



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs C Fairbanks

**Respondent:** Change Grow Live

**Heard at:** Manchester by CVP

**On:** 17<sup>th</sup> September 2024

**Before:** Employment Judge Humble

## REPRESENTATION:

**Claimant:** In Person

**Respondent:** Mr Wyeth, Counsel

# RESERVED JUDGMENT ON PRELIMINARY HEARING

The Judgment of the Employment Tribunal is that:

1. The claimant has not shown that she has a philosophical belief under section 10 Equality Act 2010.
2. The claim is dismissed.

# REASONS

## The Hearing

1. The hearing took place on 17<sup>th</sup> September by CVP video link. The claimant was self-represented and gave evidence on her own behalf. The respondent was represented by Mr Wyeth of Counsel. There was an agreed bundle of documents which extended to 155 pages. This included the claimant's witness statement, which comprised a brief statement of case followed by a series of attachments containing correspondence and documents relating to the case. This was taken as the claimant's evidence in chief, along with some additional

open questions put by the tribunal to the claimant prior to the respondent's cross examination.

2. The evidence and submission were concluded on the afternoon of 17<sup>th</sup> September and judgment was reserved.

### **The Issues**

3. The purpose of this preliminary hearing was to determine whether the claimant held a philosophical belief, at the material time, which was protected by section 10 Equality Act 2010.
4. At the outset of the hearing clarification was sought from the claimant as to the philosophical belief upon which she sought to rely. In her particulars of claim, the claimant referred to being a counsellor for the UK Independence Party and stated that she was discriminated against because of her "political beliefs". There was an earlier preliminary hearing in these proceedings, on 28<sup>th</sup> February 2024, at which the following exchange was recorded by Judge Johnson, "I explained that the mere support of that party [UKIP] was unlikely to amount to a protected characteristic of philosophical belief, but specific values connected with support of that party may be. The claimant says that she had beliefs regarding Britain leaving its membership of the EU and cessation of illegal migration. These are beliefs which he had for a period, she believed UKIP's values aligned with her. Although she is no longer a UKIP representative and is not a member, it is understood that her values and beliefs remain."
5. The Case Management Order which followed that hearing had an annex attached to it headed, "Complaints and Issues (agreed by the parties)", followed by a sub-heading "Respondent's Draft List of Issues". Within that list of issues the philosophical belief identified was "the political party, UKIP".
6. At the outset of this hearing, the tribunal explained again that membership of a political party was not, in itself, likely to be a philosophical belief and asked the claimant to precisely identify the philosophical belief which she sought to rely upon. The claimant replied, "I believe the UK should be outside of the EU"; "I oppose illegal migration"; "I am against the Halal slaughter of animals"; and, after some hesitation, "I would be happy to leave the ECHR."
7. Counsel for the respondent sought to argue that, in effect, the claimant was bound by her reliance upon her membership of UKIP as a philosophical belief since the claimant had not sought to rely upon any additional beliefs in support of her case. The tribunal did not accept that contention, the claimant's membership of UKIP was based upon the policies of that party which she believed aligned with her own views. These were views which she had elucidated these to some degree at the earlier preliminary hearing and the tribunal held that she was entitled to rely upon them. The case therefore proceeded to be determined based upon the four matters outlined by the claimant:
  - 7.1 The UK should be outside of the EU;
  - 7.2 Illegal migration should cease;
  - 7.3 The Halal slaughter of animals should cease; and
  - 7.4 The UK should leave the ECHR.

8. The issues to be determined had been agreed at the earlier preliminary hearing and were as follows:
  - 8.1 Whether the claimant's beliefs were genuinely held;
  - 8.2 Whether they amounted to beliefs, and not an opinion or viewpoint based on the present state of information available;
  - 8.3 Whether they amounted to a belief as to a weighty and substantial aspect of human life and behaviour;
  - 8.4 Whether they attained a certain level of cogency, seriousness, cohesion, and importance;
  - 8.5 Whether they were worthy of respect in a democratic society, not being incompatible with human dignity and not conflict with the fundamental rights of others; and
  - 8.6 Whether they have a similar status or cogency to a religious belief.

### The Law

9. The Employment Tribunal applied the law at section 10 of the Equality Act 2010. This provides, in relation to philosophical belief, that
  - (2) Belief means any . . . philosophical belief and a reference to belief includes a reference to a lack of belief.
  - (3) In relation to the protected characteristic of . . . belief –
    - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular . . . belief;
    - (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same . . . belief.”
10. The term “philosophical belief” is not defined by the Equality Act. Guidance is provided by the Equality and Human Rights Commission’s Statutory Code of Practice on Employment (2011), which provides as follows:

Paragraph 2.52: “The meaning of religion and belief in the Act is broad and is consistent with Article 9 of the European Convention on Human Rights (which guarantees freedom of thought, conscience and religion)”.

Paragraph 2.57: “A belief which is not a religious belief may be a philosophical belief. Examples of philosophical beliefs include Humanism and Atheism.”

Paragraph 2.59: “For a philosophical belief to be protected under the Act:

  - it must be genuinely held;
  - it must be a belief and not an opinion or viewpoint based on the present state of information available;
  - it must be a belief as to a weighty and substantial aspect of human life and behaviour;
  - it must attain a certain level of cogency, seriousness, cohesion and importance; and

- it must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.”
11. Paragraph 2.59 of the Code, which reflects the issues in this case, is taken from principles laid down in the case of Grainger plc v Nicholson [2010] IRLR 4, EAT and specifically paragraph 24 of that Judgment. Grainger also provides, at paragraph 26, “it is necessary for the belief to be protected, for it to have similar status or cogency to a religious belief”, but qualifies that by stating that the “philosophical belief in question does not need to constitute or ‘allude to a fully-fledged system of thought’, provided that it otherwise satisfies the limitations set out in paragraph 24...as it was put in argument, such philosophical belief does not need to amount to an “-ism”.
  12. The tribunal was also referred to the cases of R (Williamson and ors) v Secretary of State for Education and Employment [2005] 2 AC 246 HL, McClintock v Department of Constitutional Affairs [2008] IRLR 29 EAT, Thomas v Surrey and Borders Partnership NHS Trust and anor [2024] EAT, and Forstater v GCD Europe and ors [2022] ICR1 EAT. The two latter cases pertained to the extent to which the fifth limb of Grainger applies, whether a belief was worthy of respect in a democratic society, not incompatible with human dignity and did not conflict with the fundamental rights of others.
  13. The tribunal also had reference to the case of Mackereth v Department for Work and Pensions and another [2022] IRLR 721 EAT which gives some guidance in relation to limb two of Grainger, in drawing a distinction between a philosophical belief, on the one hand, and an opinion or viewpoint based on the present information available on the other.

## Findings

The Employment Tribunal made the following findings on the balance of probabilities (the tribunal made findings of fact only on those matters which were material to the issues to be determined and not upon all the evidence placed before it):

14. The respondent is a registered charity which provides drug and alcohol rehabilitation services to individuals throughout England and Wales. The claimant was employed by the respondent as a recovery worker based in Fleetwood, Lancashire from 10 October 2022 until she was dismissed on 21 July 2023.
15. When she was interviewed for the job, the claimant informed the respondent that she had been a local councillor, although she did not identify the political party with which she was affiliated. The claimant was a member of the UK Independence Party, and a local councillor for that party between about 2017 and 2019, a period which pre-dated her employment with the respondent. The claimant believes that difficulties arose with her employer from about February 2023 when a colleague notified her manager that the claimant had been a UKIP councillor. The claimant says that she was bullied and harassed by the respondent in relation to her membership of UKIP. She was ultimately dismissed by the respondent in relation to social media posts made on Twitter accounts (now known as ‘X’). The claimant says that one of these accounts did not belong to her.

16. The claimant presented a claim to the Tribunal on 3 October 2023 in which she indicated that she wished to claim discrimination on grounds of religion/belief. She did not identify the belief relied upon in the particulars of claim, other than to complain that she was treated unfavourably because of her political beliefs and to identify that she was a local councillor for UKIP. The respondent presented a response on 15 November 2023, resisting the claim and disputing that the claimant's political affiliation to UKIP could amount to the protected characteristic of religion or belief under section 10 Equality Act 2010 ("EQA").
17. At a preliminary hearing on 28 February 2024, the case was listed for a four day final hearing in April 2025 and a one day preliminary hearing to determine the question of whether the claimant's beliefs could amount to a protected characteristic under section 10 of the EQA. The early determination of this preliminary issue would decide whether or not the claim could proceed to a final hearing.
18. The claimant prepared a witness statement for this hearing (pages 134-159 of the bundle) but there was very little in it which related to her opinions or beliefs. Although, the specific purpose of this hearing was to examine the claimant's beliefs and opinions, the statement prepared for the hearing described those beliefs on only about half of the first page of a 25 page statement. The remainder of the document contained an account of the adverse treatment which the claimant says that she received from the respondent's management, and some correspondence and documents which related to that alleged treatment. The overwhelming majority of the statement was therefore irrelevant for the purposes of this hearing.
19. In the part of the statement that was relevant, the claimant said that she had been an "activist" since the end of 2017 with, "my activism based around my political beliefs". In 2008 she started a group called Yellow Vests Lancashire which would meet in Saint Peter's square every Saturday to inform the public of "injustices within our society". The claimant said that she protested "for Brexit because despite Leave winning the referendum in 2016 the process of leaving was being frustrated by those who voted to remain and therefore disregarding our democracy." She said that she started attending other demonstrations for people who she believed were "political prisoners" and described herself as "still an activist" who attended protests although not as much as she would like due to having mobility issues.
20. The tribunal asked some open questions in relation to these matters to give the claimant an opportunity to expand upon the limited information she had provided. She said the "Yellow Vests movement" involved protests against the murder of "three kiddies in London", and one of the political prisoners was Carol Woods who was said to have been a "whistleblower" who was put in a secure mental institute. These matters were not explained any further. She said that she believed the government was "corrupt" and was "doing things not in the best interests of the public". There was little else forthcoming, although some further information was provided during the course of cross examination when the claimant said she believed that Halal was an inhumane manner of slaughtering animals which should not be permitted, and which she said was a view shared by the RSPCA.
21. In relation to the beliefs held by the claimant, the tribunal was satisfied that the views she relied upon were genuinely held. She had been sufficiently motivated

by her wish to leave the European Union to join UKIP and to stand as a counsellor for that party, a decision which also appeared to be linked to her desire to end illegal immigration. In relation to Halal food, she said that she made a point when shopping at supermarkets of checking packaging for “slaughter house codes” so that she could ensure she was not buying meat which had been slaughtered using Halal methods. There was sufficient in the evidence to convince the tribunal that the claimant’s views were genuinely held and therefore the first stage of the Grainger tests was satisfied.

22. The main difficulty for the claimant in this case was in relation to the second limb of Grainger: whether the claimant’s views amount to philosophical beliefs and not an opinion or viewpoint based on the present state of information available. EAT guidance upon this can be found in the case of Mackereth v Department for Work and Pensions and another [2022] IRLR 721 EAT as follows:

“It seems to us that difficulties can arise in seeking to define in general terms the precise distinction between a philosophical belief, on the one hand, and an opinion or viewpoint based on the present information available, on the other. As a minimum, however, a philosophical belief implies the acceptance of a claim, whether founded on science or faith, and – as something that amounts to a protected characteristic – it must be capable of being understood as a characteristic of the individual in question. As we consider the EAT allowed in Harron, an opinion or viewpoint might be a manifestation of a belief but, where it is dependent upon the present information available, it may be found, as in McClintock, that there is in fact no link between that opinion or viewpoint and any religious or philosophical belief. Moreover, the additional test of cogency, seriousness, cohesion and importance (Grainger (iv)) may mean that the more narrowly a belief is defined the less likely it is to be found to be a philosophical belief for the purposes of s 10 EQA.”

23. The tribunal was struggling in this case to identify any underlying philosophical belief pertaining to the claimant’s opinions. It is possible that she held a belief in a form of English Nationalism, which the EAT suggested in the case of Thomas v Surrey could be capable of constituting a philosophical belief under section 10 EQA, (although it did not qualify in the circumstances of that case since the form of English Nationalism that particular claimant advocated involved, among other things, the forcible deportation of Muslims). The respondent had prepared its submissions on an assumption that the claimant might seek to rely upon English Nationalism as a philosophical belief. However, the claimant did not profess any belief in English Nationalism or make any reference to it, either in the pleaded case or in her evidence before the tribunal. In relation to the claimant’s desire to leave the EU and the ECHR, this might be related to English Nationalism or it might, for example, be related to a belief that a country should, as a sovereign state, have control over its own legislation, which might also be capable of amounting to a philosophical belief. Ultimately, however, neither of these beliefs was mentioned by the claimant and it is not for the tribunal to second guess what underlying belief or beliefs the claimant holds where no explanation is forthcoming.
24. The tribunal is mindful of its duty to ensure that self-represented parties are put on an equal footing to those who have representation but the tribunal’s view is that this does not extend to constructing a philosophical belief for a claimant

who has failed to articulate one. It might be that the claimant's failure to articulate such a belief is because of an inability on her part to elucidate her case but equally it might be because the claimant has not thought deeply enough about what those beliefs are. In her evidence, and her pleaded case, the claimant consistently referred to "political beliefs" or her membership of UKIP and did not reference any philosophical belief at all. While that is not conclusive, it does not help the claimant's case, and it suggests that she has not properly considered and formulated any philosophical belief.

25. There has to be a distinction between a philosophical belief and a strongly held opinion. As Mr Wyeth pointed out if, for example "wanting to leave the EU" was held to be a philosophical belief then more than half the British electorate would have a belief that fell within section 10 EQA, which could not be the intention of the legislation. Despite some probing, both by the tribunal and in cross examination, no coherent belief or set of beliefs was forthcoming. On balance, the tribunal found that the claimant had genuinely held opinions and views but she did not convince the tribunal that she had any underlying philosophical belief.
26. Given that the claimant has not established a philosophical belief, we are not obliged to deal with the remaining elements of the Grainger test. However, for the record, we briefly deal with the fifth element of Grainger since a lengthy section of the cross examination and submissions in this case focused upon the contention that the belief must "be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others."
27. The main focus of the respondent's cross examination was upon the claimant's support for an individual who goes by the name Tommy Robinson, which was said not to be his real name. Mr Wyeth's argument, in essence, was that Mr Robinson was a reprehensible character who had criminal convictions and who, accordingly to headlines in the Daily Mail among other news outlets, was responsible for inciting the riots which took place in England in August 2024 and who was also said "by many to be racist". The claimant acknowledged that she supported Mr Robinson when he stood as a candidate for the European Parliament and that, while she accepted that Mr Robinson had flaws and she did not share all his views, she defended him, saying that he was not racist and was not in any way responsible for the riots in August 2024. There was no evidence before us in relation to Mr Robinson's alleged convictions or upon his views on race, or indeed on any other matter, and the apparent headlines in the Daily Mail carried no weight. The claimant's support for Mr Robinson was not therefore found to have any relevance to the case.
28. The focus for the tribunal was upon the claimant's own stated views. The desire to be outside of the European Union was a view shared by the majority of the British electorate, and a wish to stop illegal immigration is, in the main, an uncontroversial and widely shared opinion. These points were acknowledged by Mr Wyeth. The tribunal were also of the view that the claimant's opinions that the United Kingdom should leave the ECHR, and a view that Halal meat which did not include stunning animals before slaughter was inhumane, were also consistent with the fifth limb of Grainger. The case of Forstater v CGD Europe and others shows that the threshold is high: "*only if the belief involves a very grave violation of the rights of others, tantamount to a destruction of*

*those rights, would it be one that was not worthy of respect in a democratic society.*” The case of Thomas v Surrey and Borders Partnership NHS Trust and anor [2024] EAT is authority for the principle that the manner in which a belief manifests itself might disqualify a belief. In that case, the claimant had expressed views to the effect that Muslims should be forcibly deported, and made reference, among other things, to illegal immigrants being “machined gunned”. There were no such equivalent remarks attributed to the claimant, although there were social media posts which were said to have been made by the claimant and which no doubt would be found offensive by many (pages 69, 70 and 53). The claimant disputed that the social media account was her own, but the tribunal were of the view that in any event those comments, which referred to “fake asylum seekers” and complained that immigrants received priority for housing and public services, were not in the same category as those in Thomas v Surrey and did not fall foul of the fifth limb of Grainger.

29. The tribunal find that the views held by the claimant were worthy of respect in a democratic society, were not incompatible with human dignity and did not conflict with the fundamental rights of others. That finding, however, does not ultimately assist claimant since the tribunal is, in this case, assessing a collection of opinions rather than a philosophical belief.

### **Conclusion**

30. The claimant failed to convince the tribunal that she holds any philosophical belief underlying the opinions which she expressed before the tribunal. The claimant had ample opportunity to formulate her beliefs given that the hearing took place eleven months after she issued her claim. She had already received a prompt from the Judge at the preliminary hearing in February 2024 that membership of a political party was not likely to amount to a philosophical belief, and she was specifically directed to prepare a witness statement dealing with the issue for this hearing. Despite this, at the outset of the hearing, when questioned by the tribunal, she appeared to be struggling for the words required to describe her beliefs. After brief consideration she said, “I believe the UK should be outside the EU”, “I oppose illegal immigration”, and “I’m against the Halal slaughter of animals.” She then added, “I would be happy to leave the ECHR”, which appeared to be an afterthought. There are some philosophical beliefs which might underpin those views, and which might have led her to join UKIP, but none were put forward by the claimant who had had every opportunity to explain them.
31. The four opinions which the claimant described to the tribunal were found to be strongly held views and not philosophical beliefs. It cannot be sufficient for a claimant to arrive at a hearing and outline four opinions, however genuinely held, and expect these to be accepted as philosophical beliefs. Nor is membership of a political party enough, in itself, to amount to a philosophical belief.
32. As an aside, it seems to the tribunal that this was a case which would have best been presented as an unfair dismissal claim. The claimant’s principal complaint was that she was treated to her detriment and ultimately dismissed because of her membership of UKIP. Section 108(4) ERA 1996 provides that the two year qualifying period for unfair dismissal does not apply where the reason for the dismissal relates to the employee’s political opinions or affiliation. However, the claimant did not plead unfair dismissal; did not tick the applicable box on the



claim form; and did not raise the issue at either of the hearings or, as far as could be discerned from the papers, at any other time in the proceedings. As with the identification of a philosophical belief, it is not for the tribunal to make the claimant's case for her or to advise her upon how best to pursue it.

33. The claim is dismissed.

Employment Judge Humble

25<sup>th</sup> October 2024

RESERVED JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

29 October 2024

FOR THE TRIBUNAL OFFICE

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