



EMPLOYMENT TRIBUNALS

Claimant: Ms Misti Kilburn

Respondent: 1. Sensient Flavors LLC
2. Sensient Technologies Corporation
3. Sensient Flavors Ltd

RECORD OF A PUBLIC PRELIMINARY HEARING

Heard at: Watford Employment Tribunal
On: 6 and 7 May 2025
Before: Employment Judge Alliott
Members: Mr D Bean
Mr N Boustred

Representation

Claimant: Mr Jack Ventress (counsel)
Respondent: Mr Kieron Wilson (counsel)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant's beliefs as set out in sub-paragraphs 12.1 and 12.2 of the list of issues are protected philosophical beliefs within the meaning of s.10 of the Equality Act 2010.
2. The allegation at paragraph 4.3 of the list of issues ("Terminated the claimant's employment relationship") is struck out pursuant to rule 38(1)(a) as it has no reasonable prospect of success. Save as aforesaid, the respondent's applications for strike out and/or deposit orders are dismissed.
3. The claimant's application for costs is dismissed.
4. The main hearing is not reserved to this panel.

REASONS

Introduction

1. This public preliminary hearing was ordered by Employment Judge Dick on 28

January 2025 to deal with the following:

- “1.1 As a substantive issue, whether the beliefs on which the claimant relies amount to protected beliefs within the meaning of the Equality Act 2010.
 - 1.2 Any application by the respondent for strike out (in particular relating to the six discrimination complaints) and/or deposit orders.
 - 1.3 Any argument about the admissibility of evidence relating to the meeting of 3 October 2023 and subsequent communications, on the basis that the communications were without prejudice and/or subject to section 111A ERA.
 - 1.4 Whether to reserve the main hearing to the same panel.
 - 1.5 Any further case management orders which may be necessary, including timetabling the main hearing.”
2. At the outset of this hearing Mr Wilson indicated that the dispute about the admissibility of evidence relating to a meeting on 3 October 2023 [actually 4 October 2023] was no longer in issue.
3. The claimant was employed by one of the respondents on 7 July 2014. By 2023 she was working as a Senior Human Resources Manager in the UK. It is the claimant’s case that her employment ceased either on dismissal on or after 4 October 2023 or with immediate effect when she resigned on 3 November 2023. It is the respondent’s case that the claimant resigned.
4. By a claim form presented on 20 February 2024, following a period of early conciliation from 20 December 2023 until 31 January 2024, the claimant brings complaints of unfair dismissal or unfair constructive dismissal , wrongful dismissal, direct discrimination (philosophical belief and/or sex), harassment (philosophical belief and/or sex) and victimisation.
5. The respondent defends the claims.

Philosophical belief

6. The philosophical beliefs relied upon by the claimant are as set out in paragraph 12 of the list of issues. The list of issues was prepared by the professional representatives of both the claimant and the respondent. It recites:-

“Protected belief – section 10 Equality Act 2010

12. The claimant relies on the beliefs that:

- 12.1 White middle-aged men have an unseen, unconscious advantage or privilege in many public and private areas of their life by consequence of their gender, age and race.
- 12.2 Women remain disadvantaged in many public and private areas of their life and that factors such as ethnicity and age affect women’s experience and the types of disadvantage to which they might be subject.”

The evidence

7. For this hearing we were provided with a hearing bundle running to 244 pages.

8. We were provided with witness statements from the claimant, Ms Ami Schmidt Jones and Mr Mike George, although, due to the admissibility of evidence issue being resolved, we did not consider the respondent's two witness statements. We heard oral evidence from the claimant.
9. Both the claimant and the respondent provided us with skeleton arguments for which we are grateful.

The law

10. Section 10 of the Equality Act 2010 provides as follows:-

“10 Religion or belief

- (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.”

11. Mr Ventress and Mr Wilson both made extensive submissions on the law in their skeleton arguments. We record that we have taken them into account.
12. Both parties referred us to the EAT's decision in Grainger Plc v Nicholson [2010] ICR 360, EAT which provides that a belief can only qualify for protection if it:

- is genuinely held.
- is not simply an opinion or viewpoint based on the present state of information available.
- Concerns a weighty and substantial aspect of human life and behaviour.
- attains a certain level of cogency, seriousness, cohesion and importance, and
- is worthy of respect in a democratic society, is not incompatible with human dignity, and is not in conflict with the fundamental rights of others.

13. Those criteria have now been replicated in the Equality and Human Rights Commission (EHRC) Code of Practice on Employment (January 2011) as official guidance on what comprises a philosophical belief for the purposes of the protected characteristic of religion or belief. It states:-

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

2.58 A belief need not include faith or worship of a God or Gods, but must affect how a person lives their life or perceives the world.

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

- It must be genuinely held;
- It must be a belief and not an opinion or viewpoint based on the present

state of information available;

- It must be a belief as to a weighty and substantial aspect of human life and behaviour;
- It must attain a certain level of cogency, seriousness, cohesion and importance;
- It must be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.”

14. Both parties submitted that the starting point when determining whether a belief is protected is to define exactly what the relevant belief is – Gray v Mulberry Co (Design) Ltd [2020] ICR 715. In this case, the beliefs have been defined in the agreed list of issues.
15. Both parties submitted that the tribunal should not set the bar too high when considering whether a belief is protected under s.10 Equality Act. The case of Forstater v CGD Europe [2022] ICR 1 references the “modest threshold requirement” nature of the Grainger guidance.
16. The EAT in Forstater also made it clear that tribunals should not stray into the territory of adjudicating on the merits and validity of the belief itself. They must remain neutral and abide by the cardinal principle that everyone is entitled to believe whatever they wish, subject only to a few modest, minimum requirements.
17. As per McClintock v Department of Constitutional Affairs [2008] IRLR 29, the EAT observed:-

“As the tribunal in our view correctly observed, to constitute a belief there must be a religious or philosophical viewpoint in which one actually believes; it is not enough “To have an opinion based on some real or perceived logic or based on information or lack of information available.”

18. Mr Wilson cited to us extracts from the case of Mackereth v DWP [2022] ICR 1609, in particular:-

“Moreover, the additional test of cogency, seriousness, cohesion and importance (Grainger (iv)) may mean that the more narrowly a belief is defined the less likely it is to be found to be a philosophical belief for the purposes of section 10 of the Equality Act 2010.”

19. Further, it is noted that in the case of Mackereth the following is recorded at 110:-

“That said, we consider the problems can be seen to arise in the ET’s reasoning, (1) From a missed characterisation of the statement made at (b), and (2) from an elision between belief and what might amount to a manifestation of that belief.”

The evidence

20. It is fair to say that the claimant’s witness statement goes significantly beyond dealing with the two beliefs relied upon and ranges over much wider aspects of societal inequality from her perspective. In addition, the examples provided in the hearing bundle reflect the wider beliefs of the claimant, for example, female bodily autonomy and the right to an abortion. Nevertheless, the two beliefs relied upon are set out in her witness statement and justified from her perspective.

21. In her cross examination the claimant agreed to a number of propositions put to her;
- i) She agreed that her views were based on her lived experience in part.
 - ii) She agreed that her views also arose in consequence of what she had read and other external circumstances.
 - iii) She agreed that she thought the world was set up for men.
 - iv) She agreed that her viewpoints were rooted in evidence.
 - v) She agreed that she supported feminism and women's rights.
 - vi) She agreed that her views were narrower than feminism in general.
22. She disagreed that they did not exist on their own as a concept.
23. It was clear to us, and we find, that the claimant does genuinely believe that white middle aged men have an inherent advantage, in particular in the workplace, and that women remain disadvantaged, in particular in the workplace.

Conclusions

24. Both parties referred to the five limbs of the Grainger test as Grainger 1,2,3,4 and 5. The respondent accepts that Grainger 1,3 and 5 are satisfied in this case. The respondent contends that Grainger 2 and 4 are not met.
25. The respondent concentrated on the beliefs as pleaded whereas the claimant sought to expand, and indeed add a third philosophical belief, namely a belief in gender equality and the need actively to support women's rights. However, as currently constituted, the list of issues does not recite that as a philosophical belief. Further, the way the matter is pleaded in the claimant's claim form recites the two philosophical beliefs before us and then a more general philosophical belief in gender equality as an add on. We have concentrated on the philosophical beliefs as pleaded in 12.1 and 12.2.
26. That said, in our judgment, the philosophical beliefs contended for cannot be seen purely in isolation and have to be seen in their context. The context is plainly gender inequality and female based disadvantage in the workplace and elsewhere.
27. We have considered whether the beliefs are merely widely held opinions based on the state of information available or whether it crosses the threshold into becoming a philosophical belief. On the one hand, we accept that the beliefs advanced do represent widely held opinions based on information available. We accept that many would subscribe to the view that in the workplace white middle-aged men have an advantage and women are disadvantaged. We take judicial notice of the fact that 'glass ceilings' for women in the workplace are often referenced in political debate and illustrated by reference to the underrepresentation of women on the boards of FTSE 100 companies. That said, such views, in our judgment, represent the reflection of, at least, the perceived reality where unfairness in the workplace needs to be acknowledged and addressed by equality in the workplace and the promotion of women's rights. It is how the claimant perceives the world. In our judgment, the context is wider than the narrow definition of the beliefs as pleaded in this case.

28. In our judgment the beliefs as defined are not that narrow. They cover a large section of males in senior management roles and all females in the workplace. We find that they constitute matters of principle and fundamental beliefs. We do not consider that we have elided belief with what might amount to manifestation of a belief.
29. Applying the relatively low threshold to constitute a philosophical belief, in our judgment the claimant's beliefs cross that threshold and consequently we find that they are such beliefs and Grainger 2 is satisfied.
30. We went on to consider Grainger 4 and the cogency, seriousness, cohesion and importance. As far as cogency is concerned we consider that the two beliefs advanced have internal logic and consistency. Further, we find that the issue of equality in the workplace and the promotion of women's rights is serious and important. We note that the beliefs need not constitute or allude to a fully-fledged system of thought. We take into consideration whether the beliefs provide a guiding principle for behaviour. In our judgment, the claimant conducted herself both at work and domestically to promote equality of treatment and opportunity at work and by mentoring women in the workplace. We accept that the claimant also mentored men and some of her functions at work represented her job. However, we note that some time ago a colleague gave the claimant a sign stating, "The future is female" and that present would only have been prompted by an awareness that the claimant conducted herself at work in support of the promotion of equality and the promotion of women's rights. Consequently, we find that the claimant did have guiding principles for her behaviour from her beliefs and that Grainger 4 is satisfied.
31. We stress that we express no opinion on the merits and validity of the claimant's beliefs. Further, we have taken into account that the first belief may be said by some white middle-aged men to be offensive and borderline racist, ageist and sexist stereotyping. Nevertheless, the belief is not advancing the proposition as a good thing and, if it were correct, few would suggest that it was a good thing. Beliefs that some may find objectionable still qualify for protection as long as they do not fall foul of Article 17 of the convention ECHR which we find these do not and, in any event, Grainger 5 was conceded.

Approved by:

Employment Judge Alliot

Date: 18 June 2025

JUDGMENT SENT TO THE PARTIES ON

25 June 2025

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment on the strike out and deposit order applications and the application for costs having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request

is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/