



EMPLOYMENT TRIBUNALS

Claimant: Mr F McBeth
Respondent: Hydro-Cleansing Ltd
Heard at: London South (by video)
On: 24 January 2024
Before: Employment Judge P Klimov (sitting alone)
Representation:
Claimant: In person
Respondent: Mr G Brady, operations director

JUDGMENT

1. The claimant's belief that he should research any type of medicine or vaccination before it is put into his body is not a philosophical belief within the meaning of section 10(2) of the Equality Act 2010 ("**EqA**").
2. The claimant's complaints of direct (s.13 EqA) and indirect (s.19 EqA) discrimination on the ground of his belief are dismissed.

REASONS

Introduction

1. On 25 April 2022, the claimant brought a claim containing complaints of unfair dismissal, religion or belief discrimination, and for holiday and arrears of pay. In sum, the claimant's unfair dismissal and religion or belief discrimination complaints are about the claimant being dismissed by the respondent at the end of December 2021 – beginning of January 2022, because the claimant had refused to get vaccinated against Covid-19. The claimant claims that his refusal was due to his philosophical belief.
2. On 24 May 2022, the respondent presented a response contesting the claims. The respondent accepts that it dismissed the claimant due to the claimant's refusal to get vaccinated, but contends that, having received the claimant's email, in which he had stated that he would not accept vaccination based on his religious belief, the respondent researched the matter, and having found

no evidence from recognised religious leaders that stated opposition to vaccination, decided to dismiss the claimant for gross misconduct.

3. On 25 August 2023, the case came for a case management preliminary hearing before Employment Judge Rice-Birchall. The claimant attended in person. There was no attendance or representation for the respondent. Before and following the hearing, the respondent wrote to the Tribunal apologising for non-attendance, which the respondent claimed was due to it not being aware of the proceedings until 30 June 2023, because of their former HR manager, who had been handling the matter, departure on 7 October 2022. The respondent assured the Tribunal that it understands "*the importance of complying with court orders and participating in the legal proceedings*".
4. EJ Rice-Birchall struck out the claimant's complaint of unfair dismissal for lack of the requisite 2-year continuous service to acquire the right not to be unfairly dismissed under s.94 of the Employment Rights Act 1996 ("**ERA**"). At the hearing, the Judge settled a List of Issues, giving the parties 14 days to write to each other and the Tribunal if they thought the list was wrong or incomplete. Neither party wrote to the Tribunal to say that the List of Issues was wrong or incomplete.
5. The claimant's religion or belief discrimination complaint was recorded in the List of Issues as complaints of direct (s.13 Equality Act 2010 ("**EqA**") and indirect (s.19 EqA) discrimination. The claimant's belief for the purposes of both complaints was recorded as follows:

The claimant's philosophical belief is that he should research any type of medicine or vaccination before it is put into his body.
6. I note that although in his communication with the respondent before the dismissal the claimant said that his refusal to get vaccinated was due to his "*religious and philosophical beliefs*", in the present proceedings he is not relying on his religious belief. That how his case was recorded in the List of Issues. He confirmed that to me at the hearing too.
7. EJ Rice-Birchall listed the claimant's claim for a 3-day final hearing on 22, 23 and 24 January 2024 and gave the usual case management orders to prepare the case for the final hearing.
8. Neither party made any steps to comply with the EJ Rice-Birchall's case management orders. When the claim came for the final hearing, documents had not been exchanged, a hearing bundle had not been prepared, witness statements had not been prepared and exchanged. The claimant had not produced a schedule of loss. The parties gave various excuses for their failures, none of which the Tribunal found convincing.
9. In short, on the first day of the hearing it became clear that the case was not ready to be heard by the Tribunal on its merits. I discussed with the parties how to proceed in the circumstances. After several short adjournments, the

parties confirmed that they had reached a settlement on the claimant's complaints for holiday pay and arrears of pay. This was recorded in a judgment by consent I issued on the first day of the hearing.

10. Considering the state of preparedness of the case and the 3-day listing, I decided to vacated the second day of the final hearing and convert the third day to a preliminary hearing (in public) to determine the following two issues:

(i) Did at the material time the claimant hold a philosophical belief that he should research any type of medicine or vaccination before it is put into his body?

(ii) If so, does that belief fall within the protection of S.10 of the Equality Act 2010?

11. I gave the parties case management orders to help them prepare to deal with these two issues. As both parties were not legally represented, I directed them to the relevant legal authorities (Grainger plc and ors v Nicholson 2010 ICR 360, EAT and Forstater v CGD Europe and ors 2022 ICR 1, EAT and the ECHR (Grand Chamber) decision in the case VAVŘIČKA AND OTHERS v. THE CZECH REPUBLIC (Applications nos. 47621/13).

The evidence

12. The claimant prepared a witness statement and submitted various documents in support of his oral evidence. The respondent submitted a response to the claimant's witness statement.
13. The claimant gave sworn evidence and was cross-examined by Mr Brady, on behalf of the respondent. I too asked the claimant several questions.

Findings of Fact

14. Based on the evidence I heard I make the following key findings of fact.
15. The claimant holds a belief that he should research any type of medicine or vaccination before it is put into his body ("**the Belief**"). He held that belief since he was 16 or 17 years of age, that is since 2001/2002.
16. The claimant is a practicing Muslim since 2006. The claimant considers that the Belief is linked with his religion, in so far as, he says, the Koran teaches: "*If in doubt – don't do it*". Whether the Koran indeed contains such a maxim is not material for the purposes of the issues before me, and I make no factual findings on this question.
17. The claimant accepts that his religion does not prohibit him from being vaccinated, as such, but requires him to approach the vaccination question with a critical eye, and if in doubt, to refuse vaccination. The Belief was not based or inspired by the claimant's religion, as it predates the claimant becoming a practicing Muslim.

18. The claimant explains his Belief in the following terms:
- it *“emphasises the importance of me making sure that I thoroughly research the contents of any medication or vaccination before I take it”*;
 - it is *“my right to make an informed decision regarding my own personal health choices and circumstances”*;
 - it is *“my religious beliefs and understanding that I must first research the contents of the vaccine before I have it injected into my body”*;
 - it *“reflects a commitment to [anatomy]¹, personal responsibility, and a desire to make informed decisions about my health based on a thorough understanding of the medical Interventions involved. It does not aim to undermine public health measures or disregard the importance of healthcare; rather, it seeks to reconcile individual rights with a conscientious approach to well-informed medical choices”*.
19. As a child the claimant had been vaccinated, which provoked an allergic reaction, and that made him fearful about having vaccines and taking other medicine.
20. He is not against taking vaccines or other medicine, as such, provided that he is satisfied that sufficient research has been done and the medicine is not going to cause harm to his health.
21. He does not have medical knowledge himself, and when it comes to doing research into vaccines and medication and their effects, he relies on views of the medical profession. He does his research by listening to knowledgeable people, including members of his family, some of whom have medical background, by reading information on the government websites, on the NHS website, and by following the news.
22. He refused Covid-19 vaccination because at that time he thought that insufficient research had been done as to the effects of the vaccines. His view is that in the past vaccine research and testing required a minimum of seven years, and, in contrast, by December 2021 there had been only limited research and testing done on Covid-19 vaccines before these were approved and rolled out for use.
23. He did not get vaccinated against Covid-19. He did not have Covid-19. Generally, he rarely falls ill. When he feels unwell, he prefers to use alternative medicine, such as herbal medicine, or simply drink hot tea with lemon and ginger.
24. The claimant’s belief is not that no one should be made to take medicine or get vaccinated against their will, but that he should have the right to make an informed decision regarding his personal choices.

¹ The claimant’s witness statement said “autonomy”, however at the hearing the claimant said it was a typo and should read “anatomy”.

25. In an emergency situation (he gave an example of losing a leg), he would accept a medical intervention of whatever kind, but would expect to be given different medical options, and have, as he put it, “the best of the best” available doctors attending on him.

The Law

26. Section 10 of the EqA states:

[...]

(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;*

27. The leading case on the definition of a “*philosophical belief*” is *Grainger plc and ors v Nicholson* 2010 ICR 360, EAT. In this case the Employment Appeal Tribunal (“**EAT**”) provided guidance on what falls within this category of belief protected under the statute. In particular, at [24] J Burton said:

I do not doubt at all that there must be some limit placed upon the definition of “philosophical belief” for the purpose of the Regulations, but before I turn to consider Mr Bowers’ suggested such limitations, I shall endeavour to set out the limitations, or criteria, which are to be implied or introduced by reference to the jurisprudence set out above:

(i) *The belief must be genuinely held.*

(ii) *It must be a belief and not, as in *McClintock*, 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 [...].*

28. This became known as the ***Grainger V*** criteria. The criteria I must apply in deciding the second question before me.

29. In doing so, I must also have regard to the Human Rights Act 1998 (“**HRA**”), which incorporates the European Convention on Human Rights (“**ECHR**”), of which Article 9 is of a particular relevance.

30. Article 9 of the ECHR states:

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

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

31. Section 1 of the HRA states:

Interpretation of Convention rights.

(1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—

(a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,

[...]

whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

32. Section 6 of the HRA states:

Acts of public authorities.

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

[...]

(3) In this section “public authority” includes—

(a) a court or tribunal,

33. This means that when interpreting s.10 of the EqA, I must take into account judgment, decision, declaration or advisory opinion of the European Court of Human Rights, and I must not act in a way which is incompatible with the claimant’s Convention rights, including his rights under Article 9.

34. In Harron v Chief Constable of Dorset Police 2016 IRLR 481, EAT, Mr Justice Langstaff held that there is no material difference between the domestic law approach to what constitutes a philosophical belief under s.10 (as set out in **Grainger**) and what constitutes a belief under Article 9 (as interpreted by the European Court of Human Rights (“**ECtHR**”).

35. Therefore, the task for me is to consider (using the aforementioned principles) each of the five elements of the Grainger V criteria to see if these are satisfied on the facts on this case. If they are – the claimant’s Belief falls within s.10 EqA and is “protected”, if, however, any of the five criterion is not met – his Belief falls outside s.10 EqA, meaning that him holding the Belief is not a protected characteristic under the EqA.

36. If I come to the latter conclusion, it will necessarily follow that his claim for discrimination on the ground of him having the Belief must fail. That is because even if he could establish that he was treated less favourably because of the Belief, or that the respondent’s requirement that all employees should have a Covid-19 vaccine put him at a particular disadvantage because of the Belief, such treatment would not be unlawful under the EqA.

Analysis and Conclusion

37. Applying the Grainger V criteria on the facts of this case I come to the following conclusions.

Grainger I: genuineness

38. As I have already said, I find that at the material time the claimant held the Belief. I also accept that he held it genuinely. The respondent did not challenge that in cross-examination. There are no apparent reasons for me to doubt the genuineness of the claimant's adherence to the Belief.

Grainger V: worthy of respect

39. In *Forstater v CGD Europe and ors* 2022 ICR 1, EAT, the EAT held that this criterion must be defined by reference to Article 17 ECHR, which prohibits the use of Convention rights to destroy or limit the Convention rights of others and therefore can only exclude the most extreme beliefs. In particular, at [79] the EAT, said:

In our judgment, 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 circumstances, justifiably be restricted under Article 9(2) or Article 10(2) as the case may be.

40. Evidently, the claimant's Belief does not come anywhere close to be excluded on these principles. Therefore, it meets this criterion too.

Grainger II: not just opinion or viewpoint

Grainger III: weighty and substantial

Grainger IV: cogency, seriousness, cohesion and importance

41. I think it is convenient to deal with these three criteria together, as I consider there is a certain overlap between them, especially when applied to the facts of the present case.

42. The requirement that a belief must be more than an opinion or viewpoint goes back to the case of *McClintock v Department of Constitutional Affairs* 2008 IRLR 29, EAT. In that case, holding that a Justice of the Peace, who held Christian religious belief, was not discriminated against by reason of his religion or belief when he was refused permission to excuse himself from sitting on family cases that might lead to the adoption of a child by a same-sex couple, Mr Justice Elias said that to constitute a belief it is not enough 'to have an opinion based on some real or perceived logic or based on information or lack of information available'.

43. For the third criterion to be satisfied a belief must relate to 'a weighty and substantial aspect of human life and behaviour' (see *Campbell and anor v United Kingdom* 1982 4 EHRR 293, ECtHR). In *R (Williamson and ors) v*

Secretary of State for Education and Employment, Lord Nicholls held that the belief must “relate to matters more than merely trivial”, must “possess an adequate degree of seriousness and importance” and must be “a belief on a fundamental problem”.

44. The fourth criterion requires a belief to possess consistent internal logic and structure and provide guiding principles for behaviour, as well as being concerned with fundamental and not trivial matters.
45. As I found, the claimant is not against vaccination, or taking medications, *per se*, although he says he rarely does so, and instead uses herbal and other alternative treatments. His Belief is that he simply should be given sufficient information about vaccines and other medications to form an informed view whether or not he should take them.
46. He accepts that he does not have the necessary medical knowledge to understand on a pathology level possible effects of a vaccine or a particular medicine and relies on medical information (such as available on the NHS website). He said several times in his evidence that he does not disregard the medical profession and their knowledge. His hypothetical example of an emergency situation (see paragraph 25 above) is a good illustration of how his Belief guides his behaviour.
47. His issue with Covid-19 vaccination is that back in December 2021 in his view the level of medical research done on possible effects of the vaccines was insufficient to convince him that it was safe for him to have it.
48. In other words, the claimant's Belief can be fairly described as “*vaccine/medication hesitancy*”. That is to say that he is not against vaccines or other medications to be administered into his body as a matter of principle. However before accepting any such medical intervention, he wants to satisfy himself, based on medical research he trusts, that it is safe for him to have it. This is to be contrasted with someone who conscientiously objects to vaccination as a matter of principle because of their core belief that defines their moral identity.
49. Professor Ian Leigh in the Article “*Vaccination, conscientious objection and human rights*”, Legal Studies (2023), 43, 201–220, illustrates the difference in the following terms:

Conscience can be understood in a variety of overlapping senses: self-knowledge and self- assessment; a faculty for, or body of, moral knowledge or beliefs; a motivation to act morally; and self- identifying moral commitments. It is the final category that is most closely associated with contemporary freedom of conscience. In Heiner Bielefeldt's words '[W]hat is at stake in freedom of conscience is no less than the nucleus of moral agency among human beings'.

In this vein Jocelyn Maclure and Charles Taylor refer to conscience as the ‘core beliefs that allow individuals to structure their moral identity’, which aid them in giving direction for life and in exercising a faculty for judgement when faced with conflicts of values, and which cannot be transgressed without violating their sense of moral integrity.

Moral integrity. ...depends on the degree of correspondence between, on the one hand, what the person perceives to be his duties and preponderant axiological commitments and, on other, his actions. A person whose acts do not satisfactorily correspond to what he judges to his obligations and core values is in peril of findings his sense of moral integrity violated.

They refer to this as 'moral harm', (or what others call moral distress) arguing, for example, that forcing a vegetarian to eat meat inflicts moral harm. It is important to clarify at this point that, contrary popular usage, beliefs are not based on conscience by reason only of being strongly-held: core beliefs related to an individual's identity are likely to be strongly held but strength of conviction is neither a necessary nor sufficient criterion. As McClure and Taylor point out, preferences – even strongly-held ones – are in a different category to decisions based on an individual's core commitments (ie beliefs that are 'intimately connected to my self-understanding as a moral agent').

Political theorist Cécile Laborde argues that such 'integrity protecting commitments' are candidates for legal exemption because they 'cannot be sacrificed without feelings of remorse, shame or guilt'.

Some of those who object to vaccination do so for such reasons of conscience, motivated by their religious or ethical beliefs, as discussed below. Hesitant vaccine refusers, however, do not apply moral understanding to determine how to act in particular circumstances, but rather apply their understanding, however accurate or erroneous, of the science or medicine. Put differently, if their understanding of the medical advantages changed, they would have no moral objection to vaccination and they would not suffer moral harm or distress if vaccinated, although some might remain anxious about the long-term effects. In all probability, many share the same moral beliefs about the policy as vaccine proponents. [...]

50. Furthermore, the claimant does not claim that his Belief is that no person should be forced to have vaccination or medication without first being allowed to undertake personal research into their effects on him/her, meaning that the Belief concerns only the claimant himself and does not have a broader societal dimension. As the claimant said in his evidence it is about his commitment to his “*anatomy and personal responsibility*”.
51. He states in his witness statement (**my emphasis**): *I held a philosophical belief that emphasises the importance of me making sure that I thoroughly research the contents of any medication or vaccination before I take it. He goes on to say: “I strongly believe that Steven Hoad intentionally did not allow or give me the time and opportunity to exercise my right to make an informed decision regarding my own personal health choices and circumstances”.*
52. Accordingly, I find that the claimant's Belief is no more than a logical viewpoint (which many people would agree with) that he does not want to be subjected to a medical risk (especially given his allergic reaction to vaccines in his childhood) without being satisfied that such risk is a minimal and/or worth taking. That, in turn, requires the claimant to have sufficient information to form that view, which back in December 2021 he was not satisfied he had. Without having what he then perceived as sufficient information he was not prepared to take the risk.
53. This would be an understandable and logical reaction of someone who had had a prior bad experience with vaccination, as the claimant has had. This stance, however, in my judgment, does not attain the status of a “philosophical belief” within the meaning of s.10 EqA.

54. I accept that the question of whether a person should be free to decide whether or not to accept a particular medical intervention, even if such intervention is necessary in the interests of public health, is a sufficiently important question related to substantial aspects of human life and behaviour.

55. However, there is a big difference between having a philosophical belief that no person should be forced to be vaccinated or accept other medical treatment against their will, and a view that I should not be forced to be vaccinated or take medication without me first being satisfied that it is safe and in my best interests.

56. In Vavříčka v Czech Republic case, the Grand Chamber of the ECtHR had to consider claims related to the Czech government programme on mandatory vaccination of children. This case predates the Covid pandemic and is not about Covid-19 vaccination, however, to my knowledge, it remains the most authoritative pronouncement by the ECtHR on the issue of mandatory vaccination.

57. The case concerns refusal by some parents to comply with the legal requirement of having their children vaccinated against well-known diseases, such as measles, mumps, rubella, and tetanus. Under Czech law, failure to vaccinate children may result in fines, and only vaccinated children may be admitted to preschool facilities. Six applicants brought their claim to the ECtHR alleging violations of their Convention rights, including the right to freedom of thought, conscience, and religion (Article 9 of the ECHR). The applicants argued that vaccines were risky and harmful to human health, and that the vaccination duty contravened their religious and philosophical beliefs. With respect to the Article 9 argument, the ECtHR recorded the applicants' objections as follows:

321. Mr Vavříčka submitted that his main motivation had been to protect the health of his children. Being convinced that vaccination caused health damage, his conscience had not allowed him to have them vaccinated.

322. Ms Novotná and Mr Hornyh relied on a right to parental care in conformity with parental conscience. On the basis of this, it was their parents who had held views protected under Article 9 of the Convention on the applicants' behalf since at the relevant time, in view of their age, the applicants could not themselves have had any attitude towards vaccination.

58. However, at [335], the Court held that “critical opinion on vaccination is not such as to constitute a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9”.

59. Finally, I find that the claimant's Belief, although have sufficient cogency, in the sense of being intelligible and capable of being understood, and formed principles of his behaviour – i.e. not accepting vaccination without being satisfied based on available information that it is safe for him to do so, lacks sufficient weight, seriousness and importance. That is because it only concerns the claimant himself, and does not go beyond that, and because it is

about being given a choice how to act, as opposed to a conviction that acting in a particular way is not acceptable in any circumstances, as doing so will cause the person “moral harm” (see paragraph 49 above).

60. By analogy, vegetarianism, as the belief in abstaining from consuming any products, which originates from animal slaughter², is very different to someone deciding whether to follow a vegetarian or carnivore diet based on what at a particular moment in time they think is better for their health.
61. For all these reasons, I find that the claimant’s belief does not meet the Grainger criteria II, III and IV.
62. It follows, that his Belief is not a belief falling within s.10 of the EqA and therefore him having the Belief is not a protected characteristic under the EqA.
63. This conclusion means that his claim for direct and indirect discrimination on the ground of the Belief must fail.

Employment Judge Klimov
Date: 27 January 2024

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

² *R (Williamson and ors) v Secretary of State for Education and Employment*, Lord Walker said at [55] that “...*Pacifism, vegetarianism and total abstinence from alcohol are uncontroversial examples of beliefs which would fall within article 9...*”