EMPLOYMENT TRIBUNALS

Claimant: Mr A Al-Abasi

Respondent*:* nGAGE Talent UK Employees Limited

Full Merits hearing

At Victory House On:	10-12 June and on 6 August for Tribunal deliberations in Chambers 2025
Before:	Employment Judge Nicolle
Non Legal Members:	Ms Z Darmas Mr R Baber
Representation:	
For the Claimant:	In person
For the Respondent:	Ms N Mallick, of Counsel

JUDGMENT

1. The claim for harassment on account of the Claimant's Muslim faith under section 26 of the Equality Act 2010 (the EQA) succeeds in relation to his being asked to remove the LinkedIn post of 5 August 2024 regarding the Complainant's post and his being told to remove the post or face "consequences".

2. His claims in respect of not been permitted to record the meetings on 5 and 6 August 2024 between him and Mr Stratton and Mr Head and being told if he was not willing to remove the post he needed to change his LinkedIn profile so that there was no link between him, and the Respondent fail.

3. Given the above it is unnecessary to consider the Claimant's claim pursuant to S 13 of the EQA, but had it been so necessary it would have failed.

4. The claim on account of the Claimant's race whether pursuant to s26 or s 13 of the EQA fails.

REASONS

The Hearing

5. There was an agreed bundle comprising of 355 pages. This included the witness statements and significant duplication of documents.

Witnesses

6. The Claimant gave evidence and Louise Hindley, Group Chief People Officer (Ms Hindley), Mark Stratton, Managing Director of Community Resourcing Limited (Mr Stratton) and Paul Head, Operations Manager (Mr Head) gave evidence on the Respondent's behalf.

The Respondent's strike out application

7. The Respondent had previously made a written application for the strike out of the claim on the basis that it had no reasonable prospect of success pursuant to Rule 37(1) of the Employment Tribunal Procedure Rules 2024 (The Rules). Directions had been given that this application would be heard at the full merits hearing. The Tribunal did not consider it appropriate to hear the application on the opening afternoon of the case given that it had not had the opportunity to read the witness statements and key documents. It was agreed that the Respondent could make an application to dismiss the case on the basis that there was no case to answer after the Claimant's evidence. Such an application was made and dismissed by the Tribunal. Oral reasons were given and there is no need for these to be repeated in this judgment.

Relevant case history

8. The Claimant undertook ACAS early conciliation between 21-25 March 2024 and issued his claim on 1 May 2024. The claim originally involved allegations of workplace bullying, unfair treatment and constructive dismissal.

9. Following a case management hearing before Employment Judge Wisby on 19 September 2024 the claims for unlawful deduction of wages and constructive unfair dismissal were dismissed on withdrawal. By consent the claim form was amended following the Claimant's email to the Tribunal dated 6 August 2024 to include a complaint of race and religion/belief discrimination. The case management order of Employment Judge Wisby sets out the claims for direct race and/or religion discrimination pursuant to s.13 of the EQA and harassment related to race and/or religion pursuant to s.26 of the EQA and there is no need to repeat them at this stage, but they will be considered in the conclusions section.

Findings of Fact

The Respondent

10. The Respondent is part of a group of companies under a parent company known as nGAGE Specialist Recruitment Limited t/a nGAGE Talent. This group

of companies provides employment agency and employment business services as defined under the Employment Agency Act 1973. Everyone working for an nGAGE Talent company in the UK is employed the Respondent and then assigned to a brand, in this case ComRes. ComRes trades in the market under three separate trading names and in this case the Claimant was working for the brand Eden Brown Built Environment (Eden Brown).

11. The Respondent has approximately 570 employees in the UK. It also operates overseas and has approximately 11,000 employees worldwide.

The Claimant

12. The Claimant commenced employment with the Respondent on 30 November 2020 and remains employed as a Divisional Manager. A large proportion of his role is placing temporary workers into roles through neutral vendors and/or managed service providers through vendor management software.

13. It is not disputed that the Claimant was one of the Respondent's highest performing employees and earnt average annual renumeration well in excess of £100,000. This was largely as a result of his receiving significant bonus and commission payments based on his successful placing of candidates.

The Claimant's self-identification

14. The Claimant identifies as a Muslim and Arab. He candidly accepted that he was not a particularly devout or observant Muslim. He came to the UK with his family from Iraq in 2000. Whilst he did not withdraw his claim of race discrimination he made it clear that his complaint was primarily based on his religion.

The Claimant's name

15. In communications on Linkedin and day to day email communications the Claimant identifies as Abs Valentino. He says that Abs is his nickname and Valentino is his late father's surname. He explained that he adopted Abs Valentino as it was easier for clients and contacts to use than his actual name. He says that Abdalah Al-Abasi appears on formal communications relating to his employment and on the company's online HR system. However, Mr Stratton and Mr Head both denied knowing him by anything other than Abs Valentino. Further, they denied knowing that he was a Muslim.

16. The Tribunal accepts that neither Mr Stratton nor Mr Head were aware as to the Claimant's actual name and Muslim faith prior to 5 August 2024. We do, however, consider that HR, and therefore the corporate Respondent, would have been aware of the Claimant's actual name and, in any event, this was included on the ET1 he issued on 1 May 2024. We also consider that it would have been likely that the claimant having come to the UK from Iraq would have been something he would have disclosed and discussed with his colleagues.

17. We acknowledge Ms Mellick's submission that even had they been aware of his actual name, whilst it may have been perceived that it was likely to indicate that he was of the Muslim faith, this was not necessarily the case. Nevertheless reject her contention that any assumption that he was likely to be a Muslim given that he came from Iraq/the Middle East would have been inappropriate given that individuals in the Middle East can have different faiths and are not necessarily Muslims. In reaching this conclusion we give judicial notice to the high probability that individuals from Iraq are likely to identify as Muslims albeit they may not necessarily be actively practicing Muslims and display a significant level of religious engagement.

Offer of employment and contract of employment

18. The Claimant received an offer of employment pursuant to a letter dated 23 November 2020. This included a provision that by accepting the offer that he would abide by any ongoing valid restrictions contained in his contract of employment or other contractual documents.

19. The Claimant signed his contract of employment on 10 December 2020. This included a provision regarding monitoring communication as follows:

> "Eden Brown reserves the right, at its discretion, to review any employee's telecommunications, electronic files and messages to the extent necessary to ensure these media are being used in compliance with the law, this contract and other company policies".

The Claimant's previous grievance

20. On 3 November 2022 the Claimant raised a grievance which was partially upheld and included in an outcome that he was due a "stretch bonus" which should be paid and back dated to January 2022.

Change of employer

21. Pursuant to a letter dated 30 March 2023 Ms Hindley advised the Claimant that with effect from 1 April 2023 his employer has changed to nGAGE Talent UK Employees Limited. This did not involve any change to his terms and conditions of employment.

Social media policy

22. Relevant provisions include:

> 1.2 This policy deals with the use of all forms of social media, including Facebook, LinkedIn, Twitter, Google +, Wikipedia, Whisper, Instagram, Tumblr and all other social networking sites, internet postings and blogs. It applies to all use of social media for business purposes as well as personal use that may affect our business in any way.

3.1 You must avoid making any social media communications that could damage our business, interests or reputation, even indirectly.

3.2 You must not use social media to defame or disparage us, our staff or any third party; to harass, bully or unlawfully discriminate against staff or third parties; to make false or misleading statements; or to impersonate colleagues or third parties.

3.3 You must not express opinions on our behalf via social media, unless expressly authorised to do so by your manager.

3.6 Any misuse of social media should be reported to your manager or a director.

4.1 You should make it clear in social media postings, or in your personal profile, that you are speaking on your own behalf, write in the first person and use a personal email address.

4.3 If you disclose any affiliation with us on your profile or in any social media postings, you must state that your views do not represent those of your employer.

4.4 If you are uncertain or concerned about the appropriateness of any statement or posting, refrain from posting it until you have discussed it with your manager.

5.1 Breach of this policy may result in disciplinary action up to and including dismissal.

5.2 You may be required to remove any social media content that we consider to constitute a breach of this policy. Failure to comply with such a request may in itself result in disciplinary action.

Equal opportunities policy

23. The Respondent has an equal opportunities policy which is accessible to employees on the Respondent's Dayforce HR system.

Respondent letter to the Claimant 21 March 2024

24. In this letter he was advised that his request for a meeting to be recorded was not permitted as a matter of course, as under GDPR regulations, the recording of meetings falls under collection of personal data. The Respondent's position is that it does not permit any employees to record meetings whether on Microsoft teams or otherwise. The Tribunal accepts that this represents the uniform policy applied by the Respondent absent any evidence that any employee has been permitted to record meetings.

The Claimant's use of Linkedin

25. It was agreed that Linkedin is used by the Claimant and the Respondent more generally as a significant business tool. Whilst the Claimant says that Linkedin has become increasingly used for personal communications over the last two years we find that it remains primarily a business networking site and this was the primary basis for the Claimant's use of it. The Claimant estimates that he has approximately 5000 Linkedin contacts and estimates that approximately 80% of these are business contacts from Housing Associations, Councils and Tenancy Management Associations.

The "incident" of 5 August 2024

Relevant background

26. The Linkedin messages giving rise to this claim need to be seen in the context of the relevant background. This comprised the febrile atmosphere, particularly online, following the murder of three British children at a nursery in Southport on 29 July 2024. In the days that followed there was considerable speculation and, in some instances, provocative and inciting online communications regarding the background and religion of the assailant. There then followed a series of riots, primarily in northern towns, to include attacks on hotels and other buildings holding asylum seekers.

27. Whilst Ms Mallick referred to pro-Palestinian marches and protests the Tribunal considers that the context for the LinkedIn messages giving rise to this claim primarily emanated from the Southport attack, the resultant online speculation and riots.

The message to which the Claimant took exception

28. We do not consider it necessary to name the poster of the message to which the Claimant took exception, but it is necessary to set out what he said. His post read as follows:

> "For over two decades Islamic grooming gangs have torched and raped tens of thousands of white British girls, in the name of religious and racist bigotry.
>
> They take to the streets calling for Jihad, calling for Jewish people to be killed, killing thousands of people across UK and Europe whilst shouting Allhu Akbar, beheading a French teacher in the middle of a French city … removing his head! for drawing a picture … all of this and more.
>
> Literal racism"

This post is subsequently referred to as the Complainant's post.

29. The Claimant explained that the poster of this message was not a client or direct business contact of the Respondent but rather a recruitment consultant

who had approached him regarding possible alternative opportunities. Following two initial telephone calls he became a LinkedIn contact of the Claimant.

30. The Clamant posted on Linkedin in respect of this message as follows:

> "For any Recruitment Consultant that is seeking Rec2Rec help to find a new role please do not work with this individual below if you feel uncomfortable reading the below.
>
> I would never engage in conversations with individuals who are ignorant however, I do feel its imperative to highlight individual's ideology especially when it is so far right".

This post is subsequently referred to as the Claimant's post.

31. The Claimant says that he sent this message during his lunch hour. It includes his name as Abs Valentino and his position as Divisional Manager at Eden Brown.

32. The Claimant says that before posting this message he had reviewed other communications by this individual on Linkedin to include messages from others he had liked or forwarded. It is not necessary to set these out in detail, but the Tribunal takes note that these communications involved inflammatory communications regarding Muslims and Islam to include one from the well-known social media poster, Laurence Fox which read:

> "Enough of this madness now,
> We need to permanently remove Islam from Great Britian.
> Completely and entirely"

33. The Claimant says he took a screen shot of Mr Fox's post.

34. The poster of the message to which the Claimant took exception sent an email to Tim Cook, Group CEO and Adam Herron, Group COO at 15:25 on 5 August 2024. This individual is subsequently referred to as the Complainant. He advised Mr Cook and Mr Herron that he would be seeking advice over the Claimant's post.

35. The Claimant gave evidence that he did not take exception with the Complainant's reference to Islamic grooming gangs. We consider that this was at least arguably an overly generous concession by the Claimant given that whilst the prevalence of men of Pakistani ethnic heritage in grooming gangs is now largely acknowledged the Complainant made reference to "Islamic grooming gangs" and this being in the name of religious and racist bigotry. We consider that these communications are distorting and potentially aimed to incite antipathy towards Muslims.

36. The Claimant did, however, take exception to the remainder of the Complainant's post. The Respondent's witnesses do not in any way condone the Complainant's message. However, Ms Hindley says that the Complainant's post

is capable of objective verification given links provided in his previous social media postings.

37. Whilst it is not for the Tribunal to reach a finding on the Complainant's Linkedin messaging and whether they are Islamophobic we have nevertheless considered the contention of Ms Hindle that his comments are capable of factual justification.

38. In respect of "killing thousands of people across UK and Europe" we note that Wikipedia records there having been 406 deaths attributable to Islamic terrorism in Europe between 2012 and 2023. We do, of course, treat such information with caution but nevertheless use it to support judicial notice of a significant number of murders in Europe between 2012 and 2023 attributable to Islamic terrorism. Nevertheless, this figure is significantly below the Complainant's contention that there were thousands of murders across the UK and Europe attributable to Islamic terrorism. We acknowledge that his reference to the beheading of a French teacher is factually correct.

39. We consider that the overall tone of his post, particularly given the febrile atmosphere and anti-Muslim/immigrant/asylum seeker feeling within certain sections of the UK population at that time, but also when seen in conjunction with the Complainant's general posts and interactions on LinkedIn, and his liking or forwarding of posts from other individuals, to include, but not limited to Mr Fox, that his message was one which the Claimant as a Muslim understandably took exception to.

<u>The Complainant's email to Mr Cook and Mr Herron of 16:17 on 5 August 2024</u>

40. He stated:

> "I write this to you in a state of shock and dare I say anger – in fact I am livid.
>
> Firstly Abs, you have incorrectly slandered me personally and my company brand. Your actions have consequences on my ability to trade, and by your own words, that is exactly your intention.
>
> Secondly, you accusation of me being "far-right" is incorrect, by a country mile. Everything I stated in the comments you have shared with recruitment businesses at will, is factually correct. Nothing I have said is conjecture, nor is it based on "racism" or "far-right" ideology. I have pointed out incidents that have happened in the name of a religious belief – I have posted links to my comments to back up what I say.
>
> And I do so on an open platform fully aware that some people will agree, and some people will not.
>
> But you have taken it upon yourself to slander me and actively tell people to not work with me. I am not a legal expert, but I will be contacting people

who are, as I am reasonably sure this is slander/corporate slander – call it what you will.

I refute and resent your remarks to fullest".

Meeting with the Claimant on 5 August 2024

41. Mr Stratton was made aware of the Claimant's post. He contacted Amy Parker in HR for advice. Ms Parker told him that she had spoken to Ms Hindley and that the post should be taken down. He checked and established that the Claimant had not sought authority before posting. Prior to his meeting with the Claimant, he was informed that the Complainant had sent an email to Mr Cook and Mr Herron.

42. The meeting took place on MS Teams. The Claimant told Mr Stratton that he was not willing to take the post down.

43. The Claimant says that he asked Mr Stratton if he could record the meeting. Mr Stratton cannot recall this. As a matter of fact, the meeting was not recorded.

44. The Claimant says that Mr Stratton told him that there would be "consequences" if he did not take down the post. Mr Stratton said that whilst he could not recall the exact words he used it is possible that he did explain to him that under the social media policy a breach of its terms may result in disciplinary action up to and including dismissal.

45. Following the Teams meeting Mr Head sent the Claimant and Mr Stratton an email at 17:51 on 5 August 2024. This included an abbreviated overview of the matters discussed during the meeting which is estimated to have lasted approximately 15 minutes. It stated:

- Mr Stratton requested the removal of post from today on the Claimant's Linkedin account
- The Claimant not prepared to remove post in its entirety but agreed to remove Eden Brown name in association with the post itself
- Mr Stratton advises reading the social media policy
- Further meeting to be held once social media policy received and read by the Claimant

46. The Claimant says that he asked for the company to make a corporate post in solidarity. He points to other organisations having done so to include Metropolitan Thames Valley University and Sadiq Khan, Mayor of London. The Respondent distinguishes these as being public sector bodies. The Respondent did not consider it appropriate to make such a post as it would involve being inconsistent with its approach not to enGAGE in potentially contentious matters of public discourse and, in any event, any such communication would have needed the approval of the Respondent's Marketing Director.

The Claimant's email to Mr Cook, Mr Herron, Ms Hindley, Mr Stratton and Mr Head of 19:46 on 5 August 2024.

47. The Claimant has said that he believed the situation needs to be reviewed more thoroughly, considering the context and content of the post. The Claimant attached various screen shots pertaining to the Complainant's messages on Linkedin. He said that the Complainant's comments have affected many people in our business, including himself. He said that his post does not contain anything that would harm the business. He said that the situation made him question whether the Respondent's commitment to diversity and inclusion is truly upheld when it matters most.

48. The Claimant referred to him and his family having experienced years of racial targeting and abuse when they first moved to the UK. He said that there had recently been posts highlighting plans riots and attacks targeting certain communities. He said that he strongly believed that more people should speak out against those promoting hate speech to prevent others from experiencing the terrible things he and his family had experienced.

49. At 1214 on 6 August 2020 for the Claimant applied for leave to amend his tribunal claim issued on 1 May 2024 to include the matters which now form the substance of this claim.

The Claimant's email to HR of 2119 on 5 August 2024

50. In an email of 21:19 on 5 August 2024 the Claimant asked HR to provide him with a copy of the Respondent's equalities policy. There is no evidence that an email was sent to him with a copy of the policy but the Respondent says that he would have had access to it on Dayforce and that he should have been familiar with its operation as it is used by employees to book holiday, obtain pay information and access the Respondent's corporate employment documents to include the staff handbook, social media and equality policies.

The Claimant's email to Mr Head of 1252 on 6 August 2024

51. In an email of 12:52 on 6 August 2024 the Claimant advised Mr Head that he had booked an appointment with his GP at 2pm that day due to his mental health in regard to what had happened yesterday.

Mr Stratton and Mr Head second meeting with the Claimant at 16:00 on 6 August 2024

52. The Claimant said that he was willing to make an amendment with the adding of a disclaimer. The Claimant also amended his reference in the post to the Complainant's post being "so far right" to "when it's so wrong". He says this change was made by 17:30 on 5 August 2024.

Claimant's email to HR Service Desk and copied to Mr Stratton and Mr Head of 16:39 on 6 August 2024.

53. This included his saying:

> "Well, I have just been asked on another MS teams call to remove something from my LinkedIn again otherwise there will be consequences by Mr Stratton and Mr Head and that the decision seems to be made however, I am not receiving an equal opportunity of having adequate time and access to read the equality policy as well as hearing from ACAS/Employment Tribunal.
>
> "Until I receive the equalities policy along with a direct response from HR once they have investigated this grievance in its entirety and conclude their findings as well as a response from ACAS to inform me whether I should remove the post or not".

54. The Claimant says that this email constituted his raising a grievance. The Respondent disputes this saying that it was incapable of constituting a grievance as the Claimant was not specific as to its subject. We consider that this represents an unduly restrictive interpretation of the raising of a grievance given that the Claimant specifically refers to "this grievance" but also in the context of it being apparent to the Respondent that the Claimant was dissatisfied with the previous day's request that he should take down the post.

Email from Mr Stratton to the Claimant of 17:28 on 6 August 2024

55. Mr Stratton made reference to the social media policy. He said that the post was targeted at an individual rather than a broad expression of the Claimant's thoughts or a comment directly to his post. He said: "We are certainly not trying to silence you as an individual or suggest we support the statements made by the Complainant".

56. The Claimant was advised that a failure to comply with the Respondent's reasonable request for action (to remove his post) can only be considered gross misconduct and inevitably follow a disciplinary course.

The Claimant's email to Mr Stratton of 17:45 on 6 August 2024

57. The Claimant proposed what we consider to be a reasonable solution that he would go back to the post and amend/edit it to clearly state at the top:

> "Please note disclaimer! The above comments do not represent the views of my employer or that of any other organisation. These comments are strictly my view".

58. In an email of 12:48 on 7 August 2024 Mr Stratton advised the Claimant that his proposed solution was acceptable as long as it was placed at the top of the post. Mr Stratton and the Respondent more generally considered that this represented the end of the matter.

The Complainant's email to Mr Herron of 8:36 on 12 August 2024

59. The Complainant advised Mr Herron that he would not be pursuing this matter.

60. In a message from Ms Hindley to the Claimant on Microsoft Teams at 11:28 on 7 August 2024 she referred to the Claimant's proposed disclaimer and asked whether he wanted to raise any other issues with her. She says that he did not.

The Claimant's Linkedin profile after this incident

61. The Claimant says that the removal of Eden Brown and his position as Divisional Manager from his Linkedin posts compromised his business generation potential. The Tribunal was provided with a screen shot of his personal Linkedin profile which includes his Eden Brown email address, mobile number and makes references to his position at Eden Brown. The Claimant says that this would not have been immediately accessible as it would have involved clicking into his profile rather than seeing his contact details from his individual posts.

The Claimant's stance more generally

62. The Claimant says that he would take exception to and call out any inappropriate communications and not just those specific to Muslims and Islam. For example, in response to a question from the Judge he said that he would call out a post involving anti-Semitism or Holocaust denial.

The Respondent's monitoring of social media posts

63. Ms Hindley says that Marketing monitor online and social media communications. This includes automated key word searches. She believes that: "far-right" may constitute a potential red flag.

64. Ms Hindley says that the Respondent took internal legal advice regarding the Complainant's threat of legal action.

Mr Stratton's evidence

65. Mr Stratton was extremely uncertain as to whether he had undergone diversity/equality training. Mr Head says that such training forms part of the Respondent's annual training on its SkillsCast system. Nevertheless, we consider that Mr Stratton's uncertainty as to whether he had undertaken such training would indicate that on the balance of probabilities he had not undertaken the training.

66. In response to a question from Mr Baber, Mr Stratton said that he had probably asked the Claimant to remove the post in its entirety rather than merely to remove the reference to Eden Brown. The Respondent accepts that such a request was made.

67. Mr Stratton was concerned regarding a potential commercial risk to the business of the post. He said that whilst the Complainant was not a client of the Respondent there could be a legal risk and potential future clients may be dissuaded from using the Respondent's services by such a post.

The Law

Direct discrimination on account of religion or belief

Direct discrimination on account of religion or belief

68. Under S 10 (2) of the EQA belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

69. Under S 13 (1) of the EQA read with s.9, direct discrimination takes place where a person treats the claimant less favourably because of the protected characteristic than that person treats or would treat others. Under s.23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.

70. Discrimination includes subjecting a worker to a detriment (S.39 EQA).

71. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of the protected characteristic. However, in some cases, for example, where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as he was.

72. We directed ourselves as to relevant case law including what constitutes less favourable treatment being an objective matter, the difference in treatment alone is not less favourable without more as per the decision in Chief Constable of West Yorkshire v Khan [2001] ICR 1065. We looked at what constitutes less favourable treatment both in the context of a hypothetical comparator and that such treatment would need to be on the grounds of the claimant's protected characteristic.

Conscious or unconscious thoughts of the alleged discriminator

73. An act may be rendered discriminatory by the mental processes, conscious or nonconscious, of the alleged discriminator: Nagarajan v London Regional Transport [1999] ICR 877, HL. In such cases, the tribunal must ask itself what the reason was for the alleged discriminator's actions. If it is that the complainant possessed the protected characteristic, then direct discrimination is made out. If the reason is the protected characteristic, that in answering the question of whether the claimant was treated less favourably than a hypothetical comparator; they are, in effect, two sides of the same coin. per Lord Nicholls:

> "In every case…it is necessary to enquire why the claimant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance because the claimant was not so well qualified for the job. Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision."

74. A benign motive is irrelevant when considering direct discrimination: Nagarajan at 884G-885D, per Lord Nicholls. It is irrelevant whether the alleged discriminator thought the reason for the treatment was the protected characteristic, as there may be subconscious motivation: Nagarajan at 885E H:

> "I turn to the question of subconscious motivation. All human beings have preconceptions, beliefs, attitudes, and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment Tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. It goes without saying that in order to justify such an inference the Tribunal must first make findings of primary fact from which the inference may properly be drawn. Conduct of this nature by an employer, when the inference is legitimately drawn, falls squarely within the language of s.1(1)(a). The employer treated the complainant less favourably on racial grounds."

The burden of proof

75. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless a respondent can show that it did not contravene the provision.

76. Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258. The tribunal can take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.) The Court of Appeal in Madarassy, a case brought under the then Sex Discrimination Act 1975, held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g., race) and a difference in treatment. LJ Mummery stated at paragraph 56:

> "Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that

> on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

77. Further, it is important to recognise the limits of the burden of proof provisions. As Lord Hope stated in Hewage v Grampian Health Board [2012] IRLR.

> "They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Drawing of inferences

78. It is not sufficient for to draw an inference of discrimination based on an "intuitive hunch" without findings of primary fact to back it: Chapman and Anor v Simon [1994] IRLR 124.

79. The process of drawing inferences is a demanding task. If a tribunal is to make a finding of discrimination on the basis of inference, per Mummery J in Qureshi v Victoria University of Manchester [2001] ICR 863:

> "It is of the greatest importance that the primary facts from which such inference is drawn are set out with clarity by the tribunal in its fact-finding role, so that the validity of the inference can be examined. Either the facts justifying such inference exist or they do not, but only the tribunal can say what those facts are. An intuitive hunch, for example, that there has been unlawful discrimination is insufficient without facts being found to support that conclusion."

80. In determining whether a claimant has established a prima facie case, the Tribunal must reach findings as to the primary facts and any circumstantial matters that it considers relevant: Anya v University of Oxford and Anor [2001] IRLR 377 (CA). Having established those facts, the tribunal must decide whether

those facts are sufficient to justify an inference that discrimination has taken place.

81. Where there are multiple allegations, the tribunal should consider whether the burden of proof has shifted in relation to each one. It should not take an "across the board approach" when deciding if the burden of proof shifted in respect of all allegations: Essex County Council v Jarrett UKEAT/19/JOJ.

82. The less favourable treatment must be because of a protected characteristic and that requires the tribunal to consider the reason why the claimant was treated less favourably in accordance with the guidance in Nagarajan. The tribunal needs to consider the conscious or subconscious mental processes which led the respondent to take a particular course of action in respect of the claimant and to consider whether her gender played a significant part in the treatment: CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439.

Harassment on the grounds of race or religion under S 26 of the EQA

S 26 definition of harassment

83. Under s26, EQA, a person harasses the claimant if he or she engages in unwanted conduct related to a protected characteristic, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

Related to a relevant protected characteristic

84. The requirement that the conduct be related to a protected characteristic is different to the requirement in a claim of direct discrimination that the treatment is because of a protected characteristic. The term "related to" is designed to cover all forms of conduct that, properly viewed, has a relationship to the protected characteristic. The issue was considered by HHJ Auerbach in Tees Esk Wear Valleys NHS Foundation Trust v Aslam & Anor [2020] IRLR 495. See paras 20-21 and 25 (emphasis added):

> *"Some basic points about the architecture of the variation of the definition of harassment found in sub-sections 26(1) and 26(4) are worth restating at the outset. The conduct must be found to be unwanted; it must be found to relate to the relevant characteristic; and it must have either the proscribed purpose or the proscribed effect, or both. Secondly, the test of whether conduct is related to a protected characteristic is a different test from that of whether conduct is "because of" a protected characteristic, which is the connector used in the definition of direction discrimination found in section 13(1) of the 2010 Act . Put shortly, it is a broader, and, therefore, more easily satisfied test. However, of course, it does have its own limits.*
>
> *Thirdly, although in many cases, the characteristic relied upon will be possessed by the complainant, this is not a necessary ingredient. The conduct must merely be found (properly) to relate to the characteristic itself. The most obvious example would be a case in which explicit language is used, which is intrinsically and overtly related to the characteristic relied upon. Fourthly, whether or not the conduct is related to the characteristic in question, is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it and its other findings of fact. The fact, if fact it be, in the given case that the complainant considers that the conduct related to that characteristic is not determinative.*
>
> *Nevertheless, there must be still, in any given case, be some feature or features of the factual matrix identified by the tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question , and in the manner alleged by the claim. In every*

> *case where it finds that this component of the definition is satisfied, the tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic , as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the tribunal may consider it to be."*

85. Treatment may be "related to" a protected characteristic where it is "because of" the protected characteristic, but there may be other circumstances in which harassment occurs where the harasser was not motivated by the protected characteristic.

86. Protection is provided because the conduct is dictated by a relevant protected characteristic, whether or not the worker has that characteristic themselves. This means that protection against unwanted conduct is provided where the worker does not have the relevant protected characteristic, including where the employer knows that the worker does not have the relevant characteristic. (See Aslam at [21]).

87. Harassment can be committed even if the protected characteristic did not motivate the perpetrator at all: see Carozzi v University of Hertfordshire [2024] EAT 169, [2025] IRLR 179.

88. The first step in the analysis is to determine whether the respondent engaged in "unwanted conduct". This means conduct that was unwelcome or uninvited from the subjective point of view of the claimant: Thomas Sanderson Blinds Ltd v English EAT 0316/10.

89. If the respondent is found to have engaged in unwanted conduct from the perspective of the claimant, the tribunal must consider whether such conduct was related to a relevant protected characteristic. This is a finding of fact for the tribunal: Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 395, EAT.

90. Facts establishing the likelihood of each of the requisite elements of the test must be proved before the burden of proof shifts – and in the course of its assessment of whether this first hurdle is met, the tribunal must consider the context of the alleged harassment. As confirmed in Nazir and another v Asim [2010] ICR 1225 (para 70):

> *"In our judgment, when a tribunal is considering whether facts have been proved from which it could conclude that harassment was on the grounds of sex or race, it is always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on the grounds of sex or race.*

> *The context may, for example, point strongly towards or strongly against a conclusion that harassment was on the grounds of sex or race. The tribunal should not leave the context out of account at the first stage and consider it only as part of the explanation at the second stage, after the burden of proof has passed".*

91. The tribunal must consider all comments and conduct in the relevant context, rather than considering these in isolation: Warby v Wunda Group Plc [2012] 1 WLUK 610.

92. Should the tribunal find that the defendant has engaged in unwanted conduct related to a relevant protected characteristic, it must consider whether the conduct has had the purpose or effect of violating B's dignity or creating the proscribed environment. This is a disjunctive test, requiring only one limb to be met. Either limb will be met if the conduct is designed to, or does in fact, produce the relevant effect.

93. In Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336, EAT, where Mr Justice Underhill (as he then was) gave this guidance:

> *"An employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'*

94. General Municipal and Boilermakers Union v Henderson [2015] IRLR 451 provides that a single incident is unlikely to be sufficient to create an environment sufficient to give rise to an offence of harassment.

95. In line with Betsi Cadwaladr University Health Board v Hughes and Ors EAT 0179/13, mere offence is not sufficient to amount to a violation of dignity. Violation of dignity is a strong term that requires a serious and marked effect or intended effect.

96. This is a mixed subjective and objective test. Per Richmond Pharmacology a claimant must actually feel that their dignity has been violated or a proscribed environment has been created. Where that is the case, the tribunal should then consider whether it was reasonable for the claimant to feel that way.

Harassment and detriment claims

97. Under S 212 of the EQA "detriment" does not…… include conduct which amounts to harassment".

98. The effect of S 212 (1) is that harassment and direct discrimination claims are mutually exclusive, meaning that a claimant cannot claim that both definitions are satisfied simultaneously by the same course of conduct. A claimant must choose one or run alternative claims.

99. In cases such as the present, where harassment and direct discrimination are relied on as alternative causes of action based on the same facts, Tribunals will often consider the complaint of harassment first. The reason for this is that under that cause of action, the acts complained of need only be "related to" the protected characteristic, as opposed to being "because of" the protected characteristic as required for direct discrimination.

Freedom of speech

100. S 3(1) of the Human Rights Act 1998 provides that, so far as it is possible to do so, primary and subordinate legislation must be read in a way which is compatible with the rights arising under the European Convention on Human Rights (the ECHR). Article 9.2 of the ECHR is of particular relevance to the issue.

Article 9

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

Article 10(1) everyone has the right to freedom of expression. This right shall include freedom to hold opinion and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Article 17

Article 17 nothing in this 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 their limitation to a greater extent than is provided for in the Convention.

The exercises of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputational rights of others, preventing the disclosure of information received in confidence and to maintain the authority and impartiality of the judiciary.

Higgs v Farmor's School [2025] EWCA Civ 109

101. The Court of Appeal held that on the factual findings of the employment tribunal, supplemented by undisputed and indisputable facts of this case, the EAT was bound to conclude that the Respondent's interference with the Appellant's rights cannot be justified under Article 9(2) or 10(2), because:
102.

- The interference was not 'prescribed by law';
- The interference was not justified by protecting the respondent's reputation;
- The interference was not justified by the protection of rights and freedoms of others. There is no right not to be offended, and the offence taken by the audience ('heckler's veto') can never justify interference with Convention rights.
- The interference was not proportionate; and/or
- The interference could not be justified as necessary in a democratic society in the light of the essential principle of pluralism which underpins the Convention.

  Whether a limitation or restriction is objectively justified will also 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 the employment.

  It will always be necessary to ask:

  (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 limitation on the rights of the worker concerned against the importance of the objective, the former outweighs the latter.

103. In answering those questions, within the context of the relationship of employment, the considerations identified by the intervener 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 positional role and that of those who 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; and
(ix) Whether the limitation imposed is the least intrusive measure open to the employer.

104. The question whether a restriction is necessary for the prescribed purposes is to be considered by reference to the test set out in Bank Mellat v HM Treasury (No 2) [2014] AC 700, SC by Lord Sumption at paragaraph 20. What is required is:

An exacting analysis of the factual case advanced in defence of the measure, in order to determine:

(i) Whether its objective is sufficiently important to justify the limitation of a fundamental right;
(ii) Whether it is rationally connected to the objective;
(iii) Whether a less intrusive measure could have been used;
(iv) Whether, having regard to these matters and to the severity of the consequences, a fair balance is being struck between the rights of the individual and the interest of the community.

105. As such the protection afforded to a belief attaches also to manifestations of the belief, except in so far as those manifestations are in themselves objectional. Manifestations will not be found objectionable unless the restriction can be justified by reference to the tests at Articles 9(2) and 10(2), including in the case of "necessity" the four-stage Bank Mallet test.

106. We reminded ourselves that it would be an error to treat a mere statement of the Claimant's protected belief as inherently unreasonable or inappropriate: see, for example, the observation of Choudhury P in the EAT's judgment in Forstater that:

> "Beliefs may well be profoundly offensive and even distressing to many others, but they are beliefs that are and must be tolerated in a pluralist society".

107. The assessment must be undertaken in respect of the beliefs held by the Claimant, not as to how those beliefs might have been interpreted or understood by the Respondent's (see paragraph 49 of the judgment of Underhill LJ in Page v NHS Trust Development Authority [2021] DWCA Civ 254.

108. Further, at paragraph 68 of his judgment in Page, Underhill LJ whilst exploring the questions arising in a claim involving the holding, or manifestation, of the belief stated as follows:

> "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…… it is thus necessary in every case 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 manifested that belief in some particular way to which an 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.
>
> Thus, in establishing the reason why the relevant decision-maker acted as they did (a question requiring an investigation into that person's subjective mental processes or motivation albeit not motive), which may be conscious or unconscious; see paragraph 29, it will not be possible to rely on a distinction between an objectional manifestation of a belief and the holding or manifestation of the belief itself if the action taken is not a proportionate means of achieving illegitimate aims. If, however, the action or response can be justified and is found by reason of the objection or manner of the manifestation, then, as was noted in Page.
>
> In such a case the "mental processes, which cause the Respondent to act do not involve the belief but only its objectionable manifestation…. also, and importantly, although it gets there by a different route (because the provisions in question are drafted in very different ways), the recognition of that distinction in the application of section 13 achieves substantially the same result as the distinction in Article 9 of the Convention between the

absolute right to hold a religious or other belief and the qualified right to manifest it".

Submissions

Respondent

109. Ms Mellick says that the claim of discrimination on account of race has in effect been withdrawn as no evidence has been led. She says that without the Claimant satisfying the Tribunal that the Respondent knew that he was a Muslim that his case does not get past first base. She says that the Claimant's request to be able to record meetings was him asking for more favourable treatment. She says that in view of the Claimant's email of 19:46 on 5 August 2024 the Tribunal should not conclude that the Claimant was asked to remove the post in in its entirety.

110. She says that the Claimant's post did not involve him manifesting his faith and that the guidance given in the Court of Appeal's judgment in Higgs v Farmor's School is not therefore engaged.

111. She contends that the Claimant was motivated by money.

112. She says that the Claimant could have responded directly to the Complainant challenging his message but chose to repost it to all of his 5000 LinkedIn contacts.

113. Ms Mellick sent written submissions to the Tribunal on the afternoon of 13 June 2025. Whilst these were read by the judge they were not, contrary to the indication are provided to by the judge in the week commencing 4 August, by the non-legal members. Further, the Tribunal did not give consideration to the submissions in its deliberations. We consider that this would have been unfair to the Claimant given that he did not have the opportunity to respond and both parties had the opportunity to submit written submissions/make oral arguments the previous day.

The Claimant

114. He denies having being monetarily money motivated. He refers to the considerable stress of pursing the claim. He said that he would waive his schedule of loss as a demonstration that this was not about money. He said that he was being silenced as a Muslim and as a human.

115. He referred to Redfern v United Kingdom [2012] ECHR 1878 where the European Court of Human Rights emphasised the balance between freedom of expression and employer interest, reinforcing his right to express views on social issues without disproportionate repercussions.

Discussion and conclusions

116. As the claim involves identical events pursuant to s.26 and s.13 of the EQA it is only necessary for us to consider the s.26 claim in accordance with s.212 of the EQA.

Did the Respondent do the following things?

a) Tell the Claimant he could not recall the meetings on 5 and 6 August between Mr Stratton and Mr Head?

b) Ask the Claimant to remove the Linkedin post dated 5 August 2024 regarding the Complaints post? (This is accepted by the Respondent).

c) Tell the Claimant to remove the post or face "consequences"?

d) Tell the Claimant if he was not willing to remove the post he needed to change his Linkedin profile so that there was no link between the Claimant and the Respondent?

117. We find that all of the above events took place.

118. Whilst there may have been some uncertainty as to whether the Claimant expressly requested permission to record the meetings on 5 and 6 August 2024 the Respondent's position, as had previously been communicated to him, was that the recording of internal meetings was not permitted.

119. We consider that the only reasonable interpretation of the reference to the Claimant facing "consequences" would be that he ran the risk of the Respondent invoking its disciplinary procedure which could potentially have resulted in his dismissal for gross misconduct.

120. We do not consider that any reasonable grounds exist to dispute the fact that the Claimant was told that if he was not willing to remove the post he needed to change his Linkedin profile so that there was no link between him and the Respondent. This was a matter which was proposed by the Claimant and a solution accepted by the Respondent.

Was this unwanted conduct?

121. From the Claimant's perspective all the above constituted unwanted conduct.

Did it relate to race or religion?

122. The Claimant has in effect disengaged from his claim for discrimination/harassment on account of race and has focussed on religion. Whilst not formally withdrawn we consider that his evidence and submissions are virtually entirely on the basis of the protected characteristic of religion and his Muslim faith. This judgment therefore is based solely on the protected characteristic of religion but for completeness the same outcome applies, or would have applied, in relation to race.

123. We have applied the burden of proof and considered whether grounds exist to infer that the conduct may have been on account of the Claimant's religion. We have then considered the explanation provided by the Respondent for that conduct.

Not being able to record the meetings

124. We find no grounds to infer that ground (a) was on account of the Claimant's religion. We reject the Claimant's assertion that his not being entitled to record the meetings had anything to do with his religion. We accept the Respondent's evidence that this constituted their generic position and would have applied regardless of any protected characteristic.

Removal of any link between his post and the Respondent

125. Whilst we find that there were grounds to infer that (d) was on account of his religion we accept the Respondent's grounds of rebuttal. We find that the requirement for the Claimant to add a disclaimer to his LinkedIn profile was something he agreed, and was in accordance with the Respondent's standard practice for expressions of personal opinion posted on LinkedIn or other social media sites and therefore the Respondent has satisfied the burden of rebutting the inference that it was on account of his religion.

Remove his post or face "consequences"

126. We do, however, find grounds to infer that the conduct related to the Claimant's religion in respect of (b) and (c) above and find that the Respondent has not satisfactorily rebutted the inference that it was on account of his religion.

127. Whilst we accept the evidence of Mr Stratton and Mr Head that they were not aware of the Claimant's Muslim faith we nevertheless consider that by no later than his email of 5 August 2024 that they were on notice that he had a high level of sensitivity regarding the Complainant's post and he referred to his background to include his immigration status. We also consider it highly probable that the Respondent would have been aware that the Claimant had come to the UK from Iraq. Whilst this does not necessarily mean that he was a Muslim we consider that it would have placed the Respondent on notice that there was a high probability that he would be. In these circumstances we consider that the Respondent was on notice that as a Muslim the Claimant would have a heightened sensitivity to communications, to include LinkedIn posts, which were Islamophobic or which he perceived as so being.

128. In reaching this decision we are cognisant of the significantly lower threshold for a claim to succeed pursuant to s.26 than would have been the case under s.13 given that that would have required the unfavourable treatment to be because of the his religion and his being treated less favourably than the Respondent treats or would treat others. In reaching this decision we have applied the guidance of HHJ Auerbach in Aslam which expressly refers to a lower threshold than would be the case under section 13. It is on this wider basis

that we have concluded that the conduct in respect of allegations (b) and (c) satisfied the existence of an identifiable reason that it related to the Claimant's religion. We have found that the conduct was related to the Claimant's protected characteristic of religion.

129. We have adopted a purposive approach to the circumstances giving rise to the Claimant being asked to remove the Linkedin post or face consequences. In reaching this decision we have considered the relevant context as per the decision in Warby.

130. We take account that no requirement exists that the protected characteristic, i.e. the Claimant's religion, motivated the perpetrator(s) in respect of the conduct in question as per the guidance in Carozzi.

131. Whilst we are not directly applying the principles enunciated by the Court of Appeal in Higgs, as this is not a directly comparable case, we nevertheless take account of the Claimant's legally protected rights of freedom of expression. We consider that in challenging the Complainant's post, and views enunciated therein, he was not acting so unreasonably that his views, and the manifestation of them, was not vitiated. We consider that the Claimant had legitimate grounds to challenge the views expressed in the Complainant's post and other linked posts. We consider that it is significant that the Complainant was not a client of the Respondent but even if he had been we consider that the Claimant would have had legitimate grounds to challenge such views. Whilst we can envisage circumstances where views expressed on Linkedin may go beyond those which an employee could reasonably expect his employer to tolerate we do not consider that the Claimant had overstepped that mark.

132. It is also relevant that even if the Respondent had not been aware that the Claimant was a Muslim that case law provides that it is not necessary for a Respondent to be aware of an individual's protected characteristic for protection to be provided, for example, a gay employee is entitled to bring a claim on the basis of the protected characteristic of sexual orientation notwithstanding his/her employer not being aware of their sexual orientation. Further, a claim can be brought by an individual who does not possess the protected characteristic in question.

133. Therefore looked at in the overall context of the atmosphere which existed in Britain at that time, the views expressed by the Complainant, and the Claimant's reaction to such views as a Muslim, and the Respondent's conduct of asking him to remove the post or face "consequences", that he has established that the conduct in question was on account of his protected characteristic of religion and that it fulfilled the s 26 definition of harassment.

134. We consider that his expression of opinion in his post was not vitiated by its unreasonable manifestation.

135. We have interpreted "consequences" to only sensibly mean disciplinary action potentially culminating in dismissal for gross misconduct.

136. As such in respect of grounds (b) and (c) adopting the purposive approach as set out above we do not consider that the Respondent has rebutted the inference that the conduct was on grounds other than the Claimant's protected characteristic of religion.

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

137. We find that it did not have that purpose. The Respondent's purpose was to maintain its policy that employees are not entitled to post personal views on social media pursuant to which those views could be associated with its business.

If not, did it have that effect

138. We find that it did. It is not necessary that all individual elements of, intimidating, hostile, degrading, humiliating or offensive environment be made out. We find that being asked to remove the post or face consequences created an intimidating and hostile environment. Whilst we acknowledge that this was a single incident, we nevertheless consider that the Claimant took subjective offence and had objective grounds for doing so. We consider that it was more than minor or trivial in so far as whilst the period between being told to take the post down on 5 August 2024, and the agreed wording put forward by the Claimant of a disclaimer on 7 August 2024, was short the potential consequences for him and the strength of his feeling that there was a hostile environment were significant. We reach this finding in the particular context of the febrile atmosphere which existed in the days after the Southport murders.

Remedy

139. Given our findings above we consider it improbable that the Claimant suffered any loss of renumeration, to include commission, as a result of our finding. This is on the basis that that our finding of harassment pursuant to s.26 related to an extremely short period. We have found that the requirement for the Claimant to add a disclaimer to his LinkedIn profile was something he agreed and was not related to his religion. Further, he went beyond what was required in removing from his Linkedin profile information regarding his connection with the Respondent when all which was required was a disclaimer in respect of his post in response to the Complainant.

140. Therefore we consider it probable, subject to any arguments which may be advanced by the Claimant, that remedy will be confined to injury to feelings. If the parties are unable to resolve this issue they should communicate this to the Tribunal and a one day remedy hearing before the same Tribunal will be listed. The parties should also confirm whether they would be content for this hearing to be by CVP which would represent the Tribunal's standard practice.

Employment Judge Nicolle

Dated: **13 August 2025**

Sent to the parties on:

15 August 2025

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For the Tribunal Office