by the mRNA created 'spike protein'.

  It gets worse. The independent scientists have been sounding the alarm for a few months now, and what they are saying is very concerning. These are expert immunologists, virologists, professors and many more health experts (hundreds and thousands of them), and what they are saying is that the experiment has done harm to the immune system, making it vulnerable to any coronavirus, of which there are thousands naturally occurring. This is leading to the view that as soon as the flu season hits (autumn/winter) there will be a lot of very ill people and I dare say deaths. Even our Prime Minister is alleged to have said "let the bodies pile up", and I have to wonder if this is what he meant (if he did say it) – and he has also confirmed that people who have already had the jab are likely going to be the ones most effected by this apparent new variant – the Indian Variant (how racist it is to label it to a country – which was already pointed out when the alleged original virus supposedly emerged in China). He (Boris) has also confirmed that this is why he is going to hold the public enquiry into the so called pandemic in the Spring of 2022 – as he suggests that the flu season will kill many!

  I say so called pandemic because there are now legal cases around the world being brought against the companies, the FDA/CDC and many more, and who are using the global data on deaths as evidence that the pandemic has been 'fraudulently' created. There has been no increase in deaths from any country. I'll just leave that one hanging. I very much look forward to seeing the outcome of the legal battles. If its anything like previous ones – the jab creators were exposed and got fined billions for doing exactly the same thing not so long ago (creating fear about a pandemic that didn't exist).

  I'm not going to beat around the bush with this;

  · What contingency plans do you have in place for our business in case of a serious impact (deaths) of a vulnerable immune system and flu season?

  · What measures will be taken to protect those in the workplace who have not taken part in this experiment?

· How will you ensure that transmission of the mRNA created 'spike protein' in those who have chosen to take part in this experiment is minimised in the work place?

· Can you confirm that HMRC will never coerce its staff into taking part in this experiment

· Anyone who doesn't take part in this experiment is protected from any detriment from HMRC and protected under human rights and freedom of speech to share and inform people who are still trying to decide if they want or need this experimental untested technology.

I think there is much more of a discussion to be had about this, so, until we know more – which is near impossible as there is a measurable and wide ranging programme of censorship, maybe it would be a good idea to slow down the return to the office. I doubt the lockdowns will ever end anyway. The writing is already on the wall.

I do expect to be vilified and bullied for posting this – and I can only appeal to you to please don't allow me to experience any detriment. I am more than willing to host a debate about this to ensure that everyone has access to the knowledge and expertise that has been and continues to be censored. (The censorship is very distressing and akin to Nazi Germany!). Finally, just to mention that I am not the only one who has become informed about this experiment and millions protested globally last Saturday, and over a million will be protesting again in London on the 29 May.

No need to respond directly to this post, I just wanted to share with you what has made me anxious.

With all my love,

SoL

47. Mr Crockett says, which we accept, that that when he saw the post what immediately came to his attention was the length of it, which he found unusual, and then the various references to vaccine safety and the mention of censorship being akin to Nazi Germany. He said when he saw the claimant's post around 20 or 30 people had read it. A reader could not "dislike" a post on Yammer but could express an emoji such as a sad or a shocked face. He says he recalls there were a number of sad or shocked faces next to the post. He says the post would also have showed the name of the author so he would have seen it was Sukhinder Sohpal. He accepts that the name might tell you something about the individual's heritage but says he had no definitive knowledge of the claimant's race. He says, and we accept, he had no prior knowledge of the claimant.

48. Mr Crockett says, and we accept, that he was quite shocked when he read the post. He says in his witness statement: "*Disagreement is fine, and management were fine with concerns about returning to the workplace being shared. That had to be done in a way that was not going to alarm or concern others or share misinformation. This post included references to the UK and Nazi Germany, and made a number of allegations about the safety of vaccines (for example suggesting vaccines travel through the air) that weren't in line with Government policy."* He goes on to say: "*If SoL had wanted to post this on his personal Facebook, fine. Whether or not we agree, civil servants must deliver the Government agenda and act in a certain way. The Civil Service Code is pretty key (288). What was said on Yammer is also disclosable under FOIs. If the post had been allowed to remain, we would have someone sharing potential misinformation,*

contradicting government policies around the vaccine on Government channels, with potential reputational impact."

49. Mr Crockett also says in his statement: "*If they had said "I don't want to take the vaccine", enquired or expressed more measured concern about what policies there may be around it and office attendance, or asked how they could discuss individual circumstances further, I wouldn't have intervened in the same way, but it was just the nature of the quite extreme views expressed against the vaccines that made me feel I ought to act."*

50. Mr Crockett's immediate gut reaction was that the post did not meet the Yammer acceptable use policy. He went to look at the policy to check on that. He also messaged Ms Newbury at around 12:27 [84] stating "*Hi Nicole – just wanted to alert you to a very lengthy reply post on your yammer update from someone in Wealthy with big concerns about the vaccine/return to the office etc. it's a really tricky one to decide on how to approach but thought you would want to be aware."* Ms Newbury directed Mr Crockett to ask HR for lines to take on the vaccine and "*work with Wealthy to ensure someone is checking in on the individuals to see they're ok. Urgent I'm afraid."* Mr Crockett replied at 12:30 to say "I *think im going to need to remove it as its probably in part fake news, but probably need to acknowledge in some way*." Ms Newbury agreed with him saying "*may need to consider removal given vaccine statements."*

51. In the meantime Mr Crockett had at 12:15pm emailed HR explaining the situation saying Ms Newberry's post "*prompted a very lengthy response with various claims about the vaccine and someone's concerns around being in an office with vaccinated people. I'm admin of the group and plan to remove the post as its almost certainly fake news in part and anti HMRC's policies as not v relevant in large parts to WMBC."* He asked for advice on how to hand it with the poster about the reason for removal and "*any lines we have that we can take re return to office/ vaccine concerns?"*

52. It seems likely that Mr Crockett deleted the post not long after 12:30pm. The deletion prompted a further post from the claimant asking why his original post had been deleted. Another employee then replied to say "*Sol I expect its because your post was full of statements which were exaggerated, unverified or entirely and probably false. What you posted essentially amounts to misinformation. I can understand if you have concerns around vaccines all vaccines have risks and side effects in the same way that medicines do. However, all COVID vaccines have been tested and approved for use by experts in their fields, and their benefits far outweigh the risks – including the risk of catching and dying from COVID."* Mr Crockett deleted the claimant's second post and the colleague's post too. Following the removal of the posts Mr Crockett entered an explanatory message as moderator [202]: "*The comments on this thread have been*

moderated as a comment made failed to meet the terms of HMRC's Yammer usage policy. Full details of the policy can be found at the following link…" Mr Crockett says he deleted the second post because it no longer made sense in the absence of the deleted post and he did not want a debate where it ended up being reposted.

53. At 1:16pm Mr Crockett emailed HMRC Internal Channels (the central Yammer moderator) saying he had removed the post as he believed it was in breach of Yammer usage policy on several grounds and "*to prevent any further offence being caused to staff."* He said they had alerted the relevant divisional director to check the person concerned is ok. He noted that the claimant had asked why the post had been removed so he was proposing to post a link to the Yammer usage principles and advise on the aspects of the post that did not meet the terms and conditions. He said he was considering giving the claimant the option to write direct to the Director in an appropriate way about his concerns, unless that was something they would usually handle or had some wording for Yammer. He flagged up that he would usually wait for advice from them before deleting but given the potential for aspects of the post to upset other staff, he had felt there was no reasonable alternative to immediately remove it.

54. The claimant emailed Ms Newbury at 3:03pm [100] saying "*I can see that you deleted my post today. I would like to better understand why you did this. Please can you explain why you deleted it? My post clearly pointed out that censorship is taking place across the piece and that this is exactly what happened in Nazi Germany. So your action is confusing as it can also be seen as censorship. Hope we can discuss this further".*

55. That afternoon Mr Crockett got a holding response from HR [86] to say "*I'm trying to speak to someone in Policy as I'm not sure what we can say beyond the need for HMRC to follow Government guidance. I'll get back to you ASAP."* Mr Crockett replied again to say Ms Newbury had received an email from the claimant but they would hold off replying until the next day, so HR had time to hear back from policy. He said the Yammer contents team were also providing some lines around inappropriate content and what they would usually forward on to a manager about discussing wellbeing and acceptable use policy.

56. That afternoon Mr Crockett rang the claimant's senior manager. He says, which we accept, that he explained he needed to delete the post but the claimant seemed quite upset and they wanted to check on wellbeing. He said the manager had the option to speak to Ms Newbury but he is not sure if they did speak. The director's office contacted the claimant's second line manager to ask him to make contact with the claimant but by the time he tried to do so the claimant had finished for the day [136].

57. At some point that afternoon Mr Crockett spoke with the Yammer Moderator and Ms Cecil sent him a follow up email with some further guidance [92]. She recommended contacting the Expert Advice Service to offer wellbeing support to the claimant. She said it had been correct to delete the post because: "*As a government organisation we are careful to link to official sources of information, such as gov.uk, NHS and Public Health England, and the post was a clear breach of the Yammer Usage Principles and policies linked to within it. Everything on Yammer is requestable under the Freedom of Information Act, and how would it look as a "HMRC say [misinformation on included this post]".* She said "*We want to encourage discussion and knowledge sharing on Yammer, but employers stipulate what constitutes acceptable standards of behaviour in the work environment, both in-person and through digital media such as Yammer. Those standards have to balance individuals' rights to freedom of expression against the rights of other employees and the protection of the employers' business interests, so in this case, you were absolutely right to remove the post."*

58. The next morning Mr Crockett replied to Ms Cecil to say they had spoken to the claimant's senior manager and they were arranging to check on well being that morning either direct with the individual or via the direct line manager. He said the claimant had already logged off for the day when the senior manager attempted contact the previous day. He took up the offer for Mr Cecil to contact the EAS about the claimant which she did saying Ms Derrick from wellbeing would try to make contact with the claimant that day [91]. By lunchtime Ms Derrick had fed back that she had spoken to the claimant's line manager who had said the post was out of character and he would speak to the claimant and signpost the claimant to support [90]. The claimant's line manager's note of his call with Ms Derrick is at [98] where the discussion is not aimed about the content of the post or trying to change the claimant's mind but support that could be offered to the claimant about his anxieties.

59. Mr Crockett also helped Ms Newbury with a response to the claimant's email which was sent to the claimant on the evening of 19 May [99]. The email made many of the points already set out in the internal correspondence above about what it was that had led to the deletion of the post. The email said it was ok to have concerns about returning to the office and offered the claimant various sources of support.

60. On 20 May the claimant's line manager had a welfare call with the claimant [102]. The claimant expressed his absolute fear of returning to the workplace and the possibility of being infected by others in the workplace, including that vaccinated people would infect the claimant and put him and his family in danger. The claimant's manager offered to listen to the

claimant whenever he needed it. The manager sent a follow up email again setting out other sources of support [104].

61. The claimant tried various internal avenues, with the assistance of his manager, to express his ongoing concerns about the deletion of his post without the resolution he was seeking. On 20 July he emailed his line manager explaining that he was booking an appointment with his GP due to the stress the situation had had on him and had also booked an appointment with PAM counselling [120]. On 13 August the claimant sent his line manager his formal grievance [126].

62. Mr Crockett gave an account to the grievance investigator [157-161]. He explained he had deleted the claimant's second post and the reply to it because there was no context for them to make sense to other group members following removal of the claimant's original post. He explained he had told the other poster of the reason for the deletion of the other poster's post by MS Teams. As part of the explanation of the deletion of the post he said: "*Describing the vaccine rollout as an experiment, unproven and unsupported allegations about large numbers of people dying from the vaccine rollout, alleged risks to fertility, damage to people's immune system and others being negatively impacted by vaccinated people breathing in the office – are all contrary to government policy and regarded as misinformation. Also effectively accusing our government of censorship "akin to Nazi Germany" is clearly inacceptable tone/language."* Mr Crockett identified areas he felt the post did not meet including: "*Follow the Civil Service Code which means acting with…objectivity and impartiality at all times (don't talk politics)", "Be responsible for what you write, exercise judgement and discretion and be mindful of how your comments might be read", "be considerate of your colleagues' wellbeing", "Protect yourself and others – Avoid posting anything that could harm the reputation of HMRC."*

63. The claimant's grievance was not upheld. The grievance decision maker considered that the post was removed because it breached HMRC's Yammer principles. A recommendation was made that when a post is deleted an explanation is provided to the person it applies to, to explain why it has been removed from the system rather than just a message on the system. We of course have to consider for ourselves what we find to be the reason or reasons for the deletion of the claimant's posts.

Discussions and Conclusions

Does the claimant have a protected philosophical belief?

64. Here the respondent did not suggest that the claimant does not genuinely hold his beliefs as expressed by the claimant. The respondent does not dispute the claimant meets the Grainger criteria (i), (ii) and (iii); the belief is

genuinely held; it is a belief and not an opinion or viewpoint based on the present state of information available; it is a belief as to a weighty and substantial aspect of human life and behaviour.

65. The respondent does dispute that the claimant has met the threshold of Grainger (iv): the belief must attain a certain level of cogency, seriousness, cohesion and importance. The respondent submits that it is difficult to understand the claimant's belief other than the suggestion that the Covid 19 vaccination is the mark of the devil, which it is said is expressed in a simplistic manner compared with the detail in the claimant's witness statement. The respondent asked the claimant in cross examination if the covid 19 vaccination meant recipients souls were taken by the devil and that the claimant had answered that was an absurd idea. But the respondent submits it is an idea that does emerge from the claimant's witness statement. The respondent argues that if the tribunal reads everything the claimant says the tribunal would struggle to understand the full nature of the claimant's belief. The respondent submits it is an unintelligible belief that is not cogent or cohesive. The respondent draws a distinction with, for example, the gender critical belief in Forstater, pointing out that was a belief that was not unique but was shared by others, is part of an important debate about sex and gender, and the tribunal in that case had available to them academic papers and opinions on the point.

66. The respondent also disputes that the claimant has met the threshold of Grainger criteria (v): the belief must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundament rights of others. Here the respondent accepts that many people believe in the devil. But the respondent draws a distinction about the particular nature of the claimant's belief, that two years into the covid 19 pandemic and the vaccination programme, which the claimant would term as darkness coming and effectively the devil taking over. The respondent says that manifestation is a relevant factor and it is important to consider how the belief might manifest itself. It is said that one way it could manifest is the way that it did, i.e. the claimant's post on a workplace forum not about his central belief but criticisms of the covid 19 vaccinations. The respondent submits, however, that if the claimant's full belief was set out it could cause fear and chaos in the workplace with people being too fearful to take up the vaccination because of what is suggested, which was not just the devil taking over; but that the taking of the vaccine could harm others, cause injury and death. The respondent argues the nature of the belief is a grave violation of the fundamental rights of others because it could compromise the vaccination programme which the world at large has worked hard at to get the virus under control and save lives. The respondent argues that if they are wrong about that and the tribunal believes that the belief is so far fetched that few would take notice, that

points back to their earlier arguments about the belief not reaching a certain level of seriousness, importance, cohesion and coherence.

67. Looking first at Grainger principle (iv), this is a principle to which we gave much attention and debate to in our deliberations as a tribunal and we spent some time considering the case law on the point, including Grainger and Forstater. We had to factor the low bar established by the case law, as was fairly drawn to our attention by the respondent's counsel, and we were on balance unable to conclude that the claimant had not met the minimum threshold required.

68. We say this because the claimant's belief system is about matters that are more than merely trivial and it is a belief in a fundamental problem. Grainger says that the belief must reach a certain level of cohesion and coherence, with coherent meaning intelligible and capable of being understood. The claimant's belief system, centering on a belief in a supreme being, the devil, and a battle between these forces that will eventually come to a head, is found in many belief systems. That he sees the covid 19 vaccination as part of a way of the darker forces taking over causing death and harm, with, he perceives, the eventual aim of mankind being convinced (as part of that aim) to enter the metaverse is, in the tribunal's own language and experience, not a mainstream belief. But it is a belief system, that is capable of being understood. Understanding is different to agreeing with. It is a belief system genuinely held by the claimant and which he has built, in part, upon religious and ancestral texts, including the Book of Revelation. It is not for us as a tribunal to then dissect and criticise the rationality of that personal belief system. As was said in Grainger, typically religion involves belief in the supernatural and which is not always susceptible to lucid exposition, less still rational justification and has long used allegory, symbolism and metaphor. Allegory, symbolism and metaphor is an apt description, in the tribunal's view, of part of the way in which the claimant has constructed his belief system when built upon religious and ancestral texts and which he then uses to interpret the world around him.

69. It appears to potentially be a fairly individually held belief system. The claimant tells us there are many others who share his views. He may be right, but we did not see detailed evidence of that. But the point ultimately is that the belief system does not have to be shared by others, it can be intensively personal and subjective provided it meets the minimum threshold criteria.

70. The claimant's belief system is complicated because in part it also builds on what the claimant sees as science based principles about the covid 19 vaccines and his belief that they alter DNA and alter mankind's ability to believe, that the vaccines themselves cause death, injury and infertility on a

major scale, that these affects can pass from the vaccinated to the unvaccinated, and about nanotechnology and the metaverse. The respondent says this is not based in proven, science, hence their reference to the difference in the quality of evidence compared with, for example, Forstater. The claimant believes that his viewpoint is science based and that whilst he has put forward what he can (as contained in the bundle and his witness statement) that governments and authorities worldwide are engaging in censorship.

71. In our judgement, if this was the sole basis for the claimant's beliefs then the respondent may well have a point. It was said in Grainger that if an individual can establish they hold a belief based on science, as opposed to religion, that is no reason to disqualify it. The belief based on science must then meet the baseline criteria which includes some element of cogency. But here the claimant holds a very individualised belief system built on matters of faith, from religious texts and ancestral texts melded together with what he observes is going on in the world and fed by what he sees as science about the covid 19 vaccination programme. It then becomes difficult, in our judgement, to separate out those pieces of the overall jigsaw puzzle of the claimant's belief system and deconstruct some to deconstruct the cogency of the overall belief. We do not see that as being fundamentally what the Grainger (iv) criteria is there to do, or the principle that the threshold should not be set too high so as to remove from protection minority beliefs. At the end of the day there are other belief systems out there which seek to use what they regard as principles of science, but which are seen as controversial by others, as part of, or to validate the belief system.

72. Turning to Grainger principle (v), we are satisfied that the claimant's belief meets the low threshold, as set out in the case law, that it is worthy of respect in a democratic society, is not incompatible with human dignity and does not conflict with the fundamental rights of others. It is important to emphasise again the low bar the case law sets; to fall foul of this criterion requires a belief akin to totalitarianism, Nazism or to subjecting others to torture and inhumane punishment. We do not consider that can be said of the claimant's belief system. His evidence was, which we accept, that he is a proponent of freedom of choice in terms of whether to take the Covid 19 vaccines. He was seeking to set out his alternative view on the covid 19 vaccine programme for what, from the claimant's perspective, was about people making an informed choice, even if many may take the view the claimant's perspective was misguided and/or ill informed. His aim was not to completely silence those in favour of the covid 19 vaccination programme or to advocate death. Indeed, the claimant saw his perspective as life-saving in several ways. Whilst it can be said that if the claimant is wrong, and that dissuading people from engaging with the covid 19 vaccination programme through spreading information about the vaccines

altering genes, and the vaccines and the vaccinated spreading injury, infertility and deaths, could lead to more injuries and death, it is pushing his belief system too far to say that the belief system is propounding death. Ultimately the claimant believes in debate and the freedom of choice in a democratic society. It is then difficult to see how the claimant's perspective, can he said to be incompatible with human dignity, or conflicts with the fundamental rights of others. The point is better considered through the lens of the appropriateness of the way in which the claimant manifested his belief, as set out further below.

73. We factor in that part of the claimant's belief system is not just the medical/physical harm he believes the vaccine can cause to individuals and those around them but that it includes the vaccine being part of the preparatory stages of the mark of the beast, and the end of days. The respondent observes that could also spread fear if manifested. For those inclined to believe, then it could. But many widely recognised faiths believe in the devil (inherently a fear provoking concept), or an equivalent being, and the notion of a battle between light and dark, that is perceived to play out in many forms in everyday life and with views expressed (some with the most serious of potential consequences) on what mankind should or should not do to stay on the perceived right side of the line. Taken back to that baseline, again it is difficult to see why the claimant's belief system should not qualify when the others do.

74. We therefore find that the claimant's belief is a protected characteristic. It is important to bear in mind here, however, that is all that finding is; that the claimant's individualistic belief system is a protected characteristic. It is not, by itself, a finding that he has been discriminated against or that he can manifest that belief howsoever he wishes in the workplace. It is also <u>not</u> a finding that belief in the covid 19 vaccination programme is a protected belief, or that a lack of belief in the covid 19 vaccination programme is a protected belief. What it is, is that the claimant's complex, individualised belief system, which is far more than just being against the covid 19 vaccination programme, is a protected characteristic. All that findings serves to do is to bring him on a par with, for example, someone of a mainstream faith group, before proceeding on to assess whether the claimant actually succeeds in his discrimination complaints. We therefore now turn to that.

What was the reason(s) why Mr Crockett deleted the claimant's posts?

75. The respondent provided us with detailed submissions on the burden of proof, which we return to and address below. However, in terms of our analysis we found it helpful to have as our starting point making findings of fact about why Mr Crockett decided to delete the claimant's post. That is fundamentally what this case is about.

76. Having heard Mr Crockett's witness evidence, tested in cross examination by the claimant, and also taking into account the emails that Mr Crockett sent at the time, we find that Mr Crockett's reasoning in deleting the first post was multifactorial (but the factors are interlinked) in that:

(a) He believed that the claimant's post contained misinformation about the Covid 19 vaccination programme, or "fake news" as he termed it in his contemporaneous emails. In particular he was concerned that, in his belief, the claimant's post contained allegations about the safety of covid 19 vaccines that was not in line with government policy, as set out on official government channels such as gov.uk, the NHS, Public Health England and Public Health Wales. This included:

(i) The reference to the vaccines being an experiment;
(ii) The reference to the vaccines causing a "spike protein factory" in the human body;
(iii) The assertions this could then contaminate others, including through the air (i.e. the claimant's reference to breath);
(iv) The reference to, as a result, large numbers of people dying, or suffering serious side effects such as a risk to fertility and damage to the immune system.

(b) He believed that this misinformation (as he saw it) had the potential to cause alarm, concern, worry and upset to others;

(c) He believed that it was information that could bring HMRC into disrepute if it became public knowledge because civil servants must deliver the wider government agenda and it would be sharing information that contradicted government policy about vaccines as set out in the government channels. He also believed that the claimant in the post was accusing the government and Health Authorities of censorship akin to Nazi Germany which again, if it became public knowledge, could bring HMRC into disrepute;

(d) He believed the post breached the Yammer usage principles and in turn the Civil Service Code. The Yammer principles [294] refer to the Civil Service Code so the two are intertwined. His concerns here included:

(i) The Yammer principles stated "Follow the Civil Service Code which means acting with integrity, honesty, objectivity and impartiality at all times (don't talk politics). Mr Crockett felt the contents of the post was not impartial in the sense of it being political in nature and not in line with government policy;

(ii) The principles stated: "Be responsible for what you write, exercise judgement and discretion and be mindful of how your comments might be read. Assume good intentions when you read other people's posts, even if you disagree. Be considerate of your colleague's wellbeing." They also stated "Be Professional – Yammer is an extension of the workplace, so show colleagues the same respect as you would in the office. Could your judgment be temporarily affected? For example, if you are upset or under stress. If so switch off Yammer rather than post inappropriately." They further stated "Be respectful – That means friendly, courteous, inclusive and considerate of the circumstances of others. Debate is welcome but be constructive, respect others' views and beliefs, do not stereotype people or sections of society and avoid offending colleagues." The principles also stated: "Be clear and concise – make your post clear and consider how your tone could make others feel (for example, sarcasm, satire, irony and humour can be misinterpreted)." Mr Crockett felt the claimant was not mindful of how the comments, not aligned with government messaging and given their content, could cause upset and worry or offend others and that the claimant had not exercised judgement when posting what he did;

(iii) The principles stated: "Protect yourself and others – Avoid posting anything that could harm the reputation of HMRC such as defamatory comments, anything casting aspersions on anyone's conduct". Mr Crockett felt, as already stated, the claimant's post in not being aligned to government policy on covid 19 vaccines, and in (in Mr Crockett's belief) accusing the Government and Health Authorities of censorship, could bring HMRC into disrepute.

77. An issue arose in the course of the hearing about whether the Yammer policy in the bundle is the version from the time in question. The claimant says that it is not and it has changed three or four times since he posted his post. Mr Crockett believed it was likely to be the one albeit he was not 100% certain and he had not provided the document that is in the bundle. We have to make our decision on the basis of what is actually presented to us as evidence at the hearing. It is unfortunate that if it is an issue it was not raised between the parties (and if unresolved with then with the tribunal) before the hearing actually started. It is not unusual for policies to be updated. Mr Crockett summarised some of the Yammer usage principles in his email found at [160]. They are similar to but not identical to the wording found at [294]. We think it likely that they are best represented in Mr Crockett's email from the time at [160].

78. We find that Mr Crockett deleted the claimant's second post because it lacked any context without the first post and he did not want a repeat of the

situation that had already occurred where a colleague commented on the claimant's second post about why the first had been deleted which could potentially lead to a reposting of the original material.

Direct race discrimination

79. Here the respondent submits that the claimant has not established a prima facie case i.e. facts from which the tribunal could conclude the claimant was subject to race discrimination, such as to pass the burden of proof over to the respondent. The respondent submits the claimant's only evidence is the fact his name was written at the top of the Yammer post which Mr Crockett could see, and his assertion that it is a common Indian name. The respondent argues the claimant has then jumped to the conclusion that Mr Crockett must have decided to act on the basis of having seen the claimant's name and that assumption is not sufficient to amount to a prima facie case. The respondent argues there is nothing in the Yammer post itself that refers to race and nothing in the following correspondence and documents which would suggest that Mr Crockett had race on his mind in any way. The respondent argues there is no evidence of the claimant being treated differently to others by Mr Crockett. The claimant relies on other Yammer posts he has put in the bundle at page [324] which he says were not deleted. But the respondent says the extracts the claimant has produced are anonymised and give no information about those individuals, their race or their names and there is nothing to show they were in the same material circumstances to the claimant. Furthermore, the respondent argues that if the tribunal looks at a hypothetical comparator there is no evidence that Mr Crockett would have acted any differently when faced with an individual of a different race but who wrote the type of post that the claimant did. The respondent also submits that even if the burden shifts to the respondent then there is cogent evidence that the reason he deleted the post was unrelated to the claimant's race.

80. The claimant submits that someone who was not a British Indian person would not have had the same comments deleted but would instead have been contacted about the content, with dialogue about it, rather than it being simply deleted. He asserts that Mr Crockett would have seen his name, would have identified it as an Indian name, would have seen the post contained a counter narrative and this would have led Mr Crockett consciously or unconsciously deciding to simply silence the claimant's voice in a way the claimant asserts Mr Crockett would not have done for an individual who had an anglicised name/ it would not happen to a white person. Mr Crockett confirmed in evidence that he is from Birmingham, a diverse city. The claimant argues that this shows that Mr Crockett would have known his was an Indian name.

81. The claimant and Mr Crockett were not known to each other. We accept that Mr Crockett would have seen the claimant's name at the top of the claimant's post. Mr Crockett also fairly accepts the claimant's name would indicate to him that potentially the claimant had Asian heritage, as Mr Crockett terms it.

82. We do not, however, find that Mr Crockett was influenced by the claimant's name or indications of the claimant's race/heritage when deciding to delete the claimant's first post. We accept Mr Crockett's evidence that when he saw the post what he was drawn to was its length, which he found unusual as a moderator at the time in that group, and some of its contents about vaccine safety and the comment about censorship being akin to Nazi Germany. He then set about looking at the Yammer terms of reference and sending the emails that are summarised above, before deciding to delete the post for the reasons we have set out above. This all happened within an hour and Mr Crockett was busy undertaking those steps within that hour. We do not consider that considerations of name/race were involved in Mr Crockett's mental decision making processes. The deletion was not a knee jerk reaction, whether conscious or unconscious, to the claimant's name. It was a considered process albeit one compressed within a relatively short time scale of within an hour. It was a considered process whereby Mr Crockett looked at the Yammer terms of reference and set out his provisional concerns within his emails to others. These are the hallmarks of a decision making process of someone who is seeking to ensure they act consciously and rationally and avoid unconscious biases. The fact that Mr Crockett acted in deleting the post with relative speed, and without first engaging in dialogue about the content, was born of Mr Crockett's concerns about the content with a potential audience of around 6000 members of staff, and again not as a knee jerk reaction to the claimant's name/race.

83. We are satisfied that Mr Crockett would have acted in exactly the same way if faced with the same post from an individual with a different racial background and/or an anglicised name. He would have deleted it in the same timescale, for the same reasons and without first having dialogue with the poster about the content. The claimant points to the fact that Mr Crockett spoke with the colleague on MS Teams who commented on the claimant's second post, but did not speak to him, to show a difference in treatment. We do not know their name, but it does not appear to be in dispute between the parties that individual has an anglicised name. That individual, like the claimant, was also not known to Mr Crockett. Our first observation about that would be that Mr Crockett also deleted that individual's post without first speaking to him i.e. in that sense it was the same treatment as the claimant.

84. But in any event this colleague was not in the same or materially similar circumstances to the claimant in several respects. The colleague's post expressed their views on why they believed the claimant's post had been deleted; it did not contain the same content as the claimant's original post. Further Mr Crockett and in turn Ms Newbury, were concerned about the claimant's welfare because of the nature of the concerns he had expressed and his related fears about physically returning to the workplace. The colleague had not expressed those kinds of fear and had not given Mr Crockett concerns about their wellbeing. Mr Crockett therefore decided it was better if the claimant was spoken to through the claimant's line management chain who would know more about the claimant's situation and vulnerabilities rather than him contacting the claimant out of the blue. It strikes the tribunal that it is the kind of situation where whichever strategy Mr Crockett had taken, he would be at risk of criticism by the claimant because of how upset the claimant was and has been about the deletion of his post. But fundamentally we accept that was Mr Crockett's rationale for following the process he did, was borne out of concern for the claimant's welfare, albeit the claimant did not react to it in that way. It was not in any way influenced by the claimant's name/considerations of race or to silence the claimant because of his race/name.

85. The claimant relies on the other Yammer posts in the bundle which he says have not been deleted to support his assertion of less favourable treatment. We did not, however, find them of assistance in our analysis because we do not know the name or race of each poster. Furthermore, there was no suggestion that these were posts that had been moderated by Mr Crockett and allowed by him to stay up on Yammer, so they did not assist in giving insight into Mr Crockett's own mental processes or what he personally saw as acceptable or unacceptable content when acting as moderator.

86. Mr Crockett deleted the claimant's second post because it lacked context without the first and because he wanted to minimise the risk of there then being a chain of subsequent posts that reproduced the original content. In that sense, the reasoning behind the deletion of the second is linked to the reasoning behind the deletion of the first. Again, for the reasons already give we do not find that the deletion was materially influenced in any sense by the claimant's name or race. It was because of Mr Crockett's concerns about the content.

87. We have squarely addressed here the reason why Mr Crockett acted as he did, rather than starting through an analysis of the burden of proof, because we were able to make clear findings about the reason why. However, if analysed through the burden of proof we would not, for the reasons given by the respondent, have found that the claimant had made out a prima facie case of discrimination, such as to shift the burden over to

the respondent. But that said, the respondent would in any event establish that the reason why the posts were deleted was not materially influenced at all by the claimant's name/ race.

88. On a final point the claimant's witness statement sets out at length how and why he believes the respondent is institutionally racist. We have not addressed these matters as they are not complaints that are directly before us in this case and were not matters about which we could fairly have reached a decision given the respondent, understandably had not called evidence on them.

Direct belief discrimination

89. The respondent submits that there was nothing in the claimant's post to alert anyone or Mr Crockett to the belief the claimant holds and that it cannot be less favourable treatment on grounds of belief when the belief is not discernible from the substance of what is said to be the less favourable treatment. The respondent further submits that the claimant has not put forward a prima facie case that Mr Crockett deleted the claimant's posts because the claimant held a specific belief. Again, it is said the belief was not referenced in the post, and the respondent submits that if you look at the reason why it is clear from Mr Crockett's evidence that what was in his mind what that he did not believe the post was appropriate in a workplace digital forum as it may have caused upset and harm to employees, may cause reputational damage to HMRC if it made its way into the public domain and had nothing to do with the claimant's belief.

90. The claimant says that his voice has been deleted and that there is cogent evidence in support of his belief but that the debate has been muted. He denies breaching Yammer usage principles or the Civil Service Code. He submits he had a duty of care to protect colleagues. He says that he stayed objective and impartial, he put care into drafting his post, and it is not against policy to just raise concerns. He says that Ms Newbury's post was starting a discussion that was inviting people to share their thoughts, which he then responded to. He says he had to go through a stressful process to try to find out the detail of why his post had been deleted and he still does not believe he has been given substantial reasons why it was. The claimant says that Mr Crockett deleted the post just based on his own opinion, which was open to conscious or subconscious bias. He says his post was deleted without Mr Crockett thinking about the impact it would have on the claimant, which itself breached the Yammer principles. He says Mr Crockett deleted his comments because Mr Crockett knew the claimant was expressing a counter narrative that did not support HMRC narrative which was in favour of the vaccination process. He asserts that the deletion of his post was discrimination against him because of his belief. He asserts that since its deletion and the bringing of his tribunal

claim that others have had material deleted for raising anything that goes against the covid narrative and that he believes the respondent are covering up the discrimination against him.

91. The claimant's first post was not deleted because the claimant held the protected belief he did. Mr Crockett did not know and could not have known about the claimant's belief system as set out by the claimant in his witness statement and oral evidence before this tribunal, as it was not fully set out within the Yammer post. Mr Crockett cannot have been materially influenced by something he did not know existed.

92. What the claimant did set out within his first post was a partial manifestation of his belief system, i.e. those parts that related to his views about covid 19 vaccine safety. But a belief based simply on safety concerns about the covid 19 vaccines or a lack of belief in the covid 19 vaccination programme is not the belief system that the claimant has laid before this tribunal, and it is not the belief that we have evaluated and found to have protection. Moreover, we do not consider, based on what the claimant had posted on Yammer, that Mr Crockett knew or reasonably would have supposed that it was the manifestation of any protected belief or indeed absence of a protected belief. You have to know about a protected characteristic, or perceive someone to hold a protected characteristic to be materially influenced by it. On that basis we would therefore not find the claimant's complaints about the deletion of his posts as being well founded.

93. But even if we focus on the partial manifestation of the claimant's belief contained within the Yammer post, we do not consider that the claimant's complaint would succeed. Mr Crockett did not take the decision to delete the claimant's email lightly. He said in his contemporaneous email at the time that it was a "tricky" decision, and observed in his email before he deleted the claimant's first post that he thought he might have to take that step (i.e. it was not a decision he was taking lightly). We accept Mr Crockett's evidence, which was tested under cross examination by the claimant, that if the claimant had posted content that said he did not want to take the vaccine and/or enquired or expressed concerns in a more measured way about what policies there may be for those who did not want to be vaccinated, and office attendance, then Mr Crockett would not have taken the deletion action that he did.

94. It was therefore not the fact that the claimant held a belief that was against the covid 19 vaccinations (indeed he does not accept they are true vaccinations), or that he expressed the essence of that (partial) belief, which caused Mr Crockett to delete the first post. What caused Mr Crockett to delete the first post were his multifactorial concerns as set out above. This included concerns about the detail the claimant put in his post

which alleged extreme side effects of the covid 19 vaccines. In turn Mr Crockett considered this contradicted official government and public health authority communications about the vaccine, could cause worry or upset to other staff, breached Yammer usage terms/ the Civil Service Code in various ways including contradicting government policy, and potentially would bring HMRC into disrepute. In short it was the way in which the claimant manifested the limited part of his belief that the claimant expressed, that caused Mr Crockett to delete the claimant's first post as he considered it to be inappropriate for the reasons given, not that the claimant held or voiced concerns about the covid 19 vaccines in itself.

95. The case law is clear that as a tribunal we need to undertake our own careful assessment of this to strike a fair balance between the claimant's rights and the legitimate interests of HMRC. As it was put in Page, was the reason why the claimant's first post was deleted because he held or manifested his belief *or* because he manifested his belief in a way to which objection could *justifiably* be taken?

96. We consider and find that Mr Crockett's objection to the way in which the claimant manifested his belief, which resulted in Mr Crockett deleting the claimant's first post, was justified. The claimant's post in asserting that the covid 19 vaccines were an untested experiment, that they were unsafe and could cause mass death, all manner of injury and infertility not only to the recipient of the vaccine but which could also be passed on to others who were unvaccinated was contrary to government, NHS, Public Health England and Public Health Wales guidance at the time. Whilst we accept it was not the claimant's intent, the post could potentially scare or cause worry to some and could potentially influence some not to get vaccinated, at a time when government and Health Authority strategies were to encourage those who could be vaccinated to do so, because whilst no vaccine it ever risk free, the guidance was that the vaccines would save many lives. HMRC is a government body. The claimant is a civil servant and bound by the Civil Service Code. HMRC had a legitimate interest in supporting wider government policies and civil servants an obligation to do so. HMRC had a legitimate interest in wanting a workplace forum such as Yammer to not distribute public health information on a matter so serious as covid 19 that ran contrary to government guidance which could have the consequences we have outlined both because of the need to support the government agenda and to secure the wellbeing of their own staff. On that basis it was also justifiable to consider the claimant's post to be in breach of the internal Yammer usage policy and the Civil Service Code, and that if the claimant's post became public it could bring HMRC into disrepute. That risk of disrepute also included the claimant's expression about censorship being akin to Nazi Germany which reasonably could have been read as referring to the government and UK public health bodies.

97. The claimant clearly did not hold a high profile position like Mr Page and did not make public comment, but we consider the point made in Page remains apt. These were the kind of circumstances in which it was right to expect the claimant, working for a public institution, to accept some limitations on how he expressed, in a workplace forum that was accessible about around 6000 individuals, his beliefs when concerned with a matter of particular sensitivity.

98. We also considered it relevant that the actions taken by Mr Crockett and HMRC as a whole were proportionate. We accept and factor in that the claimant was expressing views that were of fundamental importance to him and from his perspective he was seeking to educate and open up a discussion. Ms Newbury's post had invited responses. The claimant had his post deleted and he felt he was being silenced and shunned. But on the other hand, this was the deletion of a Yammer post on a workplace forum. The claimant was not being told he could not hold his belief. He was not being told he could not manifest his belief in other ways. The contemporaneous documents show that the claimant had in general before that time been expressing some of his views in oral workplace discussions. The respondent right from the very start, through Mr Crockett and Ms Newbury and in turn the claimant's line management chain, were expressing concerns for the claimant's wellbeing and sought to treat the situation as a welfare matter seeking to get support for the claimant through his line management and their own wellbeing services which was followed through. Mr Crockett had in mind the claimant being able to contact Ms Newbury to discuss the deletion and the claimant did indeed do so and was responded to with reasons given, albeit of course the claimant was left dissatisfied with what he was told.

99. In the deletion of the post, the claimant was not treated less favourably because of (in the sense of being materially influenced by) his belief or because of the (limited) manifestation of his belief. His post was deleted, in the particular circumstances, because of the inappropriate manner of the partial manifestation of his belief/ because he manifested his belief in a way in which objection was justifiably taken.

100. This is a case in which, for the reasons given, we considered it best to focus on the "reason why" test. It is not a case in which we found the construction of comparators an exercise that was helpful to our analysis. However, we are also satisfied that Mr Crockett would have acted in the same way if faced with a comparator in the same material circumstances who expressed views liable to have the types of consequences set out here, even if the views expressed were not the product of a protected belief. The respondent also addressed us on the burden of proof. However, given the nuanced line between on the one hand treatment because of belief/manifestation of belief, and on the other hand treatment because of a

justifiable objection to the way in which a belief is manifested, we again considered it more appropriate to focus on the "reason why."

101. It was said in Page that whilst the language is different, the assessment we have undertaken above as to the "reason why" should dovetail with an assessment under Articles 9 and 10 ECHR and indeed as set out in Westenay the principles apply when evaluating the reason why test, and are the principles we have indeed applied. But for completeness we also address the ECHR complaints head on. It is questionable whether the claimant's Yammer post was in fact a manifestation of his right to freedom of thought, conscience and religion (Article 9). We say this for the reasons already set out above, in that the claimant's Yammer post did not actually manifest his belief system, but only one limited, partial part of it relating to covid 19 vaccine safety. We would doubt that there was in such circumstances a sufficiently close and direct nexus between the claimant's Yammer post and his underlying belief. It was said in Page (analysing the case law in the field) that:

> "*Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a 'manifestation' of the belief. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9 §1 … . In order to count as a 'manifestation' within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question … ."*

102. But in any event, we would find any interference with the claimant's right to manifest his belief, or freedom of expression justified and we have already incorporated that in our assessment above. The test was summarised in Page as:

> *"There was no issue before us as to the test for establishing justification under paragraph 2 of article 9, and the equivalent paragraph in article 10. The language there used requires an assessment of proportionality, as classically expounded in the decision of the Supreme Court in Bank Mellatt v HM Treasury (No.2) [2014] AC 700, 771 (see para 20 of the judgment of Lord*

Sumption JSC). It is a sufficient summary for present purposes to say that that involves balancing the interference with the fundamental right in question against the legitimate interests recognised by paragraph 2 of both articles."

103. We have to balance the infringement of the claimant's right to express his beliefs which were genuinely held by him and important to him and impacted upon him, caused by the deletion of his post, against the legitimate interests recognised by paragraph 2 of both Articles. Both Articles include the concept of infringement being necessary in a democratic society in the interests of the protection of public health. Here there was a public health interest in terms of the respondent's legitimate interest, as a major employer and a government body, in its workplace forums not disseminating information of the type and manner that the claimant was doing that was contrary to the communications of the government and public health bodies at a critical public health time about the efficacy and safety of covid 19 vaccines that could undermine that communication programme with ensuing health risks. For the reasons already given above, particularly at paragraph 97, balancing those competing interests we consider the interference was a proportionate one.

104. The deletion of the claimant's second post was done, as set out above, because it was left without context and because Mr Crockett did not want to end up in the situation where posts were being exchanged (exemplified by the colleague's post) where the original content could end up being reposted. Here we make all the same observations as above, that this could not be less favourable treatment of the claimant because of his belief/manifestation of the belief if Mr Crockett did not know the claimant held a protected belief or was manifesting a protected belief. The claimant's second post, viewed alone, of course contained nothing of his protected belief because it merely asked why his first post had been deleted.

105. When viewed in conjunction with the first post, then the same analysis arises, i.e. the reason why the second post was deleted was because Mr Crockett was seeking to avoid the recirculation of the same material because he justifiably objected to the way in which the claimant was, in a limited and partial way, manifesting his belief as set out in the first post. That is not less favourable treatment (in the sense of being materially influenced by) belief or the appropriate manifestation of belief. We are satisfied that Mr Crockett would have treated a hypothetical comparator not materially different circumstances in the same way. It is difficult to see how the second post, viewed alone, was the manifestation of a belief or the exercise of freedom of expression within the meanings of Articles 9 and 10 ECHR but in any event, we would find any infringement justified for the reasons already given in relation to the deletion of the first post, because

the same competing interests ultimately are being weighed and the same proportionality principles apply.

106. The complaints of direct race discrimination and direct belief discrimination are therefore not well founded and are dismissed.

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Employment Judge R Harfield
Dated: 14 December 2022

JUDGMENT SENT TO THE PARTIES ON 16 December 2022

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche