



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001392/2025

**Held in Edinburgh
on 28, 29, 30 January and
2, 3 and 4 February 2026
Employment Judge A Jones**

Mr D Toshack

**Claimant
Represented by
Mr D Hay, Counsel
Instructed by,
McGrade and Co Ltd**

GEO Amey Limited

**Respondent
Represented by:
Mr M McLaughlin,
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant was not discriminated against or harassed in relation to his philosophical belief of sex realism in terms of the Equality Act 2010 and his claim is dismissed.

REASONS

Introduction

1. The claimant presented a claim on 1 June 2025 claiming that he had been discriminated against on the grounds of his religion or belief. He claimed he had been harassed and subject to direct and indirect discrimination including having been dismissed. The belief relied upon was that of “sex-realist” or “gender critical belief.”
2. The respondent accepted that the stated belief was a belief capable of protection for the purposes of section 10 Equality Act 2010 (‘EqA’) but did not accept that the claimant held that belief. The parties agreed a statement of facts, which is incorporated into this judgment. A joint list of issues was also agreed, and a joint

bundle of documents was provided. A timetable of witnesses was agreed between the parties.

3. The Tribunal heard evidence from the claimant, Mr Weir who had been on the training course with the claimant, Ms Laughland a prison officer and Mr Fairlie the Deputy General Secretary for the Scottish Prison officers' association. The respondent led evidence from Ms Harvey who had led a training session in which the claimant was involved, Ms Ross who was also at that training, Mr Hutton who took the decision to dismiss the claimant, Mr Sinclair who dealt with the claimant's appeal and Mr Redmond a senior manager responsible for the contract between the respondent and the Scottish Ministers to which the claimant's employment related.
4. Parties very helpfully provided submissions in writing and were given an opportunity to comment on the other party's submission orally. The Tribunal is extremely grateful to representatives the way they have worked together to focus the issues for determination for the Tribunal and the manner in which proceedings have been conducted.

Issues to determine

5. The issues to be determined by the Tribunal were agreed to be as follows:

DISCRIMINATION – RELIGION OR BELIEF

5.1. Protected belief

5.1.1. The claimant relies upon the belief which he describes as 'sex-realist' or more commonly referred to as 'gender-critical', namely that sex is immutable and people cannot change sex.

5.1.2. Do the claimant's beliefs qualify for protection under the test in *Grainger plc and others v Nicholson* [2010] IRLR 4, namely:-

5.1.2.1. Are the beliefs genuinely held?

5.1.2.2. Are the claimant's sex-realist views a belief, or are they opinions or viewpoints?

5.1.2.3. If so, are these beliefs related to a weighty and substantial aspect of human life and behaviour?

5.1.2.4. Do the beliefs attain a level of cogency, seriousness, cohesion and importance?

5.1.2.5. Are these beliefs worthy of respect in a democratic society, compatible with human dignity, and do they conflict with the fundamental rights of others?

5.1.3. How did the claimant manifest his beliefs?

5.1.4. Was the manifestation dissociable from the claimant's beliefs?

5.2. Harassment

5.2.1. Was the claimant subjected to the following unwanted conduct:

- a) Being asked to leave the room by Sarah Harvey during his introductory training course on 7 January 2025;
- b) Chris Hutton 'suggesting' that the claimant's beliefs meant that he would not treat people equally during the meeting on 7 January 2025;
- c) Chris Hutton 'accusing' the claimant of contradicting himself in response to the claimant saying he would complete a search on a transgender woman if asked;
- d) Dismissal.

5.2.2. If any of this unwanted conduct took place, was it related to the claimant's beliefs?

5.2.3. If so, did that conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.2.4. If so, was it reasonable for the conduct to have had that effect?

5.2.5. Alternatively, was the conduct because of/on the grounds of the claimant's manifestation of his beliefs, that manifestation being his refusal to follow some of the respondent's policies in relation to transgender persons rather than the beliefs themselves?

5.2.6. If so, was the claimant's manifestation of his beliefs objectionable or otherwise unacceptable?

5.3. Direct discrimination

5.3.1. Did the following acts take place as alleged by the claimant:

- a) The claimant being asked to leave the room by Sarah Harvey during his introductory training course on 7 January 2025;
- b) Chris Hutton 'suggesting' that the claimant's beliefs meant that he would not treat people equally during the meeting on 7 January 2025;
- c) Chris Hutton 'accusing' the claimant of contradicting himself in response to the claimant saying he would complete a search on a transgender woman if asked;
- d) Dismissal.

5.3.2. If any of these acts did take place as alleged, are they capable of constituting less favourable treatment?

- 5.3.3. Who is the comparator in relation to each alleged instance of less favourable treatment above? Are the circumstances of the comparator the same, or not materially different, from those of the claimant?
- 5.3.4. Did the respondent treat the claimant less favourably than it treated or would treat the relevant comparator?
- 5.3.5. If so, was the less favourable treatment because of/on the grounds of the claimant's protected characteristic of belief contrary to the Equality Act 2010?
- 5.3.6. Alternatively, was the less favourable treatment because of/on the grounds of the claimant's manifestation of his beliefs, rather than the beliefs themselves?
- 5.3.7. If so, was the claimant's manifestation of his beliefs objectionable? In particular, did the following acts amount to inappropriate or objectionable manifestation?
- a) The claimant's refusal to complete mandatory forms in the manner required by the respondent.
 - b) The claimant's allegedly aggressive approach to Sarah Harvey when expressing his decision not to use preferred pronouns.
- 5.3.8. If so, can the respondent show that the less favourable treatment was an objectively justified and proportionate response? In particular, can the respondent show that its response would meet the test in ***Bank Mellat v HM Treasury*** (No 2) [2013] UKSC 39, namely:
- a) Is the objective the respondent is seeking to achieve sufficiently important to justify the limitation of the protected right?
 - b) Is the limitation rationally connected to the objective?
 - c) Is there a less intrusive limitation that could have been imposed?
 - d) In balancing the severity of the limitation on the rights of the worker concerned against the importance of the objective, does the former outweigh the latter?

5.4. Indirect discrimination – Section 19 of the Equality Act 2010

- 5.4.1. Did the respondent require its employees to record prisoners' personal details and refer to them on the PER according to their asserted gender rather than their biological sex?
- 5.4.2. Did the respondent apply the PCP to the claimant?
- 5.4.3. If so, did the respondent apply the PCP generally to all employees?
- 5.4.4. If so, did the PCP put employees with sex-realist beliefs at an increased risk of dismissal compared with employees who do not share that belief?
- 5.4.5. If so, did the PCP put the claimant at an increased risk of dismissal?
- 5.4.6. If so, were either of the following legitimate aims of the respondent:

- a) ensuring compliance with its alleged contractual obligation to comply with the Scottish Prison Service's requirements; and/or
 - b) avoiding infringing the rights of transgender prisoners in its custody.
- 5.4.7. If so, was the application of the PCP a proportionate means of achieving these aims?

5.5. REMEDY

- 5.5.1. If the Tribunal finds that the claimant suffered any discrimination, should any of the following be awarded to the claimant: Injury to feelings
- 5.5.1.1. Past and future wage and pension losses.
 - 5.5.1.2. Interest.

Findings in fact

6. Having listened to the evidence, considered the documents to which reference was made, the facts agreed between the parties and submissions, the following material facts were found to have been established.
7. The claimant is Christian and has attended his local Church of Scotland church regularly since he moved to the area around 3 years ago. He has been Christian for his whole life but has returned to regular church going in the last 3 years.
8. The claimant has worked as an army reservist in various capacities since 2009, including tours of duty to Afghanistan.
9. The claimant commenced employment with the respondent on 25 November 2024.
10. The respondent entered into a contract with the Scottish Ministers in March 2018 for the provision of Scottish court custody and prisoner escort services. The contract which commenced in January 2019, was for a 4-year period and was then renewed for 4 years. As part of the contract the respondent is obliged to follow the policies and procedures of the Scottish Prison Service ('SPS').
11. SPS has a policy for the management of transgender people in custody which was published in December 2023. The policy states at paragraph 4 that "Transgender individuals will be supported and their gender identity recognised. The person in custody's gender identity and corresponding name and pronouns will be respected irrespective of where they are accommodated."
12. The respondent has a standard operating procedure for the purposes of the contract with SPS called "Transgender and non-binary people in our care" The SOP was introduced in August 2024 and was drafted by Ms Harvey.

13. The claimant's job title with the respondent was Prison Custody Officer. The role involves the care, processing and movement of prisoners between court and prisons or other establishments such as hospitals or young offender institutes.
14. The respondent issued the claimant with a Statement of Terms and Conditions of Employment dated 8 October 2024. The contract provided for a probationary period of 6 months. The contract stated "The first six months of this contract will be a probationary period and the Company reserves the right to terminate your employment either during or at the end of that period on one week's written notice.
15. The claimant was to be based at Kirkcaldy Sheriff Court following the completion of a six-week Introductory Training Course ("ITC").
16. The ITC was a residential course where participants stayed during the week and went home at the weekend and was held at the East Kilbride Holiday Inn Hotel in South Lanarkshire. Some of the training sessions took place at the respondent's offices in Bellshill. There were around 20 people in the claimant's cohort. Some sessions took place with another cohort of a similar number of participants.
17. Some participants would drop out of the course or fail probation in relation to various requirements during the course.
18. In common with other participants, the claimant was issued with a "Student Assessment Workbook", which recorded the training undertaken by him and feedback between him and trainers regarding the course and the claimant's progress on the course.
19. The claimant underwent the training module on equality and diversity on 25 November 2024. That course was facilitated by Chris Hutton ('CH') who encouraged participants to make contributions to the discussion. During the discussion the claimant expressed his view that a man was a man, and a woman was a woman and that people could not change their sex. There was nothing inappropriate in the way in which the claimant expressed his view at that time and his comments did not cause CH any concern. Mr Weir expressed similar views during the session.
20. The claimant progressed well in the training course until the session on 7 January 2025.
21. On 7 January 2025, Sarah Harvey ("SH") delivered a safeguarding session to employees attending the ITC which included a discussion about transgender prisoners. There were two cohorts of students present in this session, totalling around 30 people.

22. SH indicated during the session that a leaflet had to be provided to women in custody setting out various matters and that this leaflet had to be provided to transwomen as well as biological women.
23. The claimant expressed his view that a person born a man will remain a man and that is how he would refer to any prisoner. He said he would not use pronouns which did not align with what he believed to be the sex of a prisoner as to do so would be a lie. SH explained to the claimant that he would be required to comply with the respondent's SOPs (Standard Operating Procedures), that it would be necessary to use the preferred pronouns of prisoners and that the policies and procedures were for the safety and wellbeing of everyone in the respondent's care as well as staff employed by the respondent. During the discussion the claimant expressed his views in a forthright manner and SH perceived the discussion between her and the claimant to be escalating and to have become heated and asked the claimant to leave the room in order to de-escalate the situation. The claimant willingly left the room and was followed by SH.
24. SH perceived the claimant's tone and conduct during the discussion to be becoming more animated and that the claimant was becoming hostile towards her. The claimant interrupted SH when she was explaining the position to him that he would have to comply with the SOPs and equality legislation.
25. SH had run many similar courses and had never felt the need to ask a participant to leave the room in order to de-escalate a discussion.
26. SH had a short discussion with the claimant in the corridor outside the training room. She asked the claimant whether he was willing to adhere to the policies of the respondent requiring the use of preferred pronouns of prisoners and to treat transgender prisoners consistent with their stated sex. The claimant reiterated that he was not willing to do so. SH asked the claimant to go and sit in the canteen which was nearby and said that someone would come and speak to him.
27. SH then went to speak to the person in charge of the training course who was CH at that time. She explained what had happened in the training session and that the claimant had indicated he was not willing to comply with the requirement to treat transgender prisoners in accordance with the respondent's policies.
28. CH asked Ms Pollock who was a member of the respondent's HR team to attend a meeting with him and the claimant, and another trainer went to the canteen to bring the claimant to the meeting. The claimant was unaccompanied at the meeting and Ms Pollock took notes of the meeting which she subsequently typed up.

29. CH explained to the claimant that this was a probationary review meeting and that it related to concerns raised by SH regarding comments made by the claimant during the training session that day.
30. During the meeting the claimant referred to his view that he didn't accept that when a person is obviously male, they should be referred to as female as to do so went against his beliefs. He stated that he had rights in relation to gender critical beliefs and religious beliefs and that he would not refer to a man as a woman and that to do so would be a lie.
31. CH raised the issue of the Prisoner Escort record form ('PER') with the claimant during this meeting. This is a form which must be filled in to record the personal details and movements of a person in custody including when they go to the toilet, have a welfare check or are given food or water. The respondent's policy is that when completing the form, it is necessary to use a prisoner's preferred pronouns and the name that they use. Trainee officers spend a day on training in relation to the completion of the PER form.
32. The PER has a section which requires to be completed to state whether a prisoner is male or female and a section for legal name and alias used by a prisoner. The respondent's policy and that of the SPS is that a prisoner's preferred pronouns should be used when completing the form. A prisoner escort officer may be the first person to complete a form if the prisoner is a "walk-in", that is has attended court voluntarily and not from custody. Everything the prisoner does thereafter and everywhere they go should be recorded on the form, which remains in the physical location of the prisoner. The form therefore goes to the prison or other establishment and passes between those from different agencies in whose care the prisoner is at any one time.
33. During the meeting with CH, the claimant stated that he was willing to search a male who looked female but would not lie about their gender and would not write in the PER form that the person was male. The claimant did not suggest that he was willing to refer to the prisoner by their chosen name at any stage during the meeting.
34. The claimant suggested that he could use the terms "they/them" rather than he or she in completing the paperwork and CH indicated that would not accord with the relevant policies. CH stated that the claimant was entitled to hold strong views but that these couldn't be applied in the work situation if they were against the relevant policy and procedure and legal requirements.
35. CH concluded that the claimant had indicated that he would not comply with legal and company procedures and that therefore he had failed his probation. He informed the claimant of the position and that in the circumstances he would be

dismissed. The claimant was told to return to the classroom to get his belongings and go back to the hotel to check out and return his uniform.

36. After the meeting and after SH had completed the training session on safeguarding, Ms Pollock asked SH to make a written record of her interactions with the claimant that day. SH then wrote a summary of what had happened in the training session but did not send it to anyone at that time as she was engaged in other duties.
37. On 7 January 2025, the respondent completed a Notification of Leaver Form for the claimant.
38. An internal respondent email dated 10 January 2025 contained summary reasons for the claimant's failed probation.
39. By letter dated 14 January 2025 to the claimant the respondent confirmed his dismissal. The letter stated that

“On 7th January, you had a meeting to discuss issues which were raised by one of your ITC Trainers and Senior Safeguarding Lead in respect of:

- your refusal to fully comply with obligations of the role of a PCO with GEOAmeY in terms of equality legislation, standard operating procedures, and associated codes of practice.

The comments were made by you in relation to Transgender people that we may have in our care. It was explained to you on your ITC that GEOAmeY employees are expected to comply with obligations under equality legislation, associated codes of practice and GEOAmeY standard procedures and that a responsibility of a PCO is to ensure the rights and needs of transgender people in our care are protected.

During the meeting you provided responses that were not satisfactory to the information presented. I advised as such that you failed to meet the expectations of the organisation in relation to your role as a Prison Custody Officer and, therefore, you have been dismissed on the grounds of a failed probationary period.”

40. On 23 January 2025, the claimant appealed the decision to dismiss him. The grounds of appeal were that the decision to dismiss was wrongful and also discriminatory. The claimant was given assistance from the Free Speech Union whom he had contacted for advice in the drafting of the letter. The basis for the dismissal being said to amount to discrimination was set out as:

“I believe that the decision to dismiss me was a disproportionate reaction to me expressing my beliefs. I did not give any indication that I would act in a way that could cause harassment towards, or discriminate against, transgender individuals. I merely stated that as a matter of conscience I would find it difficult to express myself in ways in which went against my deeply held beliefs.”

41. The claimant indicated that he wished the appeal to be dealt with in writing. Ms Pollock wrote to the claimant on 7 February stating:

“If you are wishing this to be conducted in writing it will negate the ability to facilitate any meaningful discussion. We would fully recommend doing the hearing face to face so you can also present any new evidence you may wish to discuss and to be accompanied by a colleague or TU Representative. Instead of having the meeting in Bellshill, we could consider facilitating a Hearing in a different location for example in our Grangemouth site if that would help reduce your stress and make it more conducive for you to discuss your grounds. If not, can you confirm by return you consenting for the Outcome to be delivered in writing by our Hearing Manager based on the grounds already submitted or that you would like us to issue an invite to a face-to-face meeting at a mutually agreeable location please by noon Monday 10th February.”

42. The claimant responded later that day that he consented for the Outcome to be delivered in writing by the Hearing Manager based on the Grounds already submitted.

43. Mr Sinclair was appointed to deal with the appeal. Mr Sinclair is the Training Manager and would have been in charge of the ITC had he not been on holiday on 7 January. He obtained a copy of the note made by SH regarding her interaction with the claimant on 7 January and a copy of the notes of the meeting taken by Ms Pollock at the meeting that day. He also spoke briefly to CH regarding the matter, and no note was taken of that discussion.

44. By letter dated 18 February 2025, Mr Sinclair confirmed the decision not to uphold the claimant’s appeal. Mr Sinclair dismissed the claimant’s appeal on the basis that he had not been dismissed for expressing his beliefs but that:-

“[you] failed your probation on the grounds you failed to meet the expectations of the organisation in relation to your role as Prisoner Custody Officer. You stated that you would have issues using ‘preferred pronouns’ in all circumstances for transgender prisoners, you stated that you would not annotate personal documentation pertaining to the said sex of the prisoner and you would make your own decision on their sex therefore refusing to comply with our legal obligations, Standard Operating Procedures or Dignity at Work policy which states “We will follow government guidance on applying the relevant UK legislation regarding religion and belief and will strive to tackle prejudice and assumptions on the grounds of religion, faith and belief.”

45. Following his dismissal, the respondent paid the claimant up to 7 January 2025 along with a sum equivalent to one week’s payment in lieu of notice.

46. The claimant’s basic annual salary with the respondent was £24,115.

47. Had he remained in employment, the claimant would have been eligible to join the respondent's pension scheme effective 25 February 2025.
48. The claimant's gross weekly pay was £463.75 and net weekly pay was £347.26.
49. On 13 July 2025, the claimant registered as a sole trader on the HMRC website. The claimant now offers gardening services in his local area on a self-employed basis.
50. An incident took place in recent years where a transgender prisoner who was being transported in a car with Prison custody officers saw that entries had been made on the PER form which were not in keeping with that person's preferred name and/or pronouns. The prisoner reacted violently and seriously assaulted the officers whose care they were in at the time.
51. There is an informal understanding in two prisons in Scotland between the local representatives of the Scottish Prison Officer's Association and the local management of those prisons that female officers will not be required to search transgender prisoners who were born male if they do not choose to do so.
52. There are no official figures as to the number of transgender prisoners who are currently in the prison establishment or who come in to contact with the court service. Prison custody officers could come into contact with and be responsible for the care of transgender prisoners at any time during the course of their duties without any notice.
53. The respondent's operations are dynamic and involve an inherent risk of violence or aggression towards its staff. Prison custody officers are required to carry out dynamic risk assessments constantly during the course of their duties, and are required to be mindful of seeking to de-escalate tension at all times with people in their care. Constant and positive communication with those in custody is crucial to maintaining a non-threatening situation between prison custody officers and those in their care.

Observations on the evidence

54. The main conflicts on the evidence related to what was said by the claimant and how he expressed himself during the ITC and at the meeting with CH at which he was dismissed. The claimant (and Mr Weir) suggested that CH had made reference to a particular transgender prisoner on a number of occasions during sessions, but CH said that while he would have given examples of incidents which had occurred during work, he did not make reference to this particular prisoner. The Tribunal preferred the evidence of CH in this regard and concluded it was likely to have been another trainer who had said what was alleged, although the matter did not otherwise prove to be relevant in its determination.

55. There was a conflict on how the claimant had conducted himself at the training session on 7 January with SH. The claimant and Mr Weir saw nothing inappropriate in the claimant's conduct, but SH found it challenging. The Tribunal is mindful that the perception of people to the same events can often be different. The claimant may have felt that he was being polite and respectful when in dialogue with SH regarding the issue of transgender prisoners and policy. However, the Tribunal accepted the evidence of SH that she had formed the impression that the claimant was interrupting her, that he was at the least forceful in his views and that the situation was escalating. No doubt SH formed this view given her position as the trainer responsible for the session and that she required to maintain order in the training room and set standards for discussion.
56. The final main aspect of dispute on the evidence was the extent to which the claimant was proposing compromise between the respondent's position as stated by CH in the meeting with him on 7 January and his beliefs. The claimant's position in evidence was that he had suggested that he could use the prisoner's name when communicating with or about them and when filling in the PER form. That position is also noted in the notes of the meeting. However, the claimant in evidence went further and said that he used examples of names such as Susan or Shirley where the person was a transgender woman. While it was put to CH in cross examination that the claimant had been referring to the chosen name of a prisoner, the evidence that the claimant had made reference to specific names was not put to CH. The Tribunal was satisfied that the claimant did not make clear at any stage that he would refer to the chosen name of the prisoner as a compromise to using pronouns and that CH's understanding was that the claimant was referring to the birth name of the prisoner. The Tribunal preferred the evidence of CH in that regard.

Relevant law

57. Section 4 EqA provides that religion or belief are protected characteristics; for these purposes, religion and belief are defined at section 10 EqA, as follows:
- (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
 - (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
 - (3) In relation to the protected characteristic of religion or belief— (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief; (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

58. Section 13 EqA provides that “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.” Section 23(1) states in relation to comparing treatment “On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case.
59. Section 19 EqA makes provision for indirect discrimination and states (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.
60. Section 26 EqA sets out the basis on which harassment occurs for the purposes of the Act
- (1) A person (A) harasses another (B) if—
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if—
- (a) A engages in unwanted conduct of a sexual nature, and
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (3) A also harasses B if—
- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
 - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
 - (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
 - (b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

Discussion and decision

Did the claimant hold a protected belief?

61. The respondent criticised the claimant's evidence for being brief, lacking in detail in relation to his beliefs, why and when he had formed these beliefs and how they affected his life. There was some force in that criticism. It is worth noting that in line with the normal procedure in Scotland, there was no written witness statement outlining the evidence in chief of the claimant. The claimant's oral evidence on his beliefs was scant. He said that he had been a Christian his whole life but had only gone back to regular attendance at church in the last 3 years following the death of his father and moving to a new area. He said that he did not believe it is possible to be born in the wrong body. His reasoning for that was that God created Adam and Eve as a man and woman and his "normal beliefs in biology, reality and science." He said he had probably held that belief all his life but that it had only come into focus in the last 10 to 15 years "when this has been getting pushed into the mainstream". In cross examination, the claimant's evidence was that there was an issue of social contagion in relation to transgender people, that it was a mental health issue and should be dealt with as such. He said his views had been formed by watching videos on YouTube and debates. He could not name any expert he said he had listened to or any specific research. He also said that in some cases people who "dress as a woman and pretend either have a mental health issue or some kind of sexual kink or fetish."
62. The case of *Grainger plc v Nicholson* [2010] IRLR 4 set out five criteria which must be satisfied for a belief to amount to a protected belief for the purposes of section 10 EqA.
63. In *McClintock v Department of Constitutional Affairs* [2008] IRLR 29, the EAT determined (at paragraph 45) that "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..'"
64. The EAT in *Mackereth v DWP and another* [2022] IRLR 721 highlighted (at paragraph 77) 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 implied 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.”

65. In that case the EAT found that the Tribunal had erred in its approach to assessing the claimant's beliefs by reference to the **Grainger** criteria by imposing too high a threshold for protection of a belief under section 10 EqA stating (at paragraph 117) that “As has been made clear in the case-law, in a pluralist democratic society it is necessary for the threshold to be established at a low level so as to allow for protection not just of beliefs held to be acceptable by the majority but also of minority beliefs, even where those beliefs might offend others.” It went on to find that the Tribunal had erred in finding that the claimant's lack of belief in “Transgenderism” and “gender fluidity” such that he did not believe that a person could change sex/gender was protected by section 10.
66. In the present case, the Tribunal accepts without hesitation that the claimant genuinely believes that a man is a man and a woman is a woman and that it is not possible to change sex.
67. It is also accepted that this amounted to a belief and not an opinion in the terms described in **McClintock**. While the claimant was criticised for not going into detail about why he had reached this belief and that criticism had some force, nonetheless it is accepted that it amounted to a belief. The way in which the claimant had expressed that belief in his social media posts may be intemperate and indeed potentially offensive, but that is the manifestation of the belief rather than the belief itself. While the claimant put it shortly that his view was based on “biology, science and reality” it will not always be necessary for a claimant to make reference to academic studies or scientific analysis to demonstrate that they have a protected belief. To suggest otherwise would place an unreasonable burden on a claimant to establish that they formulated that belief after extensive study. Each case must be considered on its own facts. In the present case, while the claimant also expressed views about diversity, inclusion and equality more generally, these were not the matters on which he was relying and could be separated from the belief of ‘sex realism’ on which the claimant was relying. It did not follow that just because the claimant expressed intemperate views about diversity and inclusion in general terms, that he could not also have a protected belief. While the claimant's evidence that the Equality Act, on which his case was based, could be abolished on the basis that it was not necessary, was surprising that did not detract from the reality of the specific belief on which he relied.
68. In addition, the belief of sex realism is on a weighty and substantial aspect of human life and attains a level of cogency. It may have been expressed intemperately on occasion, but that does not detract from the belief itself that it is not possible to change sex or gender. Mr McLaughlin somewhat prosaically referred to this as a golden ticket to the Tribunal which could open the floodgates of claims based on this belief. However, each case is considered on its own facts,

and each claimant is required to prove that they hold a belief which is protected by section 10. That is of course only the first stage of the process of a claim. Whether or not a person has been subjected to unlawful treatment for having such a belief is an entirely separate matter.

69. Therefore, the Tribunal is satisfied that the claimant held the belief that a person cannot change their sex and that this is a philosophical belief which is protected by section 10 EqA.

How did he manifest those beliefs?

70. The claimant's position was that he had manifested his beliefs when he had an interaction with SH during the training course and then what he said during the meeting with CH shortly thereafter. These are the matters that the claimant relies upon as amounting to unlawful conduct on the part of the respondent.

71. The claimant during the session with SH and the meeting with CH stated that he would not follow the respondent's policies in relation to the treatment of transgender people. That is a not a manifestation of a belief but a refusal to follow the respondent's policy.

Harassment

Was the claimant subject to the conduct complained of?

72. The claimant complains of the following conduct:

- a) Being asked to leave the room by Sarah Harvey during his introductory training course on 7 January 2025;
- b) Chris Hutton 'suggesting' that the claimant's beliefs meant that he would not treat people equally during the meeting on 7 January 2025; and
- c) Chris Hutton 'accusing' the claimant of contradicting himself in response to the claimant saying he would complete a search on a transgender woman if asked;

73. The claimant accepted in submissions that the complaint of dismissal was properly addressed in the context of it amounting to a detriment and could not constitute harassment.

74. There is no dispute that the claimant was asked to leave the room by SH on 7 January. Although the matter was not conceded by the respondent, it appeared to be accepted that CH had said something to the claimant on 7 January to the effect suggested by the claimant. The note of the meeting which was not

verbatim stated that CH said “in the PCO role it is how the law, our policy and processes need applied and we had to treat everyone the same. We can’t refuse to treat them as the same...”

75. In addition, it was accepted in evidence by CH that he challenged the internal consistency of the claimant’s position that he was willing to search a male but not recognise them as a male if he did not believe them to be male and search female but not recognise them as female if he did not believe them to be so.
76. In these circumstances, it is accepted that at least in broad terms the conduct complained of did in fact occur.

Was it related to his protected beliefs?

77. It is then necessary to consider whether such conduct was related to the claimant’s protected belief. The Claimant’s position is that he made express reference to his religion and belief in “science, biology and reality” during the exchange with SH and that a connection was therefore made for the purposes of section 26.
78. It is not necessary that the protected characteristic motivates an alleged harasser for the conduct to be related to that protected characteristic (*Carozzi v University of Hertfordshire* [2024] EAT 169). The term ‘related to’ is generally given a wide definition. However, it is also important to consider the context in which the conduct occurred.
79. The claimant being asked to leave the training session was connected to the claimant’s refusal to comply with policy rather than the belief on which that refusal was based. Had the claimant not expressed the view that he believed in science, biology and reality and said that he would not comply with the respondent’s policy he would not have been asked to leave the training session. However, the context is important. This was a training session with around 20 or so participants. The claimant may not have been aggressive in his stance, but he was certainly forthright. SH felt that the situation was escalating and asked the claimant to leave the room to de-escalate that situation. The situation was that a member of the cohort was challenging the trainer, which of itself would not be inappropriate. However, the nature of the challenge was that the claimant was saying he would not comply with the respondent’s policy and procedures and was saying so quite dogmatically. That is why SH asked the claimant to leave the room. It was not related to his belief but was because he was saying that he would not comply with the respondent’s policy and procedures because of his beliefs and this was causing a difficult situation for the trainer to manage in front of other staff. It seems to the Tribunal that this is a subtle but significant difference and when considered in the context of the training session itself, the Tribunal

came to the view that the conduct was not related to the claimant's protected belief. The claimant was asked to leave the training session because he was, in front of the rest of the cohort, having a heated discussion with the trainer, including stating that he would not comply with certain aspects of the respondent's policies and procedures.

80. If the Tribunal is in error in that regard, then as set out below, the Tribunal is satisfied that this conduct did not amount to harassment for the reasons set out at paragraph 86 and 87 below.
81. Turning to the comments made by CH during his meeting with the claimant on 7 January these can be taken together. The context of the meeting was that CH was exploring the views the claimant had expressed to determine whether the claimant would comply with the respondent's policies and procedures. The comment CH made regarding the claimant's beliefs that the claimant would not treat people equally was made in the context of CH explaining that this was the respondent's policy. CH was explaining how the PER form had to be completed by reference to stating gender and recording interactions with a prisoner. CH did refer to the claimant having strong views during the discussion with him. However, that of itself is not sufficient to establish that the comments made during the meeting were related to the claimant's belief. Simply stating that someone has strong views, particularly when the claimant agrees that he has strong views, is not sufficient to demonstrate that this was related to the claimant's protected belief.
82. The comment made by CH that the claimant's view was contradictory, was also in the context of him trying to understand the claimant's position and whether he would comply with the respondent's policy and procedure. It was not related to his belief other than in the sense that if the claimant did not have the belief the specific issue of compliance with policy and procedure would not arise. That is too far removed from the reason for the comments made by CH to be related to the claimant's protected belief.
83. In addition, the Tribunal is not satisfied that the comments made by CH can be categorised as 'unwanted'. The claimant was engaged in a discussion with CH regarding the impact of his beliefs on compliance with the respondent's policies and procedures. The claimant was actively engaged in that discussion and while the outcome of the discussion itself leads to the claimant's dismissal which is dealt with below, there was no evidence to suggest that the claimant was not a willing and engaged participant in that discussion. That is the context in which the question of whether the conduct was unwanted must be considered.
84. If the Tribunal is in error either in relation to whether any of the conduct complained of was related to the claimant's protected belief or that the aspects

of the conduct concerning CH were unwanted, the Tribunal is satisfied that it did not amount to harassment for the reasons set out in paragraph 88 below.

85. The final aspect of consideration as to whether conduct amounted to harassment is whether the conduct had the purpose or effect of violating the claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for the claimant.
86. In terms of being asked to leave the training room, the purpose of SH was to de-escalate the situation in the training room which had developed. While the claimant said that he felt like a schoolboy and felt humiliated by being asked to leave, the Tribunal must also have regard to section 26(4) EqA and consider not just whether the claimant felt that way but whether it was reasonable for him to do so. The test therefore has both subjective and objective elements to it. In the first instance it is necessary to consider whether the claimant did in fact feel that his dignity had been violated or a proscribed environment had been created. The Tribunal concluded that the claimant was annoyed at having to leave the room. While he might also have felt embarrassed this falls short of the claimant feeling that his dignity was violated or that a proscribed environment was created. The claimant is a robust individual who has had a long army career and the Tribunal formed the view that while he now categorises being asked to leave the training room as humiliating, that was not how he felt at the time. His principal emotion was annoyance and while he might also have felt embarrassed to some extent that has subsequently been exaggerated in his mind. The Tribunal formed this view also because there was no mention of the claimant feeling embarrassed or humiliated when he met with CH shortly thereafter and that during the meeting he was far more focussed on explaining that he had rights too. In addition, the Tribunal accepted the evidence of CH in relation to how the claimant presented himself at the meeting and there was no suggestion whatsoever that the claimant presented as embarrassed or humiliated.
87. Therefore, the subjective test has not been satisfied. In any event, the Tribunal is satisfied that the objective test would not have been satisfied. The claimant was expressing views in a forthright manner and engaged in a heated debate with a trainer in front of around 20 other students, which appeared to the trainer to be escalating. It cannot be right that in such a context being asked to leave a room can amount to creating a proscribed environment for a claimant. Were that to be so it would limit the ability of a trainer in such circumstances to control their training environment, having regard to the impact on the rest of the participants.
88. Turning to the interaction between the claimant and CH, the claimant did not really suggest that he felt his dignity violated or that CH's comments had a proscribed effect. He said that his heart was racing during the meeting, and that he was nervous, but his evidence was that at the end of the meeting he said that he respected CH's right to make the decision to dismiss him although he didn't

agree with it. There was no suggestion that the meeting was anything other than professional on both sides and that the Claimant engaged in the discussion in a reasonable if determined manner. There was simply no evidence that the claimant felt that his dignity had been violated or that a proscribed environment had been created. Undoubtedly the claimant did not like the way the meeting was going as it became clear what the outcome was likely to be. However, the comments made by CH were made in the context of exploring whether the claimant was going to comply with policies and procedures. There was nothing inappropriate about the comments and they did not amount to harassment either on a subjective or objective basis.

Direct discrimination

Did the acts complained of occur?

89. The claimant complains of the same acts as those relevant for the purposes of his harassment complaint with the addition of dismissal. As set out above in general terms there is no disagreement that these acts occurred.

Did they amount to less favourable treatment?

90. The first question is whether the conduct amounts to less favourable treatment. It is obvious that dismissal amounted to a detriment. It is not however clear that the other matters complained of amounted to detriments. The claimant relied on ***Shamoon v Chief Constable Royal Ulster Constabulary*** [2003] ICR 337 in arguing that the conduct complained of all amounted to detriments or less favourable treatment. In submissions, the claimant suggested that a hypothetical comparator would be either an individual who expressed an objection unconnected with a prisoner's gender identity, or an individual who refused to use a recognised descriptor for a prisoner (for example refusing to describe a prisoner who used illegal substances as having a 'dependency') but who otherwise was willing to record matters connected with the prisoner accurately in the PER form and willing to treat that prisoner with respect and dignity."

91. As was highlighted by the respondent in submissions, this was the first time that the claimant had set out the suggested characteristics of a hypothetical comparator. No evidence had been led on the scenario posited. In any event it did not seem to the Tribunal that such a hypothetical comparator was appropriate. It appeared quite different from the position of the claimant which was that he would not use preferred pronouns of prisoners and would not record the prisoner as being of the sex the prisoner specified, all of which amounted to a failure to comply with the requirements set out in the policies and procedures of the respondent and SPS.

92. As highlighted in *Shamoon* by the House of Lords, a Tribunal can tie itself in knots in an attempt to identify a hypothetical comparator and lose focus on the essential question of why the claimant was treated in the way that they were.
93. Both parties made extensive reference to *Page v NHS Trust Development Authority* 2021 ICR 941 in submissions where the Court of Appeal states at paragraph 8 “In a direct discrimination claim the essential question is whether the act complained of was done because of the protected characteristic, or, to put the same thing another way, whether the protected characteristic was the reason for it. It is thus necessary in every case properly to characterise the putative discriminator’s reason for acting. In the context of the protected characteristic of religion or belief the EAT case-law has recognised a distinction between (1) the case where the reason is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of. Of course, if the consequences are not such as to justify the act complained of, they cannot sensibly be treated as separate from an objection to the belief itself.”
94. In that case, the original Tribunal having found that the reason for the treatment of the claimant was not his religion or belief, did not find it necessary to go on and consider a hypothetical comparator as the “reason why” approach had already answered the relevant question. The Court of Appeal did not criticise the Tribunal for that approach.

What was the reason for the conduct?

95. In the present case it seems more logical to focus on the question of the “reason why” the conduct complained of occurred rather than construct a hypothetical comparator.
96. In relation to SH, the reason why she asked the claimant to leave the training room was because the interaction with him was becoming disruptive to the training. The claimant was stating that he would not comply with certain aspects of the respondent’s policy and procedures. The evidence of SH and that of Mr Weir was that the claimant had said in the training that a man is a man and a female is a female and that the claimant would not be searching a transgender prisoner. Their evidence was also that the claimant said he would not identify a transgender person as he or she within the PER form if he did not believe that to be accurate.

97. The claimant relied on *Higgs v Farmor's School* [2023] ICR 1172 in relation to the severability of conduct of a claimant the belief on which it is predicated. The respondent also referred to *Higgs* and *Page* in this respect and relation to the extent to which an employer's response to the manifestation of the claimant's beliefs was objectively justifiable.
98. The Tribunal formed the view that there was a clear distinction to be made between the claimant's beliefs and the way in which he chose to manifest those beliefs. It was notable that the claimant had expressed his beliefs on transgender people previously in front of CH and no objection was taken by CH to the claimant expressing those views. There was also no dispute that Mr Weir had expressed similar views again without incident. The Tribunal accepted the evidence of the respondent's witnesses that they had no issue with the beliefs staff held. That was exemplified by CH's evidence in relation to the diversity and inclusion session where he sought to foster a "safe space" so that there could be an open discussion about issues on which people often felt strongly.
99. However as was made clear by CH in the meeting on 7 January with the claimant, the issue was not the personal beliefs held by the claimant but the breach of company policy which would arise from the claimant manifesting those beliefs in a particular way. The claimant accepted that he would not use preferred pronouns of transgender people and would not complete a PER form with the sex of a prisoner if he did not agree that the sex proposed by the prisoner was accurate. The claimant also accepted that he stated he would not recognise a transgender man as a man or a transgender woman as a woman. All of this was in breach of the respondent's policies. The Tribunal was satisfied that the reason for the claimant's treatment in all these instances did not arise from the belief itself but his refusal to follow the policy and procedure required. Any member of staff who stated that they would not follow the policy and procedures of the respondent and the SPS, for whatever reason would have been treated in the same manner.
100. The position of the claimant in this case was similar to that of Mr McFarlane in the case of *McFarlane v Relate Avon Ltd* 2010 IRLR 872 and that in *Mackereth*. The respondent had no issue with the claimant holding his beliefs, but it was his refusal to comply with their policies and procedures, which the respondent found objectionable.
101. The reason why the claimant was asked to leave the room by SH was that he was becoming a disruptive influence on the training session. While that may have been as a consequence of the manifestation of his belief, it was separate from that belief. Mr Weir who had the same belief was not asked to leave the room as he did not suggest that he would not follow the respondent's policies and procedures.

102. CH sought to explore the claimant's views to establish whether he would comply with the policies and procedures of the respondent. That was the reason for referring to his strong beliefs and suggesting that he might not treat everyone equally and that his position appeared to be contradictory. The claimant's position was that he would search transgender men or women but not recognise them by their affirmed sex. That is what CH was referring to in relation to a contradiction. It was the way in which the claimant was manifesting his belief, not the belief itself.
103. Finally in relation to the issue of dismissal, which is really the crux of the claimant's case, the reason why the claimant was dismissed was because he made clear that he would not comply with the respondent's policies and procedures in relation to transgender prisoners. He would not recognise prisoners in their affirmed gender, he would not refer to them with their preferred pronouns and he would not complete the PER form by reference to the prisoner's affirmed sex or pronouns. All these matters conflicted with the respondent's policies and procedures and the policies and procedures of SPS with which the respondent was required to comply. The reason for the treatment was not because of the claimant's beliefs, but because the claimant made clear that he would not comply with the respondent's policies and procedures where he felt that they came into conflict with his beliefs.
104. If the Tribunal had been required to construct a hypothetical comparator, it would have been a person who was refusing to comply with the same aspect of policy and procedure but for a reason other than having a protected belief. The Tribunal was satisfied that anyone in those circumstances would have been treated in the same manner as the claimant.
105. Turning to the question of separability of the conduct from the belief, the Tribunal considered the judgments in **Higgs** as to whether a manifestation is linked to the protected belief and therefore protected. The action complained of by the claimant in the present case was not taken because the claimant expressed his views about sex realism. The actions were not taken because of anything the claimant said or did to explain the views he held or why he held them. While in **Higgs**, the claimant was dismissed in part because it was found that she had breached the School's Code of Conduct, this was very different from the present case. In the present case the claimant was saying that he would not follow the respondent's policy and procedure. In these circumstances, the Tribunal did not find it necessary to determine whether the respondent had objectively justified its conduct which was said to amount to direct discrimination.

106. If the Tribunal is in error in that regard, and the issue of whether the respondent is required to objectively justify the conduct complained of in the context of *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, the Tribunal was satisfied that such conduct could be justified.
107. The objective in terms of the actions of SH, was to ensure that situation in a training room did not get out of her control and that she made clear that compliance with the respondent's policies and procedures was necessary. The objective of CH in exploring the claimant's position with him was to determine whether he would comply with the respondent's policy and procedures. The objective in dismissing the claimant was consistent with the legitimate aims set out in relation to the claim of indirect discrimination.
108. The manner in which the claimant's expression of his belief was limited was rationally connected to the objectives of the respondent. There was no less intrusive limitation which could have been imposed in order to comply with the respondent's objectives. Finally, the limitation on the rights of the claimant is outweighed by the importance of the objectives of the respondent.
109. For all these reasons, the Tribunal finds that the claimant was not subjected to direct discrimination.

Indirect discrimination

What was the PCP?

110. Parties agreed that the PCP was "Did the respondent require its employees to record prisoners' personal details and refer to them on the PER according to their asserted gender rather than their biological sex?"
111. There was no dispute that the respondent applied this PCP to the claimant.

Did the PCP put employees with sex realist beliefs at increased risk of dismissal?

112. No evidence was led to suggest that this PCP would put employees with sex realist beliefs at increased risk of dismissal. Indeed, the evidence which was heard was that Mr Weir had the same beliefs as the claimant and was not dismissed or told that he might be dismissed. Ms Laughland also said that she had the same beliefs but had not been dismissed, although she was employed by SPS and not the respondent. There was no suggestion that either of these individuals were more at risk of dismissal.
113. The claimant's submission under this head of claim was brief and relied essentially on the submissions made in relation to *Higgs* and the extent to which

the respondent's response to the way in which the claimant manifested his beliefs could be a proportionate limitation of the claimant's rights.

114. In addition, the respondent relied on ***Gray v Mulberry Co (Design) Ltd*** 2020 ICR 715 for the proposition that while it is not necessary to show that all people with the relevant belief were put at a disadvantage, there must be some evidence that some people who shared their belief would have had that same difficulty. Similar to the difficulty faced by the claimant in that case, there has been no evidence led that people employed by the respondent would have difficulty complying with its policies and procedures regarding transgender people. While the claimant was of the view that his beliefs were such that he would have difficulty complying with the policies and procedures, there was no evidence from anyone else that they would have the same difficulty. The evidence from Mr Weir was that he shared the belief of the claimant, but he did not suggest that he would not be able to comply with the policies and procedures. The evidence from Ms Laughland was that she had complied with the SPS policies and procedures. Her evidence was that she asked that she not be required to search transgender women and that there was an informal agreement reached in that regard. However, she had been complying with all the policies and procedures to date and continued to do so. There was no suggestion that she was more likely to be at risk of dismissal.

115. It might be suggested (although the claimant did not make this point) that it was obvious that those who held the same view as him in relation to sex realism would have difficulty complying with the policies and procedures of the respondent and SPS and therefore hypothetical group disadvantage had been established. The claimant did refer in submissions to ***Pendleton v Derbyshire County Council*** 2016 IRLR 580. The Tribunal did not find the present case to be comparable in relation to the relevant belief of the claimant in ***Pendleton***. In the present case the belief of the claimant was not so intrinsically linked to the potential disadvantage without evidence to support that proposition. The 'dilemma of conscience' in so far as it could be said that the claimant had such a dilemma, was not of the same magnitude as that in ***Pendleton***. Indeed, the evidence regarding the ability of those with the same belief as the claimant to comply with the policies and procedures before the Tribunal was to the contrary.

Can the respondent justify the treatment?

116. As the claimant has failed to establish group disadvantage his claim of indirect discrimination fails at that stage. However, for completeness, the Tribunal considered the justification put forward by the respondent.

117. The respondent relies on the legitimate aims of ensuring compliance with its contractual obligations to comply with the SPS requirements; and avoiding

infringing the rights of transgender prisoners in custody. Justification requires a critical evaluation (*Hardy Hansons plc v Lax* [2005] ICR 1656).

118. The claimant argued that dismissal was disproportionate on the basis that there are very few transgender prisoners in the prison estate. The figure of 0.3% came from a document related to 2023 and on which no direct evidence was led as to what that document was or how that statistic was established. Even if the Tribunal accepts as a matter of judicial knowledge that the proportion of transgender prisoners is likely to be small, it was not possible to predict when the claimant might encounter a transgender prisoner. That was different from the position of Ms Laughland who worked as a prison officer in a prison where there was a discussion as to which prison transgender prisoners would be housed in prior to their move to that prison and appropriate plans made. This appeared to involve a case conference in advance of a decision being taken. The claimant's role was far more dynamic and unpredictable in nature where he was required to attend court and transport people between different locations. There was no evidence to suggest that it would be possible for the respondent to identify in advance of any working day whether the claimant might be responsible for the care of a transgender person and make alternative arrangements.
119. The claimant set out other factors to be taken into account assessing proportionality in written submissions, which the Tribunal has also taken into account.
120. The respondent's position was that it did consider a "workaround" involving the use of non-gendered pronouns by the claimant but that it did not consider this would allow it to meet its legitimate aims. It was also suggested that even if the claimant had agreed to use a prisoner's affirmed name, that did not detract from the requirements of completion of the PER form (by stating male or female) and that it was not operationally feasible to eliminate the possibility that this may be required.
121. The Tribunal was mindful that the claimant was dismissed with little procedure being followed. However, this is not a case of unfair dismissal. The claimant was in his probation and had only been employed for six weeks. He was making clear to a trainer and the training manager that he would not comply with policies and procedures which he believed to conflict with his beliefs. He had not suggested his beliefs would cause him difficulty in carrying out his role during the session on diversity and inclusion. He did not raise it as a concern at any time prior to the session on 7 January. While he may have suggested a workaround the respondent was entitled to have regard to the wider issues of compliance with the policy and procedure and the extent to which that 'workaround' would meet the respondent's obligations. The respondent was entitled to conclude albeit somewhat peremptorily that it would not. The only practical way in which to avoid the risk of the claimant infringing the rights of transgender prisoners or the

breaching of the policy and procedures was either to ensure that he did not have responsibility for transgender prisoners or did not have to fill in the PER form when it concerned a transgender prisoner. That was not a practical or proportionate solution. Although the impact on the claimant was significant, in that he was dismissed, the Tribunal concluded that taking into account all the facts and circumstances of the particular case, dismissal was proportionate and therefore any discriminatory conduct was justified.

122. The claimant's claims are therefore dismissed.

Date sent to Parties

17-02-2026