



EMPLOYMENT TRIBUNALS

Claimant: Mr B Dybowski

First Respondent: The Bishop of Llandaff Church In Wales High School

Second Respondent: Staffroom Education Ltd

Heard at: Cardiff

On: 15, 16, 17, 18, 19 July 2024
23, 24 October 2024 (in chambers parties did not attend)

Before: Employment Judge S Moore
Mrs C Peel
Mrs M Humphries

Representation

Claimant: Mr Diamond, Counsel
First Respondent: Mr Mitchell, Counsel
Second Respondent: Mr Mozher and Mr McVeigh, Company Directors

RESERVED JUDGMENT

1. The claimant's claim of harassment related to religious and protected beliefs is not well founded and is dismissed.
2. The claimant's claim of direct religious and protected belief discrimination is not well founded and is dismissed.

REASONS

Background and Introduction

1. The ET1 was presented on 5 August 2023 against both respondents. This followed a period of early conciliation starting on 31 May 2023 and ending on 12 July 2023. The claim was heard at Cardiff Employment Tribunal in person on 15-19 July 2024 and two further chambers days on 23 and 24 October 2024 for the Tribunal to reach their decision.

Matters arising during the hearing

2. On 15 July 2024 the Tribunal raised a potential conflict with the parties concerning the original non legal members Mr Lewis and Ms Roberts. After discussions with the parties, Mr Lewis recused himself and the hearing was adjourned to arrange for a new non legal member. Until this stage there had been no objection to Ms Roberts' potential conflict but after Mr Lewis stood down the claimant objected to Ms Roberts continuing. Later on 15 July 2024 Ms Roberts recused herself. The hearing re started on 16 July 2024 with the members above.

Documents and witness statements

3. There was an agreed bundle of 468 pages and a number of electronic links that were not viewed by the Tribunal after the first respondent confirmed they did not wish the Tribunal to view them as part of the pre reading. There was also a recording of a conversation between the claimant and Mr Belli which was listened to by the Tribunal. This had been covertly recorded by the claimant.
4. The claimant and second respondent made applications to add additional documents to the bundle which were granted on the basis on no objections. The new numbering ran from 469-476.
5. A number of teachers and individuals feature in this case. Where their identity is not relevant to the issues in the claim it is not necessary to name them and they shall be identified by the following references:
 - a) Teacher A;
 - b) Teacher B;
 - c) Teacher C.

List of issues

6. The list of issues discussed and agreed between the Tribunal and the parties is annexed to this judgment. The first respondent's amended response did not accept that any of the claimant's beliefs and the manner in which he expressed them were religious and / or philosophical beliefs which were worth of respect in a democratic society. At the hearing, the first respondent subsequently accepted that beliefs 1, 2 and 4 were protected.

Witnesses

7. For the claimant:

Benedykt Dybowski the claimant.

Anonymous (written statement did not give oral evidence)

Deborah Pitt

Mahtre Bashi

Reinel Castillo (written statement did not give oral evidence)

Hugo Dodd (evidence admitted but not called as no challenges)

8. Witnesses for the first respondent

Marc Belli - Headteacher at First Respondent

Kathryn Bates - Chair of Governors at First Respondent

Sarah Maunder -Independent investigator at Maunder Ward HR Specialists

9. Witness for the second respondent

Ajaz Mozher - Director at Second Respondent

Findings of fact

10. We have made the following findings of fact. Where facts were disputed we have made findings on the balance of probabilities.

Introductory matters

11. The first respondent is a co-educational Anglican Secondary School attended by children from the Christian and non-Christian communities within the city and surrounding areas of Cardiff. The school has been judged as excellent in every category by Estyn and section 50 inspectors and was awarded world-class status in 2019, redesignated in 2022. The first respondent is a rights respecting school which affirms the principles of the United Nations Convention on the right of the child. The students and staff reflect the diverse community of the school's location with trans-and non-binary individuals, different religions and the LGBTQIA+ community. In addition, there are approximately 40 to 50 pupils with refugee status and the school is a designated school of sanctuary.

12. The second respondent is an education recruitment business based in Cardiff operating as an employment agency for unqualified and qualified teaching and teaching assistant jobs.

13. On 7 June 2022 the claimant was engaged by the Second Respondent under their Terms of Engagement for temporary workers and was placed in a teaching assistant role ("the first placement") at another High School in Cardiff. The name of the High School is not relevant to the issues in the claim.

14. The second respondent's terms of engagement provided that the temporary worker was obliged to co-operate with the client's lawful instructions and accept and act under their direction and supervision, and not engage in any conduct detrimental to the interests of the clients or other workers of the clients. They were also required to observe any relevant rules and regulations of the client's establishments.

Education Workforce Council ("EWC")

15. The EWC is the independent professional regulator for education practitioners in Wales. It was established under the Education (Wales) Act

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2014 and regulates school learning support workers such as the claimant. The Education Workforce (Main Functions) (Wales) Regulations 2015 provides a code must be published which specifies the standards of professional conduct and practice expected of persons registered with the EWC. The code sets out the key principles of good conduct professional practice EWC registrants must uphold. Registrants are required to conduct relationships with learners and young people professionally using all forms of communication appropriately and responsibly particularly social media. Registrants are also required to contribute to the creation of a fair and inclusive learning environment by addressing discrimination, maintaining professional boundaries.

16. The EWC has issued guidance to using social media responsibly. This provides as follows:

“The way you use social media in your private life is a matter for your own personal judgment. However, you should still exercise caution in the content you upload to any social media site and consider whether it could compromise public confidence in the education workforce.

Using social media can blur the boundary between your private and professional life and these days all professions are subject to far greater public scrutiny making practitioners vulnerable to unintended misuse. It is inevitable that people (learners, parents, public, prospective employers) will be curious about individual practitioners and may try to find out information about you.

It is therefore important you are cautious about which social media you use, and how and with whom you communicate.

Bear in mind:

The standards expected of you do not change because you are communicating through social media;

Email, texting, blogging and other social media communication encourages casual dialogue. Innocent comments or posts can be misconstrued or manipulated. The ‘feel’ can be different;

You can be vulnerable to unintended misuses;

Acknowledging, liking or sharing someone else’s post can imply you endorse or support their point of view;

You can be mentioned / identifiable in inappropriate posts, sometimes without your knowledge or consent;

Your conduct online does not have to relate to learners in order for it to have a bearing on your fitness to practice (sic);

and

If you are unsure whether or not communication you post online could compromise your professionalism or reputation, think carefully about the appropriateness of posting it.

and

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Conduct yourself online in a way which does not call into question your position as a professional;

Consider your online persona and how others perceive you. Be careful when writing profiles or establishing email addresses;

Do not discuss learners, parents, or colleagues online, or criticise your employer;

17. During the claimant's first placement, he was working one-to-one with a pupil who was transitioning between genders and was provided with instructions as to the pronouns to use when speaking to or about the child, which had been agreed by school management with the parents. On 18 October 2022 the Claimant was asked not to return to the first placement. Mr Mozher said in his witness statement that he had been told by the school that the claimant would not agree to use the requested pronouns and repeatedly misgendered the child and was therefore asked to leave. Mr Mozher told the tribunal that at the time they had been informed by the high school that this was not deliberate conduct by the claimant but they felt someone else would be better suited to work with the child. This position was confused as the words "would not agree" denote that the claimant's actions were intentional. Later evidence came to light about the first placement which is convenient to deal with here albeit out of chronology. This is an important issue as the first respondent relies upon it as one of the reasons they decided the claimant should be referred to the EWC as he was unsafe to work with young people.

18. Mr Mozher was asked about the first placement and told the tribunal that at the time the first placement was terminated they had been told by the high school that after the claimant had been asked to work with a child that was transitioning the claimant "had trouble" referring to the child in the preferred pronoun so it was decided someone else would be better suited which is why they cancelled his booking.

19. The claimant was asked about this in cross examination. He said he had fully accepted the instructions about the pronoun use but that he had occasionally used the wrong pronouns with the child but denied this was deliberate. He accepted using the child's birth pronoun in discussions with Mr Belli as he believed that child was his biological birth sex or gender. He also told the Tribunal this was not the reason he had been dismissed from the first placement, moreover it was because he had expressed his belief to a teacher in a private conversation who had then reported him.

20. On 19 October 2022 the claimant was placed with the first respondent and began an assignment there as a teaching assistant. His role was to work with children with additional learning needs ("ALN").

23 March 2023 Training Event

21. On 23 March 2023 the respondent organised a training day for staff. The focus of the training was navigating conversations where controversial topics may be discussed by pupils. The purpose of the training was to ensure that staff were comfortable and confident challenging things being said without suppressing the children's rights to express their views and

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dignified way. Ahead of the training, an email sent by the assistant head teacher, which would have been copied to the claimant, explaining the above aims and providing an opportunity for questions to be raised in advance in a confidential manner. The training was delivered by an organisation called Diverse Cymru Training.

22. Approximately 150 staff were in attendance at the training. Mr Belli was present. There was a dispute over whether the claimant had been present when the trainer said it was a safe space. A number of witnesses to a later investigation said this had been said at the beginning of the training when the claimant was not present. The claimant arrived about 40-60 minutes into the session as he had been attending other training. We find that the claimant had heard the trainer saying it was a safe space as he was consistent about this from the outset and Mr Belli agreed it had been in an email to Teacher A on 24 March 2023 (see below paragraph 28). The trainer was covering sex and gender within the Equality Act. The claimant decided to ask the trainer about his personal beliefs. He wanted to know if expressing his beliefs could be discrimination and gave examples of his views. Some of the things the claimant said are not in dispute and some are.

- a) The claimant said his view was that true marriage is a union between a man and a woman, acknowledging that other options are legally recognised in Britain. This comment reflects the position of the Christian faith and other religions. Mr Belli, the assistant headteacher and Teacher B all recall he said he could *“just about tolerate this”* but the claimant disputed making this additional comment. The assistant headteacher was specific about this comment as she mentioned the trainer had replied suggested using the word “tolerate” showed the claimant was disapproving and the Equality Act is about “acceptance”. He later accepted he used the term tolerate but said it was a different context in that he suggested in a follow up question this was how differing views should be viewed rather than accepted. We find that the claimant did use the expression he could “just about tolerate this” as it was corroborated by three witnesses and to an extent, whilst not in the same context, by the claimant and this was likely to cause offence to some people present.
- b) The claimant agrees he said that human life begins at conception and abortion is taking of innocent human life. It is disputed the claimant used the term “murder” or said abortion was the murder of innocent life for unborn children. The use of the term “murder” was recalled by Mr Belli and Teacher B. The claimant also used the term during a meeting with Mr Belli (see paragraph 36 below). The claimant also told the Free Speech Union on 27 March 2023 that he had used this term (see paragraph 62 below). For these reasons we find he did use the expression murder when he mentioned his beliefs on abortion and said words to the effect “abortion was the murder of innocent life for unborn children”. This was highly charged language and the belief was not therefore expressed in temperate terms. It was likely to have caused offence and upset to people attending in particular but not limited to people who may have been affected by abortion due to rape of health reasons.

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- c) He said he was critical of some aspects of Sharia law but did not say what these criticisms were. The claimant did not, as was later claimed to the media, cite examples such as disagreeing that stoning of men for homosexuality or of women for adultery. The claimant agreed he had not cited these examples when he was interviewed by Ms Maunder (see paragraph 72c below).
- d) It was alleged in the first respondent's response and in Mr Belli's statement that the claimant said, "*don't get me started on men claiming to be women*". Mr Belli said he had been particularly concerned as two non binary staff had just discussed their "lived experiences". It is unclear whether the claimant was present when this happened. The reference to this phrase does not appear in any of the documents and none of the other witnesses mention this. On the balance of probabilities we find if this phrase had been used at the training session, it would have appeared in the documents or statements at the time. We find the claimant did not use this phrase.
23. The speaker said that the claimant was free to hold such views but expressing them might be "*regarded as discrimination*" or words to that effect.
24. Mr Belli was very concerned at the turn of the discussion and intervened to end the claimant's interaction with the trainer. He spoke to remind everyone of the school's values. After the session a number of staff expressed concern about the claimant's views to Mr Belli and the assistant head teacher. At this stage, Mr Belli decided that whilst he was concerned about the comments there were not grounds to terminate the claimant's assignment at the school and he would meet with the claimant the following day – his statement stated: "*so that there was no misunderstanding. I wished to be absolutely clear that the type of language Ben used at the training was unacceptable as it could be in breach of the Applicable Policies.*"
25. Following the session Mr Belli was approached by three members of staff raising concerns about what the claimant had said. Teacher C told Mr Belli that the claimant had previously openly spoken of his views against female ordination and that could have been overheard by sixth form students.

Debating club

26. Prior to Mr Belli's meeting with the claimant on 24 March 2023 he was contacted by Teacher A regarding a suggestion by the claimant in February 2023 that he set up a discussion club. The first respondent already has a debating club which is run by qualified individuals. The claimant had emailed the teacher on 15 February 2023 as follows:

"Here is an outline of the proposed "discussion club:

It would take place on Thursdays during the second half of the lunch break (12.55 – 13.20).

The topics would be inspired by recent items in the curriculum or news items, opinion pieces from major news companies (papers, TV, radio).

Some of topics in the first few weeks would be:

Is there any evidence that human existence continues after the physical death?

Is it rational to believe that the universe was created by a powerful thinking being?

Should illegal migrants crossing the English Channel be immediately sent back to France/their native countries?

Was Brexit a good idea?

Can capital punishment be ever justified?

For each topic I would prepare a few excerpts from prominent thinkers or public persons to illustrate various positions.

So far 5 pupils have expressed interest in participating in it if it gets the green light (they are the students with whom I sometimes talk about topics during/after RS lessons that I attend as a TA).

The 'club' would welcome any teachers, TAs who may be interested in taking part.

If you have any comments or suggestions, I am sure they can be taken on board."

27. It was common ground that the club had not gone on to be set up. Teacher A was evidently worried about the situation after what had happened at the training as she emailed Mr Belli as follows:

"Morning,

I just wanted to make it clear that I have had nothing to do with nor encouraged Mr Dybowski and his discussion club. He approached Geraint and Geraint said that I was the best person to talk to. He sent me an email which I did not respond to and I spoke to him about it saying that I am not in charge of RS or organising extra curricular activities and that he would have to pass it by SLT. I informed Emily he had approached me and that I wasn't getting involved (obvious reasons). I believe he then sent Bec Davies an email as well as he told me that he had been told in F block that the head of RS was going to be her."

28. Mr Belli was not sent a copy of the claimant's February email to Teacher A so at that time he was not aware of the content or nature of the topics the claimant had wanted to discuss with the pupils at the discussion club. Even so, Mr Belli considered this highly irregular that an agency member of staff would be acting outside their specified role. In his emailed reply he reassured Teacher A and confirmed he was due to meet the claimant that morning to clarify the expected behaviours while with the school. Mr Belli also referenced the training event having been a safe space and he could accept that. This further corroborates our finding that at that stage there was no intention on behalf of Mr Belli to dismiss the claimant because of beliefs he had expressed at the training event.

Meeting on 24 March 2023 between the claimant and Mr Belli

29. The meeting commenced at approximately 10.15am. Mr Belli's witness statement stated as follows:

I confirmed my view, as outlined during the training, that there is a responsibility of all staff in respect to the ethos and precepts of the School. Specifically, in relation to the Christian values of love, acceptance, responsibility, and forgiveness which aligned with the legal responsibilities

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under the Equality Act. The views expressed by Ben and, in particular, the manner in which he had expressed them, was challenged as being inappropriate for the workplace and potentially discriminatory by the trainer. I explained to him that this language was contrary to the precepts of the School and conflicted with the welcoming attitude of the School.

My expectation going into the meeting was that it would be a brief conversation. I anticipated that I would receive some sort of assurance that Ben would not express his views in the manner he did at the training around the School, either in front of staff or students. My intention was to reduce any risk where someone, either student or staff, could end up being offended, as those in attendance at the training were. Unfortunately, this was not how the meeting went and Ben proceeded to turn the conversation into a debate in a similar manner as he had done the previous night with the trainer.”

30. The first part of the meeting was not covertly recorded so we have made the following findings about the non recorded element of the meeting based on the evidence from the claimant, Mr Belli and relevant notes made at the time.
31. The claimant told Mr Belli about being asked to leave the first placement. (His explanation initially differed from Mr Mozher’s account. We return to this below.) The claimant said he had been asked to leave for having private conversation with staff that he did not believe the child was a different gender. He was then “reported”. Mr Belli stated that the claimant “*openly described the child using their previous gender*”. This discussion must have happened before the recording started as Mr Belli refers to not being aware of what had happened at the first placement later in the recording. It was put to Mr Belli that Mr Belli regard the claimant to be guilty of a thought crime in regard to this belief. Mr Belli disputed this and told the Tribunal the claimant was entitled to the belief but he was concerned about him acting upon it and had to balance the needs of a transitioning pupil within his school.
32. The claimant told Mr Belli he was active on social media and regularly expressed the views he had expressed the day before. At this point Mr Belli reminded the claimant that there were specific guidance on use of social media within the staff handbook and EWC guidance. He suggested that the claimant take photographs of the sections he was referring to. When the claimant took out his phone to take the photographs he commenced a covert recording of the meeting. Mr Belli was not aware that the claimant was covertly recording him. A transcript of the covert recording and audio was available to the tribunal. That recording was very long and we therefore set out the sections we regard to be relevant to the issues as follows.
33. The claimant put a number of examples to Mr Belli about his views and whether those might bring the school into disrepute such as his views that some aspects of Islam are a problem in Western societies. In response Mr Belli said that if he presented something similar to what he did yesterday he would not asked to come back. Mr Belli repeatedly tried to draw the claimant back to the EWC social media guidance in respect of what the claimant might want to express on his private social media. The claimant told Mr Belli

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he had presented his views on Islam on social media and was active. His religion did not recognise same sex marriage and it was not regarded as a proper marriage. This was his personal view albeit he qualified it by saying that two men could be in a union or relationship. He told Mr Belli he takes part in debates. In response Mr Belli said he was “a bit concerned by the conversation and where its going” and reference the EWC guidance again. But the claimant continued to press Mr Belli:

Just three or four questions for you. So according to... If I get this right, what you're saying is that if I present views also in my private life ... because again, I've never said I want to promote my views here. [But] If there was a chance, for example, to debate like some boys, for example, [they] come up and ask the teacher, some boys ask me, "So, do you agree with me that Sharia law is a problem or that illegal immigration should be curbed, that we should send [back] immediately the people who arrive here illegally?" So, I understand I can't express my opinion [here], fair enough. Although [in one of the lessons – I'm giving an actual example here] the boys wanted to talk, and the teacher talked to the boys, so the teacher expressed some opinions, actually her own opinions. I guess. I don't know whether the school has the policy ... but if I expressed my views, I think yes, illegal immigration is a problem, and I think the government should be more effective or even harsher on illegal immigrants. Does it mean I'm not [eligible to work her] ...?

MBL: If your view that you presented contradicted the precepts of this school that is built on the foundation of love, acceptance - yes, you could ... that could [inaudible].

34. The claimant then asked Mr Belli if would lose his job if he expressed the views that the government should be more effective or harsher with illegal immigrants, on same sex marriage or to say that abortion was “killing innocent human life” with other teachers in the pub to which Mr Belli replied “potentially”.

35. It is here that Mr Belli first makes a comment that shows he was considering the claimant’s position at the school:

MBL: Well, you're asking me to comment on... You're not even employed by the school. If I'm honest, though, I've got concerns about you remaining with us.

BD: OK.

35. MBL: Because I think some of the views that you've just expressed to me in a private conversation are deeply offensive, and I'm offended by some of the things that you say.

36. BD: For example?

37. MBL: Well, I don't think you should be verbalizing in a professional environment your views around immigration.

38. BD: Yeah but you asked me. I've done it once before or twice before. When I walked with one of the pupils [I meant: one of the staff. I used a wrong word here, perhaps because of the stress. The person was the school's librarian. I never discussed any of my views with students¹] from the cathedral.

¹ The text in square brackets was added by the claimant to the transcript to assert he meant the word staff not pupils. This was a reference to his conversation with Teacher C see paragraph 89 below.

39. MBL: *I'm aware of that conversation*
40. BD: *I talked about... There was like... It wasn't me launching...*
41. MBL: *Yeah, about female ordination. Someone has relayed that to me last night.*
42. BD: *Yeah, I'm a Catholic and I think you are as well, yes, so... But in a loving way. I'm against it in a loving way, you know.*
43. MBL: *But I think that's slightly contradictory. I think the point is that some of the views that you've expressed in this space, and this is a safe space...*
44. BD: *I think this is a safe space. Yeah, so you know...*
45. MBL: *It is, and I think the purpose of me speaking to you is to reinforce what I said last night. If you express views, you do so, you're entitled to a view, you're entitled to express the view. But the views that we would express have consequences if those views contradict...*
46. BD: *Fair enough. If it's, fair enough if it's in the school context. I will obviously debate whether it makes sense. When you've got teenagers [who are] into politics, a lot of them are debating illegal immigration at home and the number of immigrants and Muslims in Britain. They talk about the big issues. If you watch the media, can't escape that. Transgender. That's a massive thing. It's a massive thing now, as you know. So if you want to cut off the teachers or the staff... you know, teaching staff from this debate with the pupils, where does this leave them? Who talks to them about this? You lose control completely over this.*
- MBL: *I think the point that maybe you're missing around the training last night that was about to encourage students to understand and to listen to an opinion. But I think if as the teacher, you are then trying to influence their opinions by expressing your view in a way that contradicts what the school stands for, then of course, that is going to...*
48. BD: *But how can a view that illegal immigration is a problem contradict the school's principles or policy?*
49. MBL: *But if you're saying that we need to take a firmer view to stop illegal... but people are dying*
50. BD: *Yeah, yeah absolutely. That's why ...*
51. MBL: *And as someone who... I come from an immigrant Italian family.*
52. BD: *But hopefully you didn't arrive on any illegal boats here.*
53. MBL: *No, but if I had,*
54. BD *Or your ancestors*
55. MBL: *But if I had what gives you the right to comment about that? I think that's the point really. That you're in a position of trust at school and in any school, the actions - I wasn't aware of what happened at (first placement), but that would happen here as well...*

36. The conversation continued in this vein with the claimant pressing Mr Belli for further examples of what might cause him to be released from his assignment including his views on immigration, gender and abortion. The claimant became upset and offended at his perception that he was being told he could not hold or express those views privately. But this was not what Mr Belli was trying to explain to the claimant as can be seen from this extract which is one of a number of similar exchanges:

Claimant – *“So you're saying: Ben, if you repeat any of those views in your private life, you lose the job. That's a bit upsetting.*

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Mr Belli - *I'm not saying that. What I'm saying is if you posted on social media, and it clearly states, and I think it would be a useful exercise if you do look at the Education Workforce Council guidelines, where it clearly states - I've read it to you - that if you express a view that adversely affects the reputation of the school, that can bring into disrepute your employment at the school.*

Claimant - *Would saying that human life starts with conception and killing innocent human life is murder, would that be offensive?*

Mr Belli - *I think the difficulty I've got with that is that why would you feel the need to verbalize that in a school context.*

And

Yes, you can have that view. But to verbalize it in the school environment potentially puts you at risk of being employed by a school.

And

BD: Yeah, that's what I do. After hours. I'm a debater. I'm a campaigner, a pro-life campaigner.

MBL: Yeah, that's fine and there is nothing wrong with that, but if you were to do that in a way that then attributes those views that could be misrepresented and damaging the reputation of the school, of course, there are consequences for your employment.

74. BD: For this particular because you said earlier if I expressed my views which I have done - not currently because I haven't been [expressing this view at school] - in another situation. The views regarding abortion, sorry, you said I would lose employment here if I expressed views about transgender people.

75. MBL: No, I said if you expressed any view that would be in breach of the Equality Act. And what this is what I'm trying to say, if you express a view that is in breach of employment and equality laws in the United Kingdom. And actually, the Equality Act extends to the European Conventions of human rights as well. As was discussed clearly about.....

76. DB: Which hopefully Britain will soon ditch, but that's another debate.

80. BD: As it happened yesterday I talked to a person who actually works for the school, at the school, whose kind of relative, relation is an expert, is part of an organization of lawyers, a legal organization that deals with these issues and that apparently, I haven't looked it up yet, the Equality Act talks of two sexes only, so biological sexes. So if I said for me that boy was biologically a boy although socially or psychologically, he may identify [differently] and I actually respected that as I said - would that be OK if I said biologically I'd consider him as a boy?

81. MBL: No, it would not be okay

82. BD: Because the Equality Act only provides for two so either girl or a boy.

83. MBL: No, but it provides the opportunity for gender reassignment and gender affirmation. I think the problem I've got with that kind of rhetoric is that who gives you the right to express a view that makes someone else feel vulnerable or unsafe, and I question and I would be really honest with you Ben, I'm going to speak to the agency. I've got concerns about your suitability working in this school if I'm being really honest because I find some of your views deeply offensive as a professional, not as a person.

84. *BD: Even though I don't promote those views.*
85. *MBL: You said them last night.*
86. *BD: I mean I find it a bit strange coming from a Catholic. But most of them are, actually what we discussed here apart from immigration, this is what you believe when you go to church all so publicly.*
87. *MBL: You can't put words in my mouth about what I believe*
88. *BD: I mean, do you go to church? So you believe that abortion is murder?*
89. *MBL: But no, Ben, the point of what I'm saying to you is that I'm a Christian and I believe in the teachings of Christ. Christ did not listen to Pharisees and Sadducees. But you're behaving in my view, in ways that are telling other people how to believe and I think ...*
90. *BD: No, you're missing ... that's a misrepresentation. I only expressed my views a couple of times in private conversations with two or three members of staff during breaks with nost [what is heard is 'nost', because I meant: 'no pupils; I mixed up two words, clearly out of stress. In the context 'most' would make no sense at all] pupils I've never [meaning: ever] promoted this. I've never engaged with any other staff apart from these couple of people who wanted to talk to me. And some of them actually started conversations or the conversation started naturally. I don't go around the school promoting this. I just fear that I may just by not believing, for example, that gay marriage or lesbian marriage is proper marriage, in my opinion, or that a woman who says suddenly "I'm a man" is really fully a man, that I just thinking of this not even mentioning to anybody that I will, I will be in some sort of danger. I find it upsetting, I find it offensive to be quite honest sir.*
91. *MBL: Well, I, if I'm being really honest, I'm contented that offends you. At the expense of upsetting and causing distress to people at the school because I think the views that you're expressing are inconsistent with the Equality Act. They're deeply inconsistent and they're inconsistent with the EWC's expectations. You are in a position of trust. You are a professional that is employed by ... do you say Prospero or Staffroom Education?*
92. *BD: Staffroom Education.*
93. *MBL: I think what I'm going to need to do is speak to Staffroom education to raise my concerns about this. I think if I'm honest, I'm going to request that you be placed elsewhere because I've got concerns. Last night you expressed some views ...*

37. The conversation reverted to what had happened at the first placement:

150. *BD: So, you know, to say that having a view that, for example, two gay people cannot marry means that I hate them. That's absurd. I just believe this aspect that some people might disagree with some aspects of my life. But it's for their sake very often that I need to point something out, that I believe in this aspect of your life, you are misguided, and you might be getting something wrong, but I still might do it in a loving way. Otherwise, you know, there's no criticism. No ... no ... we are imposing stuff on pupils all the time.*
151. *MBL: I just think to say that you're still doing that in a loving way, I can't see that. And that's because I think that person who looked to you, who opened up to you, who shared their experiences with you and trusted you, secretly, you view them less because you don't...*
152. *BD: No, no, not view them less. Listen, that's your words. Now you're putting words into my mouth.*

153. MBL: No, I'm saying this is my interpretation ...

154. BD: Yeah, yeah, yeah.

155. MBL: The very fact that you won't accept that they wish to be identified by a gender...

156. BD: I accepted that, actually. I accepted that because I publicly acknowledged ... [only] in private conversations [I said otherwise].

157. MBL: Privately, you didn't believe that that was possible?

158. BD: Yeah, oh yes, yeah, yeah.

159. MBL: So the very fact that they looked to you as a person, that they respected, that you privately, by the very nature of not accepting their desire ... I think is discriminatory.

38. Mr Belli has therefore told the claimant that he thought the fact that the claimant privately did not accept the pupil wanted to identify as a different gender as "discriminatory". He also told the claimant that some of the views he had expressed could be perceived as hate views although it was unclear which ones this applied to.

39. It was later alleged that Mr Belli had said he privately agreed with some of the claimant's views (see below). There was no evidence to support this and we find that was not said by Mr Belli. Indeed on two occasions in the transcript where the claimant suggested to Mr Belli what his view might be as a catholic Mr Belli asked the claimant not to put words in his mouth.

40. The claimant asked Mr Belli if he could stay until the end of term:

BD: I don't think Staffroom Education ... I understand that this probably is the end of the road for me here ... because the Staffroom Education, I don't think they'll find anything for me now. Would you allow me to ... and I promise, like I've never done, you know, you know I haven't ... I haven't engaged [in discussing my views], you know, except small private conversations. But I can assure you won't even do that. To stay with me till the term and then I go.

163. MBL: I think if I'm really honest, I think we're going to have to go now, as in now at the end of this conversation. I think what gives me cause for concern is the risk that you pose to express a view that is in conflict with our school ethos. And I think whatever you might have as a personal view, the more you try and justify it, the more it gives me cause for concern.

BD: So the belief that gay marriage is not proper marriage according to my religion, for example, is against the school policy?

165. MBL: The belief that you are able to openly contradict the Equality Act is something that is against what this school stands for. Because what you're talking about....

41. The discussion was plainly deteriorating. The transcript set it out as follows:

BD: Thought crime, I'm talking about thought crime. It's the closest to 1984 I've ever been, and I'm glad we've had this conversation.

167. MBL: But you're not thinking it, you're verbalizing it. The fact that you sat in front of the head teacher of the school

168. BD: Yeah, thought crime.

169. MBL: Told me that gay marriage...

170. BD: Opinion crime, yeah.

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171. MBL: Told me that a boy who identifies as a girl is not a girl. You do not have the right to make that and to be employed in school.
172. BD: The state even believes so, the state even believes so...
173. MBL: But the point I'm try to say to you... The state acknowledges same-sex marriage. The state acknowledges
174. BD: It's not that easy.
175. MBL: So the point is, you don't have the right to share that view in a school environment.
176. BD: No you said that [even] in my private life.
177. MBL: No, no, if you do that in private, what I'm saying to you, I think... I apologize, I'm not explaining myself clearly...
178. BD: Because apparently that was a safe space, so...
179. MBL: If you ... and the purpose of me meeting with you. So at the end of that conversation, last night, I spoke to the Deputy about do we terminate your involvement with us straight away, and my conclusion was no. It was a safe space, the purpose of conversation was to clarify my points. The more you speak to me, the more I am concerned because I tried to say to you people were offended by your views yesterday, and you don't seem to care.
180. BD: I do care,
181. MBL: You clearly don't
182. BD: But it's not reason enough for me not to have views and not express them.
183. MBL: I'm offended by what you're saying.
184. BD: And so am I by what you're saying.
185. MBL: All I'm saying...
186. BD: What do you do to you about it? You're in a position of power here so I understand.
187. MBL: No, no, all I'm simply saying to you is that you don't have the right to express a view that causes offense to others.
188. BD: Listen, let's finish on a compromise note. If I were in charge of you, I would sack you now, so if you're in charge, yeah ...
189. MBL: Do me a favour, leave the building and...
190. BD: Yeah, I have some stuff in the, in the...
191. MBL: I'll take you to reception and we'll get that organised. Can you give me a list? I'm going to speak to Staffroom Education and we need to make a referral to the EWC as your views are not appropriate for the children. So sit in here. Have you got any ID on you?
192. BD: Yes.
193. MBL: If you hand that over. If you go here and we will get a list of the things you need to collect. Take a seat, let's have your ID. Who is the contact in Staffroom Education to speak to because I need to speak to them and make a referral. This is, this is not appropriate.
194. BD: I think this is not appropriate and...
195. MBL: Okay, So what.....
196. BD: You're embarrassing the Church of England and the Catholic faith as well.
Very embarrassing.
197. MBL: What's the information? Who's the name at Staffroom Education I need to speak to?
198. BD: Anyone...
199. MBL: And what have you got in F block that needs collecting?
200. BD: Probably a coat, a pair of shoes in a bag somewhere in another room.

201. MBL: Okay, okay.
202. BD: And there's a, there's a, there's a shelf with my name. That's a plastic rack of shelves, there's a couple of books there.
203. MBL: Okay, okay. Jess, can you do me a favour and ring over to F block and get someone to bring over Ben's belongings. That would be helpful. Thank you
204. MBL: So, coats, shoes and there's the shelf with Ben's information.
205. BD: The shoes are in the toilet opposite the staff room in a plastic carrier bag.
206. MBL: Okay. You've obviously taken a photo of the EWC guidance, I'm going to ring Staffroom Education.
207. BD: Yeah, I'm going to record this conversation as well.
208. MBL: Well, that's entirely your right to do so.
209. BD: I'll put a complaint forward. I left it at (first placement) but I will complain about this. I think it's ridiculous and I think this is the demise of the West, you know. No views, even in private life.
210. MBL: I'm going to end it here. The Equality Act...
211. BD: Yes, please do. It's embarrassing. It's embarrassing.
212. MBL: The Equality Act says ...
213. BD: You're the wokest.....you're the wokest headmaster I've worked with. I haven't worked with too many, but you're the wokest.
214. MBL: Do me a favour, wait outside in fact. I don't even want you on the school premises. Wait outside. Okay, off you go.
215. BD: Love you. Love you
216. MBL: Okay.

42. The end of this discussion took place in reception and was witnessed by the receptionist. Mr Belli did not escort the claimant from the building but he was asked to leave and wait outside whilst his belongings were collected. Whilst he was waiting the claimant sent an email to a number of staff and copied a student. This stated as follows:

Hi

I just got escorted out of the school's premises by Mr Belli for not agreeing to stop expressing my religious, political and social views in private life. Just one tip regarding freedom of speech if you don't use it you lose it"

43. The claimant accepted that he had sent the email to a pupil but said that this had happened in error. Mr Belli took immediate action on being informed of the email to get it deleted. The claimant later apologised.

44. Immediately following Mr Belli escorting the claimant off the premises he contacted Mr Mozher of the second respondent. This call was also recorded (as is usual practice rather than any covert recording) and we had sight of the transcript.

45. Mr Belli accepts he was upset when he made this call and told the Tribunal that the claimant's words had had a significant impact on him. He told Mr Mozher that the claimant had expressed "deeply offensive" comments at the training. He also accepts the use of emotive language specifically where

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he said the claimant had used the word “abhorrent” when describing same sex marriages (he had not). Mr Belli also told Mr Mozher that the claimant had said “*migrants who have illegally try to come over on the boats deserve what’s coming to them.*” He was asked in cross examination to accept this was untrue. As a matter of fact, this comment was untrue. Mr Belli’s response was that he accepted he was very upset and had used emotive language. Mr Belli exaggerated what had been said by the claimant during this call. Mr Mozher expressed serious concern at what he was being told.

46. Mr Belli asked Mr Mozher to make a referral to the EWC over concerns the claimant could have been breaching the EWC social media policy. He also asked him about what had happened at the first placement and it was confirmed that there had been an incident relating to misgendering a student but Mr Mozher told Mr Belli it was more about the claimant “*not embracing it as much as the school needed him to*” rather than something more sinister. This contradicted the position taken in the second respondent’s response and Mr Mozher’s witness statement which suggested it had been deliberate. At this point they understood and agreed that Mr Belli would make the EWC referral. It was agreed Mr Mozher would contact the claimant and tell him not to contact the staff or any pupils in light of the email the claimant had just sent referenced above. Mr Belli was very upset with the second respondent as he considered they should not have placed him at the school given the reasons for the termination of the previous assignment.
47. Mr Belli made some notes immediately after the telephone call with Mr Mozher and emailed them to him and advised he had been advised that any referral to the EWC lies with the employer.
48. He made a number of contacts to establish who was responsible for making the referral to the EWC and learned that it was the second respondent. This included contacting the head teacher of the high school where the claimant had had his first placement. This head teacher told Mr Belli that the claimant had been reported by staff for “openly discussing views on trans issues” despite him working with a child who wanted to be known by a different pronoun to their birth. The head teacher did not say that the claimant had deliberately misgendered the child or refused to use his pronouns. Mr Belli said this concerned him as he had been led to believe there was nothing “sinister” by Mr Mozher. It remains unclear to this Tribunal why the claimant discussing his views with staff would be sinister behaviour. Mr Belli spoke to the local authority safeguarding officer and also completed a violence work report form that day describing the incident as verbal abuse.
49. Having regard to the evidence we find that as of 24 March 2023 meeting the extent of Mr Belli’s knowledge regarding the first placement was that it had been terminated as the claimant had privately expressed his fourth protected belief to a teacher who then reported him.

Actions of second respondent

50. Mr Mozher then contacted the claimant. This call was also recorded. The claimant told Mr Mozher about what had happened at the training session describing it as “another episode” and that the training had supposed to be

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a safe space. He then said that he had been told by Mr Belli he would be sacked if he expressed his views on gay marriage and gender identity in his private life on social media. Mr Mozher was under the impression at that point the first respondent would be making the referral to the EWC and told the claimant that due to the EWC referral they could not offer him any further work until that had been investigated. The first placement came up. Mr Mozher specifically agreed with the claimant when he said he had respected the rules at the first placement and never breached them. He asked for a witness statement and the claimant told Mr Mozher he had recorded the conversation with Mr Belli.

Claimant's social media accounts

51. On 24 March 2023 and for a few days after Mr Belli reviewed the claimant's public twitter account with the name "Ben Dybowski". The claimant had published the following content:

52. The claimant had re-tweeted a tweet of a video of Andrew Tate which referred to him as another truth teller who had been banned from Facebook and Instagram. The video referred to a female air steward as a "*minimum wage dumb bitch*" or words to that effect for insisting he wore a face covering on the flight.

53. On 26 March 2023 the claimant had tweeted about his meeting with Mr Belli on 24 March 2023. There were two tweets. The first stated:

*I said: MB. let's finish on a conciliatory note:
you're my boss and you're firing me. If I were
you're boss, I'd be firing you now.*

(He escorted me out of the school's premises).

54. The second tweet stated:

*I said, discretely, I had views
The same day I got sacked.*

55. At some point between 24 March 2023 and 14 May 2023 the claimant's Twitter account had been suspended. We do not have the reasons other than the screenshot of his Twitter page said the account was suspended and Twitter suspends accounts that violate Twitter rules. Before the suspension the claimant had tweeted a link to the Daily Mail article (see below). The claimant also retweeted a retweet of a tweet by someone called Amazing Atheist who had posted a post listing the words "Pregnant Men Girl Dicks" over and over again. The meaning of this post was not explained. The context of this was the retweet was critical of the tweet using sarcasm to suggest the Amazing Atheist was "*not one of the world's greatest thinkers*" given the content of the tweet. In other words the claimant was retweeting a critical tweet of the Amazing Atheist post rather than being seen to have approved of it.

Claimant's Facebook page

56. Mr Belli says that following a newspaper article in the Mail on Sunday a number of staff alerted him to comments that have been made by the claimant on its Facebook page which was open to the general public. This appears to have been translated from Polish into English by google translate so we approach the posts with a degree of caution.

57. The posts were as follows:

58. On 2 May 2023 the claimant had posted about being escorted from the first respondent. Although Mr Belli and the school were not named he commented that he had been escorted from the premises and had informed the headmaster he was the woked headmaster he had ever seen.

59. On 7 May 2023 the claimant posted comments describing the training session on 23 March 2023 and then going into some detail about the views he had expressed. In this post he specifically names Mr Belli multiple times as well as disclosing Mr Belli's religious faith. The claimant then stated:

"That's why I laugh at p.beautiful as p.Bella (sic) taking me out of school and promising to lock me out of working in public education in Wales during this unforeseeable time.

I want to say goodbye and in a reconciliation tone, so I temporarily suppress my reflection of this handsome Italian and say "Sir your now my boss and you're firing me; if I was your boss, I'd be firing you right now".

60. The claimant goes on again to refer to Mr Belli as "signore Bella" and repeats what appears to be a nickname for Mr Belli namely "beautiful Bella".

61. The claimant accepted under cross examination that he had referred to Mr Belli as Senor Belli on his Polish Facebook page and it was whilst discussing free speech. He admitted that perhaps he should not have mentioned him by name.

Contact with national press and media outlets

62. Within a week or two of the claimant's removal from the first respondent he decided to contact some newspapers and media groups and organisations who defended free speech. On 27 March 2023 the claimant emailed an organisation called Free Speech Union and we had sight of the email in the bundle. After describing his beliefs he stated:

*I **added**² that I am often told that some of my beliefs are strange, irrational or even outrageous (e.g. considering human abortion as murder), but I don't treat such comments as discrimination and acknowledge people's right to express them, which often leads to constructive, or at least informative, conversations and discussions. I suggested that in many cases when people significantly differ in their beliefs and principles, but appreciate the need to get along with one another in life and work, "tolerance" may be a more useful concept and attitude than "celebrating diversity".*

² Bold text in this paragraph is our emphasis

63. The claimant was asked about his denial that he had used the term “murder” and “just about tolerate” at the session on 23 March 2023 under cross examination. The email above was put to him as it reads that he told the Free Speech Union he **had added**, meaning added the words when speaking, *that I am often told that some of my beliefs are strange, irrational or even outrageous (e.g. considering human abortion as murder)*. This strongly suggested that he had therefore used the word murder as he told the Free Speech Union this in the email. The claimant accepted it was his email and said he must have made an error and that other witnesses had said he had said “taking of human life”. He denied using the terms at the session. This email is one of the reasons we found above that the claimant did use the word murder when discussing his views on abortion at the training session (see paragraph 22b above).

Claimant’s grievance against the first respondent / Mr Belli

64. On 18 April 2023 the Claimant raised a grievance about his removal from the first respondent which he asserted was a discriminatory dismissal because of his “*religion, i.e. “protected characteristics” under the Equality Act*”. A follow up email was sent by the claimant on 19 April 2023 to Kathryn Bates (Chair of Governors for the first respondent) with further allegations clarifying his views. The claimant told Mrs Bates that he had widely shared his complaint to the Archbishop of Canterbury and various other senior church leaders, the local MP and Welsh Ministers. He alleged that Mr Belli had demanded he stopped professing his faith in his private life.

65. Mrs Bates implemented the school’s complaints procedure and appointed Sarah Maunder to conduct an independent investigation. Sarah Maunder is a director of Maunder Ward HR specialists Ltd. She is a qualified workplace investigator, mediator member of CIPD. She specialises in workplace investigations.

66. Thereafter Ms Maunder embarked on an investigation gathering documents and interviewing the claimant and other staff within the first respondent to which we return to below.

Contact from the Daily Mail

67. On 11 May 2023 the first respondent received an email from Mr Merriman of the Mail on Sunday in which they were informed the claimant had been interviewed and the Mail on Sunday intended to publish the interview on 14 May 2023. The first respondent was asked for comments. We do not repeat the content of the email here it is sufficient to say that it repeated the claimant’s versions of how he had expressed the three beliefs at the training (see above) and then his beliefs around immigration at the following meeting with Mr Belli. It stated that Mr Belli had told the claimant that his view about reducing immigration was a hate crime and holding such views was not a problem but expressing them can be even in private life and social media. Lastly it asserted that the first respondent had referred the claimant to the EWC.

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68. On receipt of the contact Mr Belli discussed the situation with HR and Mrs Bates and prepared a statement setting out the school's version of events. He sent it to Mr Merriman on 12 May 2023. In the communication Mr Belli stated:

It is not the case that the School acted in response to someone holding particular religious or political views. This was a safeguarding issue, which the School moved promptly to address, and it is entirely proper that the School did so to prevent the risk of harm to the children entrusted to it. The School's actions were taken on the basis of evidence that Mr Dybowski was unwilling to comply with the law and policies of the School, as a result of his views.

69. Mr Merriman asked for further information on the safeguarding issue but Mr Belli declined to comment further.

70. Also on 12 May 2023 Mr Belli then sent a letter to the parents / carers of the pupils. He advised that there would be an article published in a national newspaper on Sunday. He did not name the claimant and told the parents / carers that the claimant's work had not ended due to any particular religious beliefs or political views. The reason provided in the letter was that "a decision was made to discontinue their assignment with us following their actions and the comments they made, which were concerning and raised possible safeguarding issues."

71. Mr Belli's witness statement explained that his reference to safeguarding was related to the claimant's unwillingness to give assurances he would not express himself contrary to the Applicable Policies or comply with the school's request to do so, which could give rise to risk of harm to students, specifically in relation to their emotional welfare.

72. The claimant told the Tribunal that Mr Merriman had sent him a draft of the article that was due to be published before publication. There were a number of factual errors in the article that the claimant did not correct which was unexplained by the claimant, given the claimant had both the knowledge from his own experience and was in possession of a covert recording that would have disabused Mr Merriman of some of the errors. These were:

- a) The claimant had not been encouraged to share his Christian Beliefs at the training session nor had the purpose of the session been to reduce "unconscious bias" among the teachers. The purpose of the session was as outlined above at paragraph 21. The claimant volunteered his own views without being invited to do so;
- b) The session was not intended to be a discussion about how to avoid offending pupils;
- c) The claimant never mentioned a belief that stoning of men for homosexuality or stoning to death women for adultery was an aspect of Sharia law of which he was critical;
- d) Mr Belli never told the claimant he privately shared many of the claimant's Christian values;

e) The claimant said he had never discussed his views with pupils (see below). This later proved to be incorrect.

73. The article was subsequently published on 13 May 2023 and was published in other publications thereafter.

EWC referral

74. We return now in the chronology to the fitness to practice referral. The second respondent had made a referral to the EWC on 24 March 2023 based on the email they had received from Mr Belli. On 12 May 2023 the Fitness to Practice officer investigating the second respondent's referral to the EWC contacted Mr Belli to seek further information. In response Mr Belli sent information including his notes of the meeting with the claimant on 24 March 2023 and various other witness statements, emails and screen shots of the claimant's social media accounts.

75. On 15 May 2023 the Second Respondent spoke to the EWC to obtain an update on the referral and sought guidance on how to proceed. The EWC advised the second respondent that they needed to conduct their own investigation and if they decided to terminate the claimant they should then refer him to the EWC. By this time of course the second respondent had already told the claimant on 24 March 2024 that they could not offer him any more work until the outcome of the EWC investigation.

Concerns raised by parents with the first respondent about the press coverage

76. On 22 May 2023 Mr Belli received an email from a parent raising concerns arising from a Weekly Newsletter they had received from the Free Speech Union which set out a different account to Mr Belli's letter of 12 May concerning the Claimant's departure from the School. Mr Belli replied on 23 May 2023 including a copy of the statement he had made to the Mail on Sunday.

Sarah Maunder's investigation

77. Following Mrs Bates' commission of the investigation (see above) Ms Maunder commenced a series of interviews with staff and the claimant and collated relevant documents including the social media posts we have set out above. She had been provided with a copy of the audio covert recording by the claimant.

78. Ms Maunder interviewed the claimant on 18 May 2023. The claimant accepted that the speaker at the training on 23 March 2023 had not asked for examples. He accepted he had offered to give them in context. He accepted making a comment about tolerance in the context of suggesting that a more useful approach would be tolerance.

79. The claimant told Ms Maunder that he had considered whether his comments about gay marriage may have offended people at the training but the fact that people could be offended was not reason enough for him not to express his views and it was the Christian view. He had not thought about

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how his abortion comments might have affected anyone attending the training in the context of an abortion for medical reasons. He accepted that he knew there were some Muslim staff present but did not think his comment about being critical of some aspects of Sharia law would have offended them. He accepted what he had said was controversial but referred to having been told it was a safe space. The claimant insisted that he had told Mr Belli at the meeting on the following day he understood what the role of the TA was and it did not involve discussing religion or politics and repeated several times that he had never talked about these views in any other circumstances in school other than the training. He told Ms Maunder that Mr Belli had told him saying things in his private life could go against the school's Christian values of love and inclusion and was also told that the claimant's campaigning activities could affect his job. The claimant accepted that Mr Belli had not told him not to discuss Christian views.

80. With regard to the claimant's social media accounts the claimant accepted that they were not private but told Ms Maunder they did not identify he worked at the school. He also said he could not agree have a private account as the EWC guidelines suggest, as he is a campaigner. The claimant said he had not posted anything inappropriate and his content was well mannered and within civilised boundaries. He could not remember sharing the post by Andrew Tate (see above) but when shown went on to say he may have only shared one of his posts.
81. The claimant apologised for the student inadvertently being included in this email he sent on 24 March 2023 and ask for this apology be passed on. He said he recognised this was serious if the student had read the email.
82. The claimant's confirmed by signature on 24 May 2023 that the above notes were accurate representation of the discussion.
83. We do not set out all of the other interview content with the other staff interviewed by Ms Maunder only the relevant extracts as follows. The staff interviewed were deemed to be relevant based on review of the documents by Ms Maunder. She interviewed Mr Belli, the assistant head teacher and Teachers A, B and C.
84. Teacher A, who had been the recipient of the debate club email from the claimant, told Ms Maunder that she had heard the claimant had been warned in a jest manner to watch what he says previously as he liked to debate and discuss. She corroborated that the trainer had said it was a safe space to discuss and ask questions otherwise would they know if "*the thinking was right*". She commented people were shocked and taken aback when the claimant expressed his views. She told Ms Maunder that the claimant had said to students in a class that as a Roman Catholic he believed abortion was wrong.
85. Teacher C reported that the claimant had told her previously that he does not agree with "transgenders" but that he would not say that in school but would express it in his private life. He told her he had been asked to leave another school as he had a private conversation of this nature, and he was reported as transphobic. He told her he believes you can only be one sex and you are born a man or a woman and it is wrong to change. Also that he

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was not in favour of female priests and asked her if the school had a copy of 'Mein Kampf' in the library. She said he told her he would shoot either Mark Drakeford or Dr Whitty if he saw them as his daughter had suffered after having the Covid vaccine. She told him this was not appropriate and he said he did not mean he would do and it was just something they would say in Poland.

86. Teacher C had debated reporting him but as he told her he would not say it in front of others she decided not to. She agreed he had never said any of these views to other staff or students.
87. The claimant accepts he had a private discussion with Teacher C however his version of the discussion is very different. Regarding the reference to Mein Kampf, the claimant says that he and Teacher C were arguing about the limits of freedom of speech and how to go about fake news in the context of the Covid pandemic. The claimant formed the view that Teacher C was in favour of censorship and he was defending freedom of speech. As an illustration he said "I wouldn't even mind if we had Mein Kampf in the library because it would be the best way to highlight the dangerous misconceived ideology" or words to that effect. The claimant says he never seriously suggested really having Mein Kampf on the shelves say next to Harry Potter. He also made the point if the teacher had thought he was serious about this why had she not reported it earlier or at the time of the discussion.
88. With reference to the claim that the claimant had said he wanted to shoot Mr Whitty and Mr Drakeford the claimant accepts that during the same discussions referenced above Teacher C they were discussing censorship during the Covid pandemic and he accepted that he had used the phrase "*when I hear government experts now, I reach for my gun*". He agreed that Teacher C objected to this reference pointing out that they were in a school. The claimant explained he had paraphrased the famous quote: "*when I hear the word culture, I reach for my gun*" that he says comes from a 1930s theatre play. The claimant gave examples in the bundle of where the quote had been widely used in modified versions by writers including Stephen Hawking, Henry Miller amongst others. It was put to the claimant during cross examination that this phrase had also been used by the Nazi leader Hermann Goering but we attach no weight to this as there was no evidence of this in the documents before us.
89. With reference to the claimant's objections to female priesthood the claimant says he had been misinterpreted on a walk back from Llandaff Cathedral with Teacher C where he had commented on how beautiful the service had been especially the music and said as a catholic he was not used to seeing women priests.
90. Teacher B told Ms Maunder that the claimant had used the word murder at the training session and the trainer had told the claimant he was free to hold those views but it would be better not to voice them work as this would possibly be discrimination. She did not see anyone visibly upset. She was asked if the claimant had made similar comments in front of staff prior to the training and she replied not really. She confirmed that he had not made any similar comments in front of students to her knowledge.

91. After the meeting with the claimant he sent Ms Maunder some information by email:

“My social media had never been a topic of any comments, suggestions or complaints on the part of the school. If it had been, I would probably have considered limiting the visibility of some post or tweets (not removing them though).

*If the specific post/tweet with Andrew Tate that you mentioned had been pointed out to me by the school, I would have limited its visibility.
However, what he said in the post in question wasn't controversial or vulgar. (BTW I haven't been able to find the post);*

.....

And, finally, let me stress again: Apart from a few, friendly conversations at break time with another TA, also a Christian, I wasn't discussing or expressing my religious beliefs in the school with pupils or teachers, while I worked there, nor was I planning too.

92. Ms Maunder reverted to the claimant and asked him about the discussion club email he had sent to Teacher A in February 2023. Specifically she referred to where the claimant had said “they are the students with whom I sometimes talk about topics during/**after RS lessons**³ that I attend as a TA”. She also informed him that she had been advised he had interjected during a class and told the students he thought abortion was wrong. Ms Maunder put to the claimant that when they had met he had told her he had not discussed any of his views with students and asked him to comment on light of these information above.

93. The claimant replied as follows:

Regarding my mention of 'talking about topics during lessons' - what I meant were a few occasions when I was monitoring the pupils' work during RS or Welsh Bacc lessons (which I was expected to do when not busy assisting my designated pupils with additional learning needs) and mentioned one or two of my opinions or views, which were always connected with the subject of the lessons, and in most cases when specifically asked by pupils.

I recall three such occasions: on one of them, during a discussion with the teacher a student expressed his critical view on Sharia law (he used a very general statement: "Sharia law is a big problem in the UK", or even stronger "Sharia Law should be banned" - I can't recall exactly) and a little later, when the class went back to individual work or work in pairs asked me, when I was passing his desk, "What do you think about that, sir?". I replied "I think some aspects of Sharia law are problematic in Western societies". That all I said. So it wasn't me 'discussing' a topic, it can even hardly be called 'talking' about it in the proper sense of the word. I just expressed my view in the shortest possible way, when asked.

.....

³ Bold text is our emphasis

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Another such occasion was during a Welsh Bacc lesson, when the pupils were working in small groups on a topic connected with 'global citizenship' and 'global issues' and were supposed to assess what sources of information are trustworthy and which less so. One group put the BBC in the first category and when I stopped by their desk, I pointed out - quite likely after I was asked by them for my opinion regarding their list - that even though BBC is widely regarded as a very reliable source of information, there had been issues when it was accused of being biased, e.g. regarding Brexit. That was all. I didn't elaborate, they didn't ask anything, I just moved on to another desk to check on another group's progress.

The third one that I recall was to do with abortion, even though I don't specifically recall the quote you gave in your email, but I do remember stopping by two students who were, if my memory serves me well, working on a list of situations in which abortion could be justified in their opinion (or something very similar). One of them was something to do with the mother's or the foetus' health. I pointed out that there is another aspect that may be worth considering: potential psychological effects on the mother (actually I had just seen a scientific paper published by Cambridge University Press on this aspect of abortion). I may well have added the sentence quoted in your email, especially that the Catholic attitude to abortion was discussed in the lesson and the pupils knew I was a Catholic.

As for 'talking after lessons' - it refers to two or three occasions (I can recall two, but there may have been another one that I have forgotten), when after a lesson a pupil would ask me my opinion of the topics discussed in the lesson.

And all of those occasions it was literally one question followed by one answer.

I think one of the questions might have been connected with illegal immigration, something that had been discussed in the lesson. I may have said that curbing it would in my opinion save many lives, in the context of many accidents in the English Channel.

I can't recall the other topic - it's likely it was actually to do with Sharia law and took place after the lesson I've already mentioned.

None of these brief 'exchanges' lasted more than a 10 or 20 seconds and both happened while the student and myself were walking to our respective classrooms between lessons, quickly parting our ways, as I don't think I ever worked with the same class in two consecutive lessons. So 'talking' here is a kind of exaggeration, even if it's correct in the most technical meaning of the word.

On my own initiative I started only two brief conversations with the students during break time.

The first one, which I've already mentioned in my previous email, was when I asked a couple of them if there was a discussion club at the school (actually I think we were still in the classroom waiting a minute or two for the bell after the teacher formally ended the lesson).

The second was when I stopped by a small group of pupils, which included one or two to whom I had originally mentioned the discussion club idea, and said to them: "It seems the idea got the green light". I think also added that one of the first topics would be global warming (which was one of the 'global issues' they talked about in their Welsh Bacc lessons) and mentioned the former scientific adviser to Barack Obama, who after many years of supporting the anthropogenic climate warming became a sceptic and published a book on the subject, the excerpts of which I was planning to use in the discussion club (along excerpts from scientists from IPCC). Both of those occasions lasted 15 or 20 seconds maximum.

Outcome of the investigation by Ms Maunder

94. Ms Maunder concluded that staff were shocked and upset by the claimant's comments at the training event and he seemed to have given no consideration to others when making comments he accepts were controversial. He also confirmed his stance that the fact that people were offended is not reason enough for him not to express his views.
95. Ms Maunder was clear to highlight that other matters had arisen since the claimant was asked to leave the school but these were not within Mr Belli's knowledge at the time he made that decision.
96. Ms Maunder concluded that the claimant's social media posts (the Andrew Tate and Pregnant men Girl Dicks tweets) could not be considered appropriate, well mannered or within civilized boundaries and he had made no attempt to reduce to risk of pupils or parents viewing the post as recommended by EWC guidelines.
97. She also concluded that the topics the claimant sought to discuss at his discussion club were wholly inappropriate.
98. Ms Maunder did not uphold the claimant's complaints. She concluded that the claimant's comments in his meeting with Marc Belli did not appear to instill certainty that he would refrain from expressing these views in school and certainly not in his private life. She agreed that Mr Belli did go further and suggest if he repeated these particular views in his private life, it could possibly impact on his employment within education if he breached the Equality Act. However, as this was in line with the Education Workforce Council guidance this complaint was not upheld.
99. On 26 May 2023 Sarah Maunder met with Mrs Bates to submit her findings and the investigation report. Mrs Bates accepted the recommendation not to uphold the claimant's complaint and wrote to him that day.

Dismissal from the second respondent

100. On 13 May 2023 Mr Mozher became aware of the Daily Mail article. He became concerned that whilst the EWC process had been ongoing the claimant had been acting unprofessionally which could have damaged the school's reputation and that of the second respondent. Mr Mozher opened

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his own investigation and prepared a report on 24 May 2023. Mr Mozher did not re-interview the claimant as he did not consider it necessary having been given the draft report from Ms Maunder which contained interviews with the claimant.

101. Mr Mozher concluded as follows:

- a) The claimant had verbally criticised Mr Belli in the reception area on 24 March 2023 which was inappropriate behaviour to one of their clients;
- b) After being removed from the school the claimant had sent the email to the teachers and pupil, whilst unintentional was deemed highly inappropriate;
- c) The likening of the school to communism in the press article was a very public way of criticising the school;
- d) The claimant had suggested contacting other agencies whilst the EWC referral was ongoing (it was unclear why this would have been an issue);
- e) The claimant's posting on social media about "the wokest headmaster" then subsequently naming Mr Belli and the school.

102. Mr Mozher concluded that the claimant's actions had breached his terms of engagement not to engage in any conduct detrimental to the interests of the Client or any other workers of the Client and it was therefore appropriate to dismiss the Claimant on the basis that he was acting in breach of his contract.

103. Mr Mozher denied that he dismissed the claimant because of his religious or philosophical beliefs. He said the reason was the claimant's behaviour following his exit from the school which had proved very damaging to the school and also the second respondent. Mr Belli refused to use the second respondent again and the former high school also stopped using their services. The second respondent experienced a drop in income of approximately half a million pounds after the publicity that ensued and the refusal of the first respondent and the other high school to use their services any further.

104. The claimant was called to a meeting on 25 May 2023 with Mr Mozher and Mr McVeigh, fellow director and informed of his dismissal. On 30 May 2023 the Second Respondent provided the EWC with the internal investigation report and termination letter.

Contact from parents

105. On 21 June 2023 a letter was submitted to Mrs Bates from 12 parents relating to concerns about the inconsistencies between this media coverage and the position set out by the School on 12 May 2023. The parents were very concerned about the suggestion the claimant had been dismissed for expressing Christian beliefs and the need for freedom of speech and religious expression within the school.

106. Mrs Bates responded to the letter from the 12 parents on 26 June 2023. She explained that she had commissioned an investigation into the claimant's allegations and these had not been upheld. She did not go into detail of the investigation findings but stated:

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The findings of the fact finding was that there was no evidence to suggest Mr Dybowski's assignment was ended was on the basis of his religious beliefs, but rather his unwillingness to comply with the legal requirements of the Equality Act, 2010; the school's ethos and precepts; and the Code of Practice for EWC registrants. Furthermore, the investigator concluded that the Headteacher had followed the correct procedures in managing this incident to protect individuals, both students and staff, from potential harm. Specifically, the risks posed by the discriminatory language used/actions by Mr Dybowski.

107. Around this time the claimant set up a funding campaign to support his legal costs. On 1 July 2023 he gave an interview to GB News entitled "Teacher fired after being URGED to 'express his views on marriage'". The YouTube screen shot shows it had received 64,571 views. There followed extensive media interest and coverage.

108. The school began to receive contact from the public which was in some cases abusive and critical of the school and Mr Belli and had to be later reported to the police. One particular poem sent anonymously to the school about Mr Belli was extremely offensive and threatening.

109. Mrs Bates then sent a further letter on 3 July 2023 to all parents and carers of pupils at the school. This letter went much further than the letter of 26 June 2023. By this time, the claimant was engaged in an active social media and press campaign and as such his identity was publicly known. The letter named the claimant personally and told the parents there had been an independent investigation which had not upheld his complaints. Mrs Bates said in light of the claimant's actions and claims which are now very public, she wanted to give reassurance to all families of the facts. It stated there were witnesses present at the training session confirming the claimant had:

"...shared a number of opinions using highly charged language that caused offence. As part of the investigation, other evidence included:

Mr Dybowski questioning the School's Learning Resource Centre Manager as to why there was not a copy of Mein Kampf in the school library, for the purposes of balance;

Email correspondence between Mr Dybowski and a member of staff seeking to establish a discussion group, which covered a range of inappropriate topics given his role at the school, and confirming that he has shared his views with some of these students; and Mr Dybowski's (now deleted) social media presence, which included a range of retweets made by controversial individuals, such as Andrew Tate.

110. The letter did not make it specifically clear that apart from the debate club issue, the other evidence outlined above was not within the knowledge of Mr Belli on 24 March 2023.

And

Mr Dybowski claims his dismissal was linked to three mainstream Christian beliefs that he shared. However, I can confirm this presents a very limited view of the facts and is misleading. There are a number of other controversial

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political views that Mr Dybowski shared, which have not been reported by the media. In fact, one of these strongly held views has been condemned by most mainstream Christian Churches and found to be unlawful. As an employer, we recognise all of our employees, including agency staff, will hold different views on many important issues. However, these opinions must always be expressed within the boundaries of respect and dignity for all. That remains the case whether those words and/or actions are informed by religious beliefs, political views, or otherwise. Whilst Mr Dybowski is entitled to hold whatever views he wishes, it is entirely unacceptable for him to express these in the matter he did within a workplace environment. The recording provided by Mr Dybowski demonstrates that the Headteacher repeated this message on a number of occasions, yet Mr Dybowski was unwilling to agree to this reasonable request.

111. The reference to the view held to be unlawful was not clarified in the letter. Mrs Bates told the Tribunal under cross examination that this was a reference to the claimant's belief on illegal immigrants and specifically the government policy on sending immigrants to Rwanda which had been deemed unlawful. We did not understand how or why the respondent referenced a link between the views the claimant had expressed on immigration and the Rwanda policy. There is nothing in any of the evidence before us to support a contention that the claimant supported the mentioned the Rwanda policy. He had discussed sending illegal immigrants immediately back to France and / or the country they came from (see above paragraph 26) but not about Rwanda albeit we can see how those views are closely linked with the premise of the Rwanda policy. Mrs Bates also referred to the claimant's termination from the first placement saying it was because he had been unwilling to conduct himself in accordance with their policies and expectations.

112. The claimant learned about the 3 July 2023 letter from one of the parents who had sent a letter to the school requesting an explanation of the claimant's treatment. The claimant described the letter as containing claims that were "so outrageous" he found it hard to believe the parent at first. He alleges that the letter was an act of harassment and direct discrimination. The claimant's witness statement asserted it contained malicious falsehoods and other matters that cannot have played a part in Mr Belli's termination of his assignment as they were not known to Mr Belli at that time.

113. The witness statement did not specifically outline what was said to have been the discriminatory and untrue comments although the claimant went on to outline his version of events surrounding the Mein Kampf discussion, objections to female priesthood and discussion club which we have set out above. The claimant was shocked when he saw the content of the letter and viewed it as an attempt by the school to justify their decision regarding the claimant a damage limitation exercise after the Daily Mail article. Whilst we find the claimant was entitled to be shocked by the allegation he held unlawful views (Rwanda), other than this his outrage was misplaced given it was he who had started a media campaign which had placed the first respondent in a very difficult position. We find that the first respondent was entitled to have written to parents and carers given the media storm which was ongoing as well as the abuse being received by the school and Mr Belli.

114. Following this, the claimant was approached by a reporter demanding to know why he had demanded a copy of Mein Kampf in the shelves of the school library. The claimant considered the letter to be slanderous and a deliberate smear on his reputation and followed this up with a letter dated 18 August 2023 sent under the Pre-Action Protocol for Media and Communication claims.
115. In that letter he complained that the two letters that had been sent by the school contained untrue and defamatory allegations regarding the case and his person. The claimant said that the reference to him planning to discuss a range of inappropriate topics with pupils was “*a complete fabrication*”.
116. M/s Eversheds Sutherland sent a formal reply to this letter on instructions from the first respondent on 31 August 2023. The letter disputed that the letter from Mrs Bates gave rise to any claims in defamation and had been sent in response to communications by the claimant to the media. No civil proceedings have subsequently ensued.
117. On 31 August 2023 the second respondent was sent the decision of the EWC investigating committee who decided that the claimant had no case to answer with regards to unacceptable professional conduct and that no further action will be taken by the EWC in connection with the referral made by the second respondent. It was unclear whether they had seen all of the social media posts that are now before this Tribunal.

The Committee had regard to the fact that Mr Dybowski does of course have a right to freedom of speech, and indeed the right to hold certain views, and that discussion around controversial issues is not only desired, but necessary within the education sector.

In such circumstances, the Committee did not feel that there was a sufficient evidence before it to indicate that Mr Dybowski's alleged conduct had reached the threshold for regulatory involvement. The Committee was not satisfied, therefore, that there was a real prospect of the alleged facts being found proven.

Witness evidence not directly relevant to the issues in the claim

118. We did not attach any weight to the anonymous statement as the respondents were not able to ask the author any questions or challenge any of the evidence therein. It is only relevant in so far as this witness also provided an account to Mr Merriman for the Daily Mail article.
119. Mrs Pitt is a committed Christian who has campaigned against abortion in the UK and USA. She has attended prayer vigils in Cardiff with the claimant although it was unclear whether this was linked to their beliefs on abortion. She told the Tribunal that sometimes she may disagree strongly with the claimant but always in good faith and with goodwill. She described the claimant as a sincere believer in causes related to his faith, straightforward and trustworthy.

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120. Other witnesses gave unchallenged evidence which we accepted that the claimant has established friendships and engaged in respectful debates with a range of individuals from different sections of society including some in same sex relationships and of different religions and political views.

The Law

121. It was accepted that all of the claimant's beliefs save for 1.1.3 in the list of issues (being critical of aspects of sharia law, for example that homosexual acts should be severely punished) were capable of being protected under s.10 EQA as religious or philosophical beliefs. The reason this belief was not accepted as it was said not to be understood.

122. s.4 EQA 2010 provides that religion or beliefs are protected characteristics. s.10 defines religion and belief as follows:

- (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
- (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
- (3) In relation to the protected characteristic of religion or belief—
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;
 - (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

123. The Tribunal must read and give effect to the statutory provisions in question in a way compatible with European Convention on Human Rights ("ECHR"). In this case, Article 9 is relevant which provides for the freedom of thought, conscience and religion. Article 17 prohibits the use of ECHR to destroy the rights of others providing that nothing in the Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at the limitation to a greater extent than as provided for in the Convention.

124. The Tribunal must start by defining exactly what the belief was (**Gray v Mulberry Co (Design) Ltd [2019] EWCA Civ 1720**).

125. **Grainger Plc v Nicholson [201] IRLR4** is the leading authority in regards to what will amount to a philosophical belief:

- (i) The belief must be genuinely held.

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- (ii) It must be a belief and not an opinion or viewpoint based on the present state of information available.
- (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- (iv) It must attain a certain level of cogency, seriousness, cohesion and importance.
- (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

126. In **McCLintock v Department of Constitutional affairs [2008] IRLR 29**, a distinction was between a belief qualified for protection and an opinion based on some real or perceived logic or based on informational lack of information available. If it is the latter it will not qualify. This was discussed further in **Mackereth v DWP [2022] EAT 99** at paragraphs 74-77. Per Eady J (President at paragraph 77):

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 the 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... 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 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 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 section 10.

127. In **Forstater v CGD Europe and others [2021] IRLR 706**, the EAT held that the level at which article 17 becomes relevant is a high one. The fundamental freedoms and rights conferred by the convention would be seriously diminished if article 17, an effective denial of a Convention right, could be too readily invoked. Only if the belief involves a very grave violation of the rights of others, tantamount to the destruction of those rights, would it be one that was not worthy of respect in a democratic society. Tribunals must bear in mind that it is only beliefs that would be an affront to the convention principles in a manner akin to that of pursuing totalitarianism or advocating Nazism or exposing violence and hatred in the gravest of forms that should be capable of being not worthy of respect in a democratic society. Beliefs that are offensive, shocking or even disturbing to others, and which fall into less grey forms of hate speech would not be excluded from the protection. However the manifestation of such beliefs may, depending on the circumstances justifiably be restricted under art 9 (2) or 10 (2) in determining whether any restriction on the exercise of the right justified. Further, at the preliminary stage of assessing whether the belief qualifies for protection manifestation could only be part of the analysis and should be considered only in determining whether the belief that the threshold requirements in general.

Manifestation of beliefs

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128. Article 9 (2) of ECHR provides that 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.
129. The EQA 2010 provisions relating to religious belief and protected beliefs must be interpreted where possible in accordance with articles 9 and 10. This is not a case where it has been argued there was not sufficient nexus between the manifestation and the belief. The key question is to decide whether the reason for the less favourable treatment was that the claimant manifested a belief or whether the reason was a justifiable objection to the way in which the belief was manifested.

S 26 EQA 2010 – Harassment

130. A person (A) harasses another (B) if—
A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account the perception of B; the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
131. Part 7 of the EHRC Code provides that unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.
132. It is a question of fact for the Tribunal as to whether the conduct complained of occurred. If so, the Tribunal must determine if it had the purpose or effect as set out in S26 (1) (b). The test has subjective and objective elements to it. The subjective part involves the tribunal looking at the effect that the conduct of the alleged harasser has on the Claimant. The objective part requires the tribunal to ask itself whether it was reasonable for B to claim that A's conduct had that effect.
133. In **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495** the EAT held that the broad nature of the 'related to' concept means that a finding about what is called the motivation of the individual concerned is not the only necessary or possible route to the conclusion that the conduct in question is related to the particular characteristic. Nevertheless there must still be some feature or features of the factual matrix identified by the Tribunal which properly leads it to the conclusion that the conduct is related to the protected characteristic. The Tribunal must articulate what these features are.

Direct discrimination

134. In **Nagarajan v London Regional Transport and others [1999] IRLR 572 HL** held that the Tribunal must consider the reason why the less

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favourable treatment has occurred. Or, in every case of direct discrimination the crucial question is why the Claimant received less favourable treatment.

135. The key to identifying the appropriate comparator is establishing the relevant "circumstances". In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** this was expressed as follows by Lord Scott of Foscote:

"...the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class."

136. On the burden of proof Section 136 EA 2010 provides 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.

137. In **Igen v Wong [2005] IRLR 258 (CA)** the guidance issued by the EAT in **Barton v Investec Henderson Crosthwaite Securities Ltd** was approved in amended form. The Tribunal must approach the question of burden of proof in two stages.

"The first stage requires the complainant to prove facts from which the ET could, apart from the section, conclude in the absence of an adequate explanation that the respondent has committed, or is to be treated as having committed, the unlawful act of discrimination against the complainant. The second stage, which only comes into effect if the complainant has proved those facts, requires the respondent to prove that he did not commit or is not to be treated as having committed the unlawful act, if the complaint is not to be upheld." (paragraph 17, per Gibson LJ)

138. **Hewage v Grampian Heath Board [2012] IRLR 870 (SC)** endorsed the guidelines in **Madarassy v Nomura International [2007] IRLR 246 (CA)** concerning what evidence is required to shift the burden of proof. Facts of a difference in treatment in status and treatment are not sufficient material from which a Tribunal could conclude that on the balance of probabilities there has been unlawful discrimination; there must be other evidence.

Manifestation of the belief

139. **Page v NHS Trust Development Authority [2021] EWCA Civ 255** provides guidance as to the approach to be taken when considering direct discrimination in a case where the protected characteristic is religion or belief:

Per Lord Justice Underhill:

68. 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

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

140. **Higgs v Farmor's School (No.3) 2023 EAT 89** has recently considered the authorities regarding manifestation of non religious beliefs. it is the objectionable manifestation of the belief that is treated as the reason for the act complained of. In order to determine whether or not the manifestation can properly be said to be " *objectionable* ", however, it is necessary to carry out a proportionality assessment: keeping in mind the need to interpret the EqA consistently with the **ECHR** , there can be nothing objectionable about a manifestation of a belief, or free expression of that belief, that would not justify its limitation or restriction under articles 9(2) or 10(2). Per Eady J (President):

"All that said, I can see that, 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. The fact that the issue arises within a relationship of employment will be relevant, but different considerations will inevitably arise, depending on the nature of that employment.

*(4) It will always be necessary to ask (per **Bank Mellat**): (i) 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.*

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(5) In answering those questions, within the context of a relationship of employment, the considerations identified by the intervenor are likely to be relevant, such that regard should be had to: (i) the content of the manifestation; (ii) the tone used; (iii) the extent of the manifestation; (iv) the worker's understanding of the likely audience; (v) the extent and nature of the intrusion on the rights of others, and any consequential impact on the employer's ability to run its business; (vi) whether the worker has made clear that the views expressed are personal, or whether they might be seen as representing the views of the employer, and whether that might present a reputational risk; (vii) whether there is a potential power imbalance given the nature of the worker's position or role and that of those whose rights are intruded upon; (viii) the nature of the employer's business, in particular where there is a potential impact on vulnerable service users or clients; (ix) whether the limitation imposed is the least intrusive measure open to the employer."

141. We were referred to the following additional authorities by Mr Mitchell:

Land Registry v Grant [2011] IRLR 788 (meeting the test for harassment).

142. Mr Diamond referred us to the following authorities:

Fuentes Bobo v Spain 2001 EHRR 50;
Livingston v The adjudication panel for England [2006] EWHC 2533;
Smith v Trafford Housing Trust [2013] IRLR 86;
Vogt v Germany (1996) 21 EHRR.

Conclusions

143. In reaching the conclusions below we make it clear that it is not the function of this Tribunal to express any views about the merits of either side of the debate that the facts of this case raise and our judgment should not be read as providing support for either side of the beliefs that are the subject of these proceedings.

Protected belief

144. The claimant relies upon four protected beliefs which were carefully discussed and agreed at the outset of the hearing. These were:

- 1.1.1. A belief in Biblical marriage or a lack of belief in same sex marriage (whilst recognising that same sex marriage is legal, he believes this is contrary to Biblical teaching);
- 1.1.2. Human life must be respected and protected from the moment of conception. Abortion is gravely contrary to the moral law;
- 1.1.3. Being critical of aspects of sharia law, for example that homosexual acts should be severely punished; and
- 1.1.4. A belief that sex is fixed or i) a lack of belief that someone can change their biological sex and/or gender and ii) a lack of belief in gender fluidity. The Belief in the Bible Genesis 1.27.

145. It was accepted that all of the beliefs save the third one (*being critical of aspects of Sharia law, for example that homosexual acts should be severely punished*) were capable of being protected under s.10. We

therefore firstly consider whether the third above belief is capable of being protected applying the **Grainger principles**.

146. The belief must be genuinely held. There was no real debate that the belief was not genuinely held by the claimant. From the evidence before us including the number of occasions he expressed the belief and the consistency of the beliefs, the claimant's belief was genuine.
147. It must be a belief and not an opinion or viewpoint based on the present state of information available. We have given this very careful consideration. The description of the belief reads as an opinion in our judgment; crucially the words "being critical of aspects" denote an opinion about aspects or parts Sharia law and as such cannot amount to a belief. Further, we are unable to understand the premise of how it could be understood as a characteristic of the claimant. We did not hear any evidence from the claimant as to how him being critical of aspects of Sharia law was linked to any religious or philosophical belief. The belief does not meet the third and fourth element of the Grainger test as, and only as, it is too narrow to meet the requirements of being sufficiently weighty and cogent.
148. For these reasons we have concluded that this belief was not capable of being protected. Had the belief been expressed in a different way we may have reached a different conclusion. However this would not have assisted the claimant as in any event, as we discuss below, the belief could not have been a factor in either the alleged unwanted conduct or less favourable treatment.

Did the claimant manifest those beliefs at the relevant times

149. We have made the following findings of fact about what the claimant actually said (as opposed to how his beliefs are described in the list of issues) at the training event on 23 March 2023:
- a. True marriage is between a man and a woman and he could just about tolerate this (paragraph 22 (a));
 - b. Human life begins at conception and abortion is the taking of innocent life and or murder of innocent life on unborn children (see paragraphs 22 (b));
150. The claimant therefore did manifest those beliefs at the training event. The claimant said he was critical of aspects of sharia law but he did not give the example later set out in the list of issues (that homosexual acts should be severely punished) and in any event we have found this is not a belief that qualifies for protection under s.10 as it was an opinion.
151. The fourth belief namely the belief that sex is fixed or a lack of belief that someone can change their biological sex and/or gender and a lack of belief in gender fluidity was not mentioned at the training event on 23 March 2023 (see paragraphs 22 (d)).
152. It is accepted that all of the beliefs were stated to Mr Belli at the meeting on 24 March 2023.

153. Alleged unwanted conduct

On 24 March 2023, Marc Belli told the Claimant that he did not want him to express the beliefs mentioned during the Diverse Cymru Training on 23 March 2023 whilst working at the Respondent

154. Mr Belli accepted this in his witness statement. Mr Belli repeatedly told the claimant that the views he had expressed at the training should not be repeated:

The views expressed by Ben and, in particular, the manner in which he had expressed them, was challenged as being inappropriate for the workplace and potentially discriminatory by the trainer I anticipated that I would receive some sort of assurance that Ben would not express his views in the manner he did at the training around the School, either in front of staff or students;

On 24 March 2023, Marc Belli told the Claimant that he did not want him to express the beliefs mentioned during the Diverse Cymru Training on 23 March 2023 in his private life on social media

155. Mr Belli did not quite say that he did not want the claimant to express the beliefs on social media. Mr Belli told the claimant that these were not his “rules” but those of the claimant’s professional regulator. Mr Belli did tell the claimant that the way he had expressed the beliefs was potentially an issue if he said them in a pub with other teachers.

On 24 March 2023, Marc Belli told the Claimant he would report him to the Educational Workforce Council (“EWC”) as he thought the Claimant’s views made him unsafe to work with young people

On 24 March 2023, Marc Belli requested that the Second Respondent report the Claimant to the EWC

On 24 March 2023 instruct the Second Respondent to terminate the Claimant’s engagement with the first Respondent and escorted the Claimant from the school

156. These allegations were not in dispute.

On 3 July 2023, Kathryn Bates sent a letter to parents / carers containing discriminatory and untrue comments about the Claimant including that he had used highly charged language that caused offence, one of the beliefs expressed by the Claimant had been unlawful and that the Claimant had planned to discuss with pupils a range of inappropriate topics

157. See findings of fact at paragraphs 109, 110. As regards the contents of the letter, the claimant had used highly charged language that did cause offence therefore this was not an untrue comment. Regarding the belief expressed to be unlawful, we agree that this was not true as the claimant had not at any time expressed a belief that he supported the Rwanda

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policy. He had stated he believed illegal migrants should be returned to France or their country of origin. It was also true that the claimant had planned to discuss a range of topics with pupils (in so far as he proposed the debating club). It was inappropriate and potentially could have had a very divisive effect amongst pupils to suggest discussing immediately sending illegal migrants crossing the English Channel back to France with pupils in a school with a high number of refugee children. It is quite understandable to see how this could have caused an issue amongst the pupils. It is fair to say that the claimant did not proceed with any plans as it was not approved. But he still planned to do so, had it been approved.

Allegations against the second respondent

158. These were not in dispute; it is common ground that on 24 March 2023 they referred the Claimant to EWC for being unsafe to work in education and on 25 May 2023 dismissed the Claimant.
159. There was no issue that the all of the conduct was unwanted. We must therefore considered whether any of the above conduct related to the Claimant's protected beliefs or was it for a non-discriminatory reason. The first respondent asserted the reason was that he conducted himself in the workplace a manner which was deliberately controversial, divisive, and provocative, without regard for his colleagues, and with a lack of professionalism. In our judgment this was conflating the "reason why" for a direct discrimination claim with "related to" for a harassment claim and not the correct approach.
160. The second respondent's case was the reason for the unwanted conduct was factually, his conduct after the expression of the beliefs in that the claimant had engaged in unprofessional conduct which had breached his terms of engagement.
161. In respect of all of conduct by the first respondent, save for the 3 July letter, we consider it was related to the claimant's beliefs having regard to the broad meaning of the words "related to". However in our judgment, the conduct of the first respondent did not have the **purpose** of creating the effect referred to in s.26 (1) (b).
162. The purpose of the conduct was ensure that the claimant did not have a further opportunity to express his beliefs within the school environment in the way he had verbalised them at both the training event and at the meeting with Mr Belli as those views were not aligned with the school's stated values and principles. Mr Belli was also concerned at the claimant's use of social media and the reputational risk to the school if they became associated with the claimant's campaign activities. Further and in our judgment most significantly Mr Belli reached a reasonable conclusion that the claimant would not refrain from manifesting his beliefs in the same manner within the school environment. The purpose of telling the claimant he should not be expressing his beliefs in the same manner was to ensure the claimant was complying the EWC guidelines on social media. The purpose of sending the 3 July 2023 letter was to put the school's versions of events to the parents and carers and address the hate mail and attacks

on the school and Mr Belli that had arisen from the claimant's media campaign.

163. It was also not reasonable for the conduct to have the proscribed **effect** when looking at the circumstances of how the conduct came about. In our judgment the claimant is in real difficulty here given his behaviour at the training event, the meeting with Mr Belli and his subsequent media campaign. The claimant demonstrated a complete lack of awareness as to how the way he expressed his views might have impacted on other people in attendance at the training and when this was pointed out to him told Mr Belli that this would not be enough to prevent him from expressing those beliefs again in the future. He then covertly recorded the meeting with Mr Belli. In our judgment, he did so with an intention to goad or trap Mr Belli into saying something that could be later used against him, which has happened in this case. Mr Belli repeatedly sought to bring the claimant back to the EWC social media guidelines and also the school's values and repeatedly told the claimant he was entitled to his views but not to verbalise them in the school environment. Mr Belli was plainly concerned about how the expression of these views might impact some of the pupils particularly those with refugee status and transitioning gender. The claimant repeatedly pressed Mr Belli on an ever increasing range of topics. He then made really personal and inappropriate comments about Mr Belli / his ancestors hoping that "had not arrived illegally" on a boat.

164. Subsequently, given the claimant's media campaign and the inaccurate account provided to Mr Merriman, it is somewhat ironic and unreasonable that the claimant seeks to complain that the actions of sending the 3 July 2023 letter had the proscribed effect on the claimant who had sought to gain as much publicity in his dismissal as possible.

165. In relation to the unwanted conduct of the second respondent we have concluded that this was very far removed from the claimant's protected beliefs. The conduct was not related to those beliefs it was related to the claimant's actions following the expression of those beliefs. Towards the end of the meeting with Mr Belli he made some really very ill judged and rude comments to Mr Belli, an important client of the second respondent's business. The claimant then sent an email to staff and a pupil and then started his media campaign which had a catastrophic effect on the second respondent's business. The second respondent had not understood at the time of the first placement being terminated that there was anything that should give them concern to placing the claimant at another school.

166. For these reasons we find the harassment claim against the respondents are not well founded.

Direct discrimination

167. The claimant relies upon the same conduct as the harassment claims as the less favourable treatment for his direct discrimination claims. In a direct discrimination claim the essential question is whether the act done was because of the protected characteristic. An examination of the putative discriminator's motive(s) is required. In a case of religious or

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protected belief there is a distinction between deciding if the fact of the religion or belief was the reason or if it was the manifestation of those beliefs and if so, was it objectionable.

On 24 March 2023, Marc Belli told the Claimant that he did not want him to express the beliefs mentioned during the Diverse Cymru Training on 23 March 2023 whilst working at the Respondent

On 24 March 2023, Marc Belli told the Claimant that he did not want him to express the beliefs mentioned during the Diverse Cymru Training on 23 March 2023 in his private life on social media

First respondent's asserted reasons for the treatment

168. The reasons the first respondent asserted that Mr Belli did not want the claimant to express his beliefs at the school were as follows⁴:

- a) Staff at the school were expected to respect the school's ethos and values specifically love, acceptance, responsibility and forgiveness aligned with the Equality Act and the views expressed by the claimant and the manner of expressing them were inappropriate for the workplace and potentially discriminatory, conflicting with the welcome attitude of the respondent;
- b) Employees of the first respondent had been offended by the claimant's comments and repeated comments could cause further offence and expose the first respondent and staff to harassment in respect of their particular protected characteristic;
- c) EWC guidelines could have been breached.

169. The reasons he was told he could not express his beliefs in his private life on social media were in essence the same as set out above albeit with more focus on the EWC social media guidelines.

Discussion and conclusions

170. What was the reason Mr Belli told the claimant the above? Was it because he had those beliefs or was it the way in which he had manifested them?

171. Mr Belli knew about the first three beliefs from the training event and had no plans to terminate the claimant's placement at the school knowing those beliefs. It is very clear from the factual findings and an examination of Mr Belli's intentions prior to his meeting with the claimant that he was not motivated by the fact of the beliefs to treat the claimant less favourably. Mr Belli wanted the claimant to not manifest the beliefs in the way he had at the training event. This was his intention at the outset and must be the starting premise and the prism through which Mr Belli's motivation is assessed. For these reasons we find that none of what subsequently ensued was because the claimant held his particular beliefs

⁴ As set out in the amended response

but because of the way in which they were manifested and other factors unrelated to protected beliefs.

172. This can be seen from Mr Belli's witness evidence which was corroborated in his email to Teacher A before the meeting:

*I explained to him that **this language**⁵ was contrary to the precepts of the School and conflicted with the welcoming attitude of the School. My expectation going into the meeting was that it would be a brief conversation. I anticipated that I would receive some sort of assurance that Ben would **not express his views in the manner** he did at the training around the School, either in front of staff or students (see paragraphs 27).*

173. Whilst the claimant said on several occasions that he would not express his beliefs at the school he said other things that contradicted this and in our judgment it was reasonable for Mr Belli to have become very concerned about this particular issue and reach a conclusion that he could not trust that the claimant would refrain from inappropriate discussions with pupils not only on his beliefs but potentially the other views he expressed at his meeting with Mr Belli in particular his view on illegal immigration.

174. The claimant said he did not want to promote his views at the school but went on to ask Mr Belli if there was a chance to debate about "sending illegal immigrants back immediately" or express his views the "government should be harsher" would that mean he is not eligible to work here?

175. The claimant told Mr Belli says he has discussed his views about female priests with a member of staff. Also after Mr Belli states the claimant is entitled to a view and to express view but there would be consequences if the views contradict; he was then interrupted by the claimant who says "fair enough if its in the school context **I will debate whether it makes sense**. The claimant then asks who will discuss issues with pupils that they are discussing at home such as *illegal immigration at home and the number of immigrants and Muslims in Britain. They talk about the big issues. If you watch the media, can't escape that. Transgender. That's a massive thing. It's a massive thing now* and goes on to deliberate if teachers are cut off from the debate with pupils who talks to them about the issues? Mr Belli again expresses concern about influencing these views as a teacher and expressing them in a way that contradicts what the school stands for.

176. At paragraph 36 line 80 the claimant then asks "So if I said for me that boy was biologically a boy although socially or psychologically, he may identify [differently] and I actually respected that as I said - would that be OK if I said biologically I'd consider him as a boy? To which Mr Belli said that would not be okay explaining - *I think the problem I've got with that kind of rhetoric is that who gives you the right to express a view that makes someone else feel vulnerable or unsafe.* We have understood that Mr Belli

⁵ Bold text is our emphasis

understood the claimant was saying he would tell the boy he was biologically a boy.

177. We go on to consider whether the first respondent was justified in their objection to the claimant expressing his beliefs. Mr Belli knew the claimant had expressed those beliefs in public at a training event and intended to do so in the future. The claimant told Mr Belli he had expressed the beliefs on social media and he was a campaigner and debater. The Tribunal is required to balance the infringement of the claimant's right to express his beliefs in public against the first respondent's reasons for wishing to restrict those rights.

178. In assessing whether the first respondent were justified in telling the claimant his right to express his beliefs would be restricted we have taken into account the following factors. We remind ourselves that we must judge this based on what was known to Mr Belli at the time he sought to restrict the claimant's right to express his beliefs on 24 March 2023.

179. We regard the following factors weigh in favour of the claimant:

- a) The claimant was told that the training event was a "safe space" and also his discussion with Mr Belli was also deemed a safe space.
- b) The claimant's beliefs regarding same sex marriage reflect Christian teaching and his views on abortion reflect his religious faith (Catholicism). The first respondent is an Anglican Secondary School and on the face of it expressing mainstream Christian views in such an environment would not be objectionable.
- c) Causing offence is not in itself a good enough reason to justify the first respondent seeking to restrict the claimant's expression of such beliefs in public unless it would be contrary to the Equality Act;
- d) At its highest it would appear that Mr Belli could only have known that the claimant's first placement was terminated for privately expressing his lack of belief that a person can change their sex or gender to another remember of staff who reported him for having such a view. He did not know at that stage that the claimant was alleged to have misgendered, deliberate or not, the child whilst at the first placement. Mr Belli took into account when reaching his decision that the claimant had continued to call the child by their gender at birth during his meeting with Mr Belli and concluded he might do that in the event of being assigned to a transitioning child at the first respondent's school despite being told by the claimant he had never done so at the first placement.
- e) Mr Belli's remarks that by the claimant holding the fourth belief this equated to him thinking lesser of the child. The claimant never said this about the child and there were not sufficient grounds to have formed an objective and proportionate view that just because the claimant had the fourth belief he would be unsuitable to work with such a child in the future;
- f) The fact that the EWC did not uphold the concern against the claimant and in particular their findings as set out above. However we attach a degree

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of caution to this factor as we were not certain as to what elements of the claimant's social media the EWC had access to when reaching their decision. We would be surprised if the tweets at paragraphs 52 and 55 were deemed appropriate use of social media by a teaching assistant but it is not our role to make decisions about what the EWC would deem a breach. Further, as can be seen from the findings at paragraph 58-61 the claimant did breach the social media guidelines. He named the school, Mr Belli, disclosed Mr Belli's religious belief and discussed the situation extensively in national media and on social media. The claimant was also derogatory about Mr Belli.

180. We regard the following factors weigh in favour of the respondent:

- a) The fact that the respondent is a school environment reflecting a diverse community and attended by children who will naturally be curious about teachers and staff and seek to locate them on social media and then be potentially influenced by their content posted;
- b) The claimant used language that was likely to cause offence at the training event specifically his comments regarding "true" or "proper" marriage can only be between a man and a woman which may have offended people present both gay and straight and potentially amounted to harassment related to the protected characteristic of sexual orientation. In linking abortion to "murder" he was highly likely to have caused offence and distress. There was forensic evidence of the upset and offence caused.
- c) The claimant's language at the meeting with Mr Belli went much further on a wide range of topics many of which were not protected beliefs. When considering the travel of the discussion it would appear that Mr Belli started to become very concerned about the views on illegal immigration and how future expression of such views within the school might impact on the pupils and parents. This was particularly so given the number of refugee children at the school and the school being designated a school of sanctuary;
- d) Mr Belli also became very alarmed at how the claimant's expressions of his belief might impact on the school's values. Given the claimant told Mr Belli he was active on social media and a debater and campaigner this was a reasonable concern;
- e) There was also a reasonable concern by Mr Belli that the claimant might seek to influence the pupils in the expressions of his beliefs. He was at that stage already aware that the claimant had tried to set up a debating club (albeit not of the topics he had proposed for discussion). The claimant told Mr Belli that if he did not agree with other people's aspects he would point it out "for their sake" if they were "misguided";
- f) The claimant appeared to have been completely unaware of the EWC guidelines on social media and gave no assurance he would abide by them committing only to consider whether to do so.

181. Having regard to all of the above but in particular the way in which the claimant had expressed his beliefs we consider that it was proportionate

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for the respondent to have required the claimant to refrain from expressing the beliefs **in the manner he had both** within the school and on social media if he wished to remain as a teaching assistant at the school in order to safeguard the first respondent's values and responsibilities to the children at the school.

On 24 March 2023, Marc Belli told the Claimant he would report him to the Educational Workforce Council ("EWC") as he thought the Claimant's views made him unsafe to work with young people

On 24 March 2023, Marc Belli requested that the Second Respondent report the Claimant to the EWC

182. The reasons provided by the first respondent were as follows:

- a) The first respondent had a duty of care for the safety and well being of learners which included reporting concerns which may harm a learner;
- b) The claimant had deliberately sought to provoke Mr Belli by initiating a series of topics and repeatedly asking whether differing views would lead to dismissal;
- c) Mr Belli had substantial concern after learning of the claimant's reason for being terminated from the first placement and that the claimant continually misgendered the child during the discussion on 24 March 2024. He concluded the claimant posed a risk of offending staff and harm / risk to pupils.

183. As can be seen from the transcript, Mr Belli stated that he would make the referral because "the views were not suitable for the children". He cannot have been referring to the religious beliefs because as we found above, Mr Belli knew about those at the start of the meeting and there was no suggestion of making a referral at that stage.

184. The Tribunal has had to analyse all of the evidence to assess what was Mr Belli's motivation for wanting the referral to be made. One of the reasons relied upon (see ground 182c) was that Mr Belli held substantial concerns on learning about the reason the first placement terminated and that the claimant had misgendered the child during the meeting. Had the only reason been ground 182 (c) the respondent would have been in real difficulty. It was not proportionate for Mr Belli to consider the claimant needed to be reported as unsafe to work with young people as he privately thought that the pupil could not change gender and used the birth pronouns at a private meeting with Mr Belli. Mr Belli was told by the claimant he had respected the rules during the placement and he did not know at that stage there had been an issue over using the wrong pronouns with that child. Mr Belli therefore seems to have objected to the claimant using the birth pronouns at the meeting on 24 March 2023 when only the claimant and Mr Belli were present and concluded he might do so when working with a transitioning child within his school. The claimant is entitled to hold that belief and there had been no objectionable manifestation of that belief to Mr Belli's knowledge at that stage. The

conclusion that the claimant somehow thought less of the child was also not a reasonable one to have drawn purely based on the fact the claimant did not believe the child could change gender and the claimant challenged Mr Belli on this (see paragraph 37 line 152).

185. There were other factors that were in play in the motivation for the referral which is clear from the evidence. The point at which Mr Belli mentions referring the claimant to the EWC is at paragraph 41 line 191 above after the claimant says, "*listen lets finish on a compromise note if I were in charge of you I would sack you..*" It is at this point Mr Belli says he will make the referral, because "*your views are not appropriate for the children*". Mr Belli told Mr Mozher in a telephone call just after the incident that he had been called the "*wokest headteacher ever*" and if the claimant expressed a view on social media it could be a hate crime and breach of the Equality Act. He said he had concerns over his suitability to work with children if he expressed such "*extreme views*" and if they were posted on social media it could be controversial.

186. Having regard to all of the circumstances we do consider that the claimant's protected fourth belief materially impacted on the thinking of Mr Belli in wanting the referral to the EWC and was part of the subjective reason for the treatment. However there were other factors in play including the heated discussion, how it ended with a substantial deterioration and unsuitable behaviour and comments from the claimant and the other factors we have set out above at paragraphs 178 to 180. Mr Belli did not know what the claimant had said on social media at that time but he did know that the claimant was a campaigner and it was reasonable for him to have been concerned about whether he had posted content that may have breached the EWC guidelines given how the claimant had manifested his beliefs at the training event and during his meeting with Mr Belli. The claimant was not employed by the first respondent and the correct approach for investigating such concerns lay with the second respondent and claimant's professional regulator. On this basis we consider that it was proportionate for the first respondent to request a referral be made so that the appropriate investigation could be conducted.

On 24 March 2023 instruct the Second Respondent to terminate the Claimant's engagement with the first Respondent and escorted the Claimant from the school

187. The reasons provided by the first respondent were:

- a) Holding these views were not an issue, however verbalising these views in a workplace could be an issue if it was contrary to the school values, EWC guidelines and the Equality Act;
- b) There were significant areas of concern and risk that the Claimant disregarded these rules and felt he was able to openly discuss his views in the manner he had done at the Training which was considered inappropriate and offensive;

- c) The information about the first placement and the claimant referring to the child in his birth pronouns at his meeting with Mr Belli. We have already dealt with this above. Had this been the only reason it would not have been proportionate.
- d) The claimant's behaviour towards the end of the meeting is asserted to have contravened Section 547 of the Education Act 1996, which states: "It is an offence for any person without lawful authority to be present on school premises and to cause or permit nuisance or disturbance to the annoyance of persons who lawfully use those premises".

188. We consider that the first respondent was justified in terminating the claimant's engagement with the school for the same reasons we have discussed above in paragraphs 178-180 and we have applied the same balancing exercise and consideration to this treatment. It was proportionate to conclude that termination of the placement was the only option. Mr Belli had set out to explain to the claimant why his views should not be expressed within the school environment with reference to the EWC guidelines and the school, values but this proved unsuccessful. There was not in our view another alternative approach that could have been taken especially given the deterioration in the language and behaviour of the claimant at the end of the meeting. It is somewhat ironic that Mr Belli's concern about the claimant being unable to refrain from inappropriate discussion around the children was borne out just minutes after when the claimant sent the email copied to a pupil, in haste and anger.

189. As regards to escorting the claimant from the premises the reason was the deterioration of the discussion rather than the claimant's beliefs. It was unsurprising that Mr Belli asked the claimant to leave immediately given what had just been said by the claimant (*if I were in charge, I would sack you now, you're embarrassing the Church of England and the Catholic faith, you are the wokest headmaster I've ever worked with*).

On 3 July 2023, Kathryn Bates sent a letter to parents / carers containing discriminatory and untrue comments about the Claimant including that he had used highly charged language that caused offence, one of the beliefs expressed by the Claimant had been unlawful and that the Claimant had planned to discuss with pupils a range of inappropriate topics

190. The reasons relied upon by the first respondent were:

- a) The Claimant made a number of attempts to publicise and misrepresent his departure from the school and the parents/carers of the pupils likely had access to the publications and interviews carried out by the claimant as these were in the public domain and targeted at the school and Mr Belli specifically.
- b) The school had received several correspondences from people not affiliated with the school, which included a number of threats and the letters from the parents.

c) The accounts put forward by the claimant provided a factually incorrect version of events which omitted key details and deliberately set out a false narrative which intended to damage the reputation of the school and Mr Belli. The letter was to provide an accurate account of the Claimant's departure.

191. The decision to send the letter by the first respondent was not because of the claimant's religious or protected beliefs but because of the media coverage and the threatening communications being received by the school. The first respondent was entitled to respond to the claimant's account which he put into the public domain. In this regard the claimant was the author of his own misfortune.

192. We did consider that the letter did contain one matter that was not accurate namely the reference to an unlawful belief (the Rwanda policy) but this was not motivated by any of the religious or protected beliefs but by the school's desire to protect their reputation. Whilst this may have been over zealous and ill judged it was not because of the beliefs themselves.

193. By this point in time, the first respondent knew a lot more than Mr Belli had known on 24 March 2023. They knew that claimant had covertly recorded the discussion with Mr Belli. We found above that this was done not out of concern as to how the conversation was going but with the intention on trying to goad and entrap Mr Belli. The claimant had denied discussing inappropriate topics with pupils but as Ms Maunder's investigation uncovered this was not the case. The claimant sought to downplay discussions with pupils outside of lessons and within, saying they only lasted a number of seconds. The investigation found that the claimant had discussed and expressed views that were potentially divisive as set out in paragraph 93 about a wide range of issues. Pupils had sought out the claimant and asked him for his views. The claimant was a self confessed campaigner and debater with strongly held beliefs and the evidence shows he quietly took opportunities to discuss his views with pupils and staff on a number of occasions.

194. This Tribunal recognises the challenges faced when balancing the competing rights of different groups and in particular in a school environment. The claimant has a right to hold his beliefs and to manifest them but he is under the same prohibitions as the rest of society to not discriminate or harass others. Every circumstance turns on the particular facts of the claim. The first respondent was entitled to want to exercise a degree of control over how beliefs were manifested within the school environment in accordance with the school's values given the potential power imbalance between teachers and pupils and in the context of potentially vulnerable pupils.

195. For these reasons the claimant's claims of direct discrimination against the first respondent are not well founded and are dismissed.

196. We can deal with the claimant's claims of direct discrimination against the second respondent succinctly as the reasons for the treatment

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are as set out at paragraph 165 and not his religious or protected beliefs.
These claims are not well founded and are dismissed.

Employment Judge S Moore

Date 2 December 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

19 December 2024

Katie Dickson
FOR EMPLOYMENT TRIBUNALS

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AGREED LIST OF ISSUES

1. Protected beliefs

1.1. It is the Claimant's case that he holds the following beliefs which he contends are both religious and philosophical beliefs within the meaning of s.10 EqA:

1.1.1. A belief in Biblical marriage or a lack of belief in same sex marriage (whilst recognising that same sex marriage is legal, he believes this is contrary to Biblical teaching);

1.1.2. Human life must be respected and protected from the moment of conception. Abortion is gravely contrary to the moral law;

1.1.3. Being critical of aspects of sharia law, for example that homosexual acts should be severely punished; and

1.1.4. A belief that sex is fixed or i) a lack of belief that someone can change their biological sex and/or gender and ii) a lack of belief in gender fluidity. The Belief in the Bible Genesis 1.27.

1.2. Are these beliefs protected under s.10 EqA? In particular, in relation to each of the above beliefs:

1.2.1. Was the belief held by the Claimant at the relevant time?

1.2.2. Did the belief constitute a belief which amount to more than an opinion or viewpoint based on the present state of information available?

1.2.3. Was the belief as to a weighty and substantial aspect of human life and behaviour?

1.2.4. Did the belief have a sufficient level of cogency, seriousness, cohesion and importance? and

1.2.5. Was the belief worthy of respect in a democratic society?

1.3. To the extent that the above beliefs are a protected belief, did the Respondents know that they were held by the Claimant?

1.4. Alternatively, did the Respondents perceive the Claimant to have the above beliefs (to the extent that the Claimant did not in fact hold them)?

2. Manifestation of belief

2.1. Did the Claimant manifest the above beliefs at a Diverse Cymru Training 23rd March 2023 conducted by the First Respondent on 23rd March 2023 and / or during his meeting with the First Respondent's Headteacher, Mr Belli, on 24th March 2023?

3. Respondents' position regarding Claimant's contended for beliefs

3.1. The First Respondent accepts that the Claimant's stated beliefs are capable of being protected under s.10 EqA as religious or philosophical beliefs with the exception of paragraph 1.1.3 which is not understood.

3.2 The Second Respondent accepts that some of the beliefs on which the Claimant relies may considered to a protected belief.

4. Harassment related to religion and / or belief (Equality Act 2010 section 26)

Alleged unwanted conduct

Did the First Respondent do the following things:

- 4.1.1. On 24 March 2023, Marc Belli told the Claimant that he did not want him to express the beliefs mentioned during the Diverse Cymru Training on 23 March 2023 whilst working at the Respondent; and
 - 4.1.2. On 24 March 2023, Marc Belli told the Claimant that he did not want him to express the beliefs mentioned during the Diverse Cymru Training on 23 March 2023 in his private life on social media; and
 - 4.1.3. On 24 March 2023, Marc Belli told the Claimant he would report him to the Educational Workforce Council (“EWC”) as he thought the Claimant’s views made him unsafe to work with young people; and
 - 4.1.4. On 24 March 2023, Marc Belli requested that the Second Respondent report the Claimant to the EWC; and
 - 4.1.5. On 24 March 2023 instruct the Second Respondent to terminate the Claimant’s engagement with the first Respondent and escorted the Claimant from the school; and
 - 4.1.6. On 3 July 2023, Kathryn Bates sent a letter to parents / carers containing discriminatory and untrue comments about the Claimant including that he had used highly charged language that caused offence, one of the beliefs expressed by the Claimant had been unlawful and that the Claimant had planned to discuss with pupils a range of inappropriate topics.
- 4.2. Did the Second Respondent do the following things:
- 4.3. On 24 March 2023 refer the Claimant to EWC for being unsafe to work in education and ;
- 4.4. On 25 May 2023 dismiss the Claimant?
- 4.5. If so, was that unwanted conduct?
- 4.6. Did it relate to the Claimant’s protected beliefs or was it for a non-discriminatory reason including, inter alia, that he conducted himself in the workplace a manner which was deliberately controversial, divisive, and provocative, without regard for his colleagues, and with a lack of professionalism.

5. Direct religion / belief discrimination (Equality Act 2010 section 13)

- 5.1. The Claimant is a Christian with Catholic beliefs.
- 5.2. Did the Respondents do the following things:
 - 5.2.1. The Claimant relies upon the same acts as the harassment claim set out above, with the exception of his referral to EWC at 4.1.4 and 4.3 above.
- 5.3. Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than a comparator whose circumstances (other than the protected beliefs) were not materially different to his own.

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

The Claimant has not named anyone in particular who he says was treated better than he was.

- 5.4. If so, was it because of the Claimant’s protected beliefs or his manifestation of the same or was it for a non-discriminatory reason including, inter alia, that he conducted himself in the workplace a manner which was

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deliberately controversial, divisive, and provocative, without regard for his colleagues, and with a lack of professionalism?

5.4.1. If the treatment was because of a manifestation of the Claimant's protected beliefs, was the Claimant's manifestation of his beliefs an objectionable manifestation, such that the Respondents can show that the treatment was a necessary means of protecting the rights and freedoms of others?