



EMPLOYMENT TRIBUNALS

Claimant: Mr D Falchikov

Respondent: Royal Borough of Kingston upon Thames

Heard at: Leeds

On: 7 October 2024

Before: Employment Judge Maidment

Representation

Claimant: In person

Respondent: Mr C Adjei, Counsel

JUDGMENT

The claimant did not have a belief qualifying for protection pursuant to Section 10 of the Equality Act 2010. The claimant's complaints of direct and indirect discrimination based on a protected belief are therefore struck out, the tribunal having no jurisdiction to hear them.

REASONS

Issues

1. The claimant's sole claims in these proceedings are of direct and indirect discrimination because of a protected belief.
2. The claimant maintains, as identified at the previous preliminary hearing on 24 April 2024, that he holds the belief: "that people should be active citizens and get involved with community and political activity. He says he has always been active in the community. Until 2019 he was a long-standing and active member of the Lib Dems. He is active in his community in Yorkshire."
3. At that hearing, directions were given for the parties to disclose documentation and exchange witness statement evidence in preparation for

this public preliminary hearing to determine whether or not the claimant held a belief protected under the Equality Act.

Evidence

4. It is fair to say that the claimant's witness evidence before the tribunal consisted in fact of a document incorporating the grounds of complaint submitted with his tribunal claim form together with some extracts from his application for employment with the respondent.

5. The tribunal had before it an agreed bundle of documents numbering some 137 pages. The claimant had also provided a copy of the respondent's complaints procedure and a link to a YouTube video. The tribunal explained that it had viewed the first 20 minutes or so of that video together with extracts of later footage. Ultimately, no reliance was placed by the claimant on this video.

Facts

6. The claimant, having been made redundant from a previous job, applied for the position of Opposition Group Support Officer at the respondent on 20 April 2023 – a role similar to several positions he had previously held. His application was unsuccessful and he subsequently received information that the decision to reject him was related to him being “inappropriate due to recent political activism within the Borough.” The claimant's supporting statement in his application for employment referred to knowing the 2 opposition group councillors and understanding the challenges they faced. The role applied for was to support them. He said that he fully understood and supported the council's interests having helped write the local Lib Dem manifesto on which the respondent's corporate plan was based.

7. His evidence dealing expressly with the nature of his purported protected belief is contained at paragraph 1.17 of his statement which reads (in full) as follows:

“I felt in introducing a post hoc filtering process for political activity (anonymous or otherwise) the council had also discriminated against me on the grounds of philosophical belief. While not religious I have been brought up to be an active citizen and to get involved with community and political activity. My parental grandfather fought in the Russian Civil War on the side of the Democrats and, on the victory of the Bolshevik communists, found himself stateless eventually seeking sanctuary in the UK in the 1930s. My paternal great aunt was a strong Quaker and conscientious objector, she had to overcome strong discrimination to become one of the first women to qualify as a medical doctor in the UK. Both these family relations have strongly influenced my beliefs and as a result I have always been active in the community and was until 2019 a longstanding activist member of the Liberal Democrat party. I remain active in the community in Yorkshire where I now live.”

8. Elsewhere in his statement, the claimant referred to his previous employment, saying that he started his career at the respondent as a political assistant to the then opposition Lib Dem group. He said that he had been responsible for delivering a campaign following Dame Judith Hackitt's report on building regulation and had led a stakeholder engagement programme which included government thinking post the Grenfell fire disaster. He had co-authored 12 best practice guides on stakeholder engagement and consultation for Nottinghamshire and had devised and implemented a communications campaign for Rochford Council. The claimant described himself as committed to equality and the promotion of diversity. He also reaffirmed that he understood and supported the respondent council's interests.
9. In cross-examination, the claimant agreed that his belief was that people should be active citizens as set out in the summary of the earlier preliminary hearing. He was taken to documentation relating to a separate tribunal claim brought by a friend, Mr Dennison, who had also applied for the same opposition support group officer role and been similarly rejected. He agreed, as he had said at the earlier preliminary hearing, that they shared the same belief. Mr Dennison's claim form set out that, while not a member of a political party or church, he had always been guided by his philosophical belief instilled in him by his maternal grandfather, whose family had been Quakers, that citizens should fully participate in the civic and political life of the community.
10. It was clear that there are striking similarities in the claims, including as to remedy sought where both the claimant and Mr Dennison reference a desire for a public apology at a full meeting of the respondent council. The claimant accepted that they had discussed their cases and the issues relevant to both, but said that they did have separate claims.
11. The opposition group in the council, for whom the support officer was being recruited, was the Kingston Independent Residents Group ("KIRG"), a registered local political party. Both the claimant and Mr Dennison had been involved in supporting the organisation and the two individuals who became its elected councillors, Mr Giles and Ms Tracey. The claimant described himself as believing that he had to seek to hold truth to power and make communities better. He described himself and Mr Dennison as "both members of the awkward squad".
12. As the claimant had stated in his evidence, he had been active in the Lib Dems until 2019. He said that his disillusionment with the party had been part of a process which commenced from around 2009/2010 and their involvement in the then coalition government. He described himself as now "agnostic" regarding the Liberal Democrat party, saying that there were still some people in the party who he supported.

13. The claimant was taken to a number of documents which included correspondence where he had expressed concern in September 2019 that a Liberal councillor had not declared an interest. He and Mr Giles had together complained about other Liberal councillors in email correspondence of October 2019. The claimant made a subsequent complaint of potential bias. In February 2021, in reply to correspondence in that regard from the respondent's head of democratic and electoral services, the claimant said that he wished "the council would be as speedy in investigating councillors who racially abused children in their care". In an email of 7 May 2022, the claimant accused a Liberal councillor of a breach of electoral law.
14. On seeing the documentation which the respondent intended to place before the tribunal, the claimant had disclosed a link to a YouTube video which shows an apparent Liberal Democrat activist, it is said, a recently employed support officer of the respondent, throwing a milkshake over a political opponent.
15. The claimant, in cross-examination, said that he had been a resident of the respondent borough. It was run by the Liberal Democrats - he felt not well. He said that he would be happy to criticise others in respect of whom he held such opinion. He said that he was no longer a resident of the borough and "what they get up to is none of my business now."
16. When put to the claimant that he had been given an opportunity to specify things or activities in which he had been involved, which he might say were informed by his philosophical belief, he repeated that part of his belief is to be involved in the community, as he had said, and this had led to his political activity. Citizenship, he said, was part of the national curriculum and for him it was about standing up to power. He had done so through his political activities and still holds those views.
17. It was put to the claimant that he had given no details of him remaining active in the community since living in Yorkshire. He said that it did not necessarily have to be local issues in which he felt the need to be involved. He said that he couldn't stand by and let things go unquestioned. He said that he was setting up a residents' association and "trying to get people together".

Applicable law

18. One of the protected characteristics covered by the Equality Act 2010 is "religion or belief". "Belief" means any religious or philosophical belief. There is no longer, as there once was in the earlier relevant legislation, any requirement that a philosophical belief be similar to a religious belief.

19. The leading case on the definition of a “philosophical belief” is that of the EAT in **Grainger plc v Nicholson 2010 ICR 360**. Burton J there set out that for a belief to qualify for protection:

- i. *“(i) The belief must be genuinely held.*
- ii. *(ii) It must be a belief and not, as in McClintock, an opinion or viewpoint based on the present state of information available.*
- iii. *(iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.*
- iv. *(iv) It must attain a certain level of cogency, seriousness, cohesion and importance.*
- v. *(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 ...”*

20. Burton J said: “... It is necessary, in order for the belief to be protected, for it to have a similar status of cogency to a religious belief.” The tribunal agrees with the commentary in the IDS Employment Law Handbooks, to parts of which it has been referred by Mr Adjei, that clearly Burton J was not seeking to reimport the earlier requirement that a philosophical belief be similar to a religious belief. Rather he was recognising that a philosophical thought tends to contain consistent internal logic and structure and provide guiding principles for behaviour as well as concern matters which go beyond the mere parochial.

21. According to Burton J, even a religious belief is not required to be one shared by others. A philosophical belief does not need to constitute a fully-fledged system of thought, provided the criteria he had set out were satisfied. Clearly, a belief that does not govern the entirety of a person’s life may still qualify as a protected belief. Beliefs based on political philosophies are not disqualified.

22. It has since been stressed in the case of **Harron v Chief Constable of Dorset Police 2016 IRLR 481** that the **Grainger** criteria should not set the bar too high or demand too much of those professing to have protected beliefs. There it was discussed (with reference to Lord Nicholls’ comments in the case of **R v Secretary of State for Education and Employment ex parte Williamson [2005] UKHL 15**), that the belief must relate to matters more than merely trivial - a suggestion that the requirement that the belief be “substantial” means that it is more than merely trivial. The requirement of “coherence” was to be understood in the sense of being intelligible and capable of being understood - not too much was to be expected of a claimant in this regard. The EAT in **Forstater v CGD Europe 2022 ICR 1** cautioned tribunals not to stray into the territory of adjudicating on the merits and validity of the belief itself. In that case, Choudhury P also said that, in assessing whether a belief qualifies for protection, its manifestation can be no more than part of the analysis in considering whether the belief meets the threshold requirements in general. It should not be the focus of the enquiry.

23. Genuineness of belief is to be determined as a question of fact, but this has been said in **Williamson** to be a limited enquiry. The concern is to ensure that an assertion of belief is made in good faith, but there is no assessment of validity by any objective standard.
24. Whilst Burton J observed that mere support of a political party would not meet the description of a philosophical belief, beliefs based on political philosophies or doctrines were likely to qualify. The tribunal has been asked by Mr Adjei to consider the employment tribunal decision in **Olivier v Department for Work and Pensions Case No. 1701407/2013** where it was held that the claimant's belief in democratic socialism, connected to his involvement with the Labour Party, amounted to a philosophical belief. The tribunal held that the belief was not just an opinion or viewpoint based on the present state of information available. It was a belief as to a weighty and substantial aspect of human life and behaviour and attained a certain level of cogency, seriousness, cohesion and importance. The claimant had more than a passing interest in the Labour Party. He had a strong interest in, and connection with, the party's history and moral tenets, and this affected how he conducted his life. He was not "merely a "political animal" who chooses to support a particular political party".
25. At the earlier preliminary hearing in this case, the tribunal had referred the parties to the potential relevance of the case of **Scottish Federation of Housing Associations v Jones 2022 EAT 114**. There, the EAT found no error of law in an Employment Judge's finding that a belief that "those with the relevant skills, ability and passion should participate in the democratic process" was protected. In that case, it had been found that the claimant believed that it was important for people to participate in democracy, including by standing for elections which she believed people should do for proper motives. The EAT noted that a belief in participative democracy was a belief which related to a crucial aspect of the form of government exercised in the UK – the belief dealt with a serious and important issue. The claimant's decision to stand for Parliament demonstrated that she took her belief seriously. The EAT rejected the argument that the belief was too vague to be worthy of protection. Clearly, in that case the employment tribunal had made a number of factual findings based on the claimant's evidence. The EAT noted that from these it was evident that the claimant had from an early age demonstrated an interest in politics and had campaigned on behalf of a variety of worthy causes. She had campaigned against apartheid and promoted disability rights. She held the post of Student Activities Secretary when an undergraduate. She had been employed by Unison and Oxfam. She believed that women were underrepresented in politics and that work was needed to redress that state of affairs. She believed that those who entered politics should do so for proper motives and those who do not do so damage the process. She believed that people should participate in politics by voting, standing as candidates, campaigning or lobbying, irrespective of their political stripe.

26. Undoubtedly, the effect of these authorities is that a wide variety of beliefs have been held by employment tribunals to be protected. However, the determination in any given case is extremely fact sensitive. All the EAT decided in **Grainger** was that the employee's asserted belief was capable of constituting a philosophical belief and the determination of the question was referred back to the employment tribunal. In other authorities, the EAT did likewise or recognised that the acceptance of the existence of a protected belief was a conclusion open to the tribunal at first instance. Some beliefs might be regarded as so uncontroversial as to be inconsequential, yet still be protected beliefs. Indeed, in some of the reported cases, the acceptance of the existence of a protected belief is in (and potentially influenced by) the context of the employer showing a lack of causation in any detriment suffered. The tribunal considers that the case of **Grainger** still represents a gateway that a claimant asserting a protective belief must get through. It is not an open door. It might in many cases be ajar, but it must still be opened.
27. Indeed, Burton J noted: "To establish a religious belief, the claimant may only need to show that he is an adherent to a particular religion. To establish a philosophical belief, ... it is plain that cross-examination is likely to be needed."
28. Applying these principles to the facts as found, the tribunal reaches the conclusion set out below.

Conclusions

29. In this case, the claimant's pleaded belief is that people should be active citizens and get involved with community and political activity. The tribunal concludes that this belief is genuinely held by the claimant. Certainly, the claimant believes that he is an active citizen.
30. It, however, arrives at such conclusion against a background where the claimant has worked together with his friend, Mr Dennison, to seek to frame their apparently shared belief in a manner which might attract protection. This is in the context of two individuals with similar political, though not necessarily party political, alignments in the respondent's borough, who had both applied for and been rejected from the same position. It is not coincidental that they have adopted similar wording in articulating their belief and the tribunal should legitimately be more enquiring as to the nature of the claimant's belief in those circumstances.
31. The belief is not simply an opinion or viewpoint based on the present state of information available. It does concern a weighty and substantial aspect of human life and behaviour. It is certainly worthy of respect in a democratic society. Whilst not everyone would want to be or promote being an active citizen, it is hardly a belief which would lead to serious objection or cause offence.

32. The key question for the tribunal is whether the claimant's belief attains a necessary level of cogency and cohesion.
33. The tribunal's reasoning in this case will be inevitably brief. It does not have many facts to grapple with and that is problematical for the claimant. The claimant is clearly a sophisticated and articulate individual, who was well aware of the need to provide his witness statement evidence explaining fully and in detail the nature of his belief. His lack of effort in seeking to do so is surprising, unless in reality the claimant has very little he can indeed say. The tribunal can only make a determination on the facts before it.
34. Whilst it has been recognised by the higher courts that a belief might be cogent and coherent if it can be very briefly and simply stated, the tribunal in this case has very little upon which it can base its determination beyond the claimant's bare statement of a belief that people should be active citizens and get involved in community and political activity.
35. The claimant has barely elaborated on the nature of his belief in evidence and in response to questions put in cross-examination. The tribunal understands now that the claimant believes it important to hold truth to power and to be questioning of the exercise of power.
36. In terms of how the claimant's belief is said to have influenced his behaviour, the tribunal accepts that the claimant has been over a number of years active in the Liberal Democratic party before becoming disillusioned with it in 2019. He has subsequently challenged the behaviour of local Liberal Democrat councillors, including in a forthright and critical manner. He has shown support for a local political grouping known as KIRK and knows personally the 2 individuals from that grouping, who were successful in being elected to the respondent council. In applying for the opposition group support officer role, he was effectively seeking to support a group he was aligned to politically within the respondent borough. The same applies to the claimant's friend, Mr Dennison. Clearly, the claimant had been something of a "political animal" in the past whilst living within the respondent's borough. The tribunal, however, is left with little evidence of why and to what extent.
37. The claimant's evidence is that, since he has relocated to Yorkshire, he regards whatever the majority Liberal Democrat council gets up to in Kingston upon Thames as now none of his business. Whilst, as a matter of fact, the claimant may no longer be a local resident of the respondent and entitled to vote in local elections in its borough, his response did not give the impression of a deep-seated belief beyond the locality in which the claimant previously lived. It came across as a surprisingly detached view of active citizenship, which appears to relate more to the community in which someone lives in the here and now.

38. The claimant has said that he remains active in the community in Yorkshire where he now lives. In his witness statement evidence, he gave no examples at all of how. In cross-examination, he almost had to be pushed to the point of divulging that he was trying to set up a residents' association. Again, he did not elaborate or explain the nature of his activities or the reasons behind them.
39. The claimant has provided some details of his previous employment history, albeit rather in the context of his application for employment rather than in support of any protected belief. The tribunal can draw from this evidence that the claimant has been at times employed in local government and in activities which have a public purpose. Again, the tribunal has no idea what has motivated him to do so and little detail of anything done which might be relevant to the asserted protected belief.
40. The claimant has not evidenced any activity where he has sought to promote active citizenship in others beyond canvassing for a political party for a defined period. Rather, the tribunal is left with only being able to conclude that the claimant has had in the past an interest in local politics and been a member of a political party. As at the time the claimant submitted his tribunal application, it has no idea of any sense in which the claimant was demonstrating active citizenship. It has no idea as to the likely position the claimant might take on any issue of public or community concern.
41. The claimant's case contrasts with the nature of the evidence and activities evidenced in the **Jones** case. There the belief was quite focused on the participation in the democratic process, rather than on the wider concept citizenship. Ms Jones had clearly thought about who should actively participate by reference to those with the relevant skills, ability and passion. Her claim was about her standing for election as an MP. Her campaigning on behalf of a variety of worthy causes was demonstrated from an early age. Her activities went beyond being active in local government politics for a defined period. The campaigns in which she had been involved in went wider than her employment related activities. The claimant's activities of public value appear to derive more directly from his history in local government/public sector employment. Ms Jones had clear beliefs regarding who was underrepresented in politics and how that needed to be addressed. Her beliefs demonstrated a commitment to widening participation in politics generally, rather than just setting a personal example by her own political activism.
42. In summary, the tribunal, in this case, has before it evidence of an individual with a history of employment in local government, who was active for the Liberal Democrats for a number of years, became disillusioned and then critical of them and has criticised them since aligning with a new council grouping. Any interest in that has ceased on his relocation and the tribunal has little information as to community activity since. The claimant's political activity has not been linked to any moral or philosophical tenets. The

support of the parties is not linked to a belief in participative democracy. The claimant has not told the tribunal of any particular campaigning activities beyond the causes of particular political parties. There is no evidence that the claimant has sought to promote the concept of political activism or active citizenship to anyone else. There is no evidence of encouraging people to vote or to take on community roles. Take away the claimant's political activity in the respondent's borough and affiliation with local parties there and in the nearby area and there is no material evidence as to how his beliefs might have influenced his activities. Being interested and involved in politics is insufficient to constitute a protected belief. Whatever the claimant believes in lacks coherence and cogency. That is not to say that the claimant is not a good person. Again, however, the tribunal cannot even guess at what actual campaigns or causes the claimant might support in any given circumstances or when and how he might be expected, in his life, to demonstrate active citizenship.

43. In such circumstances, the tribunal concludes that the claimant's belief does not, on the facts, have the necessary cogency and coherence for it to be a protected belief under the Equality Act 2010. It is insufficiently intelligible and capable of being understood. In coming to this conclusion tribunal is mindful that there is a relatively low hurdle to surmount in showing a protected belief. The subject matter said to be the belief need not be controversial or deep meaning or of any complexity (sometimes the more simply expressed, the better). The tribunal must nevertheless apply the facts in any case to the **Grainger** principles, which, in this case, it does not consider to have been satisfied.

Employment Judge Maidment
Date 14 October 2024

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