



EMPLOYMENT TRIBUNALS

Claimants: Ms A Sohail
Ms A Khalid

Respondent: Lloyds Bank Plc

Heard at: London Central (by video)

On: 4, 8 -11 and 15 - 17 July and 2 – 3 and 23 – 25 October and 23
December 2024 and 3 January 2025.

Before: Employment Judge E Burns
Mr F Benson
Ms Z Damas

Representation

For the Claimants: Franck Magennis, Counsel
For the Respondent: Charles Ciumei KC and Tim Welch, Counsel

JUDGMENT

Anonymised for the Register

The unanimous judgment of the Employment Tribunal is that all of the Claimants' claims fail and are dismissed.

REASONS

INTRODUCTION

1. We refer to the Claimants in this judgment by name to avoid confusion. At the time of the hearing, the first claimant, Ms Sohail, was a former employee of the Respondent. The second claimant, Ms Khalid was a current employee of the Respondent.
2. In August 2021, both Claimants were, separately, given final written warnings by the Respondent. This was in response to them posting and emailing messages internally within the Respondent about the Israel/Palestine conflict. The Respondent held that the posts/messages

breached its Code of Conduct for Employees. The Respondent also reported the conduct to its regulators, which included the Financial Conduct Authority (FCA). The Claimants appealed against the warnings, but their appeals were not upheld.

3. Both of the Claimants are Muslims. They told the tribunal they held certain beliefs about opposing racism and oppression as a result of their faith, but also, in the alternative, independently of it. In addition, they said they held anti-Zionist beliefs. The Claimants said the posts/messages were manifestations/expressions of those beliefs and their claims to the tribunal consisted of complaints of direct and indirect discrimination because of religion or belief. The Respondent denied any discrimination.
4. It has taken the Tribunal a long time to issue this reserved judgment for which we apologise to the parties. This was a difficult case to decide. Some of the decisions the Tribunal reached were finely balanced. We have therefore sought, where we felt it was sensible, to consider the alternative outcomes that would have arisen had we reached different decisions. We hope the parties find this to be a helpful approach.
5. We have also been acutely aware, when hearing the case and during our decision making, of the further and ongoing escalation in the Israel /Palestine conflict accompanied by an often emotionally charged and often very polarised public debate. We have been careful to ensure our decision making is limited to the legal questions we have been required to determine. We have also sought to be careful to use neutral language that is sensitive to the different views expressed as part of the debate. We apologise if we have not achieved this and our choice of language is at all offensive.

THE ISSUES

6. The list of issues to be determined had not been settled prior to the start of the hearing and therefore required discussion at the start of the hearing.
7. A list of issues covering Ms Khalid's legal complaints had been agreed between the parties and adopted at a case management hearing conducted in Cardiff prior to the cases being joined. When the cases were joined, Ms Khalid's case was transferred to London Central. At a case management hearing dealing with both cases, the parties were ordered to amend that list to incorporate reference to Articles 9 and 10 of the European Convention on Human Rights. The list of issues was not updated to refer to Ms Sohail.
8. Our discussion with the parties about the list of issues covered three matters. The first two matters were resolved prior to the start of the hearing. The third matter remained outstanding, to be resolved by the Tribunal as part of our decision making.
9. First, there was a discussion about whether there needed to be a single list of issues or separate lists for each Claimant. The Tribunal decided that a single list should be used and it is incorporated into this judgment as an appendix.

10. Second, the Respondent sought to add the word appropriate in several places in the list of issues. There was no objection to this from the Claimants at the start of the hearing and we proceeded on that basis.
11. The third matter arose because of the way the complaints of direct discrimination had been formulated. This appeared not to have been discussed at the earlier case management hearings. The parties were not able to agree which of two possible formulations was correct and therefore we left both in the list of issues and asked them to deal with this in closing submissions.
12. We also noted that the list of issues appeared to have been updated to include reference to the provisions in Article 9(2) (see paragraph 8) and not the provisions in Article 10(2). Both sides agreed that the two Convention rights were relevant and we should consider them both.

THE HEARING

13. The hearing was a remote video hearing. Permission was given to a number of people to observe the hearing. The parties made arrangements for relevant materials to be shared with the observers as required.
14. From a technical perspective, there were a few minor connection difficulties from time to time. We monitored these carefully and paused the proceedings when required. The participants and observers were told that it was an offence to record the proceedings.
15. The hearing was conducted in two parts. We heard all the evidence in July but there was not enough time in the timetable to hear closing submissions. Although we offered the parties dates in August to do this, the earliest we were able to all be together again was 3 October 2024. The tribunal had a reading day on 2 October 2024.
16. The panel were then not able to deliberate in chambers until the end of October 2024. We did not complete our deliberations in the available listing slot and met again in December 2024 and early January 2025. It has then taken Employment Judge E Burns until now to write up the decision due to work demands.

Witnesses

17. The tribunal ensured that each of the witnesses, who were all in different locations, had access to unmarked copies of the relevant written materials. We were satisfied that the witnesses were not being coached or assisted by any unseen third party while giving their evidence.
18. The Claimants gave evidence. We also heard evidence from the following on their behalf:
 - Assif Khalid, co-chair of the Respondent's Muslim Network

- Crispin Leatham-Frost, Ms Sohail's trade union representative who accompanied her to her disciplinary and appeal hearings
 - Antony Lerman, Claimant expert on antisemitism and anti-Zionism.
19. For the Respondent, we heard evidence from:
- Sharon McCann, Investigation Manager for both Claimants
 - Mubeen Quadir, Disciplinary Manager for Ms Sohail
 - Nicola Webster, Disciplinary Manager for Ms Khalid
 - Nina Hicks, Appeal Manager for both Claimants
 - Kathryn Harris HR Conduct Team, and
 - Richard Eaton, Conduct Panel Chair
 - Dave Rich, Respondent expert on antisemitism and anti-Zionism.
20. We were also provided with a written expert report dated May 2023 from Professor Matthew Wilkinson, Professor of Religion in Public Life at Cardiff University. He had been jointly instructed by the parties, but did not attend the hearing.
21. Mr Lerman and Dr Rich met prior to giving evidence to explore if they could reach agreement on any matters. When giving evidence, they were each cross examined by the other side and then we brought them together so that they could answer questions from the Tribunal at the same time.
22. At the start of the hearing, the Claimants applied for a witness order such that the Respondent's Inclusion and Diversity Manager be ordered to attend the hearing so that she could be cross examined. The Respondent objected to the application. Having heard submissions from both sides, the Tribunal decided not to make the order. We gave oral reasons for our decision.

Documents

23. We read the evidence in the bundles to which we were referred. We refer to the page numbers of key documents that we relied upon when reaching our decisions.
24. There was an agreed main bundle of 696 digital pages. Unfortunately, the hard copy and digital pagination did not match. When referring to documents in this main bundle we refer to the digital page numbers. References to pages numbers in round brackets should be assumed to be to the main bundle unless otherwise specified.
25. At the start of the hearing, both sides had also produced late additional supplementary bundles which they asked to be admitted into evidence. The Respondent's supplementary bundle ran to 693 pages. Although called the Respondent's supplementary bundle, we understood this contained some documents disclosed by the Claimants. The Claimants' supplementary bundle ran to 120 pages. The Claimants then produced a further supplementary bundle of 245 pages before evidence started which they asked to be admitted.

26. Neither side had had a proper opportunity to properly review the supplementary bundles. For the sake of expediency, we agreed with the parties that the Tribunal would have the bundles and that witnesses could be taken to documents within them during the hearing, subject to allowing counsel for each side the opportunity to object at the time.
27. In addition, during the course of the hearing both sides asked for additional documents to be admitted into evidence on an almost daily basis. These were admitted with the agreement of the other side, but not numbered and remained loose additional documents.

Cross Examination and Use of Language

28. The nature of the dispute meant that it was necessary for the parties to explore some sensitive issues with the witnesses. At times, both sides objected to language used or questions put by the other side. The objections were based on the issues at the heart of the case, such as the extent to which expressing anti-Zionist views is antisemitic and whether, as was argued by the Claimants, supporters of Israel have 'weaponised' antisemitism to counter criticism of it.
29. The Tribunal understood the points both sides made. Rather than decide the fundamental contentious matters at the heart of the case on the hoof, we agreed with the parties that they should voice their objections to language and questions where relevant, but that unless withdrawn, the language/questions would be allowed. The parties were content with this approach which effectively was a reservation of their positions.

Closing Submissions

30. In addition to making lengthy closing oral submissions, the parties prepared written submissions. We thank them for those submissions and the extensive authorities bundle they provided. The Respondent objected to some of the content of the Claimants' written submissions being shared with the public (not the Tribunal) and made an application under Rule 50 (as it then was) in this regard. We granted that application and gave oral reasons when doing so.

FINDINGS OF FACT

31. Having considered all the evidence, we find the following facts on a balance of probabilities. Some of our findings on disputed factual issues are dealt with in our conclusions.
32. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.

Background

33. The Respondent describes itself as the largest retail and commercial financial services provider in the UK. The Lloyds Bank Group employs

around 65,000 people across the UK. It is regulated by the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA). The Respondent refers to all the people who work for it as colleagues and we have used the term in this Judgment to mean the same. We have also used the terms employees and staff.

First Claimant

34. Ms Sohail describes herself as practising Muslim. Her faith is important to her and she is very devout.
35. Ms Sohail worked as part time Customer Service Adviser for the Respondent while she was doing her A levels and degree. This was an entry level Grade A customer facing role. She started on 14 August 2017. She completed her degree in July 2022. She left her employment with the Respondent in July 2023 to take up a permanent full time job with another employer.
36. At the relevant times for the purposes of this claim, she was working remotely at home and was employed to do 16 hours per week. Her normal working days were Saturday, Sunday and Monday. Her line manager was Benjamin O’Kane.
37. Prior to the events set out below, Ms Sohail had a clean disciplinary record.

Second Claimant

38. Ms Khalid also describes herself as a practising Muslim. Her faith is also important to her and she is very devout.
39. Ms Khalid commenced her employment with the Respondent on 1 June 2009. At the time of the hearing, she was still employed by the Respondent.
40. Ms Khalid initially joined the Respondent in an entry-level position. Within six months, however, she applied for and obtained a team leader role, overseeing approximately 13 employees. She had changed role since then however, and at the relevant times for the purposes of this claim, she was working part time in the role of Litigation and Fair Assessment Advisor, which was a Grade C role. It was not a customer facing role.
41. Ms Khalid started this role on returning from her most recent maternity leave in March 2021. Ms Khalid’s line manager was David Ormesher. She worked on Mondays and Tuesdays from the Respondent’s offices in Chester. On these days she was required to start work at 8 am, although she often arrived in the office earlier than this.
42. Prior to the events set out below, Ms Khalid also had a clean disciplinary record.

Contracts of Employment and Policies

43. The Respondent issues its employees with written contracts of employment at the start of their employment. It also has a number of written policies and procedures. In this section we set out relevant provisions contained in the Claimants' contracts. We deal with the policies and procedures in more detail in the next section.
44. Ms Sohail confirmed in evidence that she was fully aware of the provisions of her contract and all relevant policies and procedures and understood them. Ms Khalid told us that she had not read the policies and procedures. She accepted in evidence, however, that most of the provisions were common sense and that during the meeting she attended as part of the disciplinary process she had been made aware of them.
45. There were slight differences between the written employment contracts for each Claimant due to the different times when they were issued. Ms Sohail's contract was at pages 160 to 173 of the main bundle and Ms Khalid's was at pages 181 – 170.
46. The version of Ms Sohail's contract in the bundle was undated, but it was not in dispute that it had been issued to her at around the time she commenced employment in August 2017.
47. Ms Khalid's contract was provided to her following a collective agreement having been reached on harmonisation of terms and conditions and is understood to have been effective from 1 October 2010. This was before the new regulatory regime that was introduced in 2016.
48. Both contracts contained clauses dealing with the following:
 - Regulatory Duties and Requirements – this was in clause 13 (164) and the appendix (170 – 173) to Ms Sohail's contract and in clause 12 of Ms Khalid's contract (184 – 185)
 - Confidentiality and Communications - this was in clause 16 of Ms Sohail's contract (165) and clause 15 of Ms Khalid's contract (185)
 - Disciplinary and Grievance - this was in clause 18 of Ms Sohail's contract (166) and clause 16 of the Ms Khalid's contract
 - Compliance with Group Policies – this was in clause 19 of Ms Sohail's contract (166)
 - Notice and Termination of Employment – this was in clause 20 of Ms Sohail's contract (166) and clause 17 of Ms Khalid's contact (185)
49. We were referred to the following policies of the Respondent:
 - Disciplinary Policy and Procedure
 - Colleague Conduct policy
 - Conduct Rules
 - Regulatory References
 - Code of Ethics and Responsibility
 - Values

- Race Action Plan
50. We were also referred to guidelines issued to employees for using the Respondent's internal communications systems. These are dealt with in the section below.
51. The Respondent's Disciplinary Policy and Procedure, Colleague Conduct policy and Conduct Rules are published as intranet pages within a section called Conduct.

Disciplinary Policy and Procedure

52. We were provided with documents from two sub-sections of the Respondent's intranet dealing with disciplinary matters, one called Line Managers and one called Colleagues. We understood that all employees could read both versions and we have therefore referred to both.
53. From the Colleague section, we were provided with the following:
- A page dealing with Initial Concerns (234)
 - A page dealing with Informal Action (218)
 - A page dealing with Investigations (239)
 - Three pages dealing with Disciplinary Hearings (240 – 242). These were also duplicated with a menu at (245 – 247)
 - A page dealing with Appeals (251)
54. From the Line Manager section, we were provided with the following:
- A page called Process Overview, showing a flow chart (233)
 - A page dealing with Initial Concerns (235)
 - Two pages dealing with Informal Action (237 - 238)
 - A page dealing with Investigations (243)
 - Three pages dealing with Disciplinary Hearings (248 - 250)
 - Two pages dealing with Appeal Hearings (252 - 253)
55. We set out below, sections we consider to be relevant to our decision making in this case.

56. In the section providing guidance to line managers on informal action, the following can be found:

“Always consider whether a disciplinary problem can be solved informally.

If minor problems are dealt with early, colleagues can change their behaviour quickly. This can stop problems getting worse and reduce the risk of them happening again.

It is not necessary to take informal disciplinary action before escalating your concerns if you feel the issue/are sufficiently serious.” (237)

57. The guidance to managers on investigations says:

“The outcome of the investigation should be a Disciplinary Investigation Report. This should contain:

- *Details of the alleged problem and scope of the investigation*
- *A summary of the evidence that the scene, as well as any gaps, or example when a key witness has left the Group*
- *The seriousness of the problem e.g. could it be gross misconduct?*
- *The report should have a clear recommendation on whether there is a case to answer and a formal disciplinary hearing is needed. “Case to answer” means that there are grounds to conclude that the colleague could have committed the misconduct. The Disciplinary Hearing Manager decides that the allegation is true based on the balance of probabilities.” (243)*

58. There was also an intranet page in the Disciplinary section that stood alone called *“Understanding Misconduct and Potential Sanctions”* (254 – 258). We have assumed that the page was intended as guidance for both line managers and employees.

59. The page explains the following:

“Poor colleague conduct can generally be categorised as:

- *Behaviour that is inconsistent with our Colleague Conduct pillars, Group Values or Code of Responsibility*
- *Poor treatment of colleagues*
- *Poor performance*
- *Non compliance with [the Respondent’s] policies, procedures ore regulatory responsibilities*
- *Criminal activity”* (254)

60. The page then provides non-exhaustive lists of examples of misconduct and gross misconduct. The page also makes it clear that the examples given under the heading misconduct may also constitute *“Serious or Gross Misconduct”* depending on the specific circumstances. It states:

“- managers would need to consider:

- *What was the impact of the misconduct, did it, or could it have a direct and/or serious customer or colleague impact? Did it create significant risk for [the Respondent]?*
- *Have there been previous incidents with the colleague?*
- *Is there a pattern of behaviour?”* (255)

61. We note that the following examples are included under the heading Misconduct examples:

- *“Negligence in undertaking your role & responsibilities and/or behaviour likely to cause offence to other employees, Group customers or the general public*
- *Breach of the Group’s policies, rules, standards and procedures*
- *Breach of compliance and regulatory requirements*
- *Conduct likely to bring the Group’s name into disrepute” (254)*

62. The following examples are included under the heading Gross Misconduct examples:

“Flagrant and wilful disregard for the Group’s policies, procedures or standards, for example:

- *Unlawful discrimination or harassment of colleagues*
- *Persistent unauthorised absence from work*
- *Breaches of Health and Safety requirements*
- *Breach of the Groups’ Detailed Conflict of Interest Policy and the Risk Model Governance Policy*
- *Any activities expressly forbidden by the Group’s Detailed Acceptable Usage Policy*

“Personal conduct that shows a reckless disregard for the best interests of the Group, its customers and colleagues, for example:

- *Being charged with or convicted of a criminal offence that, in the Group’s opinion, adversely affects the Group’s reputation, or its relationship with colleagues, customers or the public, or otherwise affects suitability to continue employment.*
- *Conduct or behaviour inside and/or outside normal working hours which is harmful to the Group, adversely affects the Group’s reputation or its relationship with colleagues, customers or the public, or otherwise affects suitability to continue employment.*
- *Failure to disclose any unspent criminal convictions (those not exempted by the Rehabilitation of Offenders Act 1974).*
- *Theft, fraud, forgery or other dishonesty, including fabrication of records.*
- *Bullying or intimidation, including abusive language and physically threatening behaviour towards a colleague or customer.*
- *The deliberate, negligent or reckless introduction of a computer virus into the Group’s computer system.*
- *Inappropriate use of the Group’s collaboration tools such as Office Communicator and/or Hive.*

- *Deliberately, negligently or recklessly accessing Internet site containing pornographic, offensive or obscene material.*
- *Being under the influence of alcohol, illegal drugs or other substances during working hours.*
- *Participation in unofficial industrial action.*
- *Reckless or dangerous misuse or damage of company property, including company vehicles.” (255 – 256)*

63. The page gives the range of potential sanctions available by reference to the following table which we have replicated in part with the original emphasis. It confirms that the decision on what sanction to apply rests with the Disciplinary Hearing Manager (257).

Sanction	Reason
Written warning	<i>Usually given for issues which may arise from a lack of improvement after informal action, or acts of misconduct which are inappropriate to be dealt with informally.</i>
Final Written Warning	<i>Usually given for cases of serious misconduct or in response to repeated misconduct by the employee because they live written warning.</i>
<p>Action short of dismissal – to be used only where dismissal was a potential outcome</p> <p><i>A Final Written Warning and one or more combination of the following:</i></p> <ul style="list-style-type: none"> • <i>Demotion with a without a change to Terms and conditions, including a reduction appropriate.</i> • <i>Transfer to a different work location/role with a without a change in two Terms and Conditions</i> • <i>Deregulation (of regulated advisers)</i> 	<i>Issued in response to gross misconduct or repeated misconduct where there are mitigating circumstances.</i>
Dismissal (with a without notice)	<i>Dismissal without notice issued in response to Gross Misconduct.</i>

Sanction	Reason
	<i>Dismissal with notice issued in response to repeated misconduct or where the Employee already has a live final written warning.</i>

64. The page also has a note that *“Colleague (sic) should be aware that disciplinary action could have an impact on their pay and Group Performance Share awards.”* (258) There is then a link to the internet pages dealing with Reward. These pages were not in the Tribunal bundle.

Colleague Conduct Policy

65. The disciplinary section of the Respondent’s intranet cross-references the Respondent’s Colleague Conduct Policy. The undated version 7 of this policy was provided in the bundle as a complete document (192 – 197).

66. The policy explains that it *“sets out the Group’s expectations for the conduct and behaviour of colleagues as representatives of the Group in line with our Conduct Pillars, Code of Responsibility and Group Values”* and that it *“is supported by specific guidance to ensure that colleagues fully understand the requirements placed on them.”* (192)

67. It begins with five principles. Two were relevant to the case as follows:

- *“All colleagues and those representing or acting on behalf of the Group are expected to take time to understand and conduct themselves in line with requirements of this policy, and the expectations detailed within the Group’s Code of Responsibility and Values.*
- *Conduct requirements are expressed under each of the Group’s Conduct Pillars - Integrity, Compliance and Competence. Colleagues whose personal or professional conduct falls below the required standard may, after investigation, be subject to disciplinary action in accordance with the Group’s Disciplinary policy.”* (192)

68. The policy is then split into three sections (Integrity, Compliance and Competence) which reflect the three conduct Pillars identified above.

69. We were referred to the three paragraphs within the Integrity section. The first two appeared under the heading Professional Integrity and said:

“1.2 Colleagues must behave in a professional, responsible and appropriate manner towards other colleagues in the Group. Discrimination, victimisation, harassment (physical, verbal or non-verbal) and bullying will not be tolerated. All colleagues have an obligation to report such behaviours irrespective of whether they are directly involved.

1.3 Colleagues must ensure that their communications are appropriate at all times. Telephone calls or any other electronic or social media sent or

used within, or related to the Group must not contain abusive, obscene, offensive or libellous comments or contain any content that may bring embarrassment to or could harm the reputation of the Group, its employees, customers or suppliers. Colleagues should also ensure they adhere to the requirements detailed under the Group Acceptable Usage Responsibilities. Further information is available to colleagues within the Group's Social Media Guidance. "

70. The third appeared under the heading Personal Integrity and said:

"1.7 Colleagues should not place themselves, or allow themselves to be placed, in a position where their personal interests or affairs may conflict with the interests of the Group and/or their duties towards the Group or any of its customers. Colleagues are required to make their line manager aware of any interest, position or personal circumstance which may give rise to actual or potential conflicts of interest.

Colleagues should act wisely and use good judgement to determine the extent to which a potential conflict of interest should be reported. Colleagues should consider whether a potential conflict could (or could be seen by others as likely to) affect their professional judgement or performance of their duties. Further detail can be found in the Conflicts of Interest Procedures within the Group Compliance Policy."

71. The Compliance section of the document also contains information about the regulatory requirements with which all employees of the Respondent must comply. It explains that employees must adhere to certain Conduct Rules, namely:

"CR1 You must act with integrity.

CR2 You must act with due skill, care and diligence.

CR3 You must be open and cooperative with the FCA, the PRA and other regulators.

CR4 You must pay due regard to the interests of customers and treat them fairly.

CR5 You must observe proper standards of market conduct." (195)

Conduct Rules

72. The Respondent provides additional information to colleagues about the Conduct Rules referred to above on its intranet. Relevant pages were included in the bundle (198 – 212). The pages explain that a new regulatory conduct was introduced in 2016 and that a key part of it was the introduction of five individual Conduct Rules which apply to almost all colleagues. The page explains that the purpose of the individual rules is *"to promote positive behaviour and encourage colleagues to accept greater personal responsibility for the way they conduct themselves in the workplace."* (198)

73. The page goes on to explain, under the heading, **"Why are they important to us"** that:

“The Conduct Rules complement our Group Culture meaning the vast majority of colleagues already conduct themselves compliantly at all times in their dealings with customers and colleagues.

However, if following a disciplinary hearing or performance adjustment process, the Group Conduct Panel or Group Conduct Investigations Committee determine that an individual has breached a Conduct Rule, the Group must report it to the regulators. This can also have an impact on any regulatory reference the Group is requested to provide if you apply for an [Senior Manager Certification Regime] role and could therefore impact your ability to obtain future roles in the banking sector.”(200)

74. The page also includes an FAQ section which provides colleagues with the following information about the process the Respondent will adopt when deciding if a matter should be reported to a regulator. It says:
- *“Any potential Conduct Rule breach will be considered following the disciplinary hearing or performance adjustment process. Dependent upon the scale of the issue and the role being performed by the individual, either the Conduct Panel or Group Conduct Investigations Committee will undertake an independent review of the output to determine if a Conduct Rule breach has occurred.*
 - *The committee will communicate any Conduct Rule breach decision in writing to the individual. This communication also confirmed that the Conduct Rule breach will be reported to the regulator.*
 - *The committee will review the outcome of any appeal to determine if any new evidence impacts the Committee original Conduct Rule breach decision. Any changes will be communicated to the individual in writing and the regulator will be updated where required.” (204)*

Values

75. With regard to the Respondent’s **Values**, we were referred to two documents that identified slightly different values. Each document provided short examples of what behaviours are expected of colleagues in order to demonstrate each value.
76. The relevant values and the examples to which we were referred in the first document were:

“We embrace our differences, to value everyone – this means seeking out diverse perspectives. Learning about and supporting people’s different and changing needs. The opposite is thinking our perspectives are the only ones that count.” (212)

“Making a difference together

- *I collaborate within my team and across teams to make everyone successful*

- *I am inclusive and I care, valuing everyone’s skills and opinions, and helping everyone to be the best they can” (213)*

77. In the second document we were also referred to the following which was said to be an example of a “Leadership Behaviour.”

“Build Trust – I will listen and empathise to build trusted relationships” (213)

Code of Ethics and Responsibility

78. The Respondent has a lengthy Code of Ethics and Responsibility (215 – 232). Within the document it says it is intended as a guide and reference point for every colleague and *“explains how we work responsibly living up to our values and doing the right thing when we have to make decisions.” (216).*

79. In the forewords to the Code, it is said that

“The Code encourages us to speak up and challenge, uniting us as a force for positive change. We must live the Code every day and in every interaction, inspiring others to follow.” Group Chief Executive Officer

“There is no single document that can spell out what’s right and what’s wrong in every situation, but the Group expects our colleagues to exercise good personal judgement, act honestly and with integrity and a strong sense of personal accountability when decisions are made in their day to day work making.” – Chair (217)

80. The code has sections on

- inclusion and diversity
- being an ethical business

81. It contains a clear statement that:

“We’re an anti-racist organisation and do not tolerate hate. We have and will take action against discrimination and inappropriate behaviour, whether racist, sexist, homophobic, transphobic or ableist, regardless of whether this happens in our branches, offices, over the phone or online on our social media channels.”

The Code adds that this means colleagues *“should treat others as [they] would like to be treated – and always with consideration, respect and fairness.” (223)*

82. In the section on being an ethical business, the Code says:

“Respecting human rights

Human rights are fundamental principles that allow an individual to lead a dignified and independent life, free from abuse and violations. We aspire to

conduct business in ways that values and respects human rights – including our colleagues, customers, business partners and everyone who is affected by our business. We know this affects both our direct interactions with colleagues and customers and the human rights impacts that can be created by our customers – and therefore we take into account human rights concerns in our investment, lending and service operations.

We adhere to the relevant rules and regulations of every country in which we operate and seek to operate in accordance with internationally accepted human rights standards such as the United Nations Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, together with the International Labour Organization (ILO) Labour Standards.” (228)

83. The Code also very strongly encourages colleagues to speak up about any concerns they may have. It tells employees how to do this as follows:
- *Talk to your line manager or a senior leader in your business area*
 - *Contact Group Conduct Investigations*
 - *Raise a concern confidentially or anonymously with our independent Speak Up service*
 - *Raise concerns confidentially with the regulator (222)*
84. There is also a section dealing with conflicts of interest (225).

Race Action Plan

85. In July 2020, the Respondent adopted a Race Action Plan which is published on its external facing website. The document was one of the additional disclosures that was entered into evidence as the hearing progressed. It begins by saying:

“At Lloyds Banking Group, we stand against racism and discrimination in all its forms.

While we’ve worked hard over the years to create a more inclusive organisation, the launch of the Race Action Plan in July 2020 was a real turning point in our journey. Launched against the backdrop of the Black Lives Matter movement and the coronavirus pandemic, the plan has helped us to address the specific challenges we know our Black colleagues and customers are facing.”

86. The plan then has eight points which deal with:
1. A goal to increase Black representation in senior roles from 0.6% to 3% by 2025;
 2. The ongoing work of the internal Race Advisory Panel;
 3. Delivery of a Race Education programme;
 4. A commitment to continue to undertake regular listening sessions to gauge and understand colleagues’ experiences and progress against the Respondent’s plans;
 5. A commitment to publishing an Ethnicity Pay Gap report annually;

6. Work directed at ensuring diversity on senior executive recruitment shortlists;
7. The creation of specific development and sponsorship programmes for middle managers and senior grades; and
8. Outreach work in partnership with two external organisations.

Internal Communication Systems

87. In May 2021, the Respondent had recently introduced an internal communication system called Yammer which enabled its employees to make posts and to reply to the posts of others in threads. This was not the first communications system of this type that the Respondent had used. It had an earlier version called Hive that was being phased out and replaced with Yammer in early 2021.
88. Posts to Yammer were organised into communities. Employees could choose which communities (also often called networks) they could join and posts made in the specific community would only be seen by members of the communities. Membership of the communities was not restricted and each community was open to all employees to join.
89. The Respondent has a number of internal networks for employees. One such group was the Muslim Network. The Muslim Network had an associated Yammer community to enable the members of the Network to communicate with each other. It was not a closed network.
90. Guidelines were introduced for employees making posts on Hive which were then revised and adopted for Yammer. We were referred to a one page document called "Community Guidelines" (214) as well as Yammer Community Guidelines (260).
91. The Community Guidelines inform colleagues that they are accountable for the comments they post and encourage them to think carefully before they do about the following three questions:
 - The first question is to ask whether the comment is appropriate for the workplace. The guidance states in relation to this:

"We're building a culture where everyone should feel comfortable speaking out when something doesn't feel right. Equally we should be listening to what others have to say. Challenge yourself to consider how you would feel receiving the comment."
 - The second question is to ask whether the comment reflects the Respondent's values. The guidance says:

"We need to be curious and value our differences to create the right environment so we can all be our best. We can do this by practising our values and focusing on our purpose every single day."

- The final question is to ask if the comment complies with the Respondent's policies. The guidance says, *"Our comments should be truthful and accurate - spreading rumours and hearsay can be incredibly damaging."*
92. The Yammer Community Guidelines are incorporated into the Yammer platform. They inform colleagues that when contributing on Yammer, all colleagues *"have a role to play in creating a safe and inclusive workplace, one that reflects [the Respondent's] Values and Behaviours and [its] Conduct Policy."* The guidelines ask colleagues when contributing in Yammer to:
- *"Be respectful and considerate, remembering we're all colleagues working together"*
 - *Consider the diverse backgrounds and experiences of all colleagues, and the impact your words may have on others*
 - *Ensure what you share is appropriate for an open work community - do not post customer names or data or personal information about other colleagues"*
93. The guidelines also explain that comments will be monitored and that comments which breach the guidelines will be removed and line managers notified. They encourage the reporting of any posts that breach the guidelines.
94. Posts could be reported anonymously. When this occurred, the posts were considered by a group called the Moderation Committee. This was a group of between 30 to 40 employees established to review posts and determine if they fell inside the guidelines. It had been set up when Hive was introduced in order to monitor its use and was asked to do the same for Yammer.
95. The reporting mechanism was on-line. An automated message would be sent to the member of staff responsible for overseeing the working of the Moderation Committee who would then decide how to proceed.
96. The Moderation Committee did not apply any set criteria when considering posts. We were told that its purpose was for the Respondent to be able to take a balanced view between freedom of speech on internal platforms alongside meeting the Respondent's rules, procedures and values. We were also told that it was set up in this way to enable the Respondent to review and deal with situations by quickly removing posts which could or had caused offence or otherwise breached policy and procedure.
97. When reviewing a post, the Moderation committee could do the following:
- Take no action
 - Leave the post in place, but speak to the posting employee's line manager to ask them to provide informal guidance to the posting employee

- Remove the post and speak to the posting employee's line manager to ask them to provide guidance to the posting employee
 - Remove the post and recommend a formal investigation be undertaken. The matter would then be referred to the HR Investigation Team.
98. While a post was being considered by the Moderation Committee it could be temporarily hidden from view.
99. The Moderation Committee's decision process was mostly undertaken via Microsoft Teams messages, but Teams video calls could be arranged if members of the Committee wanted a more in-depth discussion. It was left to the discretion of the Committee members to decide whether or not to have input into any particular discussion. The Committee did not keep notes / records of its discussions except to the extent that these were captured in the Teams messages.
100. In May 2021, the Committee was overseen by an employee called Emma Stacey, People and Places Health and Wellbeing Manager. Kathryn Harris, Case Consultant in the Respondent's HR Case Team was also a member having been asked to participate as a representative of the Conduct Team.

Context

101. There was an escalation in the conflict in Israel/Palestine in early May which continued until a ceasefire was agreed on 21 May 2021. The escalation resulted in a number of casualties and fatalities, including children. It was widely reported in the media in the UK and generated increased social media traffic.
102. It is of particular relevance, for the purposes of this case, to note that the part of the fighting took place in and around the Al-Aqsa Mosque in Jerusalem. The Mosque is considered to be the third most holy place in Islam. The Israeli Police entered the Al-Aqsa Mosque compound by force on 7 May 2021. This was during Ramadan (12 April 2021 to 12 May 2021).
103. It was not in dispute between the parties that heightened tension in Israel/Palestine leads to an escalation in antisemitism and Islamophobia in the UK.

REACH

104. One of the internal networks in the Respondent's organisation at the time was a group called REACH. REACH stands for Race, Ethnicity and Cultural Heritage. The group's aim was "*to connect, support and develop colleagues from an ethnic minority background*". We were told its goal was to improve cultural awareness and understanding across the Respondent's workforce. The Chair at the relevant time for the purpose of this case was Mubeen Quadir. He was employed by the Respondent as a Disciplinary Manager. Mr Quadir is a Muslim. He was not part of the Moderation Committee.
105. In response to the escalation in the Israel/Palestine conflict, in around mid May 2021, REACH invited its members to attend an on-line discussion about

the conflict. The discussion was due to take place on Thursday 27 May 2021.

106. On Friday 21 May 2021 at 15:19, the discussion was cancelled. We know this because the Tribunal was provided with evidence by way of additional disclosure to confirm the time the cancellation was sent. No reason was given for why the discussion was being cancelled.
107. Mr Quadir told the Tribunal that the reason the REACH discussion was cancelled was because concerns had been raised about the content of the invitation for the event. He had not been involved in creating the invitation, but told us that when he saw the invitation he agreed that it did not set the right neutral tone. He said that he felt that the focus of the REACH meeting should have been on how the Respondent and its employees could support each other in light of the escalation in the conflict. Instead, he felt the invitation engaged with the arguments on both sides of the conflict which was not appropriate given the sensitivity of the topic.
108. Mr Khalid (no relation to Ms Khalid) who was one of two Co-Chairs of the Respondent's Muslim Network and a witness at the Tribunal hearing for the Claimants, told the Tribunal that colleagues were unhappy about the REACH discussion being cancelled. He said they felt it offered a safe space to discuss the Israel/Palestine conflict which they saw as a humanitarian issue. He told us that other potential "political" issues had been addressed via REACH such as the Indian farmer protest and war on Afghanistan. He also told us that when the discussion was cancelled, colleagues began to question when and how it was decided within the Respondent what was political and what constituted a humanitarian matter.

Initial Posts Considered by the Moderation Committee

109. As described above, the Moderation Committee did not keep notes of its proceedings and the only records available to the Tribunal were the relevant Teams messages. The Teams messages were difficult to follow and did not reflect all the discussions that took place.
110. On 19 May 2021, someone reported a post that had been made on the subject of Israel/Palestine. This was not one of the posts later made by either Claimant. The Tribunal was not provided with a copy of the post, nor any information about where it was posted. Ms Stacey "hid" the post and alerted the Moderation Committee. A meeting was arranged to take place at 9:00 am the following day on 20 May 2021 to discuss the post. We know the meeting lasted 23 minutes and 27 seconds (442) but we do not know the outcome of the discussion.
111. Ms Harris gave evidence to the Tribunal about Moderation discussions in which she participated. The first discussion she could recall related to a post that was reported in the afternoon of 20 May 2021. That post was shown on page 442 of the main bundle. Ms Stacey messaged the Moderation Committee to say that further to the post discussed that morning, a further post had been reported.

112. The post reported in the afternoon of 20 May 2021 had been made on Monday 17 May 2022 and had been reported as inappropriate for the workplace, but without saying why. It had been made in the Muslim Yammer Network.
113. Ms Harris told the Tribunal that the Moderation Committee decided that the employee who made the post should be referred for a disciplinary investigation. She knew this as she was the Case Consultant for their case. She also told us that ultimately no disciplinary action was taken against the colleague because during the investigation it was deemed that the colleague's comments were not as offensive as the later posts made by the Claimants. She said this was because no derogatory language had been used in that post and it had not contained any incorrect facts.
114. Further posts on the topic of Israel/Palestine were made on Friday 21 and Saturday 22 May 2024 in the form of a thread in the REACH Yammer Community. The first post in the thread was made at 3:47 pm under the subject "Initiating the Conversation on Palestine and Israel" (447). At 4:39 pm someone, who presumably did not realise the discussion had been cancelled, posted to say that he was pleased that REACH was organising a call on the topic. Mr Khalid himself posted in the thread at 6:03 pm on Friday 21 May 2021.

Ms Khalid's Posts

115. On Monday 24 May 2021, Ms Khalid posted two comments in the Yammer REACH Community, as part of the existing thread referred to above.
116. Ms Khalid was a member of the Respondent's Muslim and REACH Networks and their associated Yammer communities.
117. She was not a regular poster to Yammer, however. She had posted at least once before to share information about an Islamic Lifestyle Store and where to buy Halal sweets (Respondent's supplementary bundle page 21-22). Yammer had been introduced while Ms Khalid was absent on maternity leave. She told the Tribunal that she did not read the guidelines for posting before making any Yammer posts.
118. Ms Khalid's first post on Monday 24 May 2021 (made at 7:44 am before the start of her shift at 8 am) said the following:

"What I am finding difficult to understand is that NOONE in the office has spoken about the issue. Colleagues come in and talk about their daily lives, football, programmes they watched but NOTHING about this? It baffles me how people are being ignorant to the matter, and even more frustrating that when there have been issues in the past such as Paris incidents, BLM, LGBTQ etc and all that people have spoken up about it, commented on posts, changed profile pictures to show solidarity etc but why not now? Is it because they feel this is a MUSLIM issue therefore they are exempt? I don't know but i'm very disappointed in a lot of people regarding the Palestine matter."

119. Ms Khalid explained the background to her making the post in her written witness evidence as follows:

“20. *During the heightened levels of violence against Palestinians in May 2021, I witnessed an increase in social media posts on my Instagram. One page I follow, @eye.on.palestine, was showing a lot of video footage, which I did not see on mainstream media. This made me emotional and I felt I needed to do something about it.*

21. *I did a bit of further research into Israel-Palestine through Google. This research was not thorough or extensive. I only got a basic understanding of the issue. I came across an article on the Balfour Declaration, which led to the 1948 Nakba, which saw 750,000 Palestinians violently displaced from their homes, to which they have never been allowed to return. I learned that land previously owned by Palestinians had been claimed by Israel.*

22. *As a mum of three I became emotional, very disturbed and distressed especially when I used to put my kids to bed in the evening knowing they are safe and secure here in Britain. However it was quite the contrary when I used to see the unpleasant videos circulating on social media. I recall one video where a Muslim woman was putting all three of her children in the same bed as her in the hope they would all die together and not apart in separate bedrooms whilst hearing the loud bombs and explosive noises outside. This video upset and disturbed me to the point it kept repeating in my mind over and over again. It was even worse going into work the next day and seeing colleagues discussing their lives and things like the football as if nothing were happening.*

23. *I started to notice that in the office not a single person in my department mentioned anything about the conflict in Palestine. I found this very distressing given that I was already emotional and negatively impacted by the issue through observing social media.”*

120. Ms Khalid's second post, was made at 8:44 am on the same day. It was in response to a colleague's post specifically addressed to her that asked where he could find out more about the history of the conflict. The colleague said that he did not fully understand the conflict and did not feel qualified to comment on it.

121. Ms Khalid's reply said:

“Thank you for reaching out to me. I will try my best to spread awareness about this issue.

Have you ever read the Balfour Declaration? It was an agreement drawn up by the UK & US government to implement a Zionist land. Land that did not belong to them. I understand the Jewish people kind of needed a place to go but NO ONE had the right to give them Palestinian's land. Still the Palestinians opened their land for co-existence. In turn the evil Israeli

government stole more and more land and set up illegal settlements (further backed by the US) and started the oppression.

This all started in 1948. Arabs and Jews lived peacefully until Israeli's got greedier. Hamas – mind you – was democratically elected and only came into existence 40 years later out of frustration. Do you know the majority of Palestinians water supply is toxic and controlled by Israel? Do you know that Israel won't allow them to have airports? Ports? They purposely damage their crops and won't allow them to leave the country? Palestinians are forced from their homes illegally every day (research Sheikh Jarrah), IDF purposely attack young boys, pregnant women and children because they are brainwashed from a young age to see Palestinians as enemies.”

122. The second and third paragraphs of the post were not Ms Khalid's own work. They had been copied by her from an Instagram post that she had saved on her phone. Ms Khalid told us that the post had been made by a Muslim influencer she followed. She also told the tribunal that having done her own research into the Israel/Palestine conflict on the internet she felt confident that the information she had copied was accurate.
123. The colleague to whom Ms Khalid was responding on the thread thanked her for the information and said he was looking forward to the REACH discussion.
124. The entire thread was hidden by Ms Stacey at around 10:25 am that morning following reports of breaches to her (533).
125. At 10:37 on the same day, Ms Khalid posted the following on the Muslim Yammer community:
- “So we are going to experience the same here on this platform just like Facebook and Insta where the posts are being hidden/ removed? I don't recall posts or stories being hidden regarding BLM, LGBTQ and other issues, so why this?”*
126. At 11:18, Ms Stacey messaged the Moderation Committee to say that she had hidden the thread in the REACH community. She said that two colleagues had reported Ms Khalid's second post saying it was:
- *“antisemitic and so damaging”*
 - *“not appropriate for an LGB forum, factually incorrect”*
127. Ms Stacey added that the colleague who made the latter comment had then also reported the overall thread giving their reason as *“Inappropriate conversation topic for LGB, inflammatory in content and tone (as is evident in subsequent comments).”* This was why she had hidden the entire thread while it was being considered. She confirmed that she had contacted the colleague who began the thread to let them know. She added:

“For awareness - there has been a comment posted to Lloyds Muslim Network on the topic and colleagues mentioning disappointment at it being hidden which I’ve explained in response.” (440)

128. A moderation committee meeting was arranged for 3.00 pm that day. Although not a member of the Moderation Committee, Mr Khalid was invited to join the meeting in his capacity as Co-Chair of the Respondent’s Muslim Network. He told the Tribunal that he understood he had been asked to participate in the Moderation Committee *“to provide cultural background from an Islamic and/or BAME perspective”*. Ms Stacey also invited Ms XX, the Respondent’s Inclusion and Diversity Manager to join the Moderation Committee discussion (95). The Tribunal understands that she was invited to join because she was one of the Co-Chairs of the Respondent’s Jewish Network.

129. At 12:54, Ms Stacey sent a further message to the Moderation Committee saying:

“Feelings continue to escalate around this debate and I’ve had a flurry of reports come through in response to the post on the Lloyds Muslim Network now.

I’m unable to hide that thread as Yammer doesn’t allow for a discussion that has been ‘announced’ to then be moved.

I’ve linked in with the author and he is going to close the thread to comments whilst we discuss and will also pop a note on there explaining to colleagues why.

It would be super helpful if you can read through all comments on both threads ready for our discussion if possible.” (Respondent’s supplementary bundle page 47 – 48).

130. In the meantime, at 13:54, Ms Khalid deleted her second post (533). This was because she had been tipped off by Mr Khalid that the post had been reported. He did not know her, but contacted her because he was concerned for her welfare.

131. The Moderation Committee call took place at 3.00 pm as planned. It lasted an hour and 13 minutes. Mr Khalid and Ms Harris described some of the discussion that took place to the Tribunal.

132. Ms Harris said that the comments under review were brought up on screen and discussed. She recalled Ms XX being *“very passionate”* about the impact that such comments can have on Jewish colleagues and whether they feel safe in work. According to Ms Harris, Ms XX spoke about a recent rise in hate crimes against Jewish people and backed her comments up with facts. She said she could not recall there being any challenge to Ms XX’s comments. She said that the Moderation Committee members voted unanimously that Ms Khalid’s post should be removed and she should be referred for a disciplinary investigation.

133. Mr Khalid's evidence corroborated what Ms Harris said, although he also said that Ms XX had stated that Ms Khalid's post was antisemitic. He said that everyone seemed to agree. He told us that he did not challenge this as he did not feel knowledgeable enough to do so and therefore chose to remain silent and neutral. In his written witness evidence he said, "*It also felt like most people on the Committee lacked knowledge if the post was antisemitic and agreed with individuals that were expressing the loudest view, in part because they felt scared to challenge that view without being labelled antisemitic themselves.*"
134. Mr Khalid also gave evidence to the Tribunal that Ms XX said that Ms Khalid's post should be dealt with as gross misconduct. We do not make this finding. As explained further below, Mr Khalid was part of a number of other discussions where Ms XX was present and where the Respondent's response to posts about Israel/Palestine were discussed. The Tribunal finds that Mr Khalid has misremembered which conversations took place, when and about which posts. Other evidence, referred to below, confirms that Ms XX did indeed believe that Ms Khalid's post was antisemitic. However, what the documentary evidence there is of the meetings points to the comment she made in his presence being about a different post.
135. Following the end of the call, Moderation Committee members continued to message each other overnight and into the following morning. The issue the members were grappling with was whether the entire threads on the REACH network and Muslim Network should be removed and, if so what should be communicated to colleagues by way of explanation.
136. In a conversation that was not part of the ongoing discussion, Ms Stacey messaged Ms XX privately. Ms Stacey's first message was sent immediately after the end of the call and expressed concern for how Ms XX was feeling (page 95 of the Respondent's supplementary bundle).
137. Ms Stacey also privately sought Ms XX's advice on the proposed actions agreed at the Moderation Committee meeting. At 18:41 that evening she messaged Ms XX saying that she and Ms Harris had met that afternoon to discuss the actions to be taken. She listed the names of the two colleagues who would be referred for formal conduct investigations (this was Ms Khalid and one other). She also mentioned a third colleague where the action would be a note to their line manager("LM"). She added:
- "Are there any others where we could be missing anything that should be addressed by formal conduct or LM notes? So sorry to put this on you but can't tell you how grateful I am to have your knowledge and support."* (page 96 of the Respondent's Supplementary Bundle).
138. A discussion then ensued between Ms Stacey and Ms XX in which Ms XX expressed her views about the decisions. As part of that discussion she said that she thought that it was "clear cut" that Ms Khalid's message was "*really offensive*", but others were not in the same category. She also expressed concern that the Respondent's Hearing Managers did not have sufficient

expertise to deal with the next steps because they would not realise why some of the things that had been said were so offensive. Ms Stacey expressed her agreement with this point.

139. Returning to the ongoing discussion within the Moderation Group, it was agreed that the decision about removal of the entire threads should be deferred to a different group at director level, which would also consider what should be communicated about the cancellation of the REACH discussion. It was recognised that communications about removing the threads and the cancellation of the REACH discussion should be aligned.
140. We note that Ms XX's contribution to the ongoing discussion that took place in the evening on 24 May 2021 was to ask that any communication emphasise the following:

“the Group are aware that the conflict has led to a rise in both Antisemitism and Islamophobia, and it's therefore incredibly important that [the Respondent] remains a safe space for all colleagues with no place for racism - in whatever forms” (page 60, Respondent's Supplementary Bundle).

141. Mr Khalid agreed that the matter should be escalated to the senior group. He commented that *“after speaking back to some colleagues they feel the humanitarian issue which being missed”* (page 63, Respondent's Supplementary Bundle).
142. A short initial meeting about the wider communication issue took place at 2:30 pm the following day on 25 May 2021. Both Mr Khalid and Ms XX were invited to attend. Mr Khalid requested that his Co-Chair of the Muslim Network/Community also be invited and Ms XX requested that her colleague Nicholas Mandel also be invited. Further meetings on this topic were also held, at least one of which also included Mr Quadir because of his role in REACH. The outcome of the discussions was that the entire threads would be removed (page 73 of the Respondent's Supplementary Bundle). Discussions were ongoing about the messaging connected with this when Ms Sohail made her post/ sent her emails.

Ms Sohail's Emails and Post

143. In early May 2021, Ms Sohail had ordered a monitor for the purpose of remote working. She already had a work laptop, keyboard and mouse provided by the Respondent. The monitor was not a necessity for her to be able to undertake her work, but it was a useful additional tool that would have made her more effective. Ms Sohail ordered the monitor by accessing the Respondent's internet.
144. Ms Sohail told the Tribunal that she had become familiar with the situation in Israel/Palestine from a young age, but she was not particularly interested in politics or history at the time. She took a much closer interest in the escalation of violence that occurred in May 2021, because it took place during Ramadan and involved Al-Aqsa. As a result she did some research on-line. She was also influenced by the social media posts of a friend who

campaigned for Palestinian rights. According to Ms Sohail, her friend's grandparents had "*been forced out of Haifa 75 years ago*". (w/s paragraph 23)

145. Ms Sohail explained to the Tribunal that she discovered the Palestinian Boycott, Divest and Sanctions (BDS) campaign at this time. She learned that boycotts had been used successfully to help end South Africa apartheid and felt that it offered "*an effective approach to address the issues in Israel-Palestine*." (w/s paragraph 24). She became involved in action that was being taken by a group of students at her University who wanted to the University to adopt BDS measures.
146. The Tribunal did not appear to have all of the correspondence between Ms Sohail and her University. One letter was included in the Respondent's Supplementary Bundle and other correspondence was disclosed during the course of the hearing. What we had showed that on 11 May 2021, Ms Sohail had written to Professor Sir Paul Curran, President of the University calling on him "*to condemn the brutal acts of violence committed by Israeli occupation forces on worshippers at masjid Al-Aqsa and the illegal theft of Palestinian homes in the neighbourhood of Sheikh Jarrah*."

She had continued:

"As you may know, the situation in East Jerusalem is a matter of urgency. In the past few days, Israeli settlers and occupational forces have been forcibly removing Palestinians from their homes in East Jerusalem. Protests erupted across Palestine in response which was met by Israeli forces attacking the holy site of Masjid Al-Aqsa using stun grenades and rubber-coated steel bullets.

The building of settlements and forced removal of Palestinians from their homes violates human rights and international law and should be wholly condemned by the university and government. Furthermore, the UK government should take action against Israel in accordance with international law and reverse the expansion of illegal settlements.

Since 1948, the Palestinian people have endured apartheid laws, settler colonialism, ethnic cleansing, military rule, child imprisonment, pain and generational heartbreak. The UK government has a responsibility to act, especially in the context of its historical role in the consolidation of the Zionist project. The UK government continues to sell arms to Israel, in defiance of its own export guidelines and as Human Rights Watch recently became the latest organisation to recognise the State of Israel to be an apartheid state. This imperialist violence is a continuation of Britain's legacy in Palestine and worldwide.

As a university, you represent a body of students and Palestinian student voices deserve to be heard. I am urging you to take immediate action and put pressure on the government to do so by providing a solid stance on this situation." (page 26, Respondent's Supplementary Bundle)

147. Later in the month, on 28 May 2021, she wrote to him again. This time was in response to receiving an email sent to all students about the outcome of a consultation the University had conducted in connection with the adoption of the International Holocaust Remembrance Alliance (IHRA) Working definition of antisemitism and its examples. The email had explained that the University had decided to “*recognise the IHRA working definitionon a non-exclusive basis*”.
148. In her response, Ms Sohail had said
- “I am extremely disappointed in this email and expected much better.*
- How can you release a comment about this issue and not mention the main issue in Palestine: a whole GENOCIDE. May I emphasise that anti-Zionism is NOT anti-Semitic. This completely disregards the main issue and you are changing the narrative. This is gaslighting. This email was quite tone deaf. May I also raise awareness to the fact that there is also a community of Jewish Palestinian people who are victims in this main issue, since that’s where you want to narrow the focus on.”*
149. Ms Sohail also made a freedom of information request to the University at around this time asking:
- “1. *I ask how you intend to move forward to ensure your university is not complicit in international human rights violations against the Palestinian people?*
 2. *What steps have been taken thus far?*
 3. *How much are you investing in such companies and are you intending to divest?*
 4. *Are you committed to an ethical investment policy?”*
150. Returning to the subject of the monitor, Ms Sohail told us that it was delivered to her home on Thursday 20 May 2021. She realised when it arrived that it had been made by HP. She believed, based on information she says was on the Palestinian BDS campaign website, that “*HP helped to run the ID systems that Israel uses to restrict Palestinian freedom of movement, and that HP was a major target of the BDS campaign*” (w/s paragraph 28). She told the Tribunal that she felt “*emotionally overwhelmed*” to discover that the monitor was an HP one.
151. Ms Sohail says that initially she did not do anything about the monitor and left it in its box. She recalled that she worked her usual shift on Saturday 22 May 2021 until 2:00 pm and then attended a protest about the Israel/Palestine conflict. She could not recall if she worked on Sunday 23 May or Monday 24 May 2021. According to the Respondent’s records she did not take holidays on these days and therefore the Tribunal finds that she did work as usual.

152. Ms Sohail told the Tribunal that she looked on the Respondent's intranet to try and find information about how to return the monitor, but was unable to find anything.
153. On Tuesday 25 May 2021, a non-working day, Ms Sohail spent her afternoon drafting the text that she later posted/emailed. According to her, she shared the draft with a colleague (Louise Spicer) at the Respondent privately, not using the Respondent's communication systems, to get her comments. Ms Sohail also told us that the next day Ms Spicer sent the final text to her own her line manager The Tribunal was not provided with any evidence to corroborate Ms Spicer's actions.
154. Ms Sohail told us she also undertook research to try and identify who at the Respondent was responsible for purchasing computer equipment and for diversity and inclusion issues as these were the two groups she wanted to approach.
155. Her finalised text said the following:

"I recently ordered a monitor for myself which I would like returned immediately (completely brand new in packaging, unopened the moment I saw it's provided by HP).

I am writing as a colleague regarding the genocide, ethnic cleansing, illegal occupation, apartheid and colonisation that has been occurring in Palestine, all illegal under international humanitarian law. I have felt inclined to question where my own actions and consumer choices alongside the group may be fuelling this violence.

As a group, we have a duty to safeguard and uphold our stance "against discrimination in all its forms" and "racial equality," quoted from the LBG website. Now is the time to showcase this.

HP (Hewlett Packard) helps run the ID systems that Israel uses to restrict Palestinian movement.

HP-E is contracted by Israel's Population and Immigration Authority to provide and maintain the Itanium servers that house Israel's population registry through 2020. Known as the Aviv System, this population registry is the basis of Israel's ID card system. This ID system forms a core part of the Israeli apartheid regime's tiered system of citizenship and residence that privileges Israeli's Jewish population and gives inferior status and rights to Palestinians, especially those in East Jerusalem. This leads to institutionalised racial discrimination and segregation in freedom of movement, housing, employment, marriage, healthcare, education and policing. This discrimination is further exacerbated in the case of Palestinian "residents" in occupied East Jerusalem, whose basic rights can and are being revoked arbitrarily.

The system also holds information about Israeli citizens living in illegal settlements in the occupied West Bank, therefore serving Israel's settler

colonial project directly. HP-E's spin-off DXC Technology runs an R&D facility in the illegal settlement of Beitar Illit.

In regards to this, I am demanding that you take the steps to divest and boycott from Israeli companies that are directly providing resources and military equipment fuelling this harm. I ask how you intend to move forward to ensure our group is not complicit in international human right violations against the Palestinian people?

*Kind regards,
Afra."*

156. On Tuesday 25 May 2021, Ms Sohail logged onto her work laptop in order to speak (using a messaging facility) with her line manager. The conversation took place between 22:08 and 22:17
157. Ms Sohail asked her line manager if he knew the name of the "*contact that sorts out group suppliers, i.e. the monitors etc*" and "*if he could find out who organises which supplies are selected for the group or the head of that department.*" He replied saying he would ask around the following day and see if anyone knew, to which she thanked him. Ms Sohail did not tell her manager that she had a monitor that she wanted to return. She also did not ask his advice about what she did next.
158. Around 20 minutes after the conversation, at 22:42 on 25 May 2021, the Ms Sohail posted the pre drafted text into five different Yammer Communities. These were mainly groups dealing with IT supplies, but she also included the REACH and Muslim Network Communities. She then emailed the same text to several generic email addresses dealing with IT and blind cc'd it to five senior managers whom she believed were involved either in procurement or diversity and inclusion. Ms Sohail accepted when giving her evidence to the Tribunal that she had distributed the text widely because she wanted to rally support for her cause.
159. Although Ms Sohail claimed during the subsequent disciplinary process and at the tribunal hearing that she believed that she had a limited time to act to get a refund for the monitor, we find that there was no basis for her to have this belief.
160. At 8:29 am the following morning, 26 May 2024, Ms XX messaged Ms Stacey privately to say that several Jewish colleagues had brought Ms Sohail's posts on the Yammer REACH Community to her attention. She added the comment, "*this is getting unbearable*". Ms Stacey replied within two minutes to say that she had come in to work to find 15 colleagues having reported the content for moderation. Ms XX responded saying that she was getting worried about Jewish colleagues. She said she had had a call from a line manager she did not know who had a colleague that had seen the posts and had not slept all night.

161. Ms Stacey replied describing the behaviour as “*horrific*” and saying she would escalate to director level. She added that she was locating all versions of the content to move them out of public view.
162. Ms Stacey also emailed the Moderation Committee. Her email concerned two new items reported for moderation, one of which was Ms Sohail’s message. She described Ms Sohail’s post as “*another awful one*” and told the Committee that she believed the item needed to be escalated to the directors (646- 647).
163. Also on the morning of 26 May 2021, further discussions to finalise the decision to remove the previous threads and how to explain this were taking place via Teams messages. The discussions were in a smaller group which included Ms Stacey, Mr Khalid, his Muslim Network Co-Chair and Mr Quadir. Ms XX was not part of the discussions. It was agreed the following message would be posted on the Muslim Network.

“You will have noticed we've made the decision to remove the original post, the comments and close down this thread that related to the conflict between Israel and Palestine. This is not a decision we take lightly. We recognise this is a highly complex issue that can be very easily offensive to some of you. We also know this can then affect your health, wellbeing and how you feel about coming into work and that the conflict has deeply impacted those of you with connections to Israel and Palestine.

While the post originator had the very best intentions to create a balanced, respectful and safe place for us to discuss this topic, some of the eventual commentary did not support those aims. We know that it made some of you feel uncomfortable and even unsafe – the opposite of its original intention.

It’s critical that conversations like this happen in a way that helps improve wellbeing and makes everyone feel included.

The subject becomes even more important given we are also aware of feedback that the conflict has led to a rise in both Antisemitism and Islamophobia, and it's therefore incredibly important that our business remains a safe space for all colleagues with no place for racism - in whatever form.

We want all of you to feel safe, included and welcome when you come to work which is why we have the Group behaviour 'I am inclusive and I care'. If you have been affected by these events in the external news and would like to speak to someone at work about them, please talk to your line manager, other senior managers in your area, or the Employee Assistance Programme - Validiuyum which can be accessed along with many other resources on the Wellbeing Hub to help your mental health & wellbeing at work. This support will help you to discuss this issue in an appropriate place, outside of Yammer.”

Our REACH network are also looking at how they can create appropriate safe spaces to speak to colleagues, while maintaining dignity and respect

for others facing similar challenges and they will be in contact over the next few days. Our network is here to support all of you from all backgrounds.

We recognise that we won't get every decision we make on the moderation of your comments like this right. However these decisions are always made with the best intentions, while trying to be as inclusive as we can for all of you and protect everyone's' mental health and wellbeing." (79)

164. A similar message was posted on the REACH Yammer Community.
165. Mr Khalid asked about what would happen in relation to future posts. Ms Stacey replied that this was an important matter in light of the new post that had emerged that morning. The Tribunal finds this was a reference to Ms Sohail's post (82). The responses suggest that Ms Sohail's post was being considered at director level rather than by the Moderation Committee or the other group (83). The group was later updated with the text of a message that would be put up in relation to Ms Sohail's message. The message was the same as the above message, but with the first two sentences replaced as follows:

"You may have seen an email from a colleague this morning querying the Group's supply chain in relation to Israel and Palestine. I'd urge you not to respond to the query." (91)

166. Entirely separately to the discussion that was taking place above, at 15:11 on 26 May 2021, Lesley Munden, Operational Manager, Colleague Experience and Adoption / Enterprise Technology Services, Group CIO, emailed Ms Sohail's line manager Mr O'Kane about her post saying:

"I hope you don't mind me bringing this to your attention, it's a comment made by [Ms] Sohail, who I believe is one of your direct reports, on the article on the colleague knowledgebase, which is inappropriate for this forum."

167. Ms Munden provided advice to Mr O'Kane to be passed on to Ms Sohail about how she could return her monitor and asked that Mr O'Kane address the rest of the email's content with Ms Sohail. She also said she would arrange for the comment to be deleted from the forum. In response, Mr O'Kane, sought the guidance of his manager, Karen Leach who escalated the matter to HR.

168. On 28 May 2021. Mr Quadir sent an email out to members of the Reach group which included the following paragraph :

"You'll be aware that there was due to be a call in the diary this Thursday to discuss the recent events in Israel/Palestine. It was brought to our attention that the invite issued wasn't positioned appropriately, was unbalanced and didn't focus or address what we as colleagues could do to support one another in standing up against antisemitism and islamophobia. We therefore decided to remove the call. There have also been some comments made on Yammer on certain threads which didn't meet the values and behaviours

of the Group and you can see what has happened to these in my message here.” (271)

Mr Quadir acknowledged under cross examination that the last sentence was a reference to the posts made by the Claimants.

169. On 28 May 2021, Ms Stacey emailed Ms Harris to confirm the decision taken by the Moderation Committee in relation to Ms Khalid (533). She also emailed Ms Khalid’s line manager asking him to keep the matter confidential for the time being. In her email she explained:

“The moderation committee, which includes a diverse population of colleagues from across LBG, including the Colleague Conduct team, Group Culture team, Group Inclusion & Diversity, Colleague Relations met and agreed that it was inappropriate, should be removed immediately and a colleague investigation is warranted.” (445)

170. Ms Stacey sent a similar email to Ms Leach, Mr O’Kane’s manager at the same time (318).

171. Neither Ms Khalid nor Ms Sohail received any formal notification of any action at this time.

172. On 28 May 2021, Ms Stacey thanked the people who had helped her deal with the posts. Mr Khalid replied saying: *“Thank you Emma - I met some really incredible individuals and I pray I get the opportunity to work with you all again at some point in the future in a positive situation.” (94)*

173. On 29 May 2021, Ms Sohail checked and found that her posts had been removed. Mr Khalid contacted her in or around early June to tell her that her post had been considered by the moderation committee and that someone might speak to her about it.

Disciplinary Investigations

174. The Claimants’ cases were both investigated. At the time of the investigations, the Respondent had a dedicated team responsible for conducting investigations into potential breaches of conduct. Sharon McCann, an experienced investigator from that team was asked to conduct both investigations into both Claimants. Ms Harris was appointed as the case officer in HR.

175. Ms McCann told us that when an matter is referred for investigation the investigator first reviews the case to decide if a formal investigation should proceed or whether informal action should be taken. This includes speaking to the line managers for the colleagues being investigated. In Ms Sohail’s case Ms McCann spoke to Ms Leach (Mr O’Kane’s line manager) and in Ms Khalid’s case she spoke to Mr Ormesher. Ms McCann decided investigations should proceed for both Claimants.

176. Following an initial discussion with Ms McCann, Ms Harris suggested it made sense for her to approach Ms XX for some input. This was because

Ms McCann wanted to better understand the impact the posts had had, but knew very little about the Israel/Palestine conflict. She wanted to gain some insight from an Inclusion and Diversity subject matter expert. Ms McCann confirmed this later in an interview with Nina Hicks, who dealt with the Claimants' appeals (570)

177. Ms Harris emailed Ms XX on Ms McCann's behalf (copying her in) on 7 June 2021. In her outgoing email she said:

"I hope you are well, and I hope you don't mind me reaching out.

I'm on the Moderation committee and was part of the discussion the week before last about the Yammer posts relating to Israel/Palestine.

I'm supporting [Ms McCann] (cc'd in), who will be doing the investigations for the relevant colleagues, and I wondered if you would be able to speak to [Ms McCann] and I to provide some more detailed context / understanding of the content of posts and the impact of these. [Ms McCann] and I spoke earlier today and both agreed that having someone from I+D who had a detailed understanding would really help support a thorough investigation.

I hope I've explained that clearly, and you don't mind me reaching out.

Please let me know if this would be possible, we are keen to get the investigations moving as soon as possible." (291 -292)

178. Ms XX replied on 8 June 2021 as follows:

"Hope you're well. Sure that's fine. I've copied in [Mr] Mandel (who also assisted the moderation committee with this) as he may have further helpful context to add.

I know there was one particular post that stood out as clearly antisemitic – a lot of the others were borderline / misinformation (so as an organisation it's hard to know where we are drawing the line) – I am unaware of which ones are going through to investigation so I will provide general context and then can pick up with more detail if you need.

For background – whenever the Israel/Palestine conflict escalates, it causes huge spikes in both antisemitism and islamophobia throughout the world – so the knock on effect for Jewish and Muslim colleagues at [the Respondent] is very real. The spread of misinformation in particular (which seemed to be much worse this time due to social media) is a big enabler of violence. For example there was a 400% + increase in antisemitic incidents in the UK over the past few weeks. Seeing the debate come into work (e.g. on yammer) made Jewish colleagues feel very unsafe – the big debate with the committee was free speech vs physical safety of colleagues. In addition, due to the threat of terrorism being so real, no Jewish colleagues would respond on these sort of posts which causes it to be very 1 sided and spread misinformation further.

So that was some background! In regards to specific comments and understanding if the propaganda and comments posted are antisemitic, I would recommend reading the IHRA definition of antisemitism (adopted by the UK Government and the EU) which includes demonisation, stereotypical allegations (e.g. Jews controlling the economy etc) and denying the Jewish people their right to self-determination e.g., by claiming that the existence of a State of Israel is a racist endeavour. These points particularly came to mind in the comment ‘I understand the ‘Jewish people kind of needed a place to go / ‘Land that did not belong to them’’, the long thread about HP monitors and the comment about universities contributing to Israel’s military budget. The use of language in these posts are also important – if someone says ‘Jews’ then it means all Jews around the world.

In the 1 particular post that comes to mind (stating the ‘jewish people kind of needed a place to go’) – there are numerous misleading and false claims in this post (I can send you more detail if you want). But these misleading claims erase Jewish history, identity and rights. The damage of this was seen straight away from a colleague response thanking the individual for the information explaining the conflict.

Appreciate this is a really tricky one and drawing the line between comments can become a very grey area. My overarching point is that from a colleague perspective – the majority of these are simply very inappropriate for a work setting (of course with some really crossing the line as above) and do not align to our Group values and behaviours and ensuring everyone is feeling included.” (290 – 291)

179. Ms XX provided a hyper link to the IHRA definition of antisemitism in the email. Mr Mandel, who had been copied in then added the following contribution:

“Thanks for adding me, [Ms XX], although I don’t have much to add to what you have articulated below.

I think my only suggestion would be to help further our knowledge on antisemitism to support taking necessary and appropriate action where required. This includes understanding the impacts [Ms XX] mentions below, i.e. any escalation in hostilities in the Israel / Palestinian conflict inevitably causes a huge spike in antisemitism and Islamophobia for Jews and Muslims globally, and this has been felt recently here in the UK, as well as how the use of language is also very important.

A couple of sources for further information that might be useful are the Board of Deputies of British Jews (www.bod.org.uk) and the Campaign Against Antisemitism (www.antisemitism.org) (although the second link isn’t accessible internally so will need to be viewed on a personal device).” (289 -290)

180. Ms McCann did not exchange any further emails with Ms XX or Mr Mandell about the investigation, nor did she speak to either or them. She did not look at any of the sources of information they had recommended. She did,

however, use the information provided by Ms XX about the increase in antisemitism and islamophobia experienced whenever the Israel/Palestine conflict escalated to frame some questions she put to the Claimants (571).

181. Ms McCann contacted each of Claimants by email, separately, to ask them to meet with her for an investigation meeting giving them an hour's notice. This was in line with the Respondent's standard procedure for initial conduct investigations, but both Claimants complained later and to the Tribunal that they were caught off guard by the invitation and would have wanted more time to prepare. Both Claimants told the Tribunal that as a result of being caught off guard by the investigation interviews, the answers they gave did not reflect their true positions. Ms Sohail's meeting was on 19 June 2021. Ms Khalid's meeting was on 22 June 2021.
182. In Ms Sohail's case, she did not see the email inviting her to attend the meeting until after the start time. This was because she was busy speaking to customers. Ms McCann messaged her and she joined the meeting as soon as possible (312).
183. Both Claimants were advised in the invitation emails that because the meeting was an investigation meeting they did not have right to be accompanied, but Ms McCann was happy for them to be accompanied if someone was readily available (296/543). Neither Claimant opted to attend with a companion. They said they did not have time to organise this.
184. Notes were taken of the meetings by a note taker. The notes were subsequently sent to the Claimants who were able to suggest amendments. The notes from Ms Sohail's meeting were at pages 298 – 306 of the bundle with Ms Khalid's at pages 459 – 467.
185. Ms McCann structured the interviews with both Claimants in the same way. She asked them similar questions, but adapted her approach because of the differences in each case. She asked each of the Claimants about their understanding of the Colleague Conduct Policy and in particular sections 1.2 and 1.3. She did not ask about section 1.7. She then sought to establish what each of the Claimants had done and why.
186. Both Claimants admitted making the posts/sending the emails that were being investigated. We set out below a summary of what they were asked and how they responded.

Ms Sohail Investigation

187. Ms Sohail explained that the background to her actions was that she felt strongly about what had been happening in Palestine. She had learned about the boycott of HP and wanted to try to influence the Respondent to adopt this. She admitted sending emails to a wide group in order to try and get support for the cause. She said she had deliberately blind copied senior people into her email to try and ensure it was addressed to them personally and they would actually read it.

188. Ms Sohail told Ms McCann that before she had sent the emails/made her posts she had asked her manager about a contact for the Group's supplier and he had said he would get back to her, but "*he must have forgot*".
189. When it was put to her that the language she used "*could be seen by some to be trying to ignite contentious debate on a topic that [was] highly sensitive*" she said that she had not meant to be rude or make anyone feel uncomfortable. She asked Ms McCann to point out what was wrong with the language she had used, adding that she had obtained the information in her post from the internet.
190. Ms Sohail repeatedly said that her concern was a humanitarian/human rights one. She reiterated several times that she had not intended to cause harm or upset or offend anyone and apologised if people felt that way about her post.
191. When it was put to her if she felt her post demonstrated the Group value, "*I am inclusive and I care*" she replied that she had posted because she cared about innocent people being killed. She said she did not mean to be antisemitic, even though it was not put to her that she had been.
192. When asked if she understood "*why some colleagues may have felt this post does not demonstrate inclusivity and was inappropriate on this forum*", she said she thought only people who supported what Israel was doing would have thought this. She clarified that she was aware that there were good people in in Israel and not everyone there supported what was happening.
193. When asked if she had considered the impact of her post on Jewish colleagues she said that she did not consider her post was directed at Jewish people and that Jewish people could also stand up for the same cause.
194. In response to the question, "*On reflection do you feel your comments support the Groups Race action plan which focuses on creating a positive culture for colleagues?*" she replied "*I just wanted to see if I could make a difference about the innocent killings. I don't feel like I've intended to go outside of the values.*"
195. Ms Sohail did connect her actions with any particular Muslim, anti-racist/oppression or anti-Zionist beliefs.
196. Shortly after the interview was finished, Ms Sohail messaged Ms McCann to say that she wanted to add that when posting she had wanted to reach a large audience because she felt this would receive more attention, similar to a petition (312)

Ms Khalid's Investigation

197. Ms Khalid told Ms McCann that she had not been thinking properly when she made her posts. She said that she had been very upset by the events in Palestine and had been having sleepless nights She felt frustrated that no-one at work was talking about the tragedy there. She identified with the

Palestinians because of being a Muslim, but wondered if this was why her colleagues did not care. Her frustration had led to her “*jumping on the bandwagon*” when she saw the initial post in the thread.

198. She admitted that she had copied and pasted the second post and that she had deleted the post when she had reflected on her actions. Ms McCann did not ask her about her third post.
199. Ms Khalid added that she had not thought about the fact that the forum she had posted to had members from all different backgrounds, She had posted thinking it was a safe platform to vent her frustration. She now recognised that what she posted was wrong, and was very biased and one-sided and did not demonstrate inclusivity. She described the post as a silly mistake and apologised for it. She also acknowledged that the post was in breach of the policies discussed at the start of the interview. She stressed that any offence was unintentional.
200. Ms Khalid did connect her actions with any particular Muslim, anti-racist/oppression or anti-Zionist beliefs, although she did raise the fact of her being a Muslim as part of the context for her posts.

Investigation Reports

201. No further investigations were undertaken by Ms McCann following the interviews. Neither Claimant had asked her to speak to anyone during their interviews. She prepared investigation reports for both Claimants recommending disciplinary action. She used a standard template for both Claimants which required her to fill in response to particular questions.
202. The investigation report for Ms Sohail was dated 22 June 2021 and was in the bundle at pages 307 - 311. The investigation report for Ms Khalid was dated 24 June 2021 and in the bundle at pages 468 – 471.
203. Ms McCann was transparent in both Investigation Reports about the fact that her investigation had included “*engagement with Ms XX*”, although she did not say what this engagement had involved (308/469).
204. In both investigation reports, Ms McCann said she did not think suspension was justified in either case. She said she did not believe suspension was necessary for Ms Sohail because she was on sabbatical leave for 9 weeks due to her university studies (308). For Ms Khalid she said:

“[Ms Khalid] has not been removed from role as I do not believe it is necessary, [Ms Khalid] appeared very apologetic during the investigatory meeting. I do not feel [Ms Khalid] poses a direct threat to colleagues or customers and have advised to keep matters in line with group expectations if posting on work related forums. As forums are monitored and moderate I feel there is reduced risk.” (469)
205. The report template Ms McCann completed required her to complete a box setting out her Rationale for Decision on recommended action.

206. Her rationale for her decision for Ms Sohail was as follows:

“I believe there is a formal case to answer as I believe there is sufficient evidence to suggest that [Ms Sohail] has failed to meet the expectations set out in the Colleague conduct policy in regards section 1.2 and 1.3 and 1.7 in that she has acted negligently in posted comments on an internal site which in not in keeping with the Groups Race Action Plan. Whilst [Ms Sohail] may not have directly intended to cause offence to her colleagues she has acted negligently in the comments she has used in regards a highly sensitive topic which has caused other colleagues to report the posts made. The post was reviewed by the forum moderators and it was deemed that the post was inappropriate and was subsequently removed from the forums.

I also believe [Ms Sohail] e-mailing the post to several senior managers was inappropriate and she acted wilfully in sending this post blind copying others in to get a reaction.” (310)

207. Her rationale for her decision for Ms Khalid was exactly the same, save for the last paragraph. She replaced it with the following:

“Whilst [Ms Khalid] did later remove the post, she followed this with a further comment about posts being removed or hidden.” (470-471)

208. Another box required Ms McCann to frame the allegation to be considered at a disciplinary hearing. For both Claimants, she framed the allegation as one of gross misconduct as follows:

“It is alleged thathas posted inappropriate comments on Group [communication IT site/ Group internal Yammer] that included comments with overtones and implications that directly contravene the values of the Group as an anti-racist organisation which has caused colleagues to complain and the posts to be removed by the forum moderators.” (310/471)

209. Ms McCann sent the investigation reports to the Claimants shortly after completing them. Ms Sohail emailed her on 2 July 2021 and asked her some questions which included asking her to elaborate on the basis for the allegation of misconduct and/or to specify the type of misconduct. Ms McCann replied on 5 July 2021, saying:

“In relation to the allegation, the main details are that you have posted a comment on internal Group sites and sent it to a number of Directors, the post was reported to the Group forum moderators who reviewed the post and found it not to be keeping with the Group values of ‘I am inclusive and I care.’ Due to the nature of the case it falls under Gross Misconduct.” (319)

Ms McCann’s Evidence to the Tribunal

210. In her evidence to the Tribunal, Ms McCann was adamant that she was not influenced in any of her decision making by the content of the email exchange with Ms XX and Mr Mandel and that she alone made the decision in both cases.

211. She told the Tribunal that when reaching her decision she did not consider the content of the posts herself. Although she read the posts, she did not decide for herself if the content was offensive or explore the factual accuracy of the posts. Instead, she relied solely on the fact that complaints had been made about the posts and the moderation committee had deemed them to be offensive.
212. When asked if she thought the posts were antisemitic, she said that she was not knowledgeable enough to decide this and had not decided it. She said that her remit had not been to consider this question. Instead her remit had been to decide if the posts were appropriate for the workplace and in breach of any procedures.
213. Ms McCann confirmed it did not enter her mind that the posts might be manifestations or expressions of a religious or anti-Zionist belief.

Disciplinary Hearings

214. The next stage of the Respondent's process was for each Claimant to be invited to a disciplinary hearing. At the relevant time, the Respondent had a team of specialist disciplinary hearing managers trained to conduct disciplinary hearings. Different disciplinary hearing managers were appointed from the team for each Claimant. In the case of Ms Sohail, the hearing manager was Mr Quadir whereas for Ms Khalid it was Nicola Webster.
215. Both Claimants were invited by letter to attend disciplinary hearings to which they could be accompanied by a work colleague or trade union representative. The letters informed them of the allegation against them, that the matter was being treated as one of gross misconduct and the potential sanctions that could arise. This included telling them about the potential regulatory consequences.
216. The allegation in the invitation letter for Ms Sohail said:

"In your role as a Customer advisor you are expected to adhere to the Group's Colleague Conduct Policy, Code of Responsibility and the Group's requirements to act with integrity and in line with the Group's commitment to create an inclusive environment for all by being an anti-racist organisation. As an anti-racist, inclusive business, we do not accept, and will investigate, language or behaviour that is discriminatory, offensive or harasses others.

It is alleged that you have breached the Group's:

- *Colleague Conduct Policy – Professional Integrity Sections 1.2 and 1.3 and Personal Integrity Section 1.7*
- *Code of Responsibility – Section 3 Doing Business Responsibly*

It is alleged you have posted inappropriate comments on Group sites such as IT@LBG, Yammer and Hive as well as e-mailing to a number of Directors. The posts included comments with overtones and implications

that directly contravene the values of the Group as an anti-racist organisation.

Specifically it is alleged that:

- *On the 25th May 2021 you posted the following comment on various Group sites such as Yammer, Hive, IT@LBG site:*

[the text of the post was then set out]

- *You also sent the comments via e-mail, blind copied to a number of Directors.*
- *Your comments caused colleagues upset and as a result flagged the posts to the respective moderators of the Group.*
- *The forum moderators reviewed your posts and deemed them not be in keeping with the Group Value of 'I am inclusive and I care' and subsequently removed the posts.*

It is alleged that the potential and/or actual risks and impact of this conduct are as follows:

- *that your actions fall outside what is expected of all colleagues within the Group in line with its anti-racist values and culture*
- *that your comments have caused offence to colleagues*
- *that your personal integrity as a colleague has been brought into question.” (302 -303).*

217. The allegation in Ms Khalid's letter was essentially the same, but specific to her post and actions.

218. For different reasons, both Claimants requested their disciplinary hearings be postponed. The Respondent agreed to the requests. In Ms Khalid's case, her hearing actually took place on 9 August 2021, whereas Ms Sohail's hearing was on 31 August 2021. By this time Ms Sohail had returned from her exam leave and changed line management arrangements. Both Claimants were accompanied by different trade union representatives at their hearings. Notes were taken of the discussions at the hearings, which they were given the opportunity to check and amend.

Ms Sohail's Disciplinary Hearing

219. The notes of Ms Sohail's disciplinary hearing were in the bundle at pages 333 – 346. She was accompanied by Cris Leatham-Frost of Unite who gave evidence at the Tribunal hearing. He opened the hearing by making an opening statement on behalf of Ms Sohail. Following the hearing, on 2 September 2021, as agreed in the hearing, Ms Sohail emailed Mr Quadir with the information that Mr Leatham-Frost had written down (348 – 332).

220. Mr Leatham-Frost and Ms Sohail explained that neither of them understood what it was in the content of Ms Sohail's post that was said to be contrary to the Group's anti-racist culture. Ms Sohail said she still did not understand

why the moderators removed her post. Mr Quadir did not address this in the hearing.

221. Mr Leatham-Frost acknowledged that the Israel/Palestine was highly sensitive and there were likely to be different opinions within the Group about it. He argued, however, that the views Ms Sohail held were shared widely in modern society and that, as a matter of freedom of speech, she should be free to express them. At the end of the disciplinary hearing, Ms Sohail asked if there had been any guidance issued to colleagues about what they should and should not say about the Israel/Palestine conflict.
222. Mr Leatham-Frost specifically addressed Ms Sohail's use of the terms genocide, apartheid and ethnic cleansing saying that the use of this language in connection with Palestine was consistent with the Amnesty International Report dated 2020. He also attributed this report as confirming that Israel's Jewish population were given privileges and that the status of Palestinians in Israel was inferior.
223. Both Mr Leatham-Frost and Ms Sohail argued that criticism of the activities of the Israeli government did not amount to antisemitism. They explained that there was widespread support amongst Jewish people and organisations, both inside and external to Israel, that Israel's occupation of Palestinian land was illegal and needed to stop. The supplementary information provided a long list of examples.
224. Mr Leatham-Frost argued that boycott was widely understood to be a legitimate form of action and that in fact, by raising this topic as an issue for the Respondent, Ms Sohail was acting in line with the duty contained in the Code of Responsibility to speak up about matters of concern. Ms Sohail said that she had hoped that her suggestion to boycott HP could result in a "good news story" for the Respondent, because of the potential for positive publicity arising from it, rather than create reputational risk.
225. Mr Leatham-Frost said that he and Ms Sohail were assuming that the Respondent had no issue with the factual content of her post about HP's activity in Israel. The supplementary information provided afterwards included some examples of other boycotts of HP.
226. When asked by Mr Quadir in the disciplinary hearing to explain why she had made her post, Ms Sohail gave more emphasis to wanting to get advice on how to return the monitor than she had before. She told Mr Quadir that she had received the monitor on the same day she made the post and that she had not waited to speak to her manager before posting because she believed there was a 21 day refund timeline. This was not factually accurate, but was accepted by Mr Quadir who did not investigate this further. Ms Sohail admitted, however, that the holistic purpose of the post /emails was that she wanted to speak up about the "*illegal military occupation*" in Palestine.
227. Mr Quadir asked Ms Sohail about the fact that she had closed her post with a "*demand*" that the Respondent act in a particular way. She said that this

was meant to convey “*asking with authority*”, but acknowledged how it came across. She said she had not been looking for a fight or to impose her views on others.

228. Ms Sohail also said in her interview and in the information she sent subsequently that she had been under exam stress when drafting the post and that, on reflection, she thought the post was “*all over the place and messy*”. She acknowledged it could have been “*more tasteful to the audience*”. She also said that she would modify her approach and seek advice before sending a similar post in the future.
229. Other than as described above, Mr Quadir did not go through the post content with Ms Sohail. He did not put to her that any particular comments were offensive or inflammatory, or contrary to the Group’s anti-racist values and culture and ask her to respond. He also did not question the factual content of the post.
230. Before the disciplinary hearing ended, Mr Leatham-Frost queried the reference in the investigation report to engagement with Ms XX. He said he had been told by (unnamed) colleagues that Ms XX had expressed views during the moderation process about which colleagues should be disciplined, rather than limit her contribution to deciding if posts should be taken down. He said that the Respondent should share details of what engagement took place.
231. We note neither Ms Sohail, nor Mr Leatham-Frost connected Ms Sohail’s actions with any particular Muslim, anti-racist/oppression or anti-Zionist beliefs, although the issue of freedom of speech was raised. In the supplementary information provided afterwards, the following points were included (but not explained):
- “ - *Allegation logic used in the protest of Black Lives Matter; if the logic is applied in the same way, does that make one racists against white people?*
 - *Humanitarian view: everyone’s lives matter; educating myself (everyone is encouraged to do) and trying to increase awareness doesn’t discriminate against others” (348)*

Ms Sohail’s Disciplinary Outcome

232. Before reaching his decision, Mr Quadir did not undertake any additional investigations into the factual accuracy of Ms Sohail’s post or consider any of the other information that Ms Sohail had provided about the support for belief. He relied on what Ms Harris told him about the actual and potential impact the posts had had and why the moderation committee had decided the posts should be taken down.
233. Ms Sohail’s follow up information included some notes about what she should have done differently. He did consider this.

234. Ms Quadir upheld the allegation of gross misconduct and decided that Ms Sohail should be given a final written warning and undertake refresher training on Dignity at Work and complete other internal race awareness courses. He prepared a standard form document capturing the rationale for his decision (352 – 340) and an outcome letter dated 15 September 2021 (359 – 364).
235. In the letter and rationale document he recorded that the allegation of gross misconduct was upheld based on the following findings:

“You have worked for the bank for four years and been in your current role since February 2021. You have said that you are fully training in role and have completed all your mandatory training.

During the hearing you did share that you wrote the post not with the intent to cause upset, but to raise awareness around the suppliers that the bank chooses and your personal belief that we should not be using them.

You shared the timelines of activity leading to your post on Yammer. You had received the monitor and your personal preference is to not use products from companies that you believe have associations to the Israel/Palestine conflict.

You then requested information from your manager on the suppliers. You shared that you were concerned with the time it would take to identify the suppliers and to commence a refund of the monitor because of your upcoming sabbatical. This was approximately four weeks from the date you received the monitor.

On the same day of receiving the monitor you made the comments on Yammer. You have said you shared this with five senior manager and leaders as you had seen they had been active in the inclusion space and wanted them to be aware. You have said the reason you made the post was to find a way to request your monitor to be returned and raise a conversation on what suppliers the bank use. You still have the monitor and confirmed you are now using it.

Whilst I acknowledge we have social media platform to share views and have conversations, your comments went beyond exploring how to return the monitor. You did explain you put the additional detail and context about HP ID system into the comment to explain your reasoning why and have used factual external sources for the content. There is no reference to these external sources within your post.

As a group, the bank have introduced the Race Action Plan to create an inclusive and safe work spaces for all colleagues. During the meeting you said that you felt your comments were not anti-Semitic or aggressive. Colleagues have anonymously shared their distress and upset which your comments have caused, and it has been reported and raised to a moderation committee, resulting in your post being removed.

Your post has caused upset to colleagues by the tone and words you have used. Some of the specific comments that may have caused offence include:

- *“the group may be fuelling this violence”*
- *“This ID system forms a core part of the Israeli apartheid regime’s tiered system of citizenship and residence that privileges Israeli’s Jewish population”*
- *“demanding that you take the steps to divest and boycott from Israeli companies”*

Whilst you have acknowledged the wording on reflection could have been better, it has caused upset to our colleagues and is considered a form of micro-aggression towards Israelis, particularly those from a Israeli-Jewish background. Your comments are not in line with the groups values, and the inclusive culture and safe space the group is looking to achieve.

You believe the impacts of your post would be positive to our customers and other suppliers had they seen this, though there is also potential reputational damage with the tone and words that have been used given colleagues have been upset by what has been posted.

I do understand that at the time you were preparing for your exams and were worried about this, which I have considered when making my decision.

You and your representative have also shared with me information in regards to the facts within your comments and that it is information available on the internet.

You also said that there are some celebrities and high profile individuals who have taken a stand against the Israeli governments actions.

During the hearing you were not able to recall the elements of the Dignity at Work training, which reminds colleagues to be aware of the words we use and the offence it may cause to others using our group values.

I can conclude, that your actions have fallen short of what is expected of you. You had four weeks before your sabbatical began, which I feel is sufficient time to wait for a response from your manager and identify suppliers and also make your comments more specific to your original intent to return the monitor which you have failed to do.

You said you did not intend on upsetting colleagues with your comments, however this was the impact and the appropriate sanction needs to be imposed. Whilst I acknowledge this is based on a topic you are passionate about, your comments and approach to raising a conversation had not been conducted in appropriate way and has fallen short of the dignity and inclusion expected of our colleagues.” (360 – 362)

236. He then explained the reason for the sanction. Of this he said it took into account:

- Ms Sohail's length in service
- Her acknowledgement that the post could have been worded differently
- The reason for writing the post came from a personal view point she wanted to express
- The impact to colleagues with the words used
- Her lack of awareness of the negative impacts that the post may have caused

He expanded on this as follows:

“While I have taken into account your personal reasons to want to write a post about something you strongly believe in, I can conclude the way you have shared was not appropriate and the language you have used has caused upset to other colleagues.

You did share the positive impacts you believe your post would have to customers and suppliers, however were not able share what potential negative impacts they would cause, therefore suggesting you did not consider a balanced approach when writing your post.

The approach you took in a matter of hours from receiving the monitor to then posting Yammer your views does not reflect the values and behaviours expected of you as a colleague. You did not provide the full context to your manager of why you wanted the supplier details and used a social media platform on various pages to share your post. I do appreciate you are passionate about items you use from specific organisations though it is your responsibility to ensure your words and does not cause harm to others.

You did acknowledge that you could have worded your post differently and could have checked your comments with another colleague or line manager to ensure the tone was right.

You explained how you couldn't understand why the Bank had taken the decision to take Disciplinary action against you and further questioned why this had entered at Gross Misconduct. This is consistent with other cases of this nature. Some of your comments posted fail to meet standards in the Colleague Conduct Policy in regards section 1.2 (Discrimination, victimisation, harassment (physical, verbal or non-verbal) and bullying will not be tolerated) and 1.3 (Colleagues must ensure that their communications are appropriate at all times). It is also concerning that your comments are not in keeping with the Groups Race Action Plan and could cause impact to other colleagues.” (362 – 363)

237. The letter confirmed that the final written warning which would remain on Ms Sohail's personal file permanently but would be disregarded for disciplinary sanction purposes after 12 months. It also explained that the matter would be referred to the Respondent's Conduct Panel to consider if there had been a breach of the FCA conduct rules which required reporting. Mr Quadir also explained that the engagement with Ms XX referenced in the investigation report had been for context only and she had no influence on the decision

to instigate the investigation, or on the investigation manager's decision. He based this on speaking to Ms Harris.

238. The rationale document contained the same information as above, but also the following additional information about Mr Quadir's rationale for the sanction as follows:

"The colleague has confirmed that they wrote the post. They have said that it was not done to create any racist or anti-Semitism, though to provoke positive change in the suppliers that the bank use.

Before making a decision I have considered:

- The evidence available*
- The colleagues length of service*
- The colleague (sic) personal views and intent with writing the post*
- The impact of the post*

Whilst I understand the passion the colleague has for this topic, I can conclude that they have not applied the values of the group in this instance. The colleague does believe that they have created positive comments and not aware of the negative impacts of what they have said.

While they have acknowledged that they could have worded it better, the colleague has not reflected on the timescales of their actions and its impacts.

The colleague was unable to provide insight to Dignity at Work training. The colleagues actions were not appropriate in how they shared the thoughts and the content of the post has caused upset that colleagues had to raise concerns anonymously. The appropriate sanction needs to be imposed."
(358)

Mr Quadir's Evidence to the Tribunal

239. In his written witness statement prepared for the Tribunal, Mr Quadir said that before he conducted the disciplinary hearing, he had known of Ms Sohail through the Respondent's Muslim network. He had therefore been surprised at her actions because he thought she would have an understanding of what the Respondent was trying to achieve with the Race Action plan.

240. He said that he believed in freedom of speech, but felt the tone and purpose of Ms Sohail's post was "very inappropriate". He said his decision and finding of gross misconduct were primarily based on the way the post was shared, especially in relation to sending it to senior managers, as well as the language itself which "could be viewed as inflammatory".

241. With regard to the returning of the monitor, he said in paragraphs 43 and 44 of his witness statement:

“My decision was because of the speed and method of reaction from [Ms Sohail] having received the monitor. [Ms Sohail] had told me that she had tried to get a response from her manager on which supplier the bank used and was also going on sabbatical in 4 weeks’ time. However, [Ms Sohail] made the comments on the same day as receiving the monitor and on the same day that she asked her manager for the supplier details.

My thoughts were that, if it had been a few days or [Ms Sohail] had returned from sabbatical and she was frustrated that she hadn’t been given an answer and then she made a comment saying that she was not getting anywhere and was not happy for her own reasons about using HP products and left it at that we would not be in this situation. If she had just kept it short, in saying that she didn’t want to use a product, in my opinion there would not have been a disciplinary situation. It all went way beyond just returning a monitor.”

242. He also said that when he was speaking to Ms Sohail he considered she showed *“a lack of awareness [of] the impact that her comments had or may have on other colleagues”* adding, *“She didn’t say to me that she understood how it might come across. [Ms Sohail] had sent a post that had indirect connotations and potential impact for colleagues from a Jewish background. The forum and the email was not the right platform for [her] to express any such views.”* (w/s paragraph 45).

243. He said further in paragraph 46 of his witness statement:

“I acknowledged that the comments were based on a topic that [Ms Sohail] is passionate about, however, I concluded that the comments and approach to raising a conversation had not been conducted in an appropriate way and had fallen way short of the dignity and inclusion expected of our colleagues.”

244. When considering the level of sanction he told us that he took into account that Ms Sohail had said that she not intended to upset her colleagues and that her post had not been directed at a particular colleague. He said, *“I considered whether a sanction less than final written warning was appropriate, but it was my opinion that [Ms Sohail’s] actions were serious and had fallen well short of what was expected of her. The comments were specific to a particular population of people and [Ms Sohail] didn’t recognise the negative impact this had. [Ms Sohail] was trying to put her personal views across, but it wasn’t appropriate.”* (paragraph 50).

245. Mr Quadir told the Tribunal that he did not know how many complaints had been made about Ms Sohail’s post and had not reviewed them. Although he was not party to the decision to remove the post from the forum, he understood that the decision was based on the fact that the post was one-sided and contained antisemitic content. He clarified that he personally did not consider the post to be antisemitic, but maintained that the comments in the post were in breach of the Groups’ anti-racist values.

246. Mr Quadir also confirmed that, when making his decision, he did not consider whether the post was a manifestation or expression of any

particular Muslim, anti-racist/oppression or anti-Zionist beliefs. He said he did, however, address his mind to the question of freedom of speech more generally.

Ms Khalid's Disciplinary Hearing

247. The notes of Ms Khalid's disciplinary hearing were in the bundle at pages 485 to 498. She was accompanied by a trade union representative called Chris Wilton. He opened the hearing by making an opening statement on behalf of Ms Khalid.
248. Mr Wilton said began his statement by saying that he and Ms Khalid had not been provided with any information about the number of complaints that had been made about the posts or what specific concerns had been raised in the complaints and would like to have this information. Ms Webster did not address this in the meeting.
249. He had noted on the investigation report that the investigation had included engagement with Ms XX. He identified that she has a Hebrew first name and asked the Respondent to consider if there might have been any unconscious bias in the investigation.
250. Mr Wilton questioned why the allegation had been framed as one of gross misconduct and said he felt this was disproportionate. He referred Ms Webster to the comments that had been made about suspension in Ms Khalid's case and also to the fact that what the Respondent seemed to be alleging was defined as misconduct, rather than gross misconduct under the Respondent's policy. He cited the example "*Negligence in undertaking your role & responsibilities and/or behaviour likely to cause offence to other employees, group customers or the general public.*" He argued that the sanction, taking the full circumstances into account, should be informal workplace guidance.
251. Ms Khalid reiterated what she had said at the investigation meeting and said that she had not intended to cause anyone offence with her post and was sorry if she had. She acknowledged that the language she had used was too blunt. She also reiterated that she had been motivated to post because of how emotional she felt about what was happening in the Israel/Palestine conflict and her frustration that it was not being recognised as a humanitarian issue.
252. Both she and Mr Wilton strongly challenged that anything about her post had been racist or antisemitic. They emphasised the context in which the post had been made. Mr Wilton addressed the fact that the Israel/Palestine conflict was one of the most enduring and emotive in history which polarised opinions and commentary for and against both sides of the conflict. He explained that Ms Khalid had posted about the conflict from a Muslim perspective as part of an existing thread in what she had thought was a safe environment to express her views. Both argued that the post was a consequence of the Respondent's approach to encouraging colleagues to bring their whole self to work and speak openly, providing they did so in a non-discriminatory way.

253. Mr Wilton argued that the post was not critical of any particular race or religion, but had targeted a country, namely Israel and in particular the Israeli government and military. On this point, he added that Ms Khalid's concerns about the actions of Israel were widely shared including among mainstream academics, commentators and journalists and had been highlighted in the annual report of a highly respected human rights organisation. He also highlighted a section on the government website that stated that it is antisemitic to hold Jewish people collectively responsible for actions in Israel. He argued that this was not what Ms Khalid had done. Ms Khalid said that she stood by her criticisms of the Israeli government.
254. Both Mr Wilton and Ms Khalid expressed how horrified and upset Ms Khalid was to be accused of being racist. She explained that she had experienced racism when she was younger. She said that having worked for the Respondent for twelve years, none of her colleagues would accuse her of being racist and offered her former line manager whom she had worked with for 6/7 years as a character reference.
255. Ms Webster did not go through the content of the posts with Ms Khalid. She did not put to her that any particular parts of them were offensive or inflammatory, or contrary to the Groups anti- racist values and culture and ask her to respond. She also did not question the factual content of the post.
256. We note although Mr Wilton said that Ms Khalid was speaking from a Muslim perspective, other than this, neither he nor Ms Khalid connected her actions with any particular Muslim, anti-racist/oppression or anti-Zionist beliefs.

Ms Khalid's Disciplinary Outcome

257. Ms Webster did not undertake any additional investigations following the disciplinary hearing.
258. She upheld the allegation of gross misconduct and decided that Ms Khalid should be given a final written warning and undertake internal race training. She prepared a standard form document capturing the rationale for her decision (499 - 503) and an outcome letter 16 August 2021 dated 2021 (504 – 509)
259. In the letter, Ms Webster recorded that the allegation of gross misconduct was upheld based on the following findings:

“You have 12 years experience working with the Group and confirmed you have knowledge and understanding of the colleague conduct policy.

You explained you were new to Yammer, however confirmed during the meeting with myself that you were a member of Hive previously and therefore it is reasonable to assume you have knowledge of work communication platforms.

You explained you received an invite to Yammer and assumed you had joined a Muslim only network and when questioned where you had clicked

the link on the Home page which states new to Yammer click here you confirmed you never reviewed this.

[Ms Webster set out the guidelines for Yammer]

You explained how you couldn't understand why the Bank had taken the decision to take Disciplinary action against you and further questioned why this had entered at Gross Misconduct. This is consistent with other cases of this nature.

Some of your comments posted fail to meet standards in the Colleague Conduct Policy in regards section 1.2 (Discrimination, victimisation, harassment (physical, verbal or non-verbal) and bullying will not be tolerated) and 1.3 (Colleagues must ensure that their communications are appropriate at all times). It is also concerning that your comments are not in keeping with the Groups Race Action Plan and could cause impact to other colleagues.

The specific comments which have really raised concerns are as follows;

- *I understand the 'Jewish people kind of needed a place to go' but NO ONE had the right to give them Palestinian's land.*
- *In turn the evil Israeli government stole more and more land and set up illegal settlements (further backed by the US) and started the oppression. (Specifically the word evil in this sentence)*

The inflammatory language you have used in your comments has caused offence to other colleagues resulting in these concerns being raised with the moderation committee. As a Group, this is not deemed as acceptable. You say that this information came from external sources, however you have chosen to post this, so the responsibility of the content and the language used lies with you. It is your responsibility to ensure that anything which you write does not harm others.

In your meeting you confirmed you were sorry for putting these comments in a work forum, however you are not sorry for what you have said and you still stand by it. You did say however that on reflection you maybe shouldn't have posted them on a works forum. Whilst I fully understand this is a very emotive subject and something which you demonstrated you feel passionate about, we do have to consider the diverse background of all our colleagues.

In your meeting, your Union Rep commented on the name of a colleague from Inclusion and Diversity which was in the Investigation documents. The engagement of Inclusion and Diversity was for context only, and the colleague had no influence on the Investigation Manager's decision.

It was also established during your Investigatory meeting that you actually removed the 2nd part of your post which was posted at 08.44am. You confirmed you reflected and realised you shouldn't post what you think.

Whilst you therefore may not have intentionally set out to cause any upset or offense, it is clear you identified yourself the comments made may not be acceptable and in line with the Groups expectations.” (506 – 507)

260. The outcome letter confirmed the final written warning which would remain on her personal file permanently but would be disregarded for disciplinary sanction purposes after 12 months. It also explained that the matter would be referred to the Respondent’s Conduct Panel to consider if there had been a breach of the FCA conduct rules which required reporting.
261. In the rationale document, Ms Webster noted in addition to the above:
- That Mr Wilton had commented that the case appeared to fall under the misconduct example set out above
 - That Ms Khalid had “*called out*” that she did not know who had complained or what had been complained about
 - Mr Khalid had said that she was not racist in any way and was offended by this
 - The fact that Ms Khalid and Mr Wilton had raised that what was posted was aimed at the Israeli Government and military. In relation to this she observed that the comments cited above read “*as personal views are expressed and people could easily take offense (sic) to this which has obviously happened in this case.*”
 - She included the observation, “*When the moderation committee have reviewed the comments they had real concerns that the comments could be classed as racist*”. (502)
262. All that she said about the sanction in the letter was that she had taken into account the remorse that Ms Khalid had demonstrated for any upset which may have been caused (507).
263. In her rationale document, she expanded on this saying that the moderation committee had “*specifically called out*” the parts of the post cited in the outcome letter “*as real cause for concerns*”. She observed that, “*The way both of these statements are written could cause offense to be people and can be construed as Racist.*”
264. She also took into account the fact that Ms Khalid had not intended this, but held that she was responsible for what she posted and deleted it later in the say. She also recorded that while she took into account the remorse Ms Khalid had shown, she had confirmed in the hearing that she stood by her comments. This concerned Ms Webster because it meant that Ms Khalid “*could not herself see where she could cause offence to others*” (503).

Ms Webster’s Evidence to the Tribunal

265. When explaining her decision to the Tribunal, Ms Webster explained that her decision did not take the Ms Khalid’s third post into account. She told the Tribunal that she had no prior knowledge of the conflict in

Israel/Palestine conflict and did not consider she needed to research the background of it. She did not consider whether the content of Ms Khalid's post was factually correct or not. She also said she was not in a position to be able to judge if Ms Khalid's post was antisemitic or not.

266. Ms Webster told the Tribunal that the reason for her saying the post could be "*construed as racist*" was because it was not inclusive and did not present the united front the Respondent was trying to create. It was unclear as to whether she made her own findings or relied on the findings made by the Moderation Committee. She said that she had considered the content of the posts for herself in order to identify the parts that were offensive. However, it was put to her that in her witness statement and her rationale document she had said that these were comments that the Moderation Committee had identified as racist. She was unable to recall how she knew this and whether this was information that she had obtained from Ms Harris or through reading the email exchange between Ms Harris, Ms XX and Mr Mandel.
267. It was also unclear whether Ms Webster considered whether the post was a manifestation/expression of Ms Khalid's beliefs. She said in paragraph 42 of her written witness statement that she understood this at the time, without being specific about the relevant beliefs, although she said when being cross examined that she had not considered this. She was very clear, however, that she considered Ms Khalid was entitled to have her own beliefs, views or opinions. Ms Webster's concern was about the fact that they had been expressed on a work platform.

Conduct Panel

268. Following the outcome of the disciplinary hearings, the Claimants' cases were referred to the Respondent's Conduct Panel. The purpose of the referrals was to determine if their conduct amounted to a breach of the Conduct Rules, and if so whether it should be reported to the regulator.
269. The Respondent's Conduct Panel operates entirely separately to the Disciplinary Process. It does not question the findings and/or outcome of the disciplinary process, but takes these at face value. It carries out its work on an entirely anonymised basis and employees whose cases come before it do not have any opportunity to make representations to it. The Conduct Panel Secretary presents the cases to the Conduct Panel who do not have access to the disciplinary files.
270. Ms Khalid's case was considered by the Conduct Panel on or around 17 August 2021. The Conduct Panel was informed that Ms Khalid had been given a final written warning having "*made inappropriate comments on YAMMER threads with overtones and implications that directly contravene the values of the Group as an anti-racist organisation, causing complaint from colleagues.*" It was also told that, "*At the hearing the colleague admitted to making the posts and stated that they stood by their comments, however acknowledged that these should not have been shared in a work forum.*" (511)

271. The Conduct Panel decided Ms Khalid had breached Rule 2 of the FCA Conduct Rules and accordingly on 19 August 2021, she was sent a letter confirming this. The rationale in the letter was stated as

“You have failed to act with due skill, care & diligence. You have demonstrated a pattern of non-inclusive behaviours on bank systems, therefore you are deemed to have breached the Colleague Conduct Policy section 1.2.” (514)

The letter informed Ms Khalid that the breach would be reported to the FCA and that the information would remain on her file for at least six years. She was also told that reference to the breach would be included in any regulated references the Respondent was required to give for her. It added that in the event of the disciplinary sanction being overturned on appeal, the matter would be revisited.

272. The Conduct Panel met on or around 22 September 2021 to discuss Ms Sohail’s case. It was informed that she had been given a final written warning having *“made an inappropriate comment on Yammer, HIVE IT@LBG and by email to Senior Directors with overtones and implications that directly contravene the values of the Group as an anti-racist organisation, causing complaint from colleagues.” (368)*

273. It was also told that, *“At the hearing the colleague admitted to making the posts and stated that they were unhappy with the receipt of a new monitor and wanted to direct attention regarding their beliefs on the supplier. The colleague acknowledged that their comments had caused concern.”*

274. The Conduct Panel determined that Ms Sohail had also acted in breach of Conduct Rule 2. This was confirmed to her in a letter dated 22 September 2021. The only difference in her letter to that sent to Ms Khalid was the rationale which omitted any reference to a pattern saying instead

“You have failed to act with due skill, care & diligence. You have demonstrated non-inclusive behaviours on bank systems, therefore you are deemed to have breached the Colleague Conduct Policy section 1.2.” (375)

Appeals

275. Both Claimants appealed against their disciplinary sanctions. The same manager, Nina Hicks was assigned to consider both appeals, but separately. At the time she was a senior member of the Respondent’s Disciplinary Hearing Managers Team with the title Senior Hearing Manager.

276. Ms Sohail’s appeal was submitted on 29 September 2021. For various reasons, it was agreed that the appeal hearing in her case would not proceed until 2 February 2022. Ms Khalid’s appeal was submitted on 29 August 2021. Her appeal hearing, with her agreement, did not take place until 7 February 2022.

277. Both Claimants were accompanied to the appeal hearings by their respective trade union representatives who made opening statements for

them. Notes were taken of the meetings by a note taker. Both Claimant's had the opportunity to check and amend the notes.

Ms Sohail's Appeal

278. Ms Sohail's original appeal letter was at pages 379 – 389 of the bundle. After learning that Ms Hicks had been appointed to consider her appeal she wrote to her to add some additional grounds (656). Mr Leatham-Frost's opening statement made at the appeal hearing was included in the bundle at pages 394 – 395. Notes of the appeal hearing could be found at pages 396 – 413.
279. In her written appeal and at the meeting, Mr Leatham-Frost and Ms Sohail made a number of points. Both questioned the decision to categorise the allegation against Ms Sohail as gross misconduct. Ms Sohail explained that she understood from Mr Quadir that this was consistent with other cases which led her to question whether proper consideration had been given to the individual circumstances of her case. Mr Leatham-Frost explained that he had been told (by someone that did not want to go on record) that during the moderation committee discussions, a senior colleague had called for the case to be classed as gross misconduct, which led him to believe that the outcome of case had been predetermined at an early stage.
280. They also argued that Ms Sohail had been subjected to a punishment for raising a legitimate humanitarian concern about a supplier. Mr Leatham-Frost argued that this went against the values of the Group and the FCA. He said it was contrary to the message in the Code of Responsibility which stated that colleagues should feel "*inspired to do the right thing*" and highlighted that the Code contained a section on human rights which referenced the United Nations Declaration of Human Rights. He said that Ms Sohail had been asking the Respondent to look inwards and ensure it was not contributing to human rights abuses in different parts of the world.
281. Ms Sohail explained that she had posted in the way she had because she had been trying to target senior managers who had influence over the Respondent's choice of suppliers. She stressed that she had researched the managers to whom she sent the email carefully. She said that she had also posted on Yammer to encourage others to speak up in support of the boycott she was suggesting, although her primary purpose was to trigger a response rather than a reaction. She added that no-one had told her what was wrong with this approach. She said that she had seen other posts on Yammer discussing issues such as the Indian farmers and the race row at Yorkshire Cricket Club and wanted to raise the Israel/Palestine issue in the same way.
282. Ms Sohail insisted, contrary to Mr Quadir's findings, that she had felt that she needed to act with some urgency to get the monitor returned because of her limited working hours, her impending exams and sabbatical. She said that during her working hours there was limited opportunity to speak to her manager about issues like this, although she reiterated that she had tried.

283. Mr Leatham-Frost and Ms Sohail both repeated what they had said in the Disciplinary Hearing that they did not know what complaints had been made about Ms Sohail's post and on what basis it was considered to be racist. Mr Leatham-Frost provided evidence, in the form of links to three United Nations resolutions, a High Court Judgment and the Annual Report of Amnesty International for 2020, to demonstrate that what Ms Sohail had said in her post about the Israeli Government was accurate. Ms Sohail said that opposition to the Israeli Government could not be considered a micro-aggression to any race because it did not target a group of people. She added that she had researched the content of her post. She said that she had been unable to provide the links to her research with the post when she made it because she could not cut and paste them from her personal laptop to her work laptop.
284. With regard to the language used, Ms Sohail reiterated that with the benefit of hindsight she would have acknowledged that lives had been lost on both sides of the conflict and not just Palestinian lives.
285. When asked by Ms Hicks if Ms Sohail could imagine how someone with opposing views might have felt when seeing her post, Ms Sohail said that she could understand that someone with close ties to Israel or who held Israel close to their heart might be affected by her post, but said she did not believe that anyone would be against advocating for human rights. She said she did not understand how her post could offend them, unless they were in denial about what was happening in Israel.
286. The final point made by Mr Leatham-Frost and Ms Sohail was that the sanction of a final written warning was disproportionate and that the matter should have been dealt with by way of informal guidance so that she could learn from it.
287. Neither Ms Sohail nor Mr Leatham-Frost connected Ms Sohail's actions with any particular Muslim, anti-racist/oppression or anti-Zionist beliefs.

Further investigations

288. Following the hearing, Ms Hicks undertook some further investigations.
289. She ensured she had a through understanding of the moderation committee process and how it worked. She asked whether she was able to be provided with the complaints, but was informed that the complaints were made anonymously and could not be provided to her.
290. Ms Hicks interviewed Ms McCann (418 – 421) and asked her whether and in what regard she had been influenced by the email exchange with Ms XX and Mr Mandel. She also interviewed Mr O'Kane (422 – 425) and asked him about any conversations between him and Ms Sohail about returning the monitor. He provided her with the transcript of the chat that had taken place between him and Ms Sohail on 25 May 2021 (286 -287).

291. Ms Hicks also investigated how easy it was to find information about returning a monitor on the Respondent's intranet. She found the information very easily and communicated it to Ms Sohail.

Ms Sohail Appeal Outcome

292. Ms Hicks wrote to Ms Sohail with the outcome of her appeal on 17 February 2022. She enclosed the notes from the interviews with Ms McCann and Mr O'Kane. Her letter was at pages 426 – 430 of the bundle. She rejected the appeal and upheld the original decision.
293. In the letter, Ms Hicks explained that she had investigated the concern that the categorisation of the allegation as gross misconduct had been pre-determined before the investigation. She confirmed that Ms McCann had denied this and that in any event, she Ms Hicks, agreed with the assessment of the case as one of gross misconduct. Ms Hicks highlighted that in the Disciplinary policy, inappropriate use of the Group's collaboration tools was given as an example of gross misconduct.
294. The letter also explained that Ms Sohail's post had been through the moderation committee process and found to be "*inappropriate and likely to cause offence*". She noted that the post had been reviewed by colleagues from different backgrounds, including colleagues from both Muslim and Jewish backgrounds. She noted that Ms McCann and Ms Webster had reached the same conclusion.
295. In the letter, Ms Hicks noted, inaccurately, that the Yammer guidelines required colleagues not to post "*political posts, posts that could offend or anything else not safe for work*" (427).
296. Based on her subsequent investigations, Ms Hicks rejected Ms Sohail's evidence about not having had time to speak to her manager and being unable to find information about how to return the monitor easily. She established that Ms Sohail could have, but had not, asked her manager about returning the monitor or raised her concerns about the monitor with him.
297. Ms Hicks also dealt in the letter with the fact that the Respondent's policies about raising concern tell colleagues to speak to their managers as well as offer other routes to do this. She said that these were very easy to find on the Respondent's intranet. This led to her making a finding that Ms Sohail had failed to "*take reasonable steps to establish the correct way to go about raising [her] concerns and instead ... took it upon [herself] to decide what action [she] deemed appropriate, which ultimately resulted in causing other colleagues offense.*" (429)
298. In the letter she said that taking into account the circumstances she considered a final written warning was "*within the range of suitable sanctions*" (429)

Ms Khalid's Appeal

299. Ms Khalid's appeal was at pages 497 – 498 of the bundle. Notes of the appeal hearing could be found at pages 548 - 568.
300. In the written appeal and at the meeting, Mr Wilton and Ms Khalid made a number of points. Mr Wilton reiterated the point that had been made at the Disciplinary Hearing that the case appeared to be one of misconduct rather than gross misconduct. He added that that he considered the final written warning was disproportionate and that a far better way of dealing with any concerns would have been by way of education and counselling. He suggested this would have enabled Ms Khalid to understand what she had said that was considered to be offensive. He reiterated that Ms Khalid had not been suspended and was not considered to be a threat to colleagues.
301. Mr Wilton asked Ms Hicks to speak to Mr Khalid. He explained that Mr Khalid had told them that Ms XX had been vocal in the Moderation Committee discussions. Mr Wilton expressed concern that her involvement at that stage meant that she should not have been involved at the investigation stage. By this time, he and Ms Khalid were aware, as a result of a subject access request, that Ms XX had expressed the view that it was clear cut that Ms Khalid's post was offensive. Mr Wilton argued that this pointed to a predetermined outcome. He also raised a concern that Ms XX's perspective as someone who appeared to be of Jewish heritage may have led to unconscious bias and that someone neutral from the Inclusion and Diversity team should have been involved instead.
302. Mr Wilton made the point that, based on the material received as a result of the subject access request, there had only been two complaints about Ms Khalid's post which was not very many in such a large organisation.
303. They also both argued that Ms Khalid's post had been written from a Muslim perspective about a humanitarian concern. Mr Wilton reiterated the point he had made at the disciplinary hearing that there was nothing in the post that could reasonably be considered to be antisemitic or racist. He explained that Ms Khalid's criticisms had been directed at the Israeli government and military. He acknowledged that opinions about the Israel/Palestine conflict were polarised, but said that the sentiments expressed in Ms Khalid's post were aligned to a body of credible opinion available in the public domain and suggested Ms Hicks would discover this if she did a quick google search.
304. They also argued that Ms Khalid had seen that other topics such as LGBT+, BLM and the Holocaust had been discussed with the Respondent. It was unclear to them why discussion of the Israel/Palestine conflict was considered to be inflammatory and treated as a disciplinary issue.
305. We note that although Mr Wilton said that Ms Khalid was speaking from a Muslim perspective, other than this, neither of them connected her actions with any particular Muslim, anti-racist/oppression or anti-Zionist beliefs.

Ms Khalid's Appeal Outcome

306. Ms Hicks wrote to Ms Khalid with the outcome of her appeal on 1 March 2022. She enclosed the notes from the interview with Ms McCann. Her letter was at pages 573 – 578 of the bundle. She rejected the appeal and upheld the original decision.
307. In the letter, Ms Hicks confirmed that she agreed with the assessment of the case as one of gross misconduct. She highlighted that in the Disciplinary policy, inappropriate use of the Group's collaboration tools was given as an example of gross misconduct.
308. She explained that she had investigated the concern about Ms XX's influence on the disciplinary process. She explained that this had been purely to provide lived experience by way of context.
309. Ms Hicks acknowledged that that it would have been preferable for a colleague that had not been part of the Moderation Committee process to have been consulted at the investigation stage. However, she found that Ms McCann was not unduly influenced by Ms XX's input. This was because Ms XX had not provided an opinion about the level of the allegation or what specific action should be taken. She had shared her concerns and pointed out some specific comments which she found offensive as well as providing some background for context. Ms Hicks noted that Ms Khalid was also able to provide background regarding her viewpoint for context to ensure a balanced view was provided to Ms McCann.
310. Ms Hicks said she had decided not to speak to Mr Khalid, because even if he was correct that Ms XX had been vocal at the Moderation Committee, Ms McCann was not made aware of this.
311. With regard to the number of complaints received, Ms Hicks explained that she did not consider this particularly relevant. This was because the Group had a responsibility to review any and all complaints raised. She noted that Ms Khalid's post had been hidden while the moderation committee process took place which would have reduced the number of people who viewed the post and the potential for others to be offended by it.
312. Ms Hicks acknowledged that Ms Khalid had not intended to cause offence or distress to anyone. She explained that Ms Khalid's had been through the moderation committee process and found to be "*inappropriate and likely to cause offence*". She noted that the post had been reviewed by colleagues from different backgrounds, including colleagues from both Muslim and Jewish backgrounds. She noted that Ms McCann and Ms Webster had reached the same conclusion.
313. Ms Hicks noted, inaccurately, that the Yammer guidelines required colleagues not to post "*political posts, posts that could offend or anything else not safe for work*". She continued:

"Whilst I appreciate you may not have read the guidance fully, and you accept that following your comments you did consider your actions and

removed the second part of your post. I understand the escalation of the conflict was deeply distressing for you and believe you posted the comments rashly. Once you had reflected you identified a work forum was not the right place for this and to your credit removed them. Having balanced all of this, I still come back to the fact that offense (sic) was caused by your actions and therefore I find that the original decision of a final written warning is within the range of suitable sanctions and I therefore uphold the original decision” (576).

Ms Hicks’ Evidence to the Tribunal

314. Ms Hicks told the Tribunal that she was unable to determine if either of the posts was antisemitic or not. She was also not knowledgeable about Zionist and anti-Zionist beliefs. She felt that she had a clear understanding of racism however. Her view was that both posts expressed political opinions.
315. Ms Hicks said she did not consider the factual information that was presented to her and did not consider she needed to understand the Israel/Palestine conflict in order to be able to consider the appeals.
316. Ms Hicks said that she felt Ms Sohail’s post was essentially about raising a concern about a supplier. She felt the Israel/Palestine conflict was simply the context for that post. Ms Hicks explained that she considered that Ms Sohail’s post could have created reputational damage for the Respondent because she was critical of a supplier to the Respondent in it. Ms Hicks took the view that by posting it on Yammer, Ms Sohail was effectively sharing the criticism with 60,000 colleagues, any one of which could have shared the post externally.
317. When asked if the reason for Ms Sohail’s disciplinary sanction was because she failed to follow the Respondent’s policy for raising concerns, Ms Hicks clarified that if Ms Sohail had posted simply asking questions about how to return a monitor and how to raise an ethical concern about a supplier, this would not have been treated as a disciplinary matter. However, the content of the post had been determined to be offensive through the Moderation Committee process, which she considered was balanced and fair. In addition based on her own reading of the post, she considered this was a reasonable view for the Moderation Committee to have reached. This was also the same for Ms Khalid’s post.

Additional Relevant Findings

318. The bundle contained a screenshot of an announcement made on the Respondent’s intranet headed “War in Ukraine – our updated support”. The announcement was said to have been first published on 3 March 2022 and updated on 10 March 2022. The date of the screenshot was unknown, but we have taken it to be around March/April 2022 (433 – 434).
319. The announcement said the following (original emphasis):

“In summary:

- *We are shocked by the invasion of Ukraine*
- *We are donating to the International Rescue Committee to support refugees all across the world including those fleeing Ukraine*
- **Updated news:** *Colleague and customer support available and more information on how you can personally support Ukraine*

We are shocked and deeply saddened by the invasion of Ukraine. This is a truly distressing time for the people of Ukraine and for the people of Russia who do not support what is unfolding. Our thoughts are with all of those that are affected.

As an organisation, supporting our community is essential to our Purpose – whether this is through our Charitable Foundations, where they provide support for refugee and asylum seeking projects throughout the UK or by providing access to banking solutions for vulnerable customers, including those who are identified as refugees. It's important to help those in need and we want to support the people of Ukraine.

Over and above the work already undertaken by our foundations, we will be making a donation to the International Rescue Committee, an organisation that helps people affected by humanitarian crises to survive, recover and rebuild their lives. This donation will be split to support their Crisis Appeal for Ukrainian refugee families displaced by the invasion and also their overall support for refugees fleeing conflict across the world.

We know that those of you with family and friends affected by the invasion will be deeply affected by what is happening and it's important that we take special care of you at this very challenging time. We are also thoughtful of our colleagues with friends and family caught up in conflict in other parts of the world, and we should take time to check in colleagues.

Our Employee Assistance Programme (EAP) helpline is available 24/7 and is totally confidential if you'd find it helpful to talk things through.

Together, we join the many people, organisations and communities across the world helping those affected by the conflict in the Ukraine and other conflicts around the world.” (433)

320. At the time of the screenshot, the announcement had been viewed 38,284 times. 348 people had liked it. 220 comments had been made. A sample of some of the comments had also been screen shot and included in the bundle (435 – 437).
321. Although not corroborated by any documentary evidence, Mr Frost told the Tribunal that he had posted a comment in response to the original announcement. His evidence on this was unchallenged by the Respondent.
322. According to Mr Frost, his post (which had received 9 likes) had said:

“Great to see that the group has taken a stance on this horrific scenario. Maybe the next one could be the Palestine conflict that is currently ongoing?”

323. Mr Frost that he received an email later on the same day, saying:

“Hi Cris, a comment you have made has been reported by another colleague for being inappropriate for the workplace. We have reviewed the comment, the context in which it was made, and have decided to remove it as it is in breach of our community guidelines. While your post had the very best intentions as a question we have chosen to remove it. This is not a decision we take lightly. We recognise this is a highly complex issue that can be very easily offensive. The subject becomes even more important given we are also aware of feedback that the conflict has led to a rise in both antisemitism and islamophobia and it’s therefore incredibly important that our business remains a safe space for all colleagues.”

Timings of Claims

324. Ms Sohail initiated the Acas conciliation process on 23 April 2022. The certificate was issued on 11 May 2022 (10). She presented her claim to the employment tribunal on 20 May 2022 (11).

325. Ms Khalid initiated the Acas conciliation process on 21 April 2022. The certificate was issued on 10 May 2022 (55). She presented her claim to the employment tribunal on 30 May 2022 (56).

THE LAW

Introduction

326. The Claimants’ claims are brought under Part 5 of the Equality Act 2010. It has also been necessary, however, for the Tribunal to consider the Human Rights Act 1998.

327. The Human Rights Act 1998 incorporates into UK domestic law parts of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe on 4 November 1950 as it has effect for the time being in relation to the United Kingdom (the “Convention”).

328. Employment tribunals do not have the jurisdiction to consider discrete claims brought under the Human Rights Act 1998 (*Copsey v WWB Devon Clays Ltd [2005] IRLR 811; Mba v Merton London Borough Council [2014] ICR 357*). Nor do we have the ability to declare legislation to be incompatible with the Human Rights Act 1998. By virtue of sections 3 and 6 of the Human Rights Act 1998, however, employment tribunals are required to read and give effect to statutory provisions in a way which is, so far as possible, compatible with relevant Convention Rights.

329. In religion and belief cases, the obligation on employment tribunals to give effect to relevant Convention Rights has led to the following:

- an impact on the approach tribunals take when determining what constitutes a protected belief under the Equality Act 2010.
 - recognition that the protection individuals have under the Equality Act 2010 extends beyond protection from direct discrimination because they hold a religious or philosophical belief. Individuals are also protected from direct discrimination where the reason is because of they have manifested or an expressed a religious or philosophical belief;
 - in manifestation cases, where the reason for conduct towards an individual is said to be because of something objectionable about the manifestation (rather than the fact of manifestation) the conduct of the respondent will only amount to direct discrimination if it is not objectively justified. If the conduct is a proportionate response to the objectionable manner of the manifestation, it will not constitute direct discrimination.
330. The latter point comes, most recently, from the judgment of Underhill LJ in the case of *Higgs v Farmour's School & Ors* [2025] EWCA Civ 109. There he explains that although the import of a test of objective justification into the test of direct discrimination is a modification to the usual approach under the Equality Act 2010, this “blending” is jurisprudentially legitimate.
331. We note that the reference above was not, strictly, part of the ratio of the Court of Appeal decision. This was because this element was outside the scope of the appeal. However, Underhill LJ took the opportunity when writing the *Higgs* judgment to acknowledge that he had not fully explained the jurisprudential basis of the earlier decision in *Page v NHS Trust Development Authority* [2021] EWCA 255 which first introduced the blended approach and he sought to remedy this. He also provided clarity as to how the blending should work.
332. The Tribunal, in this case, considered whether to seek written submissions from the parties in relation to the Court of Appeal judgment in *Higgs* because it was not available during the hearing. We decided against this as the Court of Appeal decision essentially endorsed the approach taken by the EAT upon which we heard submissions.
333. We end these introductory paragraphs with an apology for the length of this section on the law. It is considerably more detailed than Employment Judge E Burns would normally include in a reserved judgment. The case is complex and involves a good deal of law because of the issues involved, but the main reason for writing at length has been the desire to reassure the parties that the approach we have taken is legally correct in light of the fact some of the law, particular the blended approach referred to above, we are applying has only been recently clarified in the appeal courts. We have also not followed the list of issues and felt it was important to explain why.

Human Rights Act 1998

334. Section 1(1) of the Human Rights Act tells us that the rights and fundamental freedoms contained in Articles 2 to 12 (as well as others) constitute “the Convention Rights”.

335. The relevant Convention Rights in this case were Article 9 (Freedom of thought, conscience and religion) and Article 10 (Freedom of expression) which are set out below. Article 17 (Prohibition of abuse of rights) is also set out below as it was also relevant.

336. By Article 9 it is provided:

“1. 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.

2. 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.”

337. By Article 10 it is provided:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The exercise 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 interests 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 reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

338. Article 17 says:

“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 on any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

339. In the EAT judgment in the case of *Higgs v Farmor’s School and anor [2023] ICR 1072*, Eady P sets out, at some length, the approach taken in cases brought under Articles 9 and 10 by the European Court of Human Rights. She also refers to a number of domestic cases in which the application direct application of Article 9 and 10 has been considered (see paragraphs 38 – 54). This background is particular helpful when considering the blended approach we have to adopt.

340. Within this section, in paragraphs 38 to 40 she addresses the issue of manifestation of beliefs under Article 9. We return to this below.

341. In paragraphs 51 – 54 she summarises the approach adopted in cases where Article 9 and 10 have been considered. We have adapted the formatting she used, but quote her in full.

342. She says by way of introduction in paragraph 51 that:

“there are clear similarities between the approach to be taken in relation to complaints of infringement of rights protected by articles 9 and 10....Both rights are ... qualified, with articles 9(2) and 10(2) setting out the circumstances under which the right to religion or belief, or to freedom of expression, can be limited or restricted:

- (i) it must be prescribed by law;*
- (ii) it must be in pursuit of one of the legitimate aims identified; and*
- (iii) it must be necessary in a democratic society.”*

343. She addresses what is meant by “prescribed by law” (in paragraph 52) saying, “it is well established that:

- *“Law” in this sense has an extended meaning, requiring that the impugned measure should have some basis in domestic law and be accessible to the person concerned, who must be able to foresee its consequences, and compatible with the rule of law (Huvig v France (1990) 12 EHRR 528; Kruslin v France (1990) 12 EHRR 547; R (Purdy) v Director of Public Prosecutions [2010] 1 AC 345).*
- *Accessibility requires that the measure must be such that “it must be possible to discover, if necessary with the aid of professional advice, what its provisions are . . . it must be published and comprehensible”;*
- *Foreseeability means that it must be possible for a person to foresee the consequences of the law for them (see per Lord Sumption at para 17 of In re Gallagher; R (P) v Secretary of State for Justice [2020] AC 185).*

344. She then notes (paragraph 53) that

“The legitimate aim in cases such as the present is generally identified as being concerned with the protection of the rights and freedoms (article 9(2)) or “reputation and rights” (article 10(2)) of others.

Thereafter, consideration must be given to the question of whether restriction is “necessary in a democratic society”; that is to say, that there is a “pressing social need” (Vogt v Germany (1995) 21 EHRR 205 at para 52), albeit, as Lord Bingham of Cornhill emphasised in R v Shayler [2003] 1 AC 247, “necessary” in this sense:

“23. . . . is not synonymous with ‘indispensable’, neither has it

the flexibility of such expressions as ‘admissible’, ‘ordinary’, ‘useful’, ‘reasonable’ or ‘desirable’ . . . One must consider whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authority to justify it are relevant and sufficient...”

345. In paragraph 54, she explains the proportionality assessment that is required by reference to the four questions identified by Lord Reed JSC at para 74 of *Bank Mellat v HM Treasury (No 2)* [2014] AC 700:

- (i) *is the objective of the measure sufficiently important to justify the limitation of a protected right;*
- (ii) *is the measure rationally connected to the objective;*
- (iii) *could a less intrusive measure have been used without unacceptably compromising the achievement of the objective, and*
- (iv) *whether, balancing the severity of the measure’s effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.*

346. She also references the guidance of Lord Bingham from the case of *R (SB) v Governors of Denbigh High School* [2007] 1AC 100, where he said the judge’s task was to:

“30. make a value judgment, an evaluation, by reference to the circumstances prevailing at the relevant time: Wilson v First County Trust Ltd (No 2) [2004] 1 AC 816, paras 62—67. Proportionality must be judged objectively, by the court: R (Williamson) v Secretary of State for Education and Employment [2005] 2AC 246, para 51.... it is in my view clear that the court must confront these questions, however difficult...”

The Legislative Background to the Equality Act 2010

347. Regulations prohibiting discrimination because of religion or belief were initially introduced in the UK in order to implement EU Council Directive 2000/78/EC,. Those regulations were known as the Framework Directive. Employment Equality (Religion or Belief) Regulations 2003 (the 2003 Regulations). They were amended by the Equality Act 2006 and then superseded by the Equality Act 2010.

348. Although the UK is no longer a member of the European Community, we remain, broadly speaking, bound by European laws in force as at 31 December 2020. The same applies to decisions of the European Court of Justice (ECJ) made before that date.

349. When considering cases under the Equality Act 2010, the Tribunal is required to take the Equality and Human Rights Commission’s Code of Practice on Employment (the “EHRC Code”) into account in any case in which it appears to us to be relevant by virtue of section 15(4) of the Equality Act 2006.

Equality Act 2010

350. Section 4 of the Equality Act 2010 provides that religion or belief are protected characteristics. Pursuant to section 10, religion means any religion; belief means any religious or philosophical belief. In this judgment we use the phrase “protected belief” to capture both forms of belief. We set out the legal principles we have applied in determining this question below.
351. Under section 39(2) of the Equality Act 2010:
- “An employer (A) must not discriminate against an employee of A's (B)—*
- (a) as to B's terms of employment;*
 - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
 - (c) by dismissing B;*
 - (d) by subjecting B to any other detriment.”*
352. A detriment can encompass a range of treatment from general hostility to dismissal. It does not necessarily entail financial loss, loss of an opportunity or even a very specific form of disadvantage.
353. The case of *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11* provides the most succinct guidance on what is considered to constitute a detriment. It arises where a reasonable worker would or might take the view that they had, as a result of the treatment complained of, been disadvantaged in the circumstances in which they had to work.
354. The EHRC Employment Code, drawing on this and other case law, says: *‘Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage..... However, an unjustified sense of grievance alone would not be enough to establish detriment.’* (paragraphs 9.8 and 9.9). Accordingly, the test of detriment has both subjective and objective elements.
355. In *Deer v University of Oxford [2015] ICR 1213*, Elias LJ observed that where an act of discrimination is found to have occurred, this of itself will usually amount to a detriment.
356. The Claimants in this case are pursuing claims of direct and indirect discrimination. What constitutes direct discrimination is found section 13 of the Equality Act 2010. What constitutes indirect discrimination is found in section 19 of the Equality Act 2010.
357. Where a comparison is required between people (as in the case of direct discrimination) or groups (as in the case of indirect discrimination) with and without a protected characteristic, section 23 of the Equality Act 2010 applies and requires that *“there must be no material difference between the circumstances relating to each case.”* Where no actual comparators exist,

sections 13 and 19 allow a hypothetical comparison to be made. Consideration of the position of people or groups who are not actual comparators, but useful “evidential” comparator can also sometimes assist with this.

358. Section 123 of the Equality Act 2010 deals with time limits for bringing a claim of discrimination in an employment tribunal. This is covered further below.

359. Section 136 of the Equality Act 2010 provides for what is known as a shifting burden of proof. It applies in all proceedings where it is argued that the Equality Act 2010 has been breached. The relevant sub-sections say:

“(2) 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.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

360. 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 decision of the Court of Appeal in *Efobi v Royal Mail Group Ltd* [2019] ICR 750 confirms the guidance in these cases applies under the Equality Act 2010.

361. A two-stage process is envisaged. Initially it is for the claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. Something more than the bare facts of a difference in status and a difference in treatment is required at this stage (*Madarassy v Nomura International plc* [2007] IRLR 246, CA)

362. At the second stage, discrimination is presumed to have occurred, unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the respondent must adduce cogent evidence that there was no discrimination whatsoever. The respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.

363. It may be appropriate on occasion, for the tribunal to 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.) It may also be appropriate for the tribunal to go straight to the second stage, where for example the respondent assert that it has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by such an approach since it effectively assumes in his favour that the burden

at the first stage has been discharged (*Efobi v Royal Mail Group Ltd* [2019] ICR 750, para 13).

364. In addition, there may be times, as noted in the cases of *Hewage v GHB* [2012] ICR 1054 and *Martin v Devonshires Solicitors* [2011] ICR 352, where a tribunal is in a position to make positive findings on the evidence one way or the other and the burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.

Protected Beliefs

365. In any religion or philosophical belief case, the first essential step is to define exactly what the belief is (*Gray v Mulberry Company (Design) Ltd* [2019] EWCA Civ 1720, paragraph 26, per Bean LJ).

366. Guidance on when beliefs are protected under the Equality Act 2010 is found in Chapter 2 of the EHRC Code. We note the following:

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

2.56 ‘Religious belief’ goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion.

2.57 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.*

Example:

A woman believes in a philosophy of racial superiority for a particular racial group. It is a belief around which she centres the important decisions in her life. This is not compatible with human dignity and conflicts with the fundamental rights of others. It would therefore not constitute a ‘belief’ for the purposes of the Act.”

367. The guidance reflects the considerable case law on what constitutes a protected belief under the Equality Act 2010.
368. It will be rare that a belief said to be religious will not attract protection. Although this can arise, it was not an issue in this case and we therefore do not feel it is necessary to say anything further about this.
369. The position is less clear cut for beliefs said to be philosophical. The five bullet points above reflect the guidance contained in paragraph 24 of the judgment of Burton J in the case of *Grainger Plc v Nicholson* [2010] IRLR 4 EAT, and have become known as *Grainger* (i) – (v). The case considered the position under the 2003 Regulations, but has been applied to cases under the Equality Act 2010.
370. In developing the criteria, Burton J considered whether decisions in cases determining the meaning of “religion and belief” under Article 9 and “religious and philosophical convictions” under Article 2 of the First Protocol of the Convention were relevant to the interpretation of religion and philosophical belief under the Equality Act 2010. He decided they did and drew in particular on the cases of *Arrowsmith v United Kingdom* (1978) 3 EHRR 218, *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293 and *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15.
371. He quoted the central conclusions reached in the case of *Campbell* at paragraph 21 of his judgment. Of *Williamson*, he said “*Although there are relevant passages in the speeches of both Lord Walker, at paras 55 and 59—61, and Baroness Hale of Richmond, at paras 75—76, the significant passage is in Lord Nicholls’s speech*”. He then quoted paragraphs 23 and 24 of that speech.
372. We set out those passages of Lord Nicholl’s speech, because they contain additional observations that are relevant to this case, but are not explicitly captured in the *Grainger* criteria:
- “23. *Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of manifestation arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an*

adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention.

24. *This leaves on one side the difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious. This question will seldom, if ever, arise under the European Convention. It does not arise in the present case. In the present case it does not matter whether the claimants beliefs regarding the corporal punishment of children are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. Article 9 is apt, therefore, to include a belief such as pacifism: *Arrowsmith v United Kingdom* (1978) 3 EHRR 218. The position is much the same with regard to the respect guaranteed to a parent's religious and philosophical convictions under article 2 of the First Protocol: see *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293."*
373. Burton J also considered the existing EAT decisions in the case of *McClintock v Department of Constitutional Affairs* [2008] IRLR 29, to which we return below, and *Eweida v British Airways plc* [2009] ICR 303 as well as a passage from *Hansard ((HL Debates), 13 July 2005, col 109* which he quoted at paragraph 10.
374. Having set out the five criteria which he considered represented the existing jurisprudence, Burton J next considered some further matters.
375. Burton J confirmed that notwithstanding the deletion of the word "similar" from the 2003 Regulations, it was necessary, in order for a philosophical belief to be protected, for it to have a similar status or cogency to a religious belief (paragraph 26). We note that this was challenged in *Gray v Mulberry*

Co Design Ltd, [2019] ICR 175, EAT on the basis that Burton J had impermissibly reintroduced the requirement of similarity in the definition of belief which had been expressly removed by amendment. The challenge was rejected by Choudhury P because the *Grainger* criteria had by then received endorsement from the Court of Appeal in *Maistry v British Broadcasting Corpn [2014] EWCA Civ 1116*.

376. Burton J also confirmed that there was no requirement for a belief to be shared with others to have protection, nor was it a bar to protection that the belief did not govern the entirety of a person's life being protected. (paragraph 27).
377. He also said, at paragraph 27 that the philosophical belief in question did not need to constitute or "*allude to a fully-fledged system of thought*" provided that it otherwise satisfies the five criteria he had identified. He explained that what he meant by this was that it was not necessary for a philosophical belief to be an "*-ism*" to attract protection.
378. In paragraph 28, Burton J considered political beliefs. He agreed with the comments made by the Attorney General quoted in Hansard that "*support of a political party*" would not meet the description of a philosophical belief, but said he thought that a belief in a political philosophy or doctrine would qualify, provided it complied with his fifth criterion.
379. Finally, he rejected the notion that a belief based upon or by reference to science would not attract protection (paragraph 30).
380. The proper approach to the application of the *Grainger* criteria was considered by the EAT the case of *Harron v Chief Constable of Dorset Police [2016] IRLR 481*. The case was heard by Mr Justice Langstaff (as he then was), a former president of the EAT.
381. Mr Harron had a profound belief in the proper and efficient use of public money in the public sector. An issue in the case was whether his belief qualified for protection from discriminatory treatment as a philosophical belief under the Equality Act 2010. He failed to convince the employment tribunal that his belief fell within *Grainger* (ii), (iii) or (iv).
382. Mr Justice Langstaff noted that the *Grainger* criteria had been incorporated into the EHRC Code which tribunals were bound to consider.
383. He said at paragraph 34:

"The proper approach to determining whether or not there was a qualifying belief is not simply to set out the wording in the Code of Practice or that in paragraph 24 of Burton J's decision in Grainger, but to have regard also to the way in which the criteria there set out are to be applied, as, for instance, indicated by the speech of Lord Nicholls ... He made it clear that the belief must relate to matters more than merely trivial. That is a hint towards the approach that regards as substantial that which is more than merely trivial. The fact that he meant it in that sense is indicated by the use of the word

“again” in the expression, “But, again, too much should not be demanded in this regard”, when talking about the meaning of “coherence”. “Coherence” is to be understood in the sense of being intelligible and capable of being understood... The paragraph ends with a plea not to set the threshold requirements at too high a level.”

384. He considered the tribunal had not provided reasons why the *Grainger* criteria had not been met and the case was therefore remitted to the tribunal.
385. The tribunal had not erred in excluding a belief that operated merely in the workplace. Where a belief has too narrow a focus it may, depending upon the width of that focus, not meet the standards at the appropriate level identified in summary by Burton J in *Grainger* and explored in greater detail in Lord Nicholls's speech in *Williamson*. After all, he was asking that the belief be a belief on a fundamental problem. That might be thought to exclude beliefs that had so narrow a focus as to be parochial rather than fundamental.
386. Returning to the decision in *McClintock*, and the second *Grainger* criterion, Burton J interpreted it as establishing the principle that to attract protection a philosophical belief must be a belief and not an opinion or viewpoint based on the present state of information available.
387. *McClintock*, which was decided before *Grainger*, was a case in which the employment tribunal had found against the claimant. Mr McClintock described himself as a practising Christian. He was a justice of the peace who said he could not in conscience place children for adoption with same sex couples. He initially sought to be relieved of the duty to officiate in such cases, but when he was told that an exception would not be made for him, he resigned from the family panel. He brought a claim under the 2003 Regulations for direct and indirect discrimination and harassment. He also argued that his Article 9 right had been infringed.
388. Based on what Mr McClintock had said to the respondent about his reasons for wanting to be relieved of the duty to officiate in same sex cases, the tribunal had found that this it was not because of Christian beliefs. Instead the tribunal found that he viewed the placement of children with same sex parents as a social experiment borne of political correctness that was under researched. The tribunal held this was a view that many might share regardless of their religious beliefs.
389. In addition, at the tribunal hearing, Mr McClintock had said that *‘he might in certain circumstances, given sufficient information, be properly able to adjudicate, even to the point of placing a child with a same sex couple, much though he might regret deep down having to do so.’*
390. Although Mr McClintock initially appealed against the finding that he had not been subjected to direct discrimination, this ground of appeal was withdrawn by the time of the EAT hearing. In his judgment, Elias P commented, *“In truth, it was bound to fail. The evidence was that the DCA would have treated any-one in the same way who had not been prepared to*

give effect to the judicial oath; and in any event, there can hardly be a direct discrimination on grounds of religion or philosophical belief when the DCA did not appreciate that this was the basis for the objection.” (paragraph 31)

391. When considering the appeal against the finding that Mr McClintock had not been subjected to indirect discrimination, Elias P said at paragraph 45: *“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.’ Mr McClintock had not as a matter of principle rejected the possibility that single sex parents could ever be in a child’s best interests; he felt that the evidence to support this view was unconvincing but did not discount the possibility that further research might reconcile the conflict which he perceived to exist. We do not think it was perverse for the tribunal to find that such views did not fall within the scope of the Regulations.*

392. The distinction drawn in *McClintock* between a belief and an opinion or viewpoint based on the present state of information available, enshrined in *Grainger* (ii) was considered further in the case of *Mackereth v Department for Work and Pensions* [2022] EAT 99 by the EAT. Eady J concluded 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 a claim, whether founded on science or faith, and “as something that amounts to a protected characteristic” it must be capable of being understood as a characteristic of the individual in question. As we consider the appeal tribunal allowed in *Harron*, an opinion or viewpoint might be a manifestation of a belief but, where it is dependent upon the present information available, it may be found, as in *McClintock*, that there is in fact no link between that opinion or viewpoint and any religious or philosophical belief. Moreover, the additional test of cogency, seriousness, cohesion and importance (*Grainger* (iv)) may mean that the more narrowly a belief is defined the less likely it is to be found to be a philosophical belief for the purposes of section 10 of the Equality Act 2010.”*

393. The EAT considered the application of the fourth *Grainger* criterion in the case of *Gray* referred to above. Taking account of paragraph 23 from Lord Nicholl’s speech in *Williamson* (cited above) Choudhury P confirmed in paragraph 28 that, *“in considering whether a “certain level” of cogency, seriousness, cohesion and importance has been attained, the tribunal must guard against applying too stringent a standard.”* He went on to say that he thought the test *“more than merely trivial”* was apt in assessing ‘seriousness’ and ‘importance’ but that for ‘cogency’ and ‘coherence’ the better approach would be to ensure that *“the bar was not set too high.”*

394. He then considered the extent to which whether the way in which the Claimant had manifested her belief could be taken into account when

assessing whether a belief met the minimum threshold requirements for protection. We note that he later revisited his observations on this point in the case of *Forstater v CHG (Europe)* [2022] ICR 1. His settled view, expressed in that case at paragraph 77 was:

“I was wrong to read the remarks of Lord Nicholls and Lord Walker in R (Williamson) as meaning that, at the stage of applying the Grainger criteria, the focus should be on manifestation. Manifestation is not irrelevant: the belief may only come to the employer’s attention because of some outward manifestation....Moreover, as I said in Gray, the manner in which a person manifests their belief might, in some cases, be relevant in determining whether the belief has the requisite degree of cogency or cohesion to satisfy Grainger IV. However,at this preliminary stage of assessing whether the belief even qualifies for protection, manifestation can be no more than a part of the analysis (assuming that there is any manifestation at all) and should be considered only in determining whether the belief meets the threshold requirements in general.”

395. The EAT gave further consideration to the application of the fifth *Grainger* criterion in *Forstater*. Based on a review of a number of authorities, the appeal tribunal decided that the test that should be applied by employment tribunals should mirror the test applied by the ECtHR.

396. The judgment, written by Choudhury P, explains that the ECtHR asks itself a preliminary question when considering a case of hate speech where a person argues that their Article 10 Convention rights have been infringed. The preliminary question is whether the person should fall outside the scope of protection of Article 10 by virtue of Article 17. He confirmed that it is only in cases which involve the gravest form of hate speech, which seek to destroy the rights of others, that Article 17 operates to deprive the person of the protection they seek to invoke. In other cases, where the expression is less grave, it is correct that the person has the protection of Article 10, subject to the permitted limitations found in Article 10(2).

397. The test to be applied is summarised in paragraph 79 of *Forstater* which says:

“In our judgment, it is important that in applying Grainger V, tribunals bear in mind that it is only those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing 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 the less grave forms of hate speech would not be excluded from the protection. However, the manifestation of such beliefs may, depending on circumstances, justifiably be restricted under article 9(2) or article 10(2) as the case may be.”

398. The appeal tribunal’s reasoning was informed by what is described in paragraph 55 as “the high importance attached by the ECtHR to diversity or

pluralism of thought, belief and expression and their foundational role in a liberal democracy".

399. *Thomas v Surrey & Borders Partnership NHS Foundation and another [2024] EAT 141*, EAT is an example of a case where the claimant's belief was held, at first instance not to comply with *Grainger (v)*. The belief in question was a version of English nationalism which envisaged no place in British society for Muslims or Islam itself and included a belief that Muslims should be forcibly deported from the United Kingdom. The EAT confirmed that this belief was not capable of protection under the Convention as it would offend Article 17 and that the employment tribunal had been right to conclude that while the claimant was not prevented from holding his views, he could not complain that he had been discriminated against in relation to those beliefs under the Equality Act 2010.
400. In the first instance decision in *Miller v University of Bristol (1400780/2022)* an employment tribunal held that the particular anti-Zionist beliefs held by the Claimant was consistent with *Grainger V*.

Manifestation of a Protected Belief

401. As noted at paragraph 2.60 of the EHRC Code and above, people have an absolute right to hold a particular religion or belief under Article 9 of the Convention. Article 9 also protects their rights to manifest that religion or belief. Manifestation is a qualified right which may in certain circumstances be limited.
402. The Equality Act 2010 does not refer to manifestation of a belief. It has been held, however, that the protection from discrimination and harassment under the Equality Act 2010 extends to protection in relation to manifesting a belief.
403. The case law authority for this is the decision of Court of Justice of the European Communities (CJEU) in *Bougnaoui v Micropole SA C-188/15, [2018] ICR 139*. In that case, the CJEU decided that because the recitals to the Framework Directive make reference to the Convention, the EU legislature must have intended the Framework Directive to work in the same way as the Convention and covering both the fact of having a belief and the manifestation of that belief. The case has been applied in a number of domestic employment cases.
404. With regard to what constitutes a manifestation of a protected belief, the domestic employment cases have relied on the guidance of the ECtHR in *Eweida v United Kingdom (2013) 57 EHRR 8*, (an Article 9 case). In the ECtHR's judgment, it is noted that not "every act inspired, motivated or influenced" by a protected belief will constitute a manifestation of that belief (paragraph 82). The ECtHR went on to say:

"acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of article 9(1). In order to count as a "manifestation" within the meaning of article 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which

forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question.”

405. Where, as in this case, the Claimants are arguing that emails and posts were manifestations of their beliefs, it is essential to consider whether there is a sufficiently close or direct nexus between the Claimants’ beliefs and the posts/emails. This must not be done through the prism of the Respondent’s view of the posts (*Higgs*, EAT para 81-82). It is necessary to assess what the posts/emails actually say, rather than consider them from the perspective of what some readers might wrongly read into or infer from them.
406. The test to be applied, according to LJ Falk at paragraph 178 of the Court of Appeal judgment in *Higgs*, is an objective one. It involves considering “*what meaning do the words used actually have? What message would they convey to a reasonable reader? In the event of a dispute, this will be a matter that the tribunal must decide for itself.*”
407. We were referred to two examples of cases where the actions of an individual were not held to be manifestations of a belief for the purposes of Article 9.
408. The first of these was *Arrowsmith v United Kingdom (1981) 3 EHRR 218* which was a decision of the European Commission of Human Rights. The case concerned a woman who had been convicted of an offence following her involvement in distributing leaflets to troops to try to dissuade them from serving in Northern Ireland. She challenged the decision under Articles 9 and 10 of the Convention.
409. For the purposes of Article 9, Ms Arrowsmith argued that the conviction was an interference with her right to manifest her belief in pacifism. Although pacifism was held to be a belief protected under Article 9, Ms Arrowsmith’s actions were held not to be a manifestation of that belief. This was because the leaflets she was distributing did not contain a message of pacifism. Although her belief in pacifism was her motivation for being involved in the distribution activity, there was no manifestation of that belief.
410. The second case was *R (on the application of Ngole) v University of Sheffield*. We were referred to the decisions of the High Court [2017] EWHC 2669 (Admin) and to the Court of Appeal [2019] EWCA Civ 1127.
411. During the time that Mr Ngole, a Christian, was studying a vocational Masters in Social Work at Sheffield University he posted a series of comments on social media condemning same-sex relationships on religious grounds. The University decided that Mr Ngole should be excluded from the course. He challenged the decision under Articles 9 and 10 of the Convention.

412. In the High Court, it was held that the posts were not a manifestation of Mr Ngole's religious beliefs. The Judge's reasons are set out at paragraph 64 of the judgment as follows:

"The ... postings were not made in a religious context of the sort which could potentially bring it close to the examples of worship or devotion recognisable as forming part of the practice of a religion or belief in a generally accepted form. They were made in the essentially political context of news media, as a religiously motivated contribution, albeit with a high religious content, to a political debate about the place of religious belief in the delivery of public services."

413. Although other parts of the Judge's decision were overturned on appeal, the finding that the posts were "*a religiously motivated contribution to a political debate*" and therefore not a protected manifestation of a religious belief was expressly endorsed by the Court of Appeal (paragraph 61).

Freedom of Expression

414. Unlike Article 9 and the right to manifest a belief, the EHRC Code does not address the relationship between a protected belief and the right to freedom of expression found in Article 10. The Equality Act 2010 also does not refer to any right to freely express a protected belief.
415. We were not referred to any case law authorities which deal with this point, but that may be because it is thought to be obvious that expressing a protected belief by imparting information and ideas about it is captured within the concept of manifesting a protected belief. The additional right, of freedom of expression, therefore may be thought to add nothing to the right to manifest a protected belief.
416. One of the reasons for us referring to this matter is because the *Arrowsmith* and *Ngloe* cases were brought under both Articles 9 and 10. Although Ms Arrowsmith and Mr Ngloe failed to establish that Article 9 was engaged in their cases, they were able to pursue them under Article 10. Ultimately this did not assist Ms Arrowsmith, but Mr Ngloe won his case in the Court of Appeal based on his arguments under Article 10.
417. The reason Ms Arrowsmith and Mr Ngloe were able to rely on Article 10 was because they did not need to establish that the opinions they were expressing were of a belief protected in Article 9. In their cases, they were able to rely on the fact that Article 10 protects freedom of expression of all opinions, subject to Article 17.
418. In cases brought under the Equality Act 2010, however, only freedom of expression of a protected belief is protected. There must therefore need, in our Judgment, to be a similar relationship between the protected belief and its expression as between a protected belief and its manifestation. The approach we have therefore adopted, absent any case law authority to guide us otherwise is to treat the Equality Act as extending to the protection of

expressions of a protected belief, providing such expression meets the test established in *Eweida*.

Direct Discrimination

419. Section 13 of the Equality Act 2010 says:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

420. The test for direct discrimination involves a number of different elements. There is no rule that requires the Tribunal to go through the different elements of the test in any particular order. In some cases it will be appropriate for the Tribunal to first consider if a claimant received less favourable treatment than an appropriate comparator and then, secondly, whether the less favourable treatment was because of the relevant protected characteristic. However, in other cases, particularly where there is only a hypothetical comparator, the questions are best answered by first considering *“the reason why”* a claimant was treated as she was (as per the speech of Lord Nicholls at paragraphs 7-13 in *Shamoon*).

421. In order to find discrimination has occurred, there must be some evidential basis on which the Tribunal can find, whether through primary findings of fact or justified inferences, that a claimant’s protected characteristic is the cause of the less favourable treatment. The Tribunal can take into account a number of factors including an examination of circumstantial evidence.

What is protected?

422. As noted above, in protected belief cases, a claimant is protected from adverse treatment because they have a protected belief and where the reason for the adverse treatment is because they have manifested or expressed a protected belief. Following the cases of *Page* and *Higgs* it is now settled law that the protection in the latter case is qualified. If the reason for the adverse treatment is not simply the protected belief or manifestation/expression of it, but something objectionable about the manner in which it was manifested /expressed, a test of objective justification arises. We return to this below.

423. Here, we note the observation made by Underhill LJ, in paragraph 55 of his judgment in *Higgs* that we must take care when distinguishing between the possible scenarios. He said:

*“There will be cases where the treatment complained of by the employee was ostensibly on the ground of conduct which manifested a religious or other belief but where it is found that the real reason was an animus against the belief in question. Such a finding may be straightforwardly because the employer’s account of its reasons is disbelieved; but it may also be because, as I put it in *McFarlane v Relate Avon Ltd* [2009] UKEAT 0106/09/3011, [2010] ICR 507, it is in the circumstances of the particular case “impossible to see any basis for the objection other than an objection to the belief which it manifests” so that “[the employer’s claim] to be acting on the grounds of*

the former but not the latter may be regarded as a distinction without a difference” (see para. 18). Neither kind of case is in truth a manifestation case at all, because the employer is motivated simply by the fact that the employee holds the belief. In a manifestation case proper the employer genuinely has no objection to the employee holding the belief and is motivated only by the conduct which constitutes its manifestation.”

424. We also note that there are cases where a respondent’s treatment of a claimant has nothing to do with the protected belief or the way it has been manifested/expressed, but is for an entirely different reason altogether, albeit that the context of the events involves a protected belief. An example of this type of case is *Omooba v Michael Garrett Associates Ltd (t/a Global artists [2024] IRLR 440 (EAT)*.

Criterion Cases

425. In this case, we have been asked to consider two different approaches to analysing the reason why. The difference between them is perhaps best explained by in the judgment of Underhill P (as he was then) in *Amnesty International v Ahmed [2009] UK EAT 0447/08* although he has repeated the point in many judgments since then. In these paragraphs he compares the approach adopted in *James v. Eastleigh Borough Council [1990] 2 A.C. 751*, a case relied on by the Claimants here, with that in *Nagarajan v London Regional Transport [2000] 1 AC 501*.

426. Underhill P summarised the case of *James* in paragraph 28 of his judgment in *Ahmed* as follows:

“The plaintiff was a man of 61. He and his wife, who was the same age, visited a Council swimming pool which charged for entry but allowed free admission to pensioners. Because the pensionable age was 65 for men but 60 women, his wife got in free but he had to pay. He brought proceedings in the County Court claiming that the Council had discriminated against him on the grounds of his sex, contrary to the Sex Discrimination Act 1975.”

427. He noted that a majority in the House of Lords upheld Mr James’ claim and set out key passages in their reasoning. We do not think it is necessary to set that entire reasoning out here, but we have included an extract from the judgment of Lord Goff where he said:

“I do not read the words “on the ground of sex” as necessarily referring only to the reason why the defendant acted as he did, but as embracing cases in which a gender-based criterion is the basis upon which the complainant has been selected for the relevant treatment”

He considered that “a criterion which favours women between the ages of 60 and 65, as against men between the same ages” had the same effect as a gender based criterion, of which he said; “It is plain to me that, in those cases, a man in either category who was so treated could properly say that he was treated less favourably on the ground of sex, and that the fact that the defendant had so treated him for a benign motive (to help women in the same category, because they are likely to be less well off) was irrelevant.”

428. Underhill P then summarised the case of *Nagarajan* in paragraph 29 of his judgment in *Ahmed* as follows:

“The applicant claimed that he had been denied appointment to a job with London Regional Transport because he had brought a number of previous race discrimination claims against it or associated companies. An industrial tribunal had upheld his claim of victimisation contrary to s. 2 (1) of the 1976 Act, finding that the decision-makers had been “consciously or subconsciously” influenced by knowledge of his previous complaints. He noted that decision was overturned on appeal but restored by the House of Lords.”

429. Underhill P then quoted from the speech of Lord Nicholls in that case. Again we have not set out the full extract he set out, just the most relevant part of it:

“Section 1(1)(a) is concerned with direct discrimination, to use the accepted terminology. To be within section 1(1)(a) the less favourable treatment must be on racial grounds. Thus, in every case it is necessary to inquire why the complainant 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 complainant 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. Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.”

430. In paragraph 30 of his judgment in *Ahmed*, Underhill P set out another extract from Lord Nicholls (from the case of *Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065*) where Lord Nicholls provides further clarity of what he was trying to explain in *Nagarajan* by saying:

*“Contrary to views sometimes stated, the third ingredient (“by reason that”) does not raise a question of causation as that expression is usually understood. Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the “operative” cause, or the “effective” cause. Sometimes it may apply a “but for” approach. For the reasons I sought to explain in *Nagarajan v London Regional Transport [2000] 1 AC 502*, 510-512, a causation exercise of this type is not required either by section 1(1)(a) or section 2. The phrases “on racial grounds” and “by reason that” denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.”*

431. In paragraph 33 in *Ahmed*, Underhill P explains that the first type of case as being a case where:

“the ground, or the reason, for the treatment complained of is inherent in the act itself. If an owner of premises puts up a sign saying “no blacks admitted”, race is, necessarily, the ground on which (or the reason why) a black person is excluded.”

He describes *James* as a case of this kind and says that in these types of cases, *“what was going on inside the head of the putative discriminator – whether described as his intention, his motive, his reason or his purpose – will be irrelevant.”*

432. He then says in paragraph 34:

“In other cases - of which Nagarajan is an example, the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, i.e. by the “mental processes” (whether conscious or unconscious) which led the putative discriminator to do the act. Establishing what those processes were is not always an easy inquiry, but tribunals are trusted to be able to draw appropriate inferences from the conduct of the putative discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). Even in such a case, however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the putative discriminator's action, not his motive: just as much as in the kind of case considered in James v Eastleigh, a benign motive is irrelevant.”

433. We therefore considered, in our analysis and conclusions section, whether this case fell into the first or second type of case. We did this by asking ourselves whether the reason for the Respondent's treatment of the Claimants was inherent in its conduct (whether through the application of a criterion or otherwise) or whether this was a case where we needed to consider the mental processes involved.

434. We note that for cases where a consideration of mental processes is required, the test is whether there was a significant (or more than trivial) influence on the mind of the decision maker such that it amounted to an effective reason for the cause of the treatment. The influence can be conscious or unconscious. These principles also derive from the speeches of Lord Nicholls.

Objectionable / Inappropriate Manifestation Cases

435. In paragraph 74 of his judgment in *Higgs* Underhill LJ explains the ratio of the Court of Appeal decision in *Page* as follows:

“In summary, Page was decided on the basis that adverse treatment in response to an employee's manifestation of their belief was not to be treated as having occurred “because of” that manifestation if it constituted an objectively justifiable response to something “objectionable” in the way in which the belief was manifested: it thus introduced a requirement of

objective justification into the causation element in section 13 (1). Further, we held that the test of objective justification was not substantially different from that required under article 9.2 (and also article 10.2) of the Convention. I should clarify two points about language:

- (1) The word “objectionable” in para. 74 is evidently a (possibly rather inapt) shorthand for the phrase in para. 68 “to which objection could justifiably be taken”. Both have the same effect as the word “inappropriate” which is also used.*
- (2) The “way” in which the belief is manifested is a deliberately broad phrase intended to cover also the circumstances in which the manifestation occurs.”*

We note that Falk LJ commented that she preferred the term inappropriate to objectionable, given the real meaning intended to be conveyed is to which objection could justifiably be taken (paragraph 181).

436. In paragraphs 75 to 79, Underhill LJ addresses some additional points and this legal development. We have taken particular note of two. First, his explanation that his formulation of the test of objective justification is a permissibly compressed version of the test in *Bank Mellat* and second that the reference in paragraphs 2 of Articles 9 and 10 to any limitation needing to be prescribed by law is satisfied through consideration of an employer’s rights under the contract of employment in an employment case.
437. Finally, we note that in paragraphs 112 and 113, Underhill LJ endorses the guidance contained in paragraphs 92-94 of Eady P’s EAT judgment in *Higgs* and in particular the nine factors identified by her as relevant to the question of objective justification. He says there, however:

“Eady J herself, at para. 93, sounds a strong note of caution about the value of guidelines in this field. I agree, and I would echo in particular her statement that the relevant principles require nuanced decision-making and that there can be no one-size-fits-all approach. But, provided para. 94 is read as being limited to, as she says, a summary of the underlying principles, I would respectfully endorse it. I would only say, consistently with the caution already expressed, that it will not be necessary – or always even useful – for a tribunal to structure its reasoning by reference to the nine “considerations” enumerated in head (v). All of them are potentially relevant; but in practice, as the EHRC observed, the focus of the issues in any given case will only be on some of them, and there may be some cases where other considerations – or considerations which do not neatly fit into her formulation – may be relevant.”

438. The nine factors identified by Eady J as potentially relevant are:
 - (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; and
- (ix) whether the limitation imposed is the least intrusive measure open to the employer.

439. In summary, where an employment tribunal is satisfied that the reason for an employers adverse treatment of an employee is because of the way in which that employee has manifested/expressed a protected belief rather because of the belief or manifestation per se, a test of objective justification applies. The purpose of it is to test whether the employer's objection and associated treatment is justified in all the circumstances. This requires testing how proportionate that treatment is by reference to the aim pursued by the employer and the context.
440. An employment tribunal is not required to apply the exact same test as a court or tribunal applies when determining if there has been a breach of an individual's Article 9 or Article 10 Convention rights. The test we are required to apply is a blended adaptation which should be informed by and take into account those Convention rights in the workplace context.

Indirect Discrimination

441. Under section 19 of the Equality Act 2010:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim”

442. There are four elements in an indirect discrimination claim. The burden lies on the claimant to prove the first three elements of this claim. The standard of proof required is on the balance of probabilities (*Dziedziak v Future Electronics Ltd EAT 0271/11 and Essop v Home Office; Naeem v Secretary of State for Justice [2017] UKSC 27*).

443. The first element of an indirect discrimination claim is the identification of the relevant provision, criterion or practice (“PCP”). What constitutes a PCP is not defined in the Equality Act 2010. The EHRC Code says:

“[The term PCP] should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A provision, criterion or practice may also include decisions to do something in the future – such as a policy or criterion that has not yet been applied – as well as a ‘one-off’ or discretionary decision.” (Paragraph 4.5)

444. The PCP must be such that it is or would be applied neutrally, but as a result of its application causes what is known as “group disadvantage”. This is the second element of the claim. The claimant must show, on the balance of probabilities, that people with a protected characteristic have or would be subjected to a particular disadvantage because of the application of the PCP when compared to people without the protected characteristic.
445. One way of demonstrating group disadvantage is to identify the pool of people to whom the PCP applies, identify who within that group are disadvantaged by it and compare the proportions of people within the disadvantaged group that have and do not have the protected characteristic. This is not the only way to show group disadvantage, however.
446. *Disadvantage’ is not defined in the Equality Act. The EHRC Code says: “It could include denial of an opportunity or choice, deterrence, rejection or exclusion.” and likened it to a detriment i.e. “something that a reasonable person would complain about [such that an] unjustified sense of grievance would not qualify.”*
447. *A disadvantage does not have to be quantifiable and the claimant does not have to experience actual loss (economic or otherwise). It is enough that the worker can reasonably say that they would have preferred to be treated differently.*
448. The pool will depend on the nature of the PCP being tested and should be one which suitably tests the particular discrimination complained of (*Grundy v British Airways plc [2008] IRLR 74*).
449. Particular disadvantage will be established if the proportion of those in the group with the protected characteristic who are (or would be) disadvantaged by the application comply with of the PCP is materially larger than the proportion of those in the group without the protected characteristic. It does not matter, in this respect, that the PCP does not disadvantage all those who share the protected characteristic. In *Essop* the Supreme Court held that there was no requirement for a claimant alleging indirect discrimination to prove why the application of the PCP created group disadvantage. It was sufficient that it did.

450. Having shown group disadvantage, the claimant must also prove, also on the balance of probabilities, that they personally suffered the same disadvantage. This is the third element.
451. If the claimant has proved the existence and neutral application of the PCP, group disadvantage and the relevant particular disadvantage, the burden then passes to the respondent to prove that the treatment (i.e. the application of the PCP) was a proportionate means of achieving a legitimate aim. If the respondent cannot do this, the claimant's case will succeed. The relevant standard of proof is again on the balance of probabilities.
452. When considering the question of objective justification in a protected belief case, the test the employment tribunal applies should be informed by and take into account the Convention Rights found in Article 9 and Article 10.

Time Limits

453. The relevant time-limit is at section 123 Equality Act 2010. According to section 123(1)(a) the tribunal has jurisdiction where a claim is presented within three months of the act to which the complaint relates.
454. The normal three-month time limit needs to be adjusted to take into account the early conciliation process and any extensions provided for in section 140B Equality Act.
455. By subsection 123(3)(a), conduct extending over a period is to be treated as done at the end of the period.
456. In *Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. An example is found in the case of *Hale v Brighton and Sussex University Hospitals NHS Trust* UKEAT/0342/17 where it was determined that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.
457. It is not necessary for us to take an all-or-nothing approach to continuing acts. We can decide that some acts should be grouped into a continuing act, while others remain unconnected (*Lyfar v Brighton and Sussex University Hospitals Trust* [2006] EWCA Civ 1548 in which the tribunal grouped the 17 alleged individual acts of discrimination into four continuing acts, only one of which was in time.)
458. A distinction needs to be drawn between a continuing act and a one-off act that has continuing consequences (*Barclays Bank plc v Kapur and others* [1992] ICR 208;). This distinction will depend on the facts in each case. (*Sougrin v Haringey Health Authority* [1992] IRLR 416, CA)

459. Alternatively, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable as provided for in section 123(1)(b).
460. The tribunal has a wide discretion to extend time on a just and equitable basis. As confirmed by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23, the best approach is for the tribunal to *assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. This will include the length of and reasons for the delay, but might, depending on the circumstances, include some or all of the suggested list from the case of British Coal Corporation v Keeble* [1997] IRLR 36 set out below, as well as other potentially relevant factors:
- The extent to which the cogency of the evidence is likely to be affected by the delay.
 - The extent to which the party sued had co-operated with any requests for information.
 - The promptness with which the claimant acted once they knew of the possibility of taking action.
 - The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action

It is for the claimant to show that it would be just and equitable to extend time.

ANALYSIS AND CONCLUSIONS

Did the Claimants hold any protected beliefs?

Were the emails/posts manifestations / expressions of any protected beliefs?

461. We first sought to answer the questions contained in paragraphs 1-6 of the list of issues dealing with the Claimants' beliefs, whether these were protected beliefs under section 10 of the Equality Act 2010 and whether their posts/emails were manifestations/expressions of such beliefs. We found it easiest to deal with all the issues up to and including the manifestation/expression question for each set of beliefs in turn.
462. When considering the Claimants' beliefs, we reminded ourselves that whether an individual has a protected characteristic is normally assessed at the time of the alleged acts of discrimination. It did not seem to be in dispute that the relevant time that we needed to consider was the time the Claimants made/sent their posts/emails, i.e. 24 and 25 May 2021 rather the dates of the detriments. Our findings are therefore focused on what we consider the Claimants believed at the time they made their respective posts, and not what they believed later including at the time of the hearing.
463. We considered what each the Claimants said in their witness evidence, as tested under cross examination. We were conscious, however, that their witness statements were written in December 2023, around 18 months after the events of May 2021 and their cross examinations took place more than

three years later. We therefore gave great weight to the available contemporaneous evidence, which included their posts and what they said about their beliefs during the disciplinary process.

464. For the reasons explained below, we found:

- Both Claimants held the first set of beliefs which were part of their religious Islamic beliefs. We did not therefore need to consider whether the first set of beliefs constituted protected philosophical beliefs in their own right.
- The Claimants did not succeed in their claims of direct discrimination based on their religious beliefs. This was because we found that their respective posts/emails were not manifestations/expressions of their Islamic beliefs.
- Neither Claimant held the pleaded anti-Zionist beliefs at the time of making their posts. In addition, to the extent that they held views about Israel/Palestine at the time, that might be considered to be anti-Zionist, these did not meet the *Grainger* criteria. Therefore, their direct discrimination claims based on the second set of beliefs, the anti-Zionist beliefs also failed.

465. As explained above, the Tribunal considered our decision making on the above points was finely balanced. We therefore decided to proceed to consider other issues that would have been required to be considered within the direct discrimination claims.

First Set of Beliefs – Opposing Oppression and Racism

466. The first set of beliefs we considered were set out in the list of issues as follows:

- “(a) *Oppression is wrong and should be opposed;*
- “(b) *Racism is wrong and should be opposed;*
- “(c) *It is a moral obligation on all persons capable of doing so to oppose oppressive or racist practices, institutions and, in particular, states by whatever peaceful means are available to them, and as a minimum this requires one to:*
 - “(i) *Speak out against such practices, institutions and states;*
 - “(ii) *Refuse to lend any moral, financial or other support to such institutions or states; and*
 - “(iii) *Encourage others to do the same?”*

467. We refer to this set of beliefs as “beliefs in opposing oppression and racism” by way of shorthand.

What did Ms Sohail and Ms Khalid Believe?

468. We were invited to find that both Claimants held this set of beliefs and that the beliefs constituted part of their religious, Islamic, beliefs. As noted above, our conclusions were that both Claimants did hold these beliefs and that the beliefs did indeed form part of their Islamic religious beliefs.
469. In reaching this decision we relied on the contents of the expert report prepared by Professor Matthew Wilkinson. He had been jointly instructed by the parties to answer the question of whether this set of beliefs formed part of the Islamic faith from a general perspective. He confirmed that they did. We also relied on what each of the Claimants said about their own their Islamic beliefs.
470. It was not in dispute that both Claimants are practising Muslims and follow the five pillars of Islam. It was also not in dispute that the Claimants have been Muslims their entire lives. Our finding is that any sub-set of beliefs they hold within their Islamic beliefs are long standing.
471. Ms Sohail confirmed the following:

“From around the age of three until I was 12, I attended Madrasah. There I learnt teachings of the Prophet Muhammad which instilled in me values which included a strong sense of justice, that everyone should be treated equally, and that if you see someone being treated badly and you can do something about it but fail to, you are just as bad as the perpetrator of the wrong (Hadith 34, 40 Hadith an Nawawi).

These teachings, combined with my lived experiences, have given me the urge to stand up against injustice when I see it. Although I grew up in a diverse and tolerant area in London, experiencing racism in less accepting areas taught me about racial injustice. Where possible, I have tried to intervene and support people being victimised or subjected to racial abuse. I do not do this all the time, as I sometimes feel that I am not able to influence a situation or may feel vulnerable, scared, nervous, or anxious, but I have grown more confident about standing up for myself and others over time. In around 2019, I defended an individual who I saw being subjected to racial mistreatment at the train station by a member of staff by speaking up on his behalf.”

472. Ms Khalid confirmed that she believed:

“Seeing injustice, or abuse and then turning a blind eye would be ‘wrong’ and I would be answerable to God for that. It is a practising Muslim’s duty to differentiate between right and wrong in all day to day activities. I believe this is basic human morality and ethics; you don’t need to be a Muslim to follow or adhere to this.

Prophet teaches us that whoever sees oppression and doesn’t speak up will essentially be partnering with the oppressors. There are many passages in the Quran about speaking out against oppression and injustice which

include Quran 5:8, Quran 16:90, Quran 55: 7-9, Quran 4:135 and Quran 5:8.”

473. The Respondent argued that we should not find that the Claimants held the relevant beliefs because there was no evidence of them regularly making social media posts speaking out about racism and oppression. We did not find this to be persuasive. We considered it was perfectly possible to hold a belief as part of an underlying religion, that one ought to be speaking out about racism and oppression, but not actually do it. No evidence was presented that the Claimants behaved in ways that were contrary to these beliefs.
474. In addition, the Respondent argued that because both Claimants accepted the English dictionary definition of “oppression” put to them in cross examination, rather than insist on the Islamic definition in Professor Wilkinson’s report, this undermined their position. We found this to be an unconvincing argument. The Claimants are British and speak English as their first language. It is natural that in their daily lives, especially where their religion uses a different language, that they revert to relying on ordinary English terminology.
475. Having found that the Claimants’ beliefs in opposing oppression and racism were genuine and formed part of their Islamic religious belief, we did not consider if the beliefs constituted a philosophical belief in their own right by applying the *Grainger* criteria to them. We note that issue 3 in the list of issues required us to do this only if we found that they were not part of the Claimants’ religious beliefs.

Manifestation/Expression

476. The next question we considered was whether the Claimants’ posts/emails were a manifestation/expression of their Islamic beliefs in opposing oppression and racism. For both Claimants we considered they were not.
477. When determining this question, we decided that although our primary focus should be on the text of the posts/emails themselves, we could also take into account the wider context.

Ms Sohail

478. The Respondent invited us to find that although the text of Ms Sohail’s post and emails may have been influenced by her Islamic belief in opposing and racism, it was not a manifestation/expression of this belief. This was because the text expressed opposition to the State of Israel’s policies in relation to Palestine rather expressed opposition to oppression and/or racism per se. We were invited to find that the position was on all fours with that in *Arrowsmith*.
479. We did not agree with this argument. The significant point about the leaflets in *Arrowsmith* was that they made absolutely no mention of Ms Arrowsmith’s pacifist beliefs. Rather than trying to persuade the soldiers to give up fighting altogether, the focus of the leaflets was simply on persuading them not to

fight in Northern Ireland. This was why the leaflet was held not to be a manifestation of her belief.

480. Here, although the focus of Ms Sohail's text is the Israel/Palestine conflict, she explains in it that she is making her appeal to the Respondent to boycott HP products because of the Respondent's stance towards promoting racial equality. She references concerns about institutionalised racism and segregation as a result of what she calls Israel's apartheid system. She therefore firmly positions her request in the context of opposition to oppression and racism generally.
481. Ms Sohail's text makes no reference at all to this belief being rooted in her Islamic faith, however. She explains in her text that her concern about Palestine has led her to reflect on her own consumer choices, but makes no reference to any underlying religious belief which this is based upon. On the contrary, in the text, Ms Sohail places a strong emphasis on concerns about breaches of international humanitarian law and human rights.
482. Empathy for the Palestinian cause as a humanitarian issue is not a uniquely Muslim issue. In our judgment, based on what is said in the text itself, we do not consider there is a sufficiently close nexus between Ms Sohail's religious belief and the words used. There is nothing in the text that would enable a reasonable reader to identify that it had been written by someone with specific Muslim beliefs in opposing oppression and racism.
483. There is also nothing additional about the context of Ms Sohail's actions that change this view. She emailed and posted the text widely, so although one of the places she posted it was on the Respondent's Muslim network, in our judgment this was not significant. It may have been obvious to some readers of the emails/post that Ms Sohail was a Muslim from her name, but we do not consider this would be sufficient to create the close nexus necessary.
484. We further note that during the investigation and disciplinary process Ms Sohail did not seek to argue that the post was an expression of her Islamic beliefs. Her position during the internal processes was to emphasise that the humanitarian concerns expressed in the text were shared widely within mainstream thinking, including among Jewish groups.
485. Ms Sohail had not made regular postings on social media opposing oppression and racism. She was not in the habit of using external or internal communication networks to manifest or express her religious beliefs and so this occasion was not part of a pattern of doing that would have led a reader to understand this was a manifestation/expression of a religious belief.
486. The Respondent likened Ms Sohail's act of emailing and posting the text to the actions taken in *Ngole* such that we should find that it was a religiously motivated contribution to a political debate about a humanitarian issue. Ultimately we agreed this was the correct way for us to view the post/email.

Ms Khalid

487. Turning to Ms Khalid's posts, the Respondent made the same *Arrowsmith* and *Ngole* arguments for Ms Khalid's posts as it did for Ms Sohail's text.
488. Our reason for finding that Ms Khalid's post was not a manifestation/expression of her Islamic belief in opposing oppression and racism was different to our reason for Ms Sohail.
489. Ms Khalid's first post made it clear that she was not solely concerned with the Israel/Palestine conflict and had a broader perspective in mind. She comments on various issues that had been discussed internally and mentions Israel/Palestine in that context.
490. We consider it is significant, however, that the issues she mentions are not uniquely concerned with racism and oppression. Instead, the examples she gives include the Paris arena bomb, BLM and LGBTQ. Her focus, at least in relation to the first two cited is on recent newsworthy atrocities that have generated public sympathy. The essence of her post is questioning why what is happening in Israel/Palestine is not generating the same level of concern or interest. Unlike Ms Sohail's text, Ms Khalid's posts are not obviously being posted because of a general concern about oppression and racism. Instead, we interpret them as raising a concern about a current humanitarian issue that she feels is being ignored.
491. Ms Khalid does not say anything in the posts that explains that she is posting because of her religious beliefs. In our judgment, based on what is said in the posts themselves itself, we do not consider there is a sufficiently close nexus between Ms Khalid's religious belief and the words used. There is nothing in the text that would enable a reasonable reader to identify that it had been written by someone with specific Muslim beliefs in opposing oppression and racism. Although in her first post Ms Khalid questions whether there is a perception of the Israel/Palestine issue as a Muslim issue, we do not consider this is sufficient to overcome this omission.
492. We further note that during the investigation and disciplinary process Ms Khalid did not seek to argue that the post was an expression of her Islamic beliefs. She did however say that she was posting from a Muslim perspective.
493. We find that Ms Khalid was indeed posting from a Muslim perspective, however, this was not the same as her saying the posts were manifestations/expressions of her Muslim beliefs. We consider that Ms Khalid's Muslim perspective was borne of the fact that the vast majority of (but not all) Palestinians are Muslims and so she felt an affinity with them, particular the Muslim mothers described in her witness statement. This was simply part of the context, however, and much more on all fours with *Arrowsmith*.
494. Ms Khalid had also had not made regular postings on social media opposing oppression and racism. She was not in the habit of using external or internal communication networks to manifest or express her religious beliefs and so

this occasion was not part of a pattern of doing that would have led a reader to understand this was a manifestation/expression of a religious belief.

495. Ultimately we find that Ms Khalid's posts were a religious motivated contribution to a discussion about a humanitarian issue rather than a manifestation/expression of her Islamic beliefs in opposing oppression and racism.

Second Set of Beliefs - Anti-Zionist Beliefs

496. The second set of beliefs we considered were set out in the list of issues as follows:

“(i) Political Zionism is a racist and oppressive ideology; and

(ii) Zionism and the practices of the State of Israel which give effect to that ideology ought to be opposed?”

We refer to this set of beliefs as the pleaded anti-Zionist beliefs by way of shorthand.

497. Zionism and anti-Zionism mean different things to different people and have no universal definitions.

498. We note that in their expert reports, both Dr Rich (for the Respondent) and Mr Lerman (for the Claimants) provided information about the development of the concept of Zionism and its different strands in the latter part of the 19th century up to the present date. In the opening paragraph of his report Dr Rich says the following:

“Zionism is the belief that the Jewish people, having been geographically dispersed in a diaspora since the destruction of the Jewish temple in Jerusalem in 70AD, should return to their historic homeland of Eretz Yisra’el – The Land of Israel. Further, Zionism incorporates the belief that the Jewish people form a national group and not just a religion. Political Zionism was the formalisation of this pre-existing idea at the end of the 19th century into a political movement with the goal of achieving Jewish national self-determination, which came to fruition with the establishment of the modern State of Israel in 1948. Since that date, Zionism has come to mean support for the ongoing existence and well-being of the State of Israel as a Jewish state, and, for many Jewish people, identification with Israel as part of their own Jewish identity.”

Mr Lerman, says

“There is no single definition of Zionism on which everyone can agree. Few would dispute that, in its most basic form, as formulated by the founder of the Zionist movement, Theodor Herzl (1860-1904), at the end of the nineteenth century, it was a political idea to establish a state for the Jews in Palestine. But the moment you venture to describe what kind of movement it was, fundamental differences emerge.”

499. We sought to understand and focus on what the Claimants each meant when they described themselves as holding anti-Zionist beliefs. This involved us considering whether they held the pleaded anti-Zionist beliefs, and if the beliefs they held satisfied the *Grainger* criteria.

Ms Sohail

500. For the reasons set out below, our finding was that Ms Sohail did not hold the pleaded anti-Zionist beliefs at the time she sent her emails/made her posts in May 2021. We also find that the beliefs she held at the time did not meet the second, third and fourth *Grainger* criteria. The beliefs therefore did not constitute a protected philosophical belief, albeit that the fifth *Grainger* criteria was met.
501. We went on to find however, in the alternative, that had Ms Sohail's beliefs about Israel/Palestine constituted the protected philosophical belief of anti-Zionism, her email/posts were a manifestation/expression of such a belief.

What did Ms Sohail believe?

502. In her witness evidence, Ms Sohail described herself as an anti-Zionist and explained at some length why she opposes Zionism.
503. Ms Sohail's witness evidence on what she means when she uses the term Zionism was not completely clear. This is because rather than give a succinct explanation of her own definition of Zionism, she resorted to talking about Zionism meaning different things to different people. For example, she specifically comments that "*one belief is that it is a racist political ideology*" without expressly confirming that this is her belief.
504. She does, however, demonstrate that she links Zionism with a desire to create a Jewish homeland in Israel. Of this she says:

"I believe that the way the State of Israel has pushed forward with Zionism is the root cause of the ongoing conflict in the region. I understand that Zionists want to establish a national home for persecuted Jews, and I understand that the need to safeguard the Jewish community is important following the Holocaust. One of the problems I have with Zionism is that the State of Israel seems willing to pursue the goal of establishing a Jewish homeland by any means possible. I object to all of the violence that this Zionist project has committed over the last century. It is impossible to have a Jewish-only national state where there were already Palestinian inhabitants from different faiths peacefully co-living in Palestine together. In my opinion Zionism is a settler colonial movement. The predictable consequence of Zionism is violence against Palestinians.

Zionism requires using brutal military force. It has a proven record of displacing people, and murdering innocent citizens in broad daylight without any accountability. The State of Israel has discriminatory laws that help them to establish and expand the Jewish national state."

505. It is relevant to note that Ms Sohail stressed that her anti-Zionism belief was not borne from an antipathy of Jewish people or Judaism. She noted that many Jewish people share her anti-Zionist views. She also said:

“I strongly believe that Jewish people need and deserve a solution to the predicament of their lack of safety or liberation, whether this is in the form of statehood or otherwise. I do not believe that a land specifically for Jews is required to secure their safety as I believe that they can and currently do co-exist, and are free to worship, alongside other faiths in peace all around the world, negating the need for a sovereign state, and certainly negating the need for a state that systematically discriminates against non-Jews. Jewish people have a right to live wherever they want, but not at the cost of snatching that right away from others, specifically taking away the Palestinians’ right to self-determination.”

506. When asked in cross examination about her solution to the Israel/Palestine conflict, Ms Sohail said she believed that the state of Israel should abandon or reverse all of its policies, laws and practices which she considered to be racist. She thought that this would effectively result in Israel ceasing to be Israel, but she did not advocate dismantling the state as such, nor did she advocate for the expulsion of the Jewish population or violence towards them.

507. Ms Sohail explained in her witness statement that, although she was aware of the conflict between Israel and Palestine from a young age, she was not particularly interested in politics or history. However, as a result of the escalation in the conflict that occurred in early May 2021, she began to undertake research into the history to better understand the facts. She also familiarised herself with different approaches to pro Palestinian activism and was drawn to the Campaign for Boycott, Divestment and Sanctions (BDS).

508. We find that Ms Sohail was drawn to learn about the Israel/Palestinian conflict as a result of being a Muslim and strongly identifying with the Palestinian people through this connection. She described how the fact that the escalation in the conflict occurred during Ramadan and involved Al-Aqsa, the third holiest mosque in Islam, meant she was following it closely. She also speaks eloquently in her written witness statement about her opposition to Islamophobia saying:

“I also think it’s easy to label [the Palestinians] as terrorists because Palestinians are a majority-Muslim population. In my opinion, the Israeli government and Zionists use Islamophobic justifications for ethnically cleansing Palestinians. There is a broader context following the attacks on September 11, 2001, the so called ‘War on Terror’ that followed, the rise of ISIS in the Middle East, all of which contributes to a public discourse in which it is sadly all too acceptable to engage in anti-Muslim racism, and to tar all Muslims with the same brush as a small minority of violent terrorists who incidentally happen to be Muslim. I believe that Israel contributes to that Islamophobic climate by seeking to justify its unjustifiable actions towards the Palestinians.”

509. We have no doubt that Ms Sohail 's journey of learning since early May 2021 has led her to become an anti-Zionist and that when she uses that term about herself now she is being genuine. We also consider, despite ambiguity in her witness statement that her current beliefs are those contained in the list of issues and that these would satisfy *Grainger* (ii) and (iv).
510. However, we do not find that this was the case at the time when Ms Sohail sent her email/made her posts in May 2021.
511. In reaching this conclusion, we took into account what Ms Sohail said about her beliefs at the time. We considered the text of the emails/post itself, but also her earlier communications to the University and how she described her beliefs at the time. We concluded that her beliefs at the time were not as pleaded and more significantly did not meet the *Grainger* criteria (ii) and (iv). We reminded ourselves that the threshold or bar should not be set too high when applying these *Grainger* criteria, but nevertheless reached this finding.
512. The earliest communication expressing her beliefs about the Israel/Palestine conflict was the letter Ms Sohail wrote to the Dean of her University on 11 May 2021. The focus of her communication was the recent escalation in the conflict which arose from ongoing concerns about Israeli settlements in areas considered to be Palestinian. She includes a paragraph in the letter describing her understanding of the historical context for the recent escalation, which specifically refers to the UK government playing a role in what she calls the "Zionist project" and identifying this as imperialist violence. This demonstrates that Ms Sohail was at this time identifying herself as someone who believes the current conflict grew out of the original Zionist project.
513. She does not clarify what she means by this, however, or even say that she opposes that project. Her primary concern is the impact of recent events on the Palestinian people. We interpret the communication as one that is not inconsistent with a belief in anti-Zionism, but one in which it is not clear cut that the author would identify themselves as an anti-Zionist.
514. In the text of the post/email circulated within the Respondent, Ms Sohail makes no explicit reference to Zionism or anti-Zionism. She is highly critical of Israeli government policies, but she positions her concern as being about breaches of international humanitarian law and human rights. There is a reference in the text to Israel's settlor colonial project, but this is said about settlements in the West Bank rather than the original creation of the State of Israel. Again, we interpret the email as one that is not inconsistent with a belief in anti-Zionism, but one in which it is not clear cut that the author would identify themselves as an anti-Zionist. In our view, the more obvious interpretation is that the email has been written by someone who cares deeply about the humanitarian consequences of current Israeli Government policies, and is writing based on that belief rather than on the basis of a belief that Zionism is a racist and oppressive ideology.

515. One of the factors that has influenced our decision, but was not the only factor in our decision making, was the amount of time between Ms Sohail first taking an interest in the Israel/Palestinian conflict, as a result of the escalation in the conflict and the timing of her posts/emails. We do not consider that a period of around three weeks is sufficient to enable a person to develop a firm belief about such a complex matter that is sufficiently coherent and cogent to meet the *Grainger* criteria. We consider it entirely possible to form an initial view about a particular conflict in such a short space of time, and to begin to undertake some research into it, but to move from that to a position of certainty about the underlying ideologies involved does not strike us as genuine.
516. By far the most important factor in our decision making was that Ms Sohail did not at any point during the Respondent's investigation, disciplinary or appeal process describe herself as holding or being motivated by a belief in anti-Zionism. She was at pains to point that her criticism of Israel government policies should not be interpreted as antisemitic or racist, as a reaction to the accusations against her. However, this and her emphasis on taking a humanitarian stand were the full extent to which she talked about beliefs. It is notable that in her witness statement, Ms Sohail says that it is only since facing disciplinary proceedings while employed by the Respondent that she has become afraid to publicly declare herself to be an anti-Zionist. She says that at the time of making the post, she was not afraid to do this and therefore it is even more striking that she did not say this at any time during the disciplinary proceedings.

Application of the Grainger Criteria

517. All of the above goes to *Grainger* (i) and whether the belief Ms Sohail relies on as a philosophical belief was genuinely held. Our finding is that Ms Sohail did not hold the pleaded anti-Zionist at the time of sending her emails/making her posts, albeit she does hold that belief now. At the time, she held a belief that was rooted in what has become an anti-Zionist belief, but was primarily focused on concern about Israel/Palestine from a humanitarian perspective and breaches of human rights.
518. *Grainger* (ii) is also relevant. We find that Ms Sohail's belief at the time of making her post had not crossed the threshold from being a current viewpoint based on current events to a deeper philosophical belief. The same is true in relation to the requirement found in *Grainger* (iv) for a belief to be cogent and coherent. Our finding is that Ms Sohail's beliefs about Israel and Palestine in May 2021 were still very much in their formative stages and were still developing in cogency and coherence.
519. We are satisfied that Ms Sohail's beliefs satisfied *Grainger* (iii) and the requirement in *Grainger* (iv) for a have a the belief to have a certain level of seriousness and importance. We note that this is not challenged by the Respondent in any event. In our judgment, any view taken in relation to the Israel/Palestine conflict is inevitably concerned with a weighty and substantial aspect of human life and behaviour. Such a view addresses many serious and important topics including human behaviour in conflict

scenarios, the right to self-determination and a homeland and the concepts of racial and religious identity.

Grainger V

520. The Respondent invited us to find that Ms Sohail's beliefs did not meet the final *Grainger* criterion namely that they were not worthy of respect in a democratic society, and not incompatible with human dignity and not in conflict with the fundamental rights of others. This was on the basis that an anti-Zionist belief generally is a belief "*aimed at the destruction of Jewish self-determination*" and that she advocates the destruction of the state of Israel.
521. We do not agree that Ms Sohail advocated the destruction of the State of Israel. She questioned whether it would continue to exist in its current form if the policies that she opposes ceased to be in existence. This was a far more nuanced position for her to take. In addition she did not say that she did not believe in Jewish self-determination. Her evidence was very strong that she recognised this and supported it, but considered that there were ways that it could be achieved other than through current Israeli policies.
522. We reminded ourselves that *Grainger V* is not intended to rule out from protection beliefs that others may find difficult, shocking or offensive. The test is that only those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms should not be protected.
523. We considered that there was nothing about Ms Sohail's beliefs that meant they would not satisfy *Grainger V*. We appreciate that taking this view potentially puts us in conflict with the example in the IHRA definition that says that, "*Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor*" is antisemitic. However, that is the decision we have taken,

Manifestation/ Expression

524. As explained above, although we did not find that Ms Sohail's beliefs about Israel/Palestine constituted a protected philosophical belief in anti-Zionism at the time she sent her emails/made her posts, we nevertheless considered whether the text of her emails/posts was a manifestation of such a belief.
525. As above, we decided that when determining this question our primary focus should be on the text itself, but that we could also consider the wider context. In this case, we did not consider there was any broader context that was helpful, other than that the posts/emails were sent at a time when there had been an escalation in the Israel/Palestine conflict. We therefore made decision by focussing on the text.
526. Our decision, was that the text of the posts/emails was a manifestation of an anti-Zionist belief.

527. In reaching this decision we were conscious of the potential contradiction between this finding and our finding about Ms Sohail's beliefs.
528. When considering Ms Sohail's beliefs, we said that the text of her posts/emails was not inconsistent with someone expressing an anti-Zionist belief, but could just as easily have been written by someone who did not have such a belief. This was because a possible interpretation of the text was that it had been written by someone that was concerned about what was happening in Israel/Palestine from a purely humanitarian perspective. We took the text into account, but also considered other relevant evidence when determining what Ms Sohail actually believed.
529. To help us, we considered how we would approach the wearing of a cross. That was, of course, the scenario in *Eweida* which is why we have chosen it. When an individual wears a cross this could be a religious choice or have nothing to do with religion and be simply a fashion choice. Because the wearing of a cross is so closely associated with Christianity, the Tribunal would assume that anyone they saw with a cross was doing so in the capacity of a Christian symbol unless we learned otherwise.
530. We decided the same was true of someone who had written the text prepared by Ms Sohail. On balance, the Tribunal considered that we would assume the author of the text was likely have anti-Zionist beliefs, based on the contents, until we learned otherwise. On this basis we considered that there was a sufficiently close nexus between a belief in anti-Zionism and the words used and that therefore the text of Ms Sohail's posts/emails was a manifestation of an anti-Zionist belief.
531. Had we held that, at the relevant time (i.e. the time she made her posts/ sent her emails) Ms Sohail held the pleaded anti-Zionist belief or even anti-Zionist beliefs that met the Grainger criteria, we would have been satisfied that her posts/emails were a manifestation/expression of those beliefs. This was on the same basis of the same observations we made above regarding the text.

Ms Khalid

532. For the reasons set out below, our finding is that Ms Khalid did not hold the second set of beliefs in the pleadings at the time she sent her emails/made her posts in May 2021. We also find that the beliefs she held at the time did not meet the second, third and fourth *Grainger* criteria. The beliefs therefore did not constitute a protected philosophical belief, albeit that the fifth *Grainger* criteria was met.
533. We went on to find however, in the alternative, that had Ms Khalid's beliefs about Israel/Palestine constituted a protected philosophical belief of anti-Zionism, her email/posts were a manifestation/expression of such a belief.

What did Ms Khalid believe?

534. In her evidence to the Tribunal, Ms Khalid admitted that her knowledge of the Israel/Palestine conflict was extremely limited until May 2021. It was as a result of witnessing an increased number of posts on her Instagram feed

in early May 2021, that she undertook some limited on-line research into the historical context. She said in her own words that her research provided her with only a basic understanding.

535. Our finding is that the research Ms Khalid undertook was limited to the information contained in the second post that she had cut and copied to the Respondent's message board. She was unable to reference any other sources of information she had looked at her. Her knowledge was extremely limited and, as she acknowledged under cross examination, based on some inaccurate facts.

536. Although she sought to explain her understanding of the terms Zionism and Anti-Zionism in her written witness statement, she did this in two sentences as follows:

"Zionism is where more and more Palestinian land is being unfairly taken through oppression and violence; Anti-Zionism opposes this movement. I appreciate this is a very politically and religiously sensitive area for which I certainly do not have the perfect peaceful solution.

537. This was said in her witness statement very much in the context of her seeking to demonstrate that she considered there was a distinction between anti-Zionism and antisemitism and in order to emphasise that she was not antisemitic. She expressly defined antisemitism as hatred towards members of the Jewish faith, and said she did not hold or condone this belief.

538. She confirmed, when asked in cross examination, that she understood Zionism was intimately linked with the Jewish faith and culture, but she did not know the origin of the term.

539. Ms Khalid expanded upon why she felt strongly about the situation in Israel/Palestine, saying the following in her witness statement:

"I do not believe that oppression and violence against humans by other humans is acceptable in any form and certainly less so if it is driven by a political movement to expand control and occupation of a territory. The murdering, raping of women, arresting and assault of children by the Israeli government is what I understand is happening to Palestinians and I believe this is totally unacceptable and forbidden under Islam.

Even without the aggression and violence, I believe taking control and occupying land causing displacement of Palestinian people and leading to instability, uncertainty for the future of families and poverty is impossible for me to condone. I draw a parallel to someone telling me to move out of my house after having lived there for 14 years; I would obviously oppose such a demand."

540. During her cross-examination, Ms Khalid was asked about what she believed was the solution to the ongoing conflict. When answering she questioned whether Israel should exist in the first place, but went on to say

that she did not consider herself able to answer this question as it was too difficult for her. She did not advocate either a single or two state solution.

541. Ms Khalid did not at any time during the Respondent's investigation, disciplinary or appeal process say that her posts were an expression of her anti-Zionist belief. As noted in the section above, she said that she was posting from a Muslim perspective.
542. We do not consider that Ms Khalid's first post contains any information that helps us to decide one way or another if she held anti-Zionist beliefs at the time she posted it. Her second post, is more instructive.
543. The second post, which we reminded ourselves was cut and pasted by Ms Khalid from social media, provides an extremely potted and abridged history of the conflict. The post references the aspiration to create a "Zionist land" as a homeland for Jewish people. It questions the validity of the roles of the UK and (inaccurately) US governments in achieving this aspiration rather than the aspiration itself. It also suggests that the aspiration was able to be peacefully accommodated by Palestinians until the "Israeli's got greedier." As such the post is ambiguous in relation to expressing a view on the merits or otherwise of the original Zionist project.
544. Taking all of the above into account, we find that Ms Khalid's version of anti-Zionism does not match the specific beliefs that were contained in the list of issues. Primarily she did not describe Zionism as an ideology or advance her opposition to it as an ideology. Instead, her view of Zionism was reduced purely to the act of taking Palestinian land. Her opposition to this was clear and heartfelt, but not thought through such that it led to her holding any ideological views about how the conflict should be resolved.
545. In our judgment, the underlying reason for this were some significant gaps in her understanding of the concepts of Zionism and anti-Zionism. For example, based on what she told us, she had no understanding of the concept of the Jewish people as a race (rather than a collection of people sharing a chosen faith) for whom the Zionist project involved a return to an home-land from which they were expelled. Her historical knowledge of the background to the Zionist movement was very sketchy as was her knowledge of the history of the conflict since the creation of the State of Israel.
546. It was significant for us that Ms Khalid did not say that she believed Zionism as an ideology was inherently racist. She also did not explain why she believed this was the case, despite the fact that this was said to be the basis of her philosophical belief.
547. We find that the belief Ms Khalid describes herself as having was in fact a strong belief that no-one should be subjected to oppression and displaced from their homes. This was the clear humanitarian message in her witness statement.

548. We consider Ms Khalid was drawn to the Palestinian cause in May 2021 because of the fact that the escalation in the conflict occurred during Ramadan and involved the Al-Aqsa Mosque. She also empathised strongly with the Muslim families that were impacted. This is what led to her posts, rather than holding genuine anti-Zionists beliefs that she was manifesting/expressing.

Application of the Grainger Criteria

549. All of the above goes to *Grainger* (i) and whether the belief Ms Khalid relies on as a philosophical belief was genuinely held. Our finding was that although Ms Khalid held a genuine belief, it was not the pleaded anti-Zionist belief therefore she fails at this hurdle.

550. The above observations were also relevant when considering if Ms Khalid's actual beliefs met *Grainger* (ii) to (iv). Ms Khalid's counsel urged us not to hold her to too high a threshold in this regard and we have taken this into account when considering these points.

551. In this case, we found that Ms Khalid's belief as she held it in May 2021, represented a current viewpoint about the Israel/Palestine conflict that she had formed based on a minimal amount of research. The belief therefore failed to comply with *Grainger* (ii) and the requirements for cogency and cohesion found in *Grainger* (iv).

552. As with Ms Sohail's belief, we were satisfied that *Grainger* (iii) and the requirements for beliefs to have a certain level of seriousness and importance found in *Grainger* (iv) were also met.

553. The Respondent invited us to find that Ms Khalid's belief failed at *Grainger* (ii) and/or (iv). We are in agreement with this view. As noted in our lengthy legal section in this regard, a philosophical belief does not need to constitute a fully-fledged system of thought to meet (ii) and (iv). What is needed, however, is a belief, rather than a mere current viewpoint, which has a certain level of cogency and coherence.

Grainger V

554. Turning to *Grainger V*, the Respondent also invited us to find that Ms Khalid's beliefs did not meet this final criterion. This was on the same basis as argued for Ms Sohail, namely a general argument that an anti-Zionist is a belief "*aimed at the destruction of Jewish self-determination*" and also the specific argument that she advocated the destruction of the state of Israel.

555. We did not agree that Ms Khalid advocated the destruction of the State of Israel. She questioned whether Israel should exist in the first place, but was very clear that she felt unable to say what the solution to the current ongoing conflict was. She was also at pains to say that she bore no animosity to people of the Jewish faith.

556. We considered that there was nothing about Ms Khalid's beliefs that meant they would not satisfy *Grainger V*. We repeat the same point that we make above about the IHRA definition.

Manifestation/ Expression

557. Although we did not find that Ms Khalid held the pleaded anti-Zionist beliefs at the time she made her posts, we have nevertheless considered whether her posts were a manifestation of such beliefs.

558. Her first post simply questioned why the Israel/Palestine conflict was not being discussed. There is nothing in it that manifests an anti-Zionist belief in our judgment.

559. With regard to her second post, ultimately we approached this in the same way we approached Ms Sohail's text. The Tribunal considered that they would assume the author of the post was likely to be an anti-Zionist until they learned otherwise. On this basis we considered that there was a sufficiently close nexus between a belief in anti-Zionism and the words used in the post and therefore we would have held it to be a manifestation/expression of a belief in anti-Zionism, had we held Ms Khalid held this belief.

Direct Discrimination

Introduction

560. We next considered the Claimants' complaints of direct discrimination.

561. It was not in dispute that the Respondent had given both Claimants final written warnings and upheld those warnings on appeal. It was also not in dispute that as a result of the warnings, the Respondent reported the Claimants to its regulators. The dispute centred on the reason why the Respondent's decision makers acted as they did and whether this constituted direct discrimination because of the Claimants' beliefs.

562. As explained above, our decision making on the questions of whether the Claimants (a) held both sets of beliefs and (b) their posts/emails were manifestations/expressions of those beliefs was finely balanced. We therefore decided to proceed to consider as many of the other issues required to be considered within the direct discrimination claims as we felt this would be helpful to the parties.

563. In order to assist readers in understanding which of our decisions in this section are our primary decisions and which were decisions made in the 'in the alternative' we begin with the following summary:

- As we had found that the Claimants held the first set of beliefs and these were protected beliefs, a primary decision that remained open to us was that the Respondent had directly discriminated against one or both of the Claimants because they held those beliefs. This could only arise, however, if we found this was a criterion case and/or we found the

reason for the Respondent's treatment of the Claimants was because of an animus against their beliefs. As explained below, we did not find this.

- We decided that it was not helpful for us to try and consider what alternative decisions we might have made had found that the emails/posts were an expression of the Claimants' religious beliefs.
- Based on our earlier decisions, it was not open to us to find, as a primary decision, that the Respondent had directly discriminated against the Claimants because of an animus to the second set of beliefs *per se*. We considered this in the alternative, however, and, as explained below, held that this was not the case in any event.
- It was also not open to us to find, as a primary decision, that the Claimants had been subjected to direct discrimination because although the Respondent's treatment of them was because of the manner in which they manifested/expressed the second set of beliefs, it was not objectively justified. We considered this in the alternative. Our decision, which is explained below, was that the Claimants would have succeeded on this basis as the Respondent's actions were heavy handed and not proportionate in light of the protected beliefs involved.

The reason why?

564. In cases of direct discrimination, the best approach is often for the tribunal to move straight to asking why the employer acted as it did towards its employee rather than trying to construct a hypothetical comparator and analysing if the claimant was treated less favourably than that comparator. We considered that a "reason why" approach was the best approach to take here. This was because there were no any actual comparators, only two different types of hypothetical comparators.

565. Except in a criterion case, which we deal with below, determining the reason why, requires an examination of the mental processes of the decision maker. In a belief case, this requires us to ask whether the Claimants' protected beliefs had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. The protected beliefs need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

Was this a Criterion Case?

566. The Claimants position in relation to this matter is set out in their closing written submission at paragraphs 221 – 231.

567. The criterion, as identified by the Claimants was said to consist of "*actively suppressing [the beliefs] and punishing people who manifested [the] beliefs.*" (Claimants' closing submissions paragraph 231).

First Set of Beliefs

568. Our understanding was that the Claimants were not arguing that the criterion was applied in relation to their Islamic beliefs generally or specifically in opposing oppression and racism. Instead the focus of their argument was that the Respondent singled out anti-Zionist views for special treatment (C's closing submissions paragraphs 224 and 230).
569. For the sake of completeness, however, we note that there was no evidence before us that the Respondent was actively suppressing Muslims from expressing their Muslim beliefs generally or that there was a policy of suppressing views that opposed oppression and racism generally. In fact the evidence that was before us was very much to the contrary.
570. So far as being a Muslim and expressing Muslim beliefs was concerned, the Respondent recognises that a large number of its workforce and clients are Muslims. It has actively tried to find creative ways to enable interaction between Muslim colleagues so that they can support each other. It has done the same in terms of interaction between Muslim and non-Muslim colleagues with a view to enhancing understanding of the faith and the lived experience of being Muslim within or as a client of the Respondent's organisation.
571. So far as suppression of beliefs in opposing oppression and racism, the Respondent has adopted its Race Plan with a view to increasing diversity in its organisation. It encourages colleagues to speak out about concerns they have and has policies in place to address such concerns. We were shown evidence that it had also permitted employees to discuss matters such as BLM, the Indian farmers protests against their government and the Chinese government's treatment of Uyghur Muslims, although the precise content of those discussions was not shared with the Tribunal. All of these things point to an organisation that does not seek to actively suppress colleagues from expressing beliefs opposing oppression and racism *per se*.

Second Set of Beliefs

572. As to the question of whether the Respondent adopted a criterion of actively suppressing anti-Zionist beliefs and punishing people who manifested those beliefs, there was evidence before us that this might be the case.
573. The evidence consisted of the following:
- the REACH call that was due to take place on the topic of Israel/Palestine was cancelled;
 - the entire thread that contained Ms Khalid's post as well as other threads were taken down;
 - The post Mr Frost made in response to the Respondent's Statement on Ukraine in around March/April 2022 was removed;

- Ms Sohail and Ms Khalid were given final written warnings in respect of their posts/emails in May 2021; and
- the comparison between the difference in approach to the other scenarios described above involving BLM, the Indian farmers, the Uyghur Muslims and the Respondent's support of Ukraine with its approach to discussion of the Israel/Palestine conflict.

574. In the Claimants' written closing submission (paragraphs 223 -224) it was said that the Respondent made no distinction when it came to moderating different types of anti-Zionist posts and that all were subject to disproportionate disciplinary sanctions. We do not accept this assertion. Different action was taken in connection with different posts on the relevant threads.

575. In a genuine criterion case, the reason for the Respondent's treatment must be obvious from the Respondent's conduct of itself, such that there is no need to make enquiries into the mental reasoning behind the conduct. Based on the evidence here, there is no inherent evidence that the reason why the Respondent acted was to suppress the holding or manifestation/expression of anti-Zionist beliefs. We therefore do not consider this is a criterion case where we do not need to consider the mental processes of the relevant decision-makers.

576. We say this because in our judgment, what the REACH call and the relevant posts had in common was that they were all concerned with the Israel/Palestine conflict. Although a number of the posts that were removed contain expressions of an anti-Zionist belief, other posts on the same topic that did not manifest/express anti-Zionist beliefs were also removed. The common thread appears to have been the conflict not the beliefs. By way of an example, Mr Frost's post removed in March/April 2022 merely asked that the Respondent make a statement on the Israel/Palestine conflict without expressing any view about the conflict.

577. This led us to the conclusion that this was not a criterion case and we needed to explore the mental processes of the Respondent in more detail in order to decide if the reason for disciplinary the Claimant was simply because they held anti-Zionist beliefs.

Was the reason why something different and not the Claimants' protected beliefs?

578. We next considered whether the Respondent had different reasons for its treatment of the Claimants, that were nothing to do with their beliefs. We separately explored what knowledge the Respondent's decision-makers had of the protected beliefs and what their reasons for their decisions were.

Knowledge of the protected belief

579. The Respondent's decision-makers said that they gave no thought or consideration to the possibility the Claimants' posts/emails constituted a manifestation/expression of any protected beliefs. They were not asked to

do so by either Claimant. Neither of the Claimants, at any time during the investigation or disciplinary process, argued that their actions constituted a manifestation/ expression of a protected belief.

580. We gave careful consideration to the extent to which we could make a finding that the mental processes of the decision-makers were influenced by the protected beliefs held by the Claimants where the decision makers lacked this knowledge.
581. In most of cases to which we were referred, it appeared that the employees underlying beliefs were well known at the time of the internal proceedings. The only guidance on this point we found were the obiter remarks of Elias P in *McClintock* that we have set out in paragraph 388 above which suggest that the employer needs to know about the belief in order to be responsible for direct discrimination because of it. As the comments were obiter and pre date the Equality Act 2010 we considered we were not bound by them.
582. We reached the conclusion that under section 13 of the Equality Act 2010, it does not matter that a claimant does not argue that their conduct is a manifestation /expression of a protected belief during the internal process. Instead, we decided it would be sufficient if (a) the employee's conduct, when objectively assessed by the tribunal, was held to be a manifestation / expression of a protected belief (which it was in this case) and (b) that part of the conduct influenced the decision-makers' actions.
583. We considered the position similar to protected disclosures cases. There is no requirement that the employer needs to be aware that the employee has make a qualifying protected disclosure for the employer to be able to be found liable for any detriment done on the ground of that protected disclosure.

The Decision Makers' Reasons

584. At the tribunal hearing, the Respondent sought to adduce evidence at the tribunal hearing that many of the things said in the Claimants' posts/email were factually inaccurate. The Claimants in turn, sought to adduce evidence to the contrary. Although one of the key concerns the Moderation Committee had about the posts/emails it considered, that was reflected in Ms XX's email to Ms McCann, had the danger of spreading misinformation about the Israel/Palestine conflict, both in relation to its history and current situation, none of the Respondent's decision makers considered this. None of Mr Quadir, Ms Webster nor Ms Hicks explored this. The tribunal has therefore not engaged with the issue of accuracy as it was not in the minds of the decision -makers.
585. Mr Quadir had more than one reason for giving Ms Sohail a final written warning. A significant part of his reasoning was that Ms Sohail had not followed what he considered to be an appropriately professional process in connection with her ethical concern about wanting to return her monitor. There were several elements to this. He was critical of the fact that she did not speak to her line manager about her concern, but instead sent several emails and posts to a wide audience. He considered this was not justified

by the timeline she presented. He also felt that it was unprofessional and, although he did not say it explicitly, rude for her to “demand” action from the Respondent. In our judgment, none of this reasoning was anything to do with the manifestation/expression of an anti-Zionist belief.

586. Mr Quadir’s reasons was not limited to the above, however. He also based his decision on the content of Ms Sohail’s email. As the content of the email in our judgment, constituted the manifestation/expression of an anti-Zionist belief, we found his decision was influenced by the protected belief and/or the manifestation/expression of it and was not for an entirely different reason. We therefore went on to analyse this more closely below.
587. We applied the same reasoning to the decision making by Ms Webster in relation to Ms Khalid. Ms Webster’s reasoning was very clearly focussed on the content of Ms Khalid’s posts rather than anything else and we therefore reached the same conclusion in her case as Mr Quadir, namely that her decision making could not be said to be for an entirely different reason that was not the protected beliefs and therefore required closer analysis.
588. With regard to the appeal decisions of Ms Hicks, we find that in relation to Ms Sohail, like Mr Quadir, she had reasons for rejecting the appeal, that were not influenced by any protected beliefs. They included her view that Ms Sohail could and should have followed the Respondent’s established processes for raising an ethical concern about a supplier. She felt that Ms Sohail had created the possibility of reputational risk for the Respondent because she had been critical of one of the Respondent’s suppliers in an open internal forum. She acknowledged, however, that she did not believe this alone justified disciplinary action. We found that her main reason for rejecting Ms Sohail’s appeal was because of the content of her post and therefore it bares further analysis.
589. The main reason that Ms Hicks decided to reject Ms Khalid’s appeal was also because of the content of her post and it therefore also bares further analysis.
590. The decision made by the Respondent to report the Claimants to the regulators was of a different nature to the other decisions.
591. The Conduct Panel were only tasked with the responsibility of deciding whether or not, based on the information provided to them, the offences fell within any of the FCA conduct rules. The Conduct Panel had no knowledge of the content of the posts and were provided with minimal information about what the Claimants actually did.
592. Although the usual position in a discrimination case is for the tribunal to examine what is in the mind of the decision-maker, we consider the decision making here was different and justifies a different approach. The Conduct Panel effectively adopted the reasoning of the decision-makers at the disciplinary stage about the content of the posts and then asked themselves an additional question. The way they answered that additional question had nothing to do with the original decision making and was not influenced by

any protected beliefs. However, the adoption of the earlier decision-making means that the decisions made by the Conduct Panel were undoubtedly influenced in the exact same way as the earlier decisions by the protected beliefs. The same analysis applies to the decision taken not to pay Ms Khalid's bonus because she had been a disciplinary warning.

Was the reason for the Respondent's treatment of the Claimants because they held/manifested protected beliefs per se?

First Set of Beliefs

593. When considering whether this case was a criterion case in relation to the first set of beliefs above, we stated there was no evidence before us that the Respondent's treatment of the Claimants was because they were Muslims and held the first set of beliefs. It therefore follows that we find that the Respondent's treatment of the Claimants was not because they were Muslims or because they held specific Islamic beliefs in opposing oppression or racism *per se*.

594. We note that in the list of issues, the Claimants say they:

"both rely upon a hypothetical comparator who shares each Claimant's beliefs but who is not a Muslim for the purpose of each Claimant's claim based on their religious beliefs."

595. We have understood this as an argument that had a non-Muslim colleague been responsible for the posts made by Ms Khalid and the emails sent and posts made by Ms Sohail, that person would not have been subjected to the same disciplinary action with the reason for this being that they were not Muslim.

596. Ms Sohail suggested that there was an actual comparator, her colleague Ms Spicer, a non-Muslim, for whom this was true. Ms Sohail said Ms Spicer had sent the same text as Ms Sohail posted more widely email to her manager and nothing happened to her. Even if this did happen, and we were provided with no evidence to corroborate what Ms Sohail said, we do not consider this sufficient to make out this claim as we simply do not know enough about what happened.

597. We also consider it is relevant that several other Muslim employees had their posts removed from the threads, but did not have disciplinary action taken against them. An example of this was Mr Khalid. This demonstrates that the Respondent paid attention to the content of what was posted/emailed when deciding on the sanction rather than the religion of the poster.

Second Set of Beliefs

598. In our judgment, the same evidence that we considered above when analysing if this was a criterion case was relevant to us deciding whether the reason for the Respondent's actions was because the Claimants held anti-Zionist beliefs *per se*. The Claimants have invited us to find that the

Respondent's action towards them, because they held and/or manifested/expressed anti-Zionist beliefs was different to the way it treated the holding or manifestation/expression of other beliefs.

599. We considered this carefully based on our findings above at paragraph 573. Our finding was that the Respondent was influenced to take the action it did because the topic was the Israel/Palestine conflict rather than animus to its employees holding anti-Zionist beliefs *per se*. This was because the Respondent was opposed to its colleagues expressing views internally about controversial conflicts that had the potential to create internal conflict.
600. In reaching this decision we have relied heavily on the explanations that were posted in the Muslim network following the removal of the entire thread there and in the REACH network to explain why the REACH call had been cancelled. Those explanations expressed the Respondent's belief that that *"the conflict is a highly complex issue that can be easily offensive to some of you"* and which can cause colleagues to experience adverse impacts on their health and wellbeing compounded by an increase in antisemitism and Islamophobia. The messages acknowledged that colleagues might have connections and allegiances with either Israel or Palestine and so showed no support for either side of the conflict.
601. We find that the Respondent quickly came to realise, in May 2021, that within British society the Israel/Palestine conflict was an extremely polarising topic about which different sections of the community had very strong beliefs. As such, it decided that it was not able to facilitate substantive discussions about the conflict without risking upsetting significant cohorts of its employee population. It decided not to permit such discussions, and instead focus on providing wellbeing support for anyone affected by the escalation in the conflict, regardless of their allegiance. The message sent to Mr Leatham-Frost, after he posted in response to the Ukraine message, was also consistent with this. We understand that the Respondent has maintained this stance throughout the further escalation in the conflict that began on 7 October 2023.
602. It is significant that the Respondent did not take the same action against all of the people who posted pro-Palestinian messages. The action taken depended on the content of the messages. We note that none of the employees involved, including Ms Sohail and Ms Khalid were dismissed. Had the real reason for the Respondent's actions been the fact that they held anti-Zionist beliefs, rather than a concern about the manner of manifestation/expression of those beliefs, we consider it likely that more robust action would have been taken towards them and others.
603. The list of issues invites us to consider a hypothetical comparator who expressed support for an anti-racist campaign not concerned with Zionism or Israel.
604. In this regard the Claimants pointed to the Respondent's support for BLM and Ukraine. We were not taken to evidence that complaints were made by any colleagues about the stance taken by the Respondent. We take judicial

notice of the fact that in May 2021 support for BLM was not widely considered to be controversial and it represented the mainstream belief at the time. The same was true in relation to the Russian invasion of Ukraine in February 2022. In his regard, the messaging in relation to Ukraine, aside from firmly siding with Ukraine, adopted a similar tone to that adopted for the Israel/Palestine conflict in relation to employee welfare. Overall, in our judgment, the comparisons we were invited to consider were not legally valid or particularly helpful.

605. We also did not find that the comparison with the approach taken by the Respondent in relation to the Indian farmers and the Uyghur Muslims was helpful. Our understanding was that REACH discussions covering these topics took place, which were passionate, but no complaints were made about them and so the situation was not on all fours with that of the Claimants.
606. Finally, we considered, another possible hypothetical comparator that could be used to test if the Respondent discriminated against the Claimants, based purely on them holding anti-Zionist beliefs. This was to compare their treatment with someone that held the opposing belief, i.e. a Zionist belief.
607. We were not taken to any evidence that any of the Respondent's employees actually posted or emailed messages of support for Israel in connection with the escalation of the conflict in May 2021. Based on the messages posted in support of Palestine and the reaction to them, we find it highly likely that posts supporting Israel would have generated complaints and that a similar process of moderation would have been initiated with the same conclusion, namely that the topic of the conflict was too polarising to permit internal discussion.
608. Our conclusion therefore was that the Claimants' claims of direct discrimination because they held anti-Zionist beliefs *per se* would have failed, even if our decision making about their beliefs was wrong.

Was the reason for the Respondent's treatment of the Claimants because of the manner in which they manifested/expressed their protected beliefs?

609. In the sections above, we have concluded that the Claimants' posts and emails were manifestations of anti-Zionist beliefs, albeit that we also found that the Claimants did not hold these beliefs at the relevant time.
610. As for the reason for the Respondent's treatment of the Claimants, the anti-Zionist content of the emails was a significant part of the Respondent's reason for taking disciplinary action against the Claimants. However, we did not find that the Respondent acted because the Claimants held anti-Zionist beliefs or because the posts/emails were manifestations/expressions of those beliefs *per se*. Our finding was that the Respondent's treatment of the Claimants was because the Respondent considered the manner of the manifestations/expressions was inappropriate. All of the Respondent's decision makers emphasised that the emails/posts were inappropriate in the workplace.

611. Because we found that the Claimants did not actually hold protected anti-Zionist beliefs at the relevant time, this finding could not lead to a primary finding that the Claimants were subjected to direct discrimination. If our decision making about their beliefs was wrong, however, the final stage of our decision process would have been to apply the objective justification test established in *Page* and reiterated in *Higgs*. We decided to apply that test in the alternative.

Was the Respondent's treatment of the Claimants an objectively justifiable response to something objectionable/inappropriate in the way in which the belief was manifested/expressed?

612. When applying this test we reminded ourselves that we were not determining a claim brought under the Human Rights Act 1998 for breach of the Convention Rights found in Articles 9 and 10. Instead, as an employment tribunal, we were determining a claim of direct discrimination arising in the workplace and giving effect as far as we could to the provisions in Articles 9 and 10. This involved us considering, the provisions of Articles 9(2) and 10(2) and the *Bank Mellat* questions as well as the questions suggested by *Eady P* in *Higgs*.
613. The aim the Respondent relied upon in this case was ensuring that all employees of the Respondent display the “*highest standards of professional and personal integrity in order for the Respondent to achieve its aim of helping Britain prosper by building an inclusive society and meeting its legal and regulatory obligations.*”

Articles 9 and 10

614. We first considered this aim in the context of the Convention Rights in Articles 9 and 10.
615. Although put forward as a single aim, when broken down the Respondent's pleaded aim actually contained two aims with the requirement for the Respondent's employees to display the highest standards of professional and personal integrity being a means to achieve the aims. The first actual aim is to build an inclusive society and the second is to meet legal and regulatory requirements.
616. The Respondent's pleaded aims were said to be linked to the prosperity of Britain. The Respondent is a large bank that probably does have a greater ability to influence Britain's prosperity and societal attitudes when compared to smaller employers in different sectors. We did not consider this level of influence to be a necessary requirement for an employer in a case of this nature, however. We therefore did not give any weight this and treated the first aim as one to build an inclusive society within the Respondent's workforce or put more simply, to build an inclusive workplace.
617. Articles 9(2) and 10(2) permit a limitation on the manifestation/expression of beliefs only where such limitation is (a) prescribed by law and (b) necessary in a democratic society for certain reasons. We therefore considered both of these requirements, dealing first with the second limb.

618. In our judgment, both aims satisfied the requirement that any limitation is necessary in a democratic society for the protection of the rights and freedoms of others. This reason is found in both Articles 9(2) and 10(2) although expressed slightly differently in wording found in the different Convention rights.
619. The aim to build an inclusive workplace is innately connected with protecting respect for the rights and freedoms of others in a pluralistic democratic society. The aim to comply with legal and regulatory requirements is very broad, but to the extent that this consists of taking steps to ensure that the workplace is free from discrimination and harassment prohibited by the Equality Act 2010, this is also clearly directed at protecting the rights and freedoms of others.
620. Turning to the first limb and whether the limitation was prescribed by law we considered the extent to which the Respondent had specific written rules prohibiting the conduct of the Claimants.
621. As set out in our section on the facts, the Respondent has a large number of written policies which set out the rules and standards of behaviour with which its employees must comply. The Respondent argued that the Claimants should have appreciated that they should not have made the posts they made or sent the emails they did because of those written policies. We agreed with this to an extent. However, significantly we did not agree that the Claimants should have realised in advance of posting/emailing that their actions would constitute gross misconduct.
622. The Respondent placed great weight on its Race Action Plan in the disciplinary hearings, but this document says nothing about expected standards of behaviour, other than the statement that the Respondent stands against racism and discrimination in all forms. For someone who genuinely believes that Zionism is a racist ideology and/or that the policies of the Israeli government amount to ethnic cleansing, apartheid and genocide, there is nothing in this statement that would lead them to think that they should not post on an internal message board in support of Palestine.
623. The Respondent also has a very well written Code of Ethics and Responsibility. The Code rightly recognises that it is impossible for any organisation to have a fully comprehensive set of rules guiding behaviour. Instead it encourages its employees to act honestly and with integrity and with a strong sense of personal accountability and sets out procedures for raising concerns.
624. The Code has a strong section promoting inclusion and diversity, which reflects the Respondent's values. It also has a strong section on conducting business ethically with regard to human rights standards. Again, for someone who genuinely believes that Zionism is a racist ideology and/or that the policies of the Israeli government amount to ethnic cleansing, apartheid and genocide, we consider the message that the Code gives them

is that would be acceptable to raise this at work, providing that they did so in a respectful way and through appropriate channels.

625. The Respondent's Colleague Conduct Policy paragraph 1.2 requires its employees to behave in a professional, responsible and appropriate manner towards their colleagues. It makes it clear that discrimination and harassment of colleagues is not tolerated. In its Disciplinary Policy, unlawful discrimination and harassment are classified as gross misconduct. The reference to unlawful discrimination and harassment suggests that this is a reference to discrimination and harassment that would be unlawful under legislation such as the Equality Act 2010.
626. The Respondent's Colleague Conduct Policy paragraph 1.3 requires its employees to ensure that their communications are appropriate at all times. The paragraph makes it clear that content which is abusive, obscene, offensive, libellous or could cause reputational damage to the group or its suppliers will not be tolerated. The Disciplinary Policy says that inappropriate use of the Group's collaboration tools, i.e. its internal messaging systems, of itself constitutes gross misconduct. This is out of kilter with the rest of the examples of what constitutes gross misconduct however. In our judgment, anyone reading the policy would think that only the most serious inappropriate misuse of the internal systems would be so classified.
627. More specific guidance is found in the Community Guidelines as well as the Yammer Community Guidelines. There colleagues are actively encouraged to think carefully about what they post and specifically to be respectful and considerate and to consider the diverse backgrounds and experience of all colleagues and the impact their words may have on others. In our judgment, these guidelines provided the clearest indication to the Respondent's employees of the need to monitor their posting activity and consider the potential impact on others with differing views before posting. Read by themselves, however, there is an absence of specific guidance on what this means in practice and how breaches will be viewed.

Bank Mellat Questions

628. In our judgment, the Respondent's aim was sufficiently important to justify the limitation of the right to manifest/express a religious or philosophical belief in the workplace. In addition, the action taken was rationally connected to the aim in the sense that having rules that set out the highest standards of professional and personal integrity and then taking disciplinary action against employees that fail to meet those standards is rational.
629. The critical *Bank Mellat* questions for us were whether a less intrusive limitation might be imposed in the particular circumstances involving the Claimants without undermining the achievement of the objective in question. And ultimately whether, balancing the severity of the limitation on the rights of the Claimants against the importance of the objective, the rights of the Claimants outweighed the aims pursued by the Respondent.

630. In considering this, we took into account the factors suggested by Eady P in *Higgs*.
631. This was not a case where we needed to consider the impact on vulnerable service users or clients (factor viii). Although the Respondent is a bank with clients, the posts were made on internal communications to an internal audience (factor iv). Although Ms Hicks considered that the way the posts were made, they effectively reached the entire workforce of the respondent, we do not agree this is a fair assessment.
632. In the case of Ms Khalid, she believed she was making her posts in a space (the REACH network) where it was safe for her to post on political topics from a Muslim perspective. Although the posts could potentially be accessed by the entire population of the bank, in Ms Khalid's case she was actually only posting to people who had joined the REACH community and through that action had demonstrated they were open to such discussions. It was also significant that she posted in the context of a thread that was already underway.
633. Ms Sohail's post/email had a broader distribution, but one that she had thought about carefully and researched. She targeted managers who were involved in procurement of IT supplies and groups which she thought would empathise with her cause. This approach was not in line with the Respondent's procedures for raising ethical concerns, but based on what Ms Hicks told us, of itself this would not have led to her being given a disciplinary warning.
634. It was also clear from the posts/emails that they represented the personal views of the Claimants (factor vi). There was no risk that they would be perceived as representing the views of the Respondent. The posts were clearly intended to be manifestations/expressions of the Claimant's beliefs about the Israel/Palestine conflict (factor iii).
635. The significant factors in this case, in our judgment, were the content of the posts and emails and the tone used (factors (i) and (ii)) and the extent to which the posts/emails intruded on the rights of the Claimants' colleagues (factor v). We have considered the nature of that intrusion and whether there was any consequential impact on the Respondent's ability to run its business. We also considered whether the limitation imposed was the least intrusive measure open to the Respondent (factor (ix)).
636. We briefly mention the extent to which we considered the potential power imbalance in the Respondent between the Claimants and the people whose rights were intruded upon (factor vii). The peoples whose rights were intruded upon were the people who complained about the posts/emails. The Tribunal and the Respondent's decision makers did not know who they were or why they complained which makes it difficult to consider this factor.
637. The Respondent relied on the fact that the Moderation Committee considered the posts and deemed them to be offensive. We know, based on the witness testimony from witnesses from both sides, that Ms XX was a

strong, expert voice during the Moderation Committee. Ms XX did not attend the hearing to give evidence and so the Tribunal can only make findings about her based on our interpretation of what she wrote in contemporaneous documents and what others told us. Taking that into account, the Tribunal do not find that Ms XX behaved inappropriately when doing this, as this was why she had been invited to participate in the first place. We did not consider that observations and criticisms were made about her by the Claimants' counsel in the Claimants' closing statement were justified.

638. However, it did appear to the Tribunal that the Moderation Committee process was unduly influenced by Ms XX. She appears to have been very knowledgeable about Jewish history and the Israel/Palestine conflict. No-one else on the Moderation Committee had similar levels of knowledge. She also held an influential senior role in that she was the Respondent's Inclusion and Diversity Manager. This meant that although she was meant to bring a Jewish perspective to the debate, she was also seen as an expert in inclusion and diversity. This led to her being able to privately influence the Chair of the Moderation Committee and being consulted during the investigation.
639. Based on what we read and heard, Ms XX's primary concern appeared to be ensure that all employees within the Respondent's workplace felt safe in the work place. This was not connected with physical safety, but safety from having to confront difficult emotions and feelings and potential conflict with colleagues. However, her opinions on the level of offensiveness in the posts were accepted without challenge. The Tribunal finds that there was a degree of imbalance of power in this case.
640. Turning back to the main questions highlighted above, the posts/emails of both Claimants contained factual inaccuracies. However, as the question of factual inaccuracy was never considered by the Respondent when weighing up the disciplinary action to be taken, we have not taken them into account here.
641. We have considered whether the degree to which the language in the posts was offensive, racist and antisemitic. On this latter point, we have considered the IHRA definition and the views of the experts who gave evidence at the Tribunal.
642. The posts/emails were not balanced in their perspectives. Any post that expresses an opinion on the Israel/Palestinian conflict in support of one side or the other is not going to be viewed as balanced and is likely to offend someone that takes the opposite view.
643. However, we find the posts did not target any particular sections of the Respondent's workforce. The criticism in the posts/emails is of the Israeli Government and its policies towards Palestinians. The posts/emails also do not criticise the Israeli population and most importantly are not targeted at Jewish people.

644. The IHRA definition says “*Manifestations [of antisemitism] might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic.*” (294)
645. The language in Ms Sohail’s post is strong and emotive. She references genocide, ethnic cleansing and illegal occupation, apartheid and colonisation. These are all terms that had been used about Israel by well regarded human rights organisations prior to Ms Sohail’s posts/emails and while no doubt they offend people who take a different view, are not antisemitic of themselves.
646. Ms Sohail is particularly clear in her text that her concern is about the policies of the Israeli government. She does not target Jewish people in her text. Her criticisms could have been made of any State involved in breaching human rights. There is nothing in her comments that suggests that Israel’s behaviour is because it is a predominantly Jewish state. There is also no reference to the type of Jewish conspiracies referred to in the IHRA definition. Ms Sohail targets one company because of its alleged involvement in activity in Israel itself.
647. Ms Khalid’s post is less well considered. It is horrendously clumsy and insensitive in the way it references the Holocaust. We can understand why people were offended when they read this. However, her post does not do what is said to be antisemitic in the IHRA definition in that it does not deny that the Holocaust happened or suggest it has been invented or exaggerated by Jewish people. The comment does not erase Jewish history.
648. Ms Khalid uses the word “evil” in her post. She also describes Israelis as being “greedy” in the past. We recognise that these terms are triggering as they are often associated with the type of Jewish conspiracies referred to in the IHRA definition. We can fully appreciate how and why Ms Khalid’s use of these terms would have caused offense. Balancing that interpretation however, Ms Khalid’s post distinguishes between Jewish people generally and Israelis. She uses the word “evil” about the Israeli government and the activities that it is said to be undertaking. In terms of greed, this is in reference to the taking of land. The question of whether land was acquired legitimately, or taken or is illegally occupied is at the very heart of the Israel/Palesitine conflict.
649. The fact that the Respondent received complaints about the posts demonstrates that some of its colleagues found the posts upsetting and were offended by them. The proportion of complaints was very small, but would very likely have got bigger had the posts remained in view for longer. It was, in our judgment, entirely legitimate for the Respondent to want to protect employees in the workplace being confronted with posts about such a difficult polarising topic that would have caused them to feel unsettling emotions and had the potential to generate conflict between colleagues. This was consistent with the pursuit of its pleaded aims.

650. In the Tribunal's judgment, it was legitimate for the Respondent to remove the Claimants' posts and to take steps to prevent the difficult topic of Israel/Palestine being discussed on its internal messages boards. Although such action inevitably resulted in a limitation on the expression/manifestation of protected beliefs, it was justified because of the polarising effect of the subject matter and the workplace context.
651. In considering the impact of this limitation, we considered that it was significant that the action was limited to requiring employees to refrain from using its internal communication systems to discuss the substance of the Israel/Palestine conflict. The Respondent has not banned its employees from holding views about the conflict and manifesting/expressing them outside of the workplace. They are free to do so. It has also offered support to employees affected by the Israel/Palestine conflict.
652. Against that back drop, we consider the Respondent went too far when it decided to take disciplinary action against Ms Khalid and Ms Sohail for their posts/emails.
653. Until the posts were made/emails were sent, the Respondent did not have a clear position on whether to allow debate, whether informed or not, on the conflict to take place. In fact, the REACH call was intended to enable such a debate. We find that it would not have been clear to Ms Khalid or Ms Sohail that posting as they did would be treated as the most grave and serious disciplinary offence which would be reported to the Respondent's regulator.
654. The posts were ill-judged, and lacked sensitivity and balance. However neither Claimant had done anything similar in the past. Neither intended to cause anyone offence and both apologised that they had done so. Both posted out of concern for the plight of Palestinians rather than in order to offend. Once the Claimants were alerted to the concerns about their posts, they agreed not to post any future posts.
655. Had we found that the Claimants held protected anti-Zionist beliefs at the time they made the posts/sent the emails, we would have upheld their claims for direct discrimination. This would have been on the basis that that taking disciplinary action against them in connection with the posts was heavy handed and, when balanced against the Respondent's aims not proportionate.
656. In our judgment, a far less intrusive option was available to the Respondent in the circumstances. The Respondent could have dealt with the matter by removing the posts and providing informal guidance to the Claimants.
657. Had the Claimants repeated the behaviour after the guidance had been issued to them and after the Respondent had published a clear message about posting about the Israel/Palestinian conflict disciplinary action would have been proportionate. Absent that, disciplinary action was not justified. In particular, we consider there was no justification for the findings that the Respondent made that the Claimants had contravened the values of the Group as an anti-racist organisation and committed gross misconduct.

Indirect Discrimination Claim

658. For the purposes of the Claimants' indirect discrimination claim, it was not in dispute that the Respondent applied a neutral PCP, namely that it subjected inappropriate, offensive or potentially offensive speech to disciplinary action. The first element required in an indirect discrimination claim was therefore made out by the Claimants.
659. The second element required the Tribunal to consider whether the Claimants had proved, on a balance of probabilities, that Muslim employees at the Respondent were put at a particular disadvantage by the application of the PCP.
660. The standard way to test this proposition in an organisation as large as the Respondents would have been to identify a pool for comparison. As the PCP applies to the entirety of the Respondent's workforce, the sensible pool would have been the entire workforce. The Tribunal would have expected to be provided with information about the relative proportions of the Respondent's Muslim and non-Muslim workforce who had been subjected to disciplinary action for making posts on the Respondent's internal communication systems over a period of time. None of this evidence was adduced.
661. Mindful that it is not strictly necessary to always apply a statistical approach, the Tribunal considered what other evidence was before it of indirect discrimination. All that the Claimants said in their closing written submissions about this, was that the Respondent had provided no evidence of any non-Muslims being disciplined in the same way as the Claimants. This fails to appreciate that the burden at this stage of an indirect discrimination claim is on the Claimants. It also fails to appreciate what is being tested in an indirect discrimination claim.
662. The dearth of evidence adduced by the Claimants at stage two led us to decide that it is not necessary to consider the remaining parts of the test for indirect discrimination in the alternative. We simply found that this claim failed for both Claimants.

Time Limits

663. It was not in dispute that Ms Sohail's legal complaint of direct discrimination about the dismissal of her appeal (Issue 11(c) (i)) was presented in time. The Respondent argued that her other legal complaints of direct discrimination were out of time as they occurred more than three months before Ms Sohail initiated the Acas early conciliation process.
664. It was also not in dispute that Ms Khalid's legal complaints of direct discrimination about the dismissal of her appeal and non payment of bonus (Issues 11(c) (ii) and 11(d)) were presented in time. The Respondent argued that her other legal complaints of direct discrimination were out of time as they occurred more than three months before Ms Khalid initiated the Acas early conciliation process.

665. As we have not upheld any of the legal complaints of direct discrimination, we have not had to reach a conclusion regarding the time issue for them. We have done so, however, as we consider this is likely to be helpful for the parties.
666. In our judgment, the earlier legal complaints were presented in time because they formed part of a continuing act with the acts that were in time. Although different decision makers were responsible for the earlier acts, they nevertheless formed part of the same process followed by the Respondent in response to the conduct of the Claimants and that therefore there was an ongoing situation or a continuing state of affairs that applied.
667. The disciplinary process included the disciplinary and appeal stages under the Disciplinary Procedure. Although the Conduct Rules Panel part of the process is different and separate to the disciplinary process, the trigger for it to be undertaken was the outcome of the disciplinary process. The legal complaints essentially concerned all the formal steps that the Respondent decided to take in response to the posts made/ emails sent by the Claimants save for the investigation.
668. In any event, we would have granted the Claimants an extension of time for the earlier claims on a just and equitable basis. The delay was not very long and did not prejudice the Respondent's ability to defend the complaints. It was understandable that the Claimants did not present their claims until after the outcome of their appeals was known.

Approved by:

Employment Judge E Burns
10 November 2025

JUDGMENT SENT TO THE PARTIES ON

10 November 2025

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FOR THE TRIBUNAL OFFICE

Appendix 1

List of Issues

References to POC1 and POC2 are to the corresponding paragraphs of the Particulars of Claim for the first Claimant, Ms Sohail and for the second Claimant, Ms Khalid respectively. References to GOR1 and GOR2 are to the corresponding paragraphs of the Grounds of Resistance responding to the First and Second Claimants respectively.

The Claimants' beliefs

1. Does each Claimant hold the belief that:
 - (a) oppression is wrong and should be opposed;
 - (b) racism is wrong and should be opposed;
 - (c) it is a moral obligation on all persons capable of doing so to oppose oppressive or racist practices, institutions and, in particular, states by whatever peaceful means are available to them, and as a minimum this requires one to:
 - (i) speak out against such practices, institutions and states;
 - (ii) refuse to lend any moral, financial or other support to such institutions or states; and
 - (iii) encourage others to do the same?
2. If each Claimant does, do those beliefs form part of each Claimant's religious (Islamic) beliefs?
3. If not, are those beliefs philosophical beliefs? In particular:
 - (a) are they beliefs, as opposed to opinions or viewpoints;
 - (b) do they relate to a weighty and substantial aspect of human life and behaviour;
 - (c) do they attain a minimum level of cogency, seriousness, cohesion and importance; and
 - (d) are they worthy of respect in a democratic society, and not incompatible with human dignity and not in conflict with the fundamental rights of others?
4. Does each Claimant hold the beliefs pleaded at paragraph 3 of POC1 and POC2, namely that (i) political Zionism is a racist and oppressive ideology and that (ii) Zionism and the practices of the State of Israel which give effect to that ideology ought to be opposed?
5. If she does, are those beliefs philosophical beliefs? Questions 3(a)-(d) are repeated.

6. Did the Claimants' individual posts and/or emails ('the Posts and/or Emails') manifest any or all of those beliefs?
 - (a) In respect of the First Claimant, did her post of 25 May 2021, and her subsequent emails forwarding the Post to directors within the Respondent, manifest any or all of those beliefs?
 - (b) In respect of the Second Claimant, did her posts of 24 May 2021 manifest any or all of those beliefs?
7. If so, was any such manifestation limited by the Respondent subjecting inappropriate, offensive or potentially offensive speech to disciplinary action?
8. If so, was any such limitation prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others?
9. Furthermore, in respect of each Claimant:
 - (a) was the objective the Respondent sought to achieve (subjecting inappropriate, offensive or potentially offensive speech to disciplinary action) sufficiently important to justify the limitation of the right in question?
 - (b) was the limitation rationally connected to that objective?
 - (c) might the Respondent have imposed a less intrusive limitation without undermining the achievement of the objective in question?
and
 - (d) balancing the severity of the limitation on the rights of the Claimant against the importance of the objective, did the former outweigh the latter?

Direct discrimination

Claimants' preferred formulation

10. Did the Respondent apply a criterion specific to the Claimants' beliefs (as identified above) in deciding to:
11.
 - (a) impose a final written warning in connection with the Posts and/or Emails?
 - (i) (the decision being taken in respect of the First Claimant by Mubeen Quadir on 15 September 2021: GOR1 paragraph 15);
 - (ii) (the decision being taken in respect of the Second Claimant by Nicola Webster on 16 August 2021: GOR2 paragraph 12)

- (b) reporting the final written warnings to the FCA and Prudential Regulation Authority?
 - (i) (that decision being taken in respect of the First Claimant by the Respondent's Conduct Panel on or around 22 September 2021: GOR1 paragraph 16);
 - (ii) (that decision being taken in respect of the Second Claimant by the Respondent's Conduct Panel on or around 19 August 2021: GOR2 paragraph 14);
 - (c) dismissing the Claimants' appeals against the final written warning?
 - (i) (that decision being taken in respect of the First Claimant by an appeal panel chaired by Nina Hicks on 17 February 2022: GOR1 paragraph 20);
 - (ii) (that decision being taken in respect of the Second Claimant by an appeal panel chaired by Nina Hicks on 1 March 2022: GOR2 paragraph 17)
 - (d) in respect of the Second Claimant, not providing the Claimant with her annual bonus in 2021 (POC2 paragraph 15).
12. If not, did the Respondent treat the Claimant less favourably than it would have treated a person in materially identical circumstances but who did not manifest the Claimant's religious and/or philosophical beliefs in any event by reason of subjecting her to the treatment identified at paragraph above?

Respondent's preferred formulation

13. Did the Respondent do any of the following:
- Paragraphs 10 (a) to (d) are repeated
14. If so, and in so doing, did the Respondent treat either of the Claimants less favourably than it would have treated others because they manifested any of the Claimant's beliefs in paragraphs 1-4 above?

Both formulations

15. For the purpose of the issue at paragraph 11/13:
- (a) The Claimants both rely upon a hypothetical comparator who shares each Claimant's beliefs but who is not a Muslim for the purpose of each Claimant's claim based on their religious beliefs.
 - (b) The Claimants both rely upon a comparator who expressed support for an anti-racist campaign not concerned with Zionism or Israel for the purpose of each Claimant's claim based on their philosophical beliefs.

Indirect discrimination

16. If the Claimants' claim for direct discrimination fails, then it will be common ground that the Respondent applied a practice, criterion or policy of

subjecting inappropriate, offensive or potentially offensive speech to disciplinary action (“the PCP”) equally as between the Claimants and people who are not Muslim (see GOR1 paragraph 22.6).

17. Were Muslims put at a particular disadvantage by reason of the application of the PCP, and if so was each Claimant put at a particular disadvantage as compared to persons who are not Muslim by reason of that application?
18. If so, was the PCP a proportionate means of achieving the aim of ensuring that all employees of the Respondent display the “*highest standards of professional and personal integrity in order for the Respondent to achieve its aim of helping Britain prosper by building an inclusive society and meeting its legal and regulatory obligations*”? (GOR1 paragraph 22.8 and GOR2 paragraph 18.8).

Jurisdiction

19. Are the claims in time? In particular:
 - (a) Were the acts complained of brought within the three-month time limit set out in s.123(1)(a) of the Equality Act 2010 (“the EqA”)?
 - (b) If not, were the Claimants subjected to discriminatory conduct extending over a period within the meaning of s.123(3) of the EqA?
 - (c) If not, would it be just and equitable to extend time in relation to any of the acts complained of under s.123(1)(b) of the EqA?

Remedy

20. If either Claimant succeeds on any part of her claim:
 - (a) Would it be just and equitable for her to be awarded compensation (for claims arising under the EA 2010, only)?
 - (b) What is the loss caused to the Claimant by reason of the discriminatory acts of which she complains?
 - (c) Is the Claimant entitled to a recommendation that the Respondent withdraw its final written warning and decision to report that warning to the FCA/PRA, and to notify the FCA of the same?

Appendix 2

Interim Anonymisation Order

ANONYMISATION ORDER

Pursuant to rules 49(1) and (3)(b) of the Employment Tribunal Procedure Rules 2024, it being in the interests of justice to do so, it is ORDERED, on an interim basis, that Ms XX's name shall not be used in the reserved judgment entered on the Register. She shall be referred to as Ms XX instead.