EMPLOYMENT TRIBUNALS

Claimant: Mr A Edwards

Respondent: Cliff College

Heard at: Sheffield On: 28, 29, 30, 31 May and 3,4 and 5 June 2024
Deliberations: In Chambers 15 July 2024

Before: Employment Judge Shepherd
Members: Mr Lannaman
Mr Wilks

Appearances
For the claimant: Mr Phillips, Solicitor Advocate
For the respondent: Ms Mellor, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim of unfair dismissal is not well-founded and is dismissed.

2. The claims of direct and indirect religion or belief discrimination are not well-founded and are dismissed

3. The claims of harassment related to religion or belief are not well-founded and are dismissed.

REASONS

1. The claimant was represented by Mr Phillips and the respondent was represented by Ms Mellor.

2. The Tribunal heard evidence from:

Dr Aaron Edwards, the claimant; ;
Reverend Dr Andrew Stobart, Vice Principal;
Reverend Ashley Cooper, Principal;

Reverend Michaela Youngson , Senior Member of the Methodist Church Connexional Team.

The Tribunal had sight of a written statement from Dr Gareth Crispin, Lecturer and Programme Lead. However, the representative agreed that his evidence could be taken as read as Ms Mellor had no questions for him.

3. The Tribunal had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 722 The Tribunal considered those documents to which it was referred by the parties.

The issues

4. The issues were identified at a Preliminary Hearing before Employment Judge Miller on 18 September 2023. The parties agreed that these were the issues for this Tribunal to determine. They were recorded as follows:

1. Unfair dismissal

Reason

1.1. Has the respondent shown the reason or principal reason for dismissal? The respondent will say that the reason or principal reason for dismissal was conduct, or some other substantial reason 'SOSR'.

1.2. The respondent asserts that the SOSR is the Tweet bringing/likely to bring the respondent into disrepute which significantly breached the respondent's trust and confidence in the claimant.

1.3. Was it a potentially fair reason under section 98 of the Employment Rights Act 1996?

Fairness

1.4. If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as a sufficient reason to dismiss the claimant?

1.5. In respect of misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

1.5.1. The respondent genuinely believed the claimant had committed misconduct in that the claimant had breached the social media policy and/or brought the respondent into disrepute;

1.5.2. There were reasonable grounds for that belief;

1.5.3. At the time the belief was formed the respondent had carried out a reasonable investigation;

1.5.4. The respondent followed a reasonably fair procedure;

1.5.5. Dismissal was within the band of reasonable responses.

Further or alternatively SOSR

1.6. What was the reason or principal reason for dismissal? The respondent says the reason was a substantial reason capable of justifying dismissal, namely the Tweet significantly breached the respondent's trust and confidence in the claimant, and it brought the respondent into disrepute.

1.7. Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

2. Remedy for unfair dismissal.

2.1. The claimant does seek reinstatement.

2.2. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

2.3. What basic award is payable to the claimant, if any?

2.4. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

2.5. Is there a compensatory award, how much should it be?

2.5.1. Polkey: is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed or for some other reason?

2.5.2. If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

2.5.3. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

3. Harassment related to Religion and Belief (Equality Act 2010 section 26)

3.1. Did the respondent do the following alleged acts:

3.1.1. The respondent's tweet of 19 February 2023;

3.1.2. The demand to the claimant to remove the claimant's tweet by email from Rev Stobart to the claimant on 19 February 2023;

3.1.3. Suspending the claimant on 20 February 2023;

3.1.4. Initiating investigation of the claimant on 20 February 2023.

3.1.5. Criticism of the claimant's tweet in the email circulated to all students on 20 February 2023;

3.1.6. Informing all students about the ongoing investigation of the claimant by email of 20 of February 2023;

3.1.7. Inviting comments from any students "affected" by the claimant's tweet by the respondent's email of 20 February 2023;

3.1.8. The appointment of Rev Stobart to conduct the investigation;

3.1.9. The contents of the investigation report;

3.1.10. Keeping the claimant's actions under review pursuant to the Prevent Duty;

3.1.11. The disciplinary meeting on 8 March 2023;

3.1.12. The dismissal of the claimant by letter 8 March 2023;

3.1.13. Rejecting the claimant's appeal on 27 March 2023.

3.2. If so, was that unwanted conduct?

3.3. Was it related to the claimant's religion and belief?

3.4. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3.5. If not, did it have that effect taking into account:

3.5.1. The perception of the claimant;

3.5.2. The other circumstances of the case;

3.5.3. Was it reasonable for the conduct to have that effect?

4. Direct discrimination (Equality Act 2010 section 13)

4.1. The claimant is an Evangelical Christian.

4.2. Does the claimant's religious/and or philosophical belief as set out in paragraphs 5 to 12 meet the criteria for protection under section 10 EQA 2010 by applying Grainger plc and others v Nicholson 2010 ICR 360 EAT?

This is now conceded.

4.3 in particular does the claimant's belief satisfy the fifth criteria; is the belief worthy of respect in a democratic society, and is compatible with human dignity and is it in conflict with the fundamental rights of others?

This is now conceded.

4.4. Whether the respondent treated the claimant less favourably because of his protected characteristics of religion or belief by:

4.4.1. The respondent's tweet of 19 February 2023;

4.4.2. The demand to the claimant to remove the claimant's tweet by email from Rev Stobart to the claimant on 19 February 2023;

4.4.3. Suspending the claimant on 20 February 2023;

4.4.4 Initiating and investigation of the claimant on 20 February 2023;

4.4.5. Criticism of the claimant's tweet in the email circulated to all students and 20 February 2023;

4.4.6. Informing all students about the ongoing investigation of the claimant by email on 20 of February 2023;

4.4.7. Inviting comments from any students "affected" by the claimant's tweet by the respondent's email of 20 February 2023;

4.4.8. The appointment of Rev Stobart to conduct investigations;

4.4.9. The contents of the investigation report;

4.4.10. Keeping the claimant's actions under review pursuant the Prevent Duty;

4.4.11. The disciplinary meeting on 8 March 2023;

4.4.12. Rejecting the claimant's appeal on 27 March 2023.

4.5. Did the claimant reasonably see the treatment as a detriment?

4.6. If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances who does not share the claimant's religious belief was or would have been treated?

4.7. What is the correct hypothetical comparator?

4.8. If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of religion?

4.9. If so, has the respondent shown that there was no less favourable treatment because of religion?

4.10. Human Rights considerations:

4.10.1. Were the actions of the respondent prescribed by law and were they necessary for the protection of the rights and freedoms of others?

4.10.2. Were the respondent's actions because of or related to the manifestation of the claimant protected beliefs?

4.10.3. Or does the claimant fall outside the protection of Article 9 and 10 ECHR due to a justified objection that was due to the manner of that manifestation? (Such objection must be 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)

5. Indirect discrimination (Equality Act 2010 section 19)

5.1. Did the respondent have the following PCP(s):

5.1.1. The treatment of social media post by its lecturers expressing rational views on matters of public interest, as:

5.1.1.1. Inappropriate breach of its social media policy; and/or

5.1.1.2. Misconduct; and/or

5.1.1.3. Gross misconduct; and/or

5.1.1.4. A justification for dismissal of the lecturer;
Solely because a post has provoked controversy and/or criticism by others.

5.1.2. The respondent considers the intensity of controversy and/or criticism attracted by the social media post is a factor which weighs in favour of treating the post as inappropriate and/or misconduct and/or gross misconduct.

5.2. The respondent does not accept this was a PCP.

5.3. Did the respondent apply any of those PCPs to the claimant?

5.4. Did the respondent apply any such PCP to persons who do not share the claimant's religious beliefs, or would it have done so?

5.5. Did the PCP put Evangelical Christians who are opposed to same-sex unions imitating marriage at a particular disadvantage when compared

with persons who do not share those religious beliefs namely colleagues who do not hold the claimant's belief?

5.6. Did the PCP put the claimant at that disadvantage?

5.7. If, which is not accepted, such a PCP was applied: was the PCP a proportionate means of achieving a legitimate aim? The respondent says its aims were:

5.7.1. Protecting the brand or reputation of the college;

5.7.2. Ensuring that students, staff and the wider community are treated with dignity and respect.

5.7.3. Ensuring adherence to the social media policy which seeks to protect the reputation of the college by prohibiting the inappropriate use of social media.

5.8. The Tribunal will decide in particular:

5.8.1. Was the PCP an appropriate and reasonably necessary way to achieve those aims;

5.8.2. Could something less discriminatory have been done instead;

5.8.3. How should the needs of the claimant and the respondent be balanced?

6. Remedy for discrimination

6.1. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

6.2. What financial losses has the discrimination caused the claimant?

6.3. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

6.4. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

5. On the first day of the hearing, 28 May 2024, the respondent conceded that the claimant's beliefs set out at paragraph 5 to 12 of the claim met the criteria for protection under section 10 of the Equality Act 2010. The issues identified at paragraphs 4.2 and 4.3 were therefore conceded.

6. Also, on the morning of 28 May 2024, an application was made on behalf of the claimant to rely on the expert evidence of Rev Dr Paul Sullins on the question of "minority

stress theory". This had been referred to at paragraph 7 in the record of the Preliminary Hearing before Employment Judge Miller on 18 September 2023. At that time the application had been withdrawn as it was not clear whether such evidence would be required. It had been indicated that the claimant was not prohibited from renewing that application if he reasonably considered that it was necessary following the exchange of evidence.

7. Mr Phillips said that the application was made because there was a 'disconnect' between the reference to self-harm by some students as it had become apparent that the self-harm predated the tweet of the claimant. The respondent objected to the admission of the expert report. It is not entirely clear which issues it was relevant to. The respondent had not seen the letter of instruction and it was a highly partisan expert's report. It was put as relating to minority stress theory but it went well beyond that. The application did not comply with the requirements for expert witnesses.

8. Mr Phillips said that the students in question had mental issues prior to the claimant's Tweet. The report of Dr Sullins was with regard to whether the claimant's tweet was capable of causing the types of issues referred to in the Student Welfare Manager's email of 24 February 2023(308)*.*

9. Dr Sullins is a PhD. Research Associate Professor of sociology at the Catholic University of America. If his evidence was to be admitted, then the respondent would apply for leave to instruct and adduce its own expert evidence. The Tribunal panel considered this application. It had been an application made on the first morning of the hearing. The respondent had not been informed of the instruction or provided with the letter of instruction. It would inevitably lead to an adjournment. It was too late; it was disproportionate and would cause further expense. The claimant can put to the respondent's witnesses the point about any self-harm having predated the Tweet in question. It could be dealt with as a matter of evidence and, in those circumstances, the application to rely on the expert evidence was refused.

10. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

11. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.

12. There is no large amount of dispute in respect of the facts in this case.

13. The respondent is a Methodist Theological College owned by the Methodist Church in Great Britain.

14. The claimant was employed by the respondent as a Programme Lead from 1 July 2016. The claimant holds degrees in English Literature, Applied Theology and Creative

Writing and a PhD in Divinity. He Is an Evangelical Christian, a preacher and an academic theologian. He is not a member of the Methodist Church.

15. The claimant is an Evangelical Christian.

16. In his claim to the Tribunal the claimant stated that he:

> "… believes in the truth of the Bible; that the Bible is the sole infallible source of authority on all religious and moral issues; and the moral imperative for all Christians is to follow biblical teachings in all aspects of human life. Those beliefs (hereinafter"Sola Scriptura beliefs") are determinative of Evangelical Christianity.
>
> The Claimant believes in marriage as a lifelong union between one man and one woman, as ordained by God, and is opposed to any same sex unions imitating marriage.
>
> The claimant believes that all and any sexual activity outside marriage, including homosexuality is inherently sinful and not conducive to a life of Christian holiness (Lev. 18:22, Rom. 1:26 – 27). The claimant therefore believes that homosexual practices and lifestyles (as distinct from involuntary homosexual desires) are inherently sinful. The claimant believes that whilst heterosexual desires can also be sinful, there is a God ordained context for heterosexual desire in marriage. In contrast for Christians, homosexual desires have no God-ordained context in which to be fulfilled which would lead to sin unless they are resisted. "

17. He regards social media platforms such as Twitter as the "new marketplace of ideas equivalent to the spaces in which early Christians preached radical yet inculturated messages".

> "The claimant believes that the church has a duty and a mission, as commanded by the Lord Jesus Christ, to proclaim Biblical truth and to guide souls to repentance, salvation, and holiness. The claimant therefore believes that by accepting worldly ideas which encourage sin and/or discourage repentance, the Church and its life-giving message, become compromised and corrupted".
>
> The claimant does not believe in the concept of "living with contradictory convictions" which has currency in the Methodist Church in Britain (MCB), and which asserts that the Church should simultaneously embrace the view of marriage as a union between one man and one woman and the opposing view of marriage as a union between any two persons, is applied consistently. Whilst the claimant does not disrespect those with contradictory convictions to his own, he does not believe the concept of "living with contradictory convictions, as expressed by the MCB allows him the freedom to express his convictions fully because such expression would necessitate a strong denial of the opposing conviction.
>
> The claimant believes he has a general duty as a faithful Christian, and a particular duty as a theologian and a preacher, to proclaim fearlessly the

implications of Biblical truth, especially when they are being undermined in the public sphere by other Christians."

18. In or around June 2019 the Methodist Church in Britain (MCB) issued a report in which it was provided that it had decided to respect and make provision for different views about the interpretation of the Bible and Christian tradition as to whether those being married may be any two people, or may be only a woman or man.

19. In 2021 the Methodist Church Conference agreed to change the principle from:

> "The Methodist Church believes that marriage is a lifelong union in body, mind and spirit of one man and one woman" to
>
> "the Methodist Church believes that marriage is a lifelong union in body, mind and spirit of two people."

20. In the Methodist Church Homophobia Definition and Guidance it states that "The guidance recognises that Methodists have deeply held but contradictory convictions and any discussion held under the Methodist auspices must allow a range of views to be expressed and heard in an atmosphere of open-hearted, respectful Christian conferring" (148)

21. On Sunday 19 February 2023 at approximately 8 am the claimant posted a Tweet on his personal Twitter account (159) which stated:

> "Homosexuality is invading the Church.
>
> Evangelicals no longer see the severity of this b/c they're busy apologising for their apparently barbaric homophobia, whether or not it's true.
>
> This *is*a "Gospel issue", by the way. If sin is no longer seen, we no longer need a saviour."

22.The claimant had prepared this Tweet in advance, a number of days before and scheduled it to be posted when he did not have access to his laptop, and it was known that he did not use a smart phone. It was not spontaneous and had been prepared in advance and thought through.

23. The Tweet resulted in significant responses on Twitter criticising the claimant and the respondent. The respondent received a large number of complaints (in the hundreds) from students, other Methodists and numerous other individuals and groups. The respondent accepted that some third parties had responded to the respondent supporting the claimant's views.

24. The respondent posted a Tweet at 12:49 pm on Twitter (163,175) stating:

> "We have become aware that one of our lecturers posted some comments on this platform this morning regarding human sexuality. The language used is

inappropriate and unacceptable and does not represent either the views or the ethos of Cliff College.

Cliff College, with the Methodist Church in Britain, is committed to being a safe and hospitable place, were those with different convictions are welcomed and challenged to live together as faithful disciples of Christ.

We aim to do this with mutual respect and generosity of spirit that springs from our biblical and evangelical conviction of God's love for each and for all."

25. On 19 February 2023 Andrew Stobart sent an email to the claimant (162) in which it was stated:

"Dear Aaron,

The College leadership has been made aware of your post on Twitter this morning at 8.00am, which has clearly generated a number of responses, some of which raise questions about Cliff's stance.

We think that your post may contravene the College's Social Media Policy, and so would like to ask you to take the Tweet down. We recognise that we will need to arrange a conversation about this with you later this coming week, but wanted to invite you to take the post down now.
Grace and peace,

Andrew"

26. The claimant did not take down the Tweet. He made a further Twitter post entitled Clarifications (332) in which he stated:

"- The Tweet below is not homophobic.

- It is addressed to Evangelicals who agree but feel they can't say so for fear of backlash.

- My expression of the view is not representative of Cliff College.

- The response to the Tweet illustrates the problem it addressed."

27. On Monday, 20 February 2023 the claimant sent an email (176) stating that:

"I do not believe the Tweet contravened the College's social media policy. It was not defamatory; it was not an attack on any colleague or individual; it was not abusive; and it was not an extremist religious view. It was addressed to Evangelicals as a point of doctrine and it has been misunderstood by many who wish to cause personal and institutional trouble for those who express that view. I cannot in good conscience take it down.

Yesterday afternoon I added several responses and clarifications, including a clear separation between the expression of my view the Tweet and the views of

> Cliff College; a reminder that Cliff College is a hospitable place to hold and discuss alternative views to mine; and a note of respect for the rights of others to disagree with my view.
>
> It was not my intention to cause trouble for the college and I apologise for causing the leadership unwanted problems here. My expressed view has not been received respectfully, tolerantly, or charitably. It has rather been met with harassment and personal defamation by many.
>
> Please let me know when you wish to have a conversation."

28. The respondent's Senior Strategy Group met on Monday, 20 February 2023 (160). The claimant's Tweet was discussed. It was noted that the claimant had not directly mentioned the respondent in his Tweet, but his header named him as a lecturer at Cliff College.

29. Emails expressing concerns about the claimant's Tweet were sent to the respondent from, amongst others, the Student Welfare Officer (185) setting out concerns with regard to safeguarding issues in respect of various students including concerns about students' feeling unsafe and being terrified about might be said by the claimant or other students.

30.The Secretary of Conference, Methodist Church in Britain (181) raised issues about the claimant's Tweet which it said appeared to misrepresent the Church's understanding of living with contradictory convictions.

31. Also there was an email from Manchester University (182) asking what further action was being taken by the College in view of safeguarding and discrimination and asking for a copy of the safeguarding policy (182).

32. On 20 February 2003 Ashley Cooper, Principal, had a conversation with the claimant and informed him that he was to be suspended. The claimant was informed that the college was looking into whether the claimant's actions had brought the college into disrepute. The claimant mentioned that he did not think that Andrew Stobart was the right person to lead the investigation and that made him uncomfortable. However, he did not explain why, and he raised no allegation of conflict of interest or apparent bias.

33. The suspension was confirmed in a letter of 20 February 2023 (165). The claimant was informed that the respondent was investigating a number of complaints against the claimant. Andrew Stobart, Vice Principal had been appointed to conduct the investigation. It was stated that the length of suspension was likely to last two weeks but would be kept under review.

34. Ashley Cooper sent an email to all students (175) referring to comments made on Twitter the day before by one of the faculty:

> "… The language used has caused some distress, both within the College community and outside it. This language does not represent the views or ethos of Cliff College.

> Cliff College, with the Methodist Church in Britain, is committed to being a safe and hospitable place, where those with differing convictions are welcomed and challenged to live together as faithful disciples of Christ. We aim to do so with mutual respect and the generosity of spirit that springs from our biblical and evangelical conviction of God's love for each and for all.
>
> We are unable to comment on any ongoing investigation; however, if you have been affected by the comments made on Twitter of the Colleges response, please can we encourage you to be in touch with the College Student Welfare Officer…"

35. Ashley Cooper said that the email made it clear that the concern of the respondent was the language used rather than the views expressed.

36. Andrew Stobart provided an investigation report dated 27 February 2023 (173). This set out numerous external communications from members of the Methodist Church. Concerns were raised referring to finding the claimant's post deeply offensive and damaging to the reputation of both Cliff College and the Methodist Church. There was reference to the impact on the ability of the College to attract, recruit and retain students. The language contradicted the church's stance on homophobia.

37. The respondent had received comments by email from the University of Manchester, (which validates the respondent's degrees) which referred to concerns having been raised anonymously of a lecturer at Cliff College using their Twitter account to post homophobic and religious hate Tweets.

38. There were also communications received from students and former students expressing concern.

39. In the summary of risk in the investigation report there was reference to inflammatory language. It was stated that the claimant's tweet "does not of itself constitute an instance of homophobia. However, it can be reasonably argued that AE's tweet was worded in such a way to provoke a response, and as such can be deemed to be inflammatory… The language of the Tweet has been interpreted as being 'hostile' by some who have expressed their concerns to the College".

40. Other risks identified in the report were discrimination, loss of business, investigation by University of Manchester/Office for Students and "effective colleagueship".

41. The finding of the investigation was that the ongoing risks were reputational, operational, financial and collegial and that the matter should proceed to a formal disciplinary hearing.

42. On 28 February 2023 Ashley Cooper wrote to the claimant (190) inviting him to attend a disciplinary hearing.

44. The claimant attended a disciplinary hearing on 8 March 2023 (192) during which he was dismissed.

45. On 8 March 2023 (197) Ashley Cooper wrote to the claimant indicating that the decision to dismiss the claimant for misconduct was confirmed. It was stated that:

> "The decision to dismiss is made for some other substantial reason following a full investigation and disciplinary hearing in which you were given an opportunity to respond to the allegations of gross misconduct, namely that you, through your Twitter engagement brought the College into disrepute and there is now a significant breach of confidence and trust in you as a member of our faculty. As a result of your actions we have significant concerns about the ongoing business of the College and that being affected by this situation, ongoing concerns about trust and respect within the faculty, staff and students and damage to Cliff's relationship with the Methodist Church in Britain and undermining the Colleges validation arrangement with the University of Manchester…"

46. The claimant appealed against the decision to dismiss him (200). He set out detailed grounds of appeal under nine headings as follows:

> "1. The decision to dismiss was disproportionate and failed to balance my freedom to express my Christian beliefs.…
>
> 2. The disciplinary procedure which led to my dismissal lacked the requisite fairness.…
>
> 3. There were possible mitigating factors unduly influencing the person carrying out the investigation.…
>
> 4. The report did not contain a single quotation or argument in support of my case and appeared to allow the misrepresentation of facts to influence its final recommendations, re. legitimate risks to the College' reputation.…
>
> 5. The Report incorrectly claims there is a legitimate risk to institutional academic validation…
>
> 6. The report incorrectly claims there is a legitimate risks to ongoing effective colleagueship that could not otherwise be resolved…
>
> 7. The report incorrectly claims that students have grounds to feel unsafe in my classroom, would feel discriminated against, and that the expression of my Tweet could not be reasonably separated from my teaching content…
>
> 8. The report did not take into account the College's prior knowledge of my expressed concerns over the outworking of the MCIB's 'living in contradiction' concept for evangelical free speech, as well as my previous attempts to ensure the safeguarding of Cliff's reputation with conservatives as well as progressives.…
>
> 9. The report and the disciplinary hearing did not adequately consider that my Tweet was a legitimate articulation of my academic freedom as emanation of critical reflection germane to academic thought and expression.…"

47. The appeal hearing took place before Michaela Youngson, Assistant Secretary of the Conference (217).

48. The report following the hearing of the appeal set out in detail the reasons for rejecting the appeal and stated:

> "Having heard Dr Edward's appeal and read the various policies, papers, and correspondence listed above, I am content that the College acted appropriately and in good faith in reaching the conclusion to dismiss Doctor Edwards. Therefore my decision is that the original decision to dismiss on grounds of misconduct stands."

The law

Unfair dismissal

Section 98 Employment Rights Act 1996 (the 1996 Act)

49. "98(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair it is for the employer to show –

> (a) the reason (or if more than one the principal reason) for the dismissal, and
>
> (b) that it is either a reason falling in subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) The reason falls within this subsection if it –

> (a) relates to the capability or qualifications of the employee for performing work of a kind which he was employed to do;
>
> (b) relates to the conduct of the employee …

(4) In any other case where the employer has fulfilled the requirements of subsection (1) the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –

> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case".

50. In accordance with the case of **British Home Stores Limited v Burchell [1978] IRLR379** it is for the respondent to establish that it had a genuine belief in the

misconduct of the claimant at the time of the dismissal and that that belief was based upon reasonable grounds and the dismissal followed a reasonable investigation and a reasonable procedure. This formulation is commonly termed the “Burchell test”. If the Burchell test is answered in the affirmative, the Tribunal must still determine whether the decision of the employer to dismiss the employee rather than impose a different disciplinary sanction (or no sanction at all) was a reasonable one. When Burchell was decided the burden lay with the respondent to show some elements of fairness. That burden was removed by primary legislation in 1980 and there is now no burden on either party in relation to section 98(4) of the 1996 Act. The burden lies neutrally between them. It is of key importance to avoid substituting the Tribunal’s view for that of the respondent. The Tribunal must judge the questions posed by section 98(4) from the standpoint of the hypothetical reasonable employer and note that the band of reasonable responses can in appropriate cases encompass both dismissal and a lesser disciplinary punishment. The size and resources of the respondent are relevant to the matters to be determined under section 98(4) of the 1996 Act.

51. In **Sainsbury’s Supermarkets Limited v Hitt [2003] IRLR23** the Court of Appeal confirmed that the range of reasonable responses test applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to any other procedural and substantive aspects of the decision to dismiss the person from his employment for misconduct reason.

52. In the decision of **South West Trains v McDonnell [2003] EAT/0052/03/RN** HHJ Burke at paragraph 36 stated:

> “Whilst not only unfair it is incumbent on an employer conducting an investigation followed by a disciplinary hearing both to seek out and take into account information which is exculpatory as well as information which points towards guilt, it does not follow that an investigation is unfair overall because individual components of an investigation might have been dealt with differently, or were arguably unfair. Whilst, of course, an individual component on the facts of a particular case may vitiate the whole process the question which the Tribunal hearing a claim for unfair dismissal has to ask itself is: in all the circumstances was the investigation as a whole fair?”

53. In the case of Orr **–v- Milton Keynes 2011 ICR 704** Aitkens LJ provided guidance

> “….the ET must consider, by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the employer has acted within a "band or range of reasonable responses" to the particular misconduct found of the particular employee. If it has, then the employer's decision to dismiss will be reasonable. But that is not the same thing as saying that a decision of an employer to dismiss will only be regarded as unreasonable if it is shown to be perverse. (7) The ET must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. The ET must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which "a reasonable employer might have adopted". (8) A particular application of (6) and (7) is that an ET may not substitute its own evaluation of a witness for that of the

employer at the time of its investigation and dismissal, save in exceptional circumstances. (9) An ET must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any appeal process) and not on whether in fact the employee has suffered an injustice.

54.The cases set out above are in respect of unfair dismissal by reason of the employee's conduct. An employer that dismisses an employee after receiving information that the employee has been engaged in activities that could seriously damage the employer's business or reputation may be able to show Some Other Substantial Reason (SOSR) for the dismissal.

55. This is so even if the employee's conduct is unproven or not directly relevant to his or her working responsibilities. It is still necessary for a Tribunal to consider whether the dismissal for SOSR was within the range of reasonable responses and that there were no reasonable possible alternatives available.

Direct discrimination

56. Section 13 of the Equality Act 2010 states:

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

Indirect Discrimination

57. Section 19 of the Equality Act 2010 states:

> (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
>
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
>
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
>
> (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> (c) it puts, or would put, B at that disadvantage, and
>
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

PCPs cannot be considered in isolation. The adverse disparate impact must also be established. Once a PCP has been established, the complainant must show that the PCP is to the disadvantage of his or her group. Before any assessment of the impact of the PCP can be made, the appropriate pool for comparison must be identified.

58. In the case **of Essop v Home Office (UK Border Agency); Naeem v Secretary of State for Justice [2017] UKSC 27** the Supreme Court stated that the purpose behind indirect discrimination legislation is to protect people with a protected characteristic from suffering disadvantage where an apparently neutral PCP is applied. It is about achieving a level playing field and removing hidden barriers.

59. There is no obligation on the employee to explain the reason why the PCP put the group at a disadvantage when compared to others: it is enough simply to show that there is disadvantage. However, the requirement to justify PCP should not be seen as placing an unreasonable burden on employers.

60. In **Chief Constable of West Midlands Police v Harold [2015] IRLR 790,** the EAT emphasised that justification is an objective evaluation. Further what has to be justified is the outcome, not the process followed. In **Allonby v Accrington and Rossendale College and others [2001] IRLR 364** the Court of Appeal made it clear that:

> "once an employment tribunal has concluded that the [PCP] has a disparate impact on a protected group it must carry out a critical evaluation of whether the reasons demonstrate a real need to take the action in question. This should include consideration of whether there was another way to achieve the aim in question."

61. The EAT emphasised in **Rajaratnam v Care UK Clinical Services Ltd (UKEAT/0435/14)** that it is the rule that needs to be justified and not its application to the individual concerned.

62.The Supreme Court held, in **Homer v Chief Constable of West Yorkshire Police [2012**] UKSC 15 that to be proportionate, a measure must be an appropriate and necessary means of meeting the legitimate aim. Actions will not be proportionate if less discriminatory means to achieve the result were available.

63.The burden of proving objective justification is on the employer. The employer needs to produce cogent evidence that the justification defence is made out. However, the claimant has to show some evidence of disparate impact before the burden of proof placed on the employer.

<u>Burden of Proof</u>

64. Section 136 of the Equality Act 2010 states:

> "(1) This Section applies to any proceedings relating to a contravention of this Act.
>
> (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.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.

(5) This Section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to –

(a) An Employment Tribunal."

65. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** and approved again in **Madarassy v Normura International plc [2007] EWCA 33.**

66. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

67. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer "casts no light whatsoever" to the question of whether he has treated the employee "unfavourably".

68. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that :

> "all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable."

69. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

Harassment

70. Section 26 of the Equality Act provides

(1) A person (A) harasses another (B) if--

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of--

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

71. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant’s subjective perception. was reasonable for the claimant to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

72. In the case of **Grant v HM Land Registry [2011] IRLR 748** the Court of Appeal said that:

> “Tribunals must not cheapen the significance of the words “intimidating, hostile, degrading, humiliating or offensive environment”. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

73. In the case of **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT stated

> “We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.”

Human Rights Act and the European Convention on Human Rights (ECHR)

74. Section 3(1) of the Human Rights Act 1998 provides that:

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

75. Section 6(1) of the Human Rights Act states as follows:

> "It is unlawful for a public authority to act in a way which is incompatible with a Convention right."
>
> By virtue of section 6(3), 'public authority' is defined as included "a court or tribunal".

76. Article 9 of the European Convention on Human Rights (Freedom of thought, conscience and religion) 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.
>
> 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."

77. Article 10 of the European Convention on Human Rights (Freedom of expression) provides that:

> "1. 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

78. Article 14:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour,

language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

79. The rights granted by articles 9 and 10 of the ECHR are foundational in nature. In **Higgs v Farmor's school [2023] EAT 89** Mrs Justice Eady DBE, President of the EAT, commented that:

> "Before restrictions to the right to freedom of religion or belief are weighed, the essential nature of the right has to be recognised. The first question is, therefore, whether the conduct complained of involves any limitation on the claimant's article 9 rights. That, in turn, requires an assessment as to whether the actions of the claimant (that is, the actions that caused the response complained of) amount to a manifestation of religion or belief. As the European Court of Human Rights made clear in **Eweida and ors v United Kingdom (2013) 57 EHHR 8:**
>
> "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 art.9(1). In order to count as a "manifestation" within the meaning of art.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 application to establish that he or she acted in fulfilment of a duty mandated by the religion in question."
>
> Whether or not there is the requisite link between the act in issue and the relevant belief will be a matter for the ET to assess, although its task may not always be straightforward….
>
> If the claimant's actions have a sufficiently close and direct nexus to an underlying religion or belief, any limitation would need to be such as is prescribed by law and necessary, in one of the ways identified under article 9(2)…."

80. The Tribunal accepts that the right to freedom of expression is fundamental in a democracy and that restrictions on this freedom "need to be examined rigorously by all concerned, not least the courts…" (**R (ex parte Prolife Alliance v BBC [2004] 1 AC 185**). The right to freedom of speech in Article 10 is, however, a qualified one and is not entirely unrestricted. In **Overd and ors v Chief Constable of Avon and Somerset Constabulary [2021] EWHC 3100**, Linden J stated:

> "[Counsel for the claimants] referred on a number of occasions to the officers in this case having a 'positive duty' to protect the speaker's Convention rights even where what they say is unpopular or offensive. That may be true, as far

as it goes. But as those rights are qualified any such duty does not mean, as he appeared to contend, that police officers must always side with the speaker in such a case and must always ensure that they are able to say what they wish to say. It does, however, mean that any action which they take to inhibit the speaker's freedom of expression must be 'justified'… and proportionate. Moreover, these provisions must be applied having regard to the importance of the relevant rights, and the justification for any infringement must therefore be convincing…"

81. If an individual's rights under Articles 9 and 10 are restricted, then the restriction must be 'prescribed in law' (such that the claimant could foresee the potential consequences of his conduct), concerned with the pursuit of a legitimate aim, and necessary in a democratic society. (**Higgs v Farmor**, para 51). The Tribunal must consider the proportionality of the interference with the Convention rights.

> "94. … within the employment context, it may be helpful for there to at least be some mutual understanding of the basic principles that will underpin the approach adopted when assessing the proportionality of any interference with rights to freedom of religion and belief and of freedom of expression.
>
> (1) First, the foundational nature of the rights must be recognised: the freedom to manifest belief (religious or otherwise) and to express views relating to that belief are essential rights in any democracy, whether or not the belief in question is popular or mainstream and even if its expression may offend.
>
> (2) Second, those rights are, however, qualified. The manifestation of belief, and free expression, will be protected but not where the law permits the limitation or restriction of such manifestation or expression to the extent necessary for the protection of the rights and freedoms of others. Where such limitation or restriction is objectively justified given the manner of the manifestation or expression, that is not, properly understood, action taken because of, or relating to, the exercise of the rights in question but is by reason of the objectionable manner of the manifestation or expression.
>
> (3) Whether a limitation or restriction is objectively justified will always be context-specific…
>
> (4) It will always be necessary to ask (per **Bank Mellat**): (1) whether the objective the employer seeks to achieve is sufficiently important to justify the limitation of the right in question; (ii) whether the limitation is rationally connected to that objective, (iii) whether a less intrusive limitation might be imposed without undermining the achievement of the objective in question; and (iv) whether, balancing the severity of the limitation on the rights of the worker concerned against the importance of the objective, the former outweighs the latter."

82. Mr Phillips provided a skeleton argument, written and oral and submissions on behalf of the claimant and Ms Mellor provided written and oral submissions on behalf of

the respondent These submissions are not set out in detail but both parties can be assured that the Tribunal has considered all the points made and any authorities referred to even where no specific reference is made to them.

83. The essential authorities referred to in the claimant's skeleton argument were set out as follows:

Din v Carrington Vyella [1982] ICR 256
In Re Sandown Free Presbyterian Church [2011] NIQB 26
Smith v Trafford Housing Trust [2012] EWHC 3221 (Ch)
Lee (Respondent) v Ashers Baking Company Ltd and others (Appellants) [2018] UKSC 49
R (Ngole) v University of Sheffiel0 v SOS [2019] EWCA Civ 1127;
Forstater v Centre for Global Development Europe [2021] UK EAT 0105_20_1006.
Higgs v Farmor's school [2023] EAT 89

84. A substantial amount of further authorities were also referred to, these included but were not limited to:

Bank Mellatt v HM Treasury [2013] 39
Eweida v United Kingdom [2013] ECHR 37
MBA v Merton LBC [2014] ICR 357
Giniewski v France [2006] 45 EHRR 2
XvY [2004] EWCA Civ 662
Bougnaooui v Micropole SA (C-188/15) EU:C: 26:553 (ECJ GC)
R (on the application of Amicus) v SoS [2004] WL 741919
Ishola v Transport for London [2020] IRLR 378
Page v NHS Trust Development Authority [2021] EWCA Civ 2

Conclusions

85. The Tribunal has considered all the evidence and submissions and has reached a unanimous judgment in respect of the claims brought by the Claimant.

Unfair Dismissal

86. The Tribunal is satisfied that the reason for the claimant's dismissal was some other substantial reason by the Tweet bringing or likely to bring the respondent into disrepute which significantly breached the respondent's trust and confidence in the claimant.

87. This is a potentially fair reason for dismissal.

88.The respondent had received complaints and concerns about the effect of the claimant's Tweet on a number of students, from the University validating the degrees awarded by the respondent and from the Methodist Church of Britain. The respondent's Staff Social Media Policy (135) provides:

> "Generally, if your personal internet presence does not make reference to and you do not identify yourself as being employed by Cliff College, the content is

likely to be of little concern to the College. However, you must avoid bringing the College into disrepute in any way, as this may constitute gross misconduct.

If a member of staff breaches this Policy or breaks the law on a social media site, e.g. by posting something defamatory, or that spreads, seeks to spread, or permits the spread of extremist religious or political views, they will be held personally responsible and appropriate disciplinary action may be taken"

89. The respondent's disciplinary policy (154) provides examples of gross misconduct including, but not limited to:

"Acts of discrimination against fellow staff members, clients or customers; deliberate damage to company property; any conduct that negatively affects our brand or reputation.... deliberate refusal to follow reasonable instructions.
Conduct and behaviour – actions outside of work: We may consider your actions outside work including your use of social media to be gross misconduct, or misconduct, if they affect your ability to carry out your job or have a negative effect on our reputation".

90. The College had previously been aware of the Claimant's views that marriage should be between one man and one woman and of his views on homosexuality.

91. There had been a previous occasion when the respondent removed a recording of a live streamed sermon from its website. A sermon given by the claimant in 2019 in the college chapel in which the Claimant expressed his views on homosexuality, the "Amos sermon". The claimant had referred to sexual immorality "infiltrating the church" the lecture was taken down by the respondent from the respondent's website. There had been a complaint by one student with "same sex attraction" [253]. The claimant attended a meeting with this student. That complaint was resolved informally. It had been arranged for the claimant and the student to meet, and the matter was dealt with informally.

92. The claimant was aware of the respondent's Social Media Policy and he knew that his Tweet could cause offence. His earlier sermon had been removed from the respondent's website. He had agreed to put a disclaimer on his podcast to disassociate his words from the respondent.

93. Although his conservative evangelical views were not the reason for his dismissal, indeed, the dismissing officer indicated that he agreed with many of the claimant's views. However, the wording of the Tweet did cause a 'Twitterstorm' and damage to the respondent's reputation. The claimant identified himself as a lecturer at the respondent college and there was no disclaimer to indicate that they were his views and not the views of the college. It was not reasonable to assume that any person gaining access to the tweet would see the disclaimer on the claimant's podcast.

94. The claimant said that his Tweet was addressed to Evangelicals. However, his Tweet was available to anyone who chose to view it. It did actually cause offence. The claimant said that it was his duty to put his views on Twitter which he viewed as the

marketplace and equivalent to Speakers' Corner and he had written the Tweet days before he posted it. He felt it needed to be said and he was content with the wording.

95. He was asked to take Tweet down but refused to do so.

96. The investigation report was prepared by the Principal, Andrew Stobart. The claimant did indicate that he did not think that Andrew Stobart was the right person to lead the investigation and stated that this made him uncomfortable. However, he did not provide any further elaboration on that point. There had been some earlier, unrelated issues between the claimant and Andrew Stobart with regard to the content and delivery of lectures and seminars. These were unlikely to be unusual in the context of the preparation and delivery of academic programmes. The Tribunal is not satisfied that this was a procedural error that would take the investigation outside the band of reasonable responses.

97. The claimant also raised the issue of Michaela Youngson dealing with the appeal. Reverend Youngson is a senior member of the Methodist Church's Connexional Team. She is independent of the respondent college. The claimant provided evidence of Reverend Youngson having retweeted other posts and having been in attendance at a Pride rally.

98. It was submitted by Ms Mellor, on behalf of the respondent that the claimant suggested that it would appear that the claimant was suggesting that anyone who holds views contrary to his would be biased or there was a perception of bias. This is a severely limiting view. It would be difficult, if not impossible, to find someone appropriate to deal with the appeal in those circumstances. The Tribunal is satisfied that the appeal appeared to be dealt with impartially and that it was a review of the decision to dismiss, not a rehearing.

99. The Tribunal is satisfied that the respondent held a genuine belief that the reputation of the respondent was being brought into disrepute by the claimant's Tweet. The belief was on reasonable grounds following a reasonable investigation. There was sufficient evidence considered by the respondent to support that belief.

100. The claimant refused to take the Tweet down. He had brought the respondent into disrepute, and he was suspended on full pay. There was a reasonable investigation and the decision to dismiss the claimant was within the band of reasonable responses.

Harassment

101. The Tribunal has considered each of the allegations of harassment. It is accepted by the respondent that the treatment alleged in respect of each allegation was unwanted. It is not accepted that the conduct of the respondent was related to the claimant's religious or philosophical belief.

The respondent's Tweet of 19 February 2023.

102. The Tweet was posted as a reaction to the developing Twitter storm provoked by the claimant's Tweet earlier that day. The Tribunal is satisfied that the respondent was

concerned that the claimant may have contravened the respondent's Social Media Policy. The claimant was not named in the respondent's Tweet.

103. It was submitted by Mr Phillips that the Tweet was the college "throwing the claimant under the bus" because of the collective outrage of third parties and condemned the claimant without first speaking to him.

104.The Tribunal is satisfied that this Tweet by the respondent was posted because of the severe adverse reaction to the claimant's Tweet. It did not name the claimant, the language used was proportionate and reasonably necessary to protect the respondent's reputation in the circumstances. The claimant had posted the initial Tweet on a Sunday morning. It had caused significant negative reaction and the respondent felt it was necessary to make it clear that the language used did not represent the views of the respondent.

105. The Tweet was not related to the claimant's religious or philosophical belief. It was because of the complaints and reaction to the language the claimant had used. The Tribunal was not satisfied that this email by the respondent had the purpose of violating the claimant's dignity or creating an intimidating or hostile environment for the claimant and it did not have that effect taking into account the circumstances of the case, the perception of the claimant and it was not reasonable for the conduct to have that effect.

The demand to the claimant to remove the claimant's Tweet by email from Rev Stobart to the claimant on 19 February 2023.

106. The Tribunal is satisfied that this was a reasonable and appropriate request. It was not a demand to the claimant to remove his tweet and it did not have the proscribed purpose or effect of harassing the claimant. It was not related to the claimant's religion or belief.

Suspending the claimant on 20 February 2023.

107. The claimant acknowledged in a Tweet on the same day (329) that the respondent was within its right to investigate given the very high volume of complaints and that the suspension was not disciplinary action. It was not established that the suspension was an act of harassment.

Initiating an investigation of the claimant on 20 February 2023.

108. Once again, the claimant acknowledged that suspension pending an investigation was not a disciplinary action. It was appropriate and not an act of harassment.

Criticism of the claimant's Tweet in the email circulated to all students on 20 February 2023.

109. The email from the respondent was an appropriate response. It was reasonable in view of the level of concern that had been raised and it was a statement distancing the respondent from the language used. The Tribunal finds that it was not an act of harassment.

Inviting comments from any students “affected” by the claimant’s Tweet by the respondent’s email of 20 February 2023.

Informing all students about the ongoing investigation of the claimant by email of 20 of February 2023.

110. The email states “we are unable to comment on any ongoing investigation”. It does not inform all students about an investigation of the claimant.

111. It was submitted by Ms Mellor that it seemed to have been accepted by the respondent that there was a maelstrom that had arisen as a consequence of the division of views in the public sphere. It had an impact on the college and it would have been inappropriate and a dereliction of care in such a small community to have done nothing. The respondent’s witnesses were not challenged on the purpose of this communication.

112. The claimant was not named in the Tweet. It did not have the proscribed purpose or effect and the Tribunal finds that it was not an act of harassment.

The appointment of Rev Stobart to conduct the investigation.

113. Andrew Stobart was the Vice Principal and the academic lead of the college. He was the obvious person to carry out the investigation. There had previously been some disagreements with regard to the content and delivery of lectures. The claimant provided no details of his objection. Reverend Ashley Cooper appointed Andrew Stobart. There was no allegation of a conflict of interest. The previous issues were unrelated and no grievance had been raised.

114. The Tribunal is not satisfied that the appointment of Reverend Stobart had the purpose or effect of harassing the claimant. It was not related to the claimant’s religion or belief.

The contents of the investigation report.

115. It was submitted by Mr Phillips that it was entirely unfair to not present any evidence in support of claimant within the report.

116. There had been concerns raised by ‘conservative evangelical students’ about the actions of the respondent. However, the purpose of the report was to consider whether there was any need for further action, and it went through the risk factors which included inflammatory language, discrimination, loss of business, investigation by University of Manchester/Office for Students, colleagueship. The recommendation was thatthe matter should proceed to a disciplinary hearing.

117. The investigation report was with regard to the risks to the respondent’s reputation and was reasonable and balanced. It did not have the proscribed purpose or effect of harassing the claimant and it was not related to the claimant’s religion or belief.

Keeping the claimant’s actions under review pursuant to the Prevent duty.

118. Andrew Stobart gave clear evidence that the duty was placed on the respondent as part of its conditions of registration with the Office for Students. The purpose of the Prevent Duty in Higher Education is to prevent students from being drawn into ideologies and radicalisation. He raised a concern as a result of extreme language used in the Twitter conversation. This was a concern as the Prevent duty is aimed to stop people from becoming terrorists or supporting terrorism.

119. The East Midlands Regional Education Prevent Coordinator confirmed (601) that the intention to notify the Office for Students was the correct course of action although he did not believe the original issue to be a Prevent matter.

120. There was no threat to report the claimant to Prevent. It was indicated that the situation was being kept under review. Andrew Stobart said that it was his duty to keep under review matters of reputational damage. it was because of extreme views expressed in the Twitter storm.

121. Andrew Stobart stated that the respondent was contacted by the Education Editor at the Daily Telegraph and asked to provide a response to a story they were running provided to them by Christian Concern on behalf of the claimant. This included a statement that the claimant had been “sacked and labelled as a potential terrorist”.

122. The claimant had appeared on a programme GB Used to talk about his case and this led to further headlines in the Daily Mail and Fox News that included the language of terrorism.

123. As a result of these media appearances, the East Midlands Prevent Coordinator, Sam Swift, contacted Andrew Stobart. He had a conversation with Sam Swift and explained that he did not think the claimant’s Tweet was a reportable event, but they had kept the situation under review.

124. The Tribunal is not satisfied that this had the purpose or effect of harassing the claimant and it was not related to the claimant’s religion or belief.

The disciplinary meeting on 8 March 2023.

125. It was submitted by Mr Phillips that, having heard his submissions, the claimant should not have been dismissed. Ms Mellor submitted that the claimant had accepted that the hearing was conducted in a fair manner, he was able to put his case across, he knew what the allegation was.

126. The Tribunal is satisfied that was the case and there was no evidence of harassment related to the claimant’s religion or belief.

The dismissal of the claimant by letter of 8 March 2023.

127. The decision to dismiss the claimant was a fair and reasonable response and was not an act of harassment. It did not have the proscribed purpose or effect and was not related to the claimant’s religion or belief. The decision was made because of the reputational risk to the respondent and perception of breach of mutual trust and confidence.

Rejecting the claimant's appeal on 27 March 2023.

128. The rejection of the claimant's appeal by Reverend Youngson was a review not a rehearing. She did look into further evidence in support of the claimant's views. However, she concluded that the claimant was not dismissed for such views, he was dismissed because of his breach of the Social Media policy due to the language in his Tweet and the level of concerns, bringing the college or the Methodist Church into disrepute.

Direct discrimination

129. It is accepted by the respondent that the claimant's belief is a protected characteristic with protection under section 10 EQA 2010 and meets the criteria pursuant to **Grainger plc and others v Nicholson 2010 ICR 360 EAT.**

130. The allegations of less favourable treatment are the same acts as those set out above in respect of the claim for harassment. These have been considered by the Tribunal at some length. The reason for the treatment of the claimant was the language used by the claimant and the reaction to the Tweet and the reputational damage to the respondent.

131. There is no actual comparator. The hypothetical comparator would be another member of the academic staff who posted a Tweet using language in respect of a controversial issue that generated the same reaction and risk to the respondent's reputation.

132. In reaching its conclusions on the direct discrimination allegations, the Tribunal also considered the judgment in **Page,** in which LJ Underhill held that, in relation to complaints of direct discrimination:

> "I start with a point which is central to the analysis on this issue. In a direct discrimination claim the essential question is whether the act complained of was done because of the protected characteristic, or, to put the same thing another way, whether the protected characteristic was the reason for it: see para. 29 above. It is thus necessary in every case properly to characterise the putative discriminator's reason for acting…"

133. The protected characteristic (in this case the claimant's protected belief) does not have to be the sole or principal reason for the respondent's treatment of the claimant, but it must be a 'significant cause' of the treatment.

134. The reason why the respondent treated the claimant as they did was not established to be because of the claimant's religion or belief or that the claimant's belief was a significant cause of the treatment. The Tribunal is satisfied that the reason for the treatment was because of the damage caused to the reputation of the respondent and not because of a manifestation of the claimant's religion or belief.

135. It was because of the language used by the claimant and the reputational damage to the respondent.

Human Rights considerations

136. The Tribunal has taken into account the Human Rights issues raised in this case.

137. The Law in respect of the Human Rights Act does not supersede domestic legislation and the Tribunal must apply the law in accordance with the articles of the European Convention on Human Rights.

138. The treatment of the claimant was not because of the manifestation of his belief and free expression. It was because of the bringing of the respondent into disrepute and the breakdown of trust and confidence. However, if it had been because of the claimant's belief then the limitation or restriction of such manifestation or expression would be limited in order to protect the rights and freedoms of students, the Methodist Church and the reputation of the respondent.

139. Applying the tests in **Bank Mellat***:*

140. The objective that the respondent was seeking to achieve was to protect the brand or reputation of the college, ensuring that students, staff and the wider community were treated with dignity and respect. This is, in the Tribunal's view, a sufficiently important objective to justify any limited restriction on the claimant's Article 9 and 10 rights.

141. Based on the evidence before the Tribunal, it is clear that any limited restrictions placed by the respondent on the claimant's Convention rights were clearly connected to those objectives.

142. The Tribunal is satisfied that there was no less intrusive step that the respondent could have taken to achieve those aims. The claimant was not prepared to remove the Tweet and he was not prepared to comply with the respondent's Social Media Policy.

143. Finally, the Tribunal has balanced the severity of any limitations placed on the claimant's Convention rights against the importance of the respondent's objectives. The limitations placed on the claimant's Convention rights were not sufficiently significant to outweigh the interests of the respondent and the protection of the rights and freedoms of students and the Methodist Church. He was asked to remove the Tweet and to comply with the respondent's social media policy. The claimant was not prevented from posting on social media generally or from expressing his views publicly.

144. The Tribunal has found that the claimant's Article 9 rights are not engaged in this case. This is because the claimant did not suffer the treatment on basis of his religious beliefs in and of themselves or because of a manifestation of his beliefs. The treatment of the claimant by the respondent was not because of his expression of views rooted in Christian beliefs but because of the severe reaction to them.

145. If the Tribunal is wrong upon the question of manifestation, then the same outcome would apply by application of the Bank Mellat proportionality test to the claimant's claims

under Article 9(2) as under Article 10(1) and (2) in any case.

146. For the avoidance of doubt, the same considerations would apply upon the claimant's Article 9(2) rights to manifest his religious belief were the Tribunal to be wrong to find there to be no manifestation on the facts of the case. This imports the same considerations of proportionality pursuant to Bank Mellat and the Tribunal is satisfied for the reasons given that the respondent has discharged the burden upon them of proving a proportionate and justified interference with the claimant's qualified rights to manifestation of religious belief (were they to be applicable) and freedom of expression.

147. Taking all of the above into account, the Tribunal is satisfied that the respondent's actions were proportionate in the circumstances.

Indirect discrimination

148.The respondent does not accept that that the respondent applied the PCP as set out.

149. Mr Phillips submitted that the claimant's beliefs are orthodox Christian beliefs, and the PCPs are inherently disadvantageous to adherents of unpopular beliefs on emotive issues and that it is a matter of judicial notice that the claimant's beliefs on sexual ethics are unpopular with significant sections of modern society.

150. The Tribunal finds that respondent did not apply the PCP as set out in the identified issues. A PCP that would be applied was that members of the respondent's staff should comply with, or not breach the respondent's Social Media Policy. There was no evidence of the identified PCP being applied to persons not sharing the claimant's belief. The respondent took action against the claimant in respect of the particular circumstances of the case. The Claimant was dismissed for bringing the respondent into disrepute and breach of trust because he was not showing any signs of understanding or contrition, meaning the respondent could not trust that the same thing would not happen again.

151. It was submitted by Ms Mellor that the Claimant relied on the evidence of Dr Parsons to show that the Claimant would be subject to a group disadvantage. She said that the respondent did not challenge the figures or the opinion as set out in the summary [73]. However, that does not address whether a Methodist (Christian) Evangelical Conservative would be more likely to post on social media 'rational views on matters of public interest'. That particular PCP has no connection to any religion at all. It was submitted that in those circumstances the evidence of Dr Parsons is of no assistance.

152. The PCP identified as the respondent considering the intensity of controversy and/or criticism attracted by a social media post is a factor which weighs in favour of treating the post as inappropriate and/or this conduct and/or gross misconduct is not a PCP and not relating to religion or applied to persons who do not, or would not, share the claimant's religious beliefs. There was no evidence of group disadvantage.

153. The Tribunal is not satisfied that there was a PCP of the treatment of social media posts by the respondent's lecturers expressing rational views on matters of public interest which were seen as inappropriate in breach of its Social Media Policy and/or misconduct and/or gross misconduct.

154. If there have been such a PCP the Tribunal has considered that it would have put Christians opposed to same-sex unions imitating marriage at a particular disadvantage compared with persons who do not share those religious beliefs.

155. The Tribunal is satisfied that the provision of such a PCP would be a proportionate means of achieving the legitimate aim of protecting the brand or reputation of the college, ensuring that students, staff and the wider community are treated with dignity and respect. Also ensuring adherence to the Social Media Policy which seeks to protect the reputation of the college by prohibiting inappropriate use of social media.

156. The Tribunal is satisfied that such a PCP is an appropriate and reasonably necessary way to achieve those aims. There was a demonstrable risk to the reputation of the respondent.

157. The Tribunal has given careful consideration to whether, if there had been found to be a PCP which would have put the claimant at a substantial disadvantage, something less discriminatory could have been done instead. The ensuing “twitterstorm” was indicative of damage to the respondent’s relationships in respect of some students feeling unsafe, concerns raised by the University of Manchester and the Methodist Church.

158. The action taken by the respondent was appropriate and necessary to achieve the aims of ensuring that students, staff and the wider community was treated with dignity and respect and protecting the reputation of the college. The Tribunal has considered whether, if it had been found to be a PCP that had placed the claimant at a substantial disadvantage, anything less discriminatory could have been done instead. Ashley Cooper, the Principal and dismissing officer gave clear evidence that he agreed with the claimant’s views with regard to same-sex marriage. However, he considered that the claimant’s Tweet was abhorrent, indefensible and an appalling way to describe the LGBT QI+ community within the Methodist Church.

159. The claimant refused to remove the Tweet despite the uproar and offence it was causing and the reputational damage to the respondent. There was a significant breakdown in trust and confidence and the relationship with claimant had been irrevocably damaged and action short of dismissal was not appropriate.

160. The claimant made it clear that he viewed Twitter and social media as the marketplace, and it was his duty to proselytise in that marketplace. He was not prepared to comply with the Social Media Policy and the Tribunal is satisfied that action short of dismissal was not proportionate.

161. In all the circumstances, the unanimous decision of the Tribunal is that the claim brought by the claimant of unfair dismissal and direct and indirect religion or belief discrimination are not well founded and dismissed in their entirety.

Employment Judge Shepherd

23 July 2024

Sent to the parties on:

29 July 2024