# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr Mark Jennings**

**Respondents:** **Department for Work and Pensions**

**Heard at:** **London South (Ashford) via CVP** **On:** **24-26 November 2025**

**Before:** **Employment Judge D Wright**
**Tribunal Member L Lindsay**
**Tribunal Member P Adkins**

**Representation**
Claimant: In Person
Respondent: Mr. Moretto, instructed by the Government Legal Department

# WRITTEN REASONS

1. Following the Tribunal's judgment dated 26 November 2025, the Claimant requested written reasons.

2. This was a claim brought by the Claimant, Mr. Mark Jennings, against the Department for Work and Pensions, for indirect religious belief discrimination and a failure to make reasonable adjustments. The Claimant had originally brought a further claim for direct religious belief discrimination, but that was withdrawn at the start of the hearing.

3. The Claimant represented himself and the Respondent was represented by Mr. Moretto of Counsel. We express our thanks to all involved for the collaborative and polite approach taken during the hearing.

4. We heard evidence from the Claimant and two witnesses for the respondents, Maria Landers, the Customer Service Leader, and Anna Sullivan, Head of Equity, Diversity and Inclusion for DWP.

5. This is a case involving matters where terminology can be important to people. At any point if I use any incorrect terms during the decision, then I apologise and can say that no offense was intended in so doing.

6. By way of background, this claim arises following the Claimant's application to join the Respondent as a work coach in November 2023. The Respondent offered him the job by telephone on 21 June 2024 and during that conversation, the Claimant was asked if he considered that any workplace adjustments were necessary.

7. The Claimant requested that no-one in the Canterbury office of the Job Centre, the centre to which he had been assigned, should promote the use of different pronouns, and that no visible imagery of the Pride or LGBTQ+ movements be displayed or celebration of those causes be permitted.

8. In an exchange of correspondence over the following days, the Claimant explained that as a Roman Catholic, evangelical Christian, his faith dictated that gender ideology was the work of the Devil, and the promotion of "trans ideology" caused him great anxiety. He also explained that because of his mental health conditions, particularly autism and a history of gender dysphoria as a child, pride iconography caused him distress.

9. The Respondent's position was that it could not accommodate the request for such adjustments, but they left the offer open, albeit with the deadline to accept the position. The Claimant did not eventually take up the role.

10. During the legal proceedings, the Claimant's position has altered from an initial request that no-one be permitted to wear pride iconography such as the rainbow or the word pride in the office, no-one use pronouns and no-one celebrate Pride in the office, into a more nuanced position, whereby he seems to accept that others can mark their allyship of the LGBTQ+ community, as long as there is no pervasive and/or semi-permanent imagery present in the workplace which he may see.

11. ACAS Early Conciliation began on 24 June 2024 and ended on 1 August 2024. The ET1 was submitted on 3 August 2024 and there are therefore no issues with time limits.

12. The Respondent has defended the claim on multiple fronts. Some of these are pure legal arguments, and others involve questions of fact, although there is one legal argument which the Respondent says is fatal to the claim, which we will deal with first.

13. The Respondent asks that we deal with all of the issues, even if we rule in their favour on that point, as there is no settled case law on the first issue, and therefore dealing with all of the points will save time should there be any subsequent appeal.

14. The first of these arguments is in relation to Section 39 of the Equality Act. This is an argument on which the parties are unaware of any settled case law. We have also not been able to find any relevant case law. The Respondent argues that the Claimant was an applicant at all material times and not an employee, as he never accepted the job offer and did not commence work.

15. They also argue that the claim relates to the environment in which the claimant would be required to work, and which is an environment in which pride related iconography may be seen. Reference was made to subsections (1) and (2) of section 39 which distinguish between an employee and other people, in this case, an applicant.

16. Subsection one says:

    An employer (A) must not discriminate against a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;
(b)as to the terms on which A offers B employment;
(c)by not offering B employment.

17. Subsection two says:

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.

18. It's clear that s.39(1)(c) does not apply here as the Claimant was offered employment. Likewise, the Respondent argues that the Claimant was not disadvantaged by the arrangements for deciding whom to offer employment as the Claimant was indeed chosen.

19. The respondent says that the only element which could apply in the present case is 39(1)(b) in relation to the terms on which the Respondent offered the Claimant employment. We were invited to find that terms can only apply to the contractual terms and not anything wider, such as the PCPs under which an applicant is expected to work. This argument was supported by reference to section 32 which includes the terms of employment, but also refers to any other detriment.

20. It is argued that by introducing this distinction, Parliament made it clear that 39(1)(b) only applied to the contractual terms. As set out in **Shamoon v RUC [2003] IRLR 285, HL**, detriment is defined as a circumstance in which a reasonable worker would or might take the view that he'd thereby been disadvantaged in the circumstances in which he had thereafter to work. This is a wide definition and is capable of catching the treatment which the Claimant relies upon. The question for us is whether the detriment complained or falls within the terms of employment or any other detriment.

21. We do note that it is quite common for contracts of employment to incorporate other policies which an employer has. That is a factor which we take into account.

22. The Claimant says that the PCP which he complains of is an arrangement for deciding whom to offer employment. We do not agree with this characterisation as the PCP he complains of is the environment in which he would have to work and not part of the hiring process.

23. He also argues that the PCP is covered under the terms on which the employment was offered as he was told he could only have the job if he accepted it without adjustments. The Claimant further argues that Schedule 8, paragraph 5, sets out that with respect to employment by A, a disabled person is an applicant for employment by A or an employee of A's. Alternatively, he argues that he accepted the offer and was therefore covered under s.39(2) even if we accept the Respondent's interpretation.

24. With respect to this argument, we find that it would not support the Claimant as even if he had accepted the offer, on which point we do not make any particular finding, he would not have started employment by the relevant point.

25. The Respondent's position is certainly arguable. However, it does lead to a perverse situation where someone could apply for a job, be offered it, then be told that they will be subjected to a detriment and yet will be left without any protection, whereas someone who waits until the first day of their contract to request adjustments to a PCP to avoid a detriment will be protected.

26. It would also allow an employer to offer someone a job and explicitly inform them they will not make any adjustments, and if the applicant then, understandably got concerned and stepped away from the offer, it would leave them with no protection. This appears on the face of it to fly contrary to the intention of the Equality Act, which was in part to ensure that people could access work without facing discrimination.

27. When we consider Schedule eight, the intention behind the Act, the argument that terms can include policies of the employer, we find that the claimant is able to bring such a claim and the Respondent's argument on section 39(1) is dismissed.

28. We then move on to consider the PCP itself. In the list of issues, the PCP is set out as "a requirement that all claimants and/or employees engage with DWP environments, services or communications containing pride related iconography, including, but not limited to rainbow flags, branding, digital materials, promotional literature and staff attire or lanyards without offering exemptions or alternatives for those whose disabilities result in significant distress, phobia or sensory overload in response to such content".

29. During the course of the hearing, the claimant accepted that there was no requirement for him to take part in pride events or to display or wear the pride flag himself. It was also accepted that he would not be required to display his pronouns in his emails or include pride related material in his footer.

30. Essentially, the Claimant's case now is that he says the Respondent has a policy whereby people are allowed to display Pride symbols, such as lanyards, pin badges, flags on their desk, clothing and email footers, and that there may be information about Pride on staff notice boards and email bulletins. As such, the word "engage" in the list of issues should be read in a broad way, so as to include seeing such material. As summarised by Mr. Moretto, the PCP could be described as "staff would need to engage in a workspace where others may display rainbow flags or promote Pride or use any particular pronoun markers".

31. We heard from the Respondent's witnesses that the Respondent themselves would not put up pride symbols in the public facing part of the office, which is where the Claimant's desk would be and where he would meet clients as they try and keep it as a neutral zone. They do, however, allow members of staff to display flags on their desk or to wear pin badges

or lanyards showing their support for LGBTQ+ causes.

32. It was also explained that there would be, on occasion, information about Pride on the notice boards in the staff room, as happens with other protected characteristics. An example given was Black History Month, and that once or twice a year the National network would be allowed to include information in the DWP connect email newsletter.

33. It was also clear from the Respondent's evidence that they would feel extremely uncomfortable asking any staff member to remove a Pride flag or lanyard in the same way they would not ask someone to remove a cross or stop wearing a headscarf. They felt that this could amount to harassment and or a breach of PSED.

34. The claimant's own evidence was that on the few occasions he visited the Job Centre, he only saw a rainbow displayed once, and that was on someone's desk.

35. When we consider all the evidence, we find that whilst the extent of people displaying pride related iconography was limited at the Respondents premises, we find that the Respondent did have a PCP whereby employees would need to engage in a workspace where others may display rainbow flags or promote Pride or use any particular pronoun markers.

36. Moving on to consider the indirect religious discrimination, it is fair to say that the Claimant's main argument was focused on his disability, although this was to be viewed in line of the interplay with his religious views, rather than focusing on a standalone religious claim. However, there was a standalone indirect discrimination claim in relation to his religious belief before us.

37. The claimant describes his faith as Catholic and Evangelical Christian. He told us that he is a baptized member of the Roman Catholic Church, attending Mass and Confession, but he also attends two evangelical churches, meaning on a normal Sunday, he attends three churches.

38. From his evidence, it is clear that the Claimant subscribes to what may be referred to as a conservative or orthodox interpretation of the Christian faith. It is his view, in line with many others within the faith, that homosexuality and transgenderism is a sin contrary to the laws of God, and that a Christian should not promote LGBTQ+ activities. He also sees the use of the rainbow by the LGBTQ+ community as co-opting, a symbol of God and Christianity (referencing the promise made to Noah after the flood), which is offensive to him.

39. He was keen to point out that he separates the sin from the sinner. He accepts that people are free to live their life in a way which conflicts with his views, and he has gay and transgender friends. The problem he has is the promotion of beliefs which, in his view, equate to mortal sins.

40. The Claimant accepts that his interpretation of Christianity is not one shared by all Christians nor by all Catholics. We take judicial notice that within any religion or belief system, there is bound to be disagreement between adherents. However, the Claimant has referenced a number of studies

which show a significant proportion of Catholics are opposed to homosexuality and transgenderism. The Claimant also accepts that there is hostility to pride for members of other faiths and people of no faith.

41. The Respondent argues that because some Catholics accept Pride and some non-Catholics oppose it, there can be no group disadvantage here. Reference was made to **Gray v Mulberry Company (Design) Ltd [2019] EWCA Civ 1720** whereby it was made clear at paragraphs 41 to 46 that group disadvantage is not self-proving and needs to be shown by the claimant.

42. However, within that judgment, at paragraph 32 their Lordships set out that the correct test was whether others sharing the belief, not necessarily all others, but some others, were put at a disadvantage. We are satisfied that other people sharing the Claimant's belief would be put at a disadvantage as it is accepted that the Claimant is not the only member of the Catholic faith who would find exposure to pride related iconography to be offensive. Likewise, the fact that other people from different faiths (or no faith) may also be offended does not prevent the Claimant from proving group disadvantage.

43. We then have to have to consider whether the PCP in place was a proportionate means of achieving a legitimate aim. The Respondent relies upon three aims which overlap to a large extent. These are:

    a. demonstrating that it is an inclusive employer or public authority committed to embracing the diversity of workforce, and/or
    b. demonstrating it is committed to employing, retaining and developing a workforce which reflects the diverse community which it serves, and/or
    c. fostering an inclusive environment where everyone feels valued and has a sense of belonging.

44. It is not in dispute that this is a legitimate aim. The question is one of proportionality. In terms of proportionality, the Respondent has drawn our case our attention to the cases of **Ladele v Islington [2010] IRLR 211** CA and **McFarlane v Relate Avon Ltd [2010] IRLR 872 CA** in support of their position. In those cases, the Claimants opposed same sex relationships, but were forced by their employer to respectively, conduct civil partnerships and counsel same sex couples. The appeal courts found that the Respondents in those cases had acted proportionately.

45. The Respondent says if this was proportionate, then surely requiring the Claimant to potentially see material he did not like would also be proportionate. However, we find that these cases are of limited assistance as the issues in those cases went to the core duties of the job, rather than in this case, where the PCP applied to the office environment. The policy in place was one where, by individual employees could join networks for people who share a protected characteristic or where they wanted to support those individuals. They could display their support through the wearing of lanyards, badges and or religious items. They could have pronouns their emails. They could include elements in the footer of emails to show that they supported a particular group and that the networks would, at appropriate times, be allowed to display things on notice boards and to

include messages in DWP wide communications. There was no requirement for any individual to wear or display anything to suggest that they were allied to Pride. Nor was there a requirement to be involved with promoting Pride. We remind ourselves of the decision in **Selden v Clarkson Wright & Jake [2012] ICR 716**, where the test is whether the practice was justified and not explicitly the application of it to the Claimant.

46. We do find that this policy whereby people were allowed to do things but not required to do things was a proportionate means to achieving the legitimate aim. As the Respondent points out in their skeleton argument and in the evidence, the suggestion that the Claimant puts forward of preventing and or restricting the ability of employees to display their support for Pride would leave the Respondent open to claims of direct or indirect sexual orientation discrimination, harassment and direct or indirect belief discrimination. As such, the indirect religious discrimination claim is dismissed.

47. We then moved on to consideration of the reasonable adjustments claim. In relation to that the Claimant relies on the same PCP as the religious discrimination. We find that the PCP would leave the possibility open that the Claimant would come into contact with Pride related imagery, be it worn by colleagues, displayed in the staff room, or on members of the public coming into the office.

48. The Respondent argues that the Claimant has failed to show that he would be at a substantial disadvantage compared to those who are not disabled. The focus of the Claimant's disability claim is his ASD, although he does refer to the intersectionality of all his disabilities, with his religion playing a part in how he reacts to triggers. His other disabilities include general anxiety disorder, emotionally unstable personality disorder and borderline personality disorder. From the evidence we find that these do amount to disabilities.

49. The Claimant says that he has a history of trauma around gender dysphoria or confusion, the claimant accepting he was never formally diagnosed with gender dysphoria, and as such, he has a phobia of Pride symbols. Reference was made to this becoming worse after the Cass Report, which explored the impact of autism and gender dysphoria.

50. It is right, as the Respondent says, that there is no formal link from a medical professional between his autism and the phobia. The closest we see is a GP letter which says that the Claimant has some phobia, obsessional traits, which may link to his ASD diagnosis as well as anxiety.

51. What we find is that this is a question for the Tribunal to determine. Whilst an expert report is helpful, it is not mandatory. What we do see through the medical records in the run up to the job offer is a Claimant clearly struggling with his mental health conditions because of seeing Pride imagery. Within his evidence he also made it clear to us that the phobia was of such severity so as to trigger autistic shutdown. Reference was made to seeing a Pride flag near his home that had been placed by the Council, seeing flags on buses and in shops, and our attention was also drawn by Mr. Moretto to references in the notes of problems triggered by seeing rainbow laces on

football boots on Match of the Day and to a shutdown being triggered by viewing a Drag Act.

52. There is some dispute as to when the phobia began, but it is clear from the medical evidence that by the time of the job offer it was present. As I say, whilst a formal diagnosis linking the phobia to the autism would be helpful, it is not essential. The Tribunal is able and does, on a daily basis, make decisions on whether somebody is disabled without reference to expert reports or formal diagnosis. It is ultimately a question for the Tribunal to determine. On balance, we find that the phobia triggers the Claimant's autism, and that it is sufficient to engage the requirement to make reasonable adjustments.

53. As to the Respondent's knowledge of the disability, we find that the Claimant told the Respondent of mild autism in his application form and ticked the box to say that he had a disability. Whilst Miss Landers did not have sight of this application form, we find that the telephone call and email correspondence did put the Respondent on notice of a disability.

54. We accept that the main thrust of the email on 21 June from the claimant was about his religious views, but there was sufficient information therein to put the Respondent on notice that he had a disability which may be impacted by pride imagery and that reasonable adjustments might be required. Furthermore, we know that the internal emails discussing the Claimant's request refer to them as reasonable adjustments, which tend towards the Respondent being aware of a disability. As such, we find that Respondent knew or ought to have known about the Claimant's disabilities.

55. Moving on then to the reasonableness of any adjustments requested by the Claimant. Originally, these were set out in a phone call on 21 June 2024. In that call, he requested, as set out in the subsequent email from Miss Landers, that no one in the Job Centre promoted the use of different pronouns or LGBTQ+, or wore a lanyard or any other things that promote things like Pride or LGBTQ+. This request was refused as it was deemed not to be reasonable.

56. During proceedings, the Claimant argued that other adjustments could have been made with a lesser impact on the workforce. He suggested the following, a neutral or zoned workspace, which would involve him being placed at a workstation not directly surrounded by high salience Pride iconography during onboarding or office work. He also suggested a neutral it or Teams system, which would involve the Claimant being able to use a neutral background or email signature template, so as not to mention symbolic branding. He suggested giving permission for personal neutrality, which would not require him to add pronouns to his email signature or to wear badges, whilst allowing others to do so. He asked for a quiet or neutral route, to allow access to a workspace via a neutral or low stimulus route to avoid prominent Pride displays at reception or key areas. He suggested that his line manager could be briefed not to include symbolic introductions with pronouns in meetings involving the Claimant, and for colleagues to respect his personal neutrality. He also said the Respondent could have considered allowing him to work from home, even if just on a temporary basis during Pride month.

57. The Claimant complains that by refusing to engage occupational health or enter into meaningful discussions with him over the adjustments required, the opportunity was lost to consider these alternatives. He relies on **Griffiths v Secretary of State for Work and Pensions [2015] EWCA Civ 1265** in relation to this complaint. In this case, the Respondent did make inquiries by speaking to the Claimant and relying on the information provided by the Claimant about his condition.

58. The Claimant suggests that a conversation should have been had with those in the office who would have been affected by the adjustments to see if they were happy to remove the items. This we find would have been inappropriate for the employer to do, and would have potentially opened the door to harassment claims from those individuals. In any event, it would not have amounted to an adjustment being made by the Respondent, but would rather be an agreement between colleagues, which would be subject to change with every new member of staff, or should a member of staff change their mind.

59. Furthermore, whilst the Claimant says that he would have removed any symbols of Christianity if a colleague explained that those symbols set off at their disability (and we accept that he would have done this), we do feel that the Claimant was being somewhat naive to assume that all members of the Pride community would have agreed to remove their symbols for his disability.

60. The test we have to apply is to not just consider the process by which the decision was made, but also to consider whether there were adjustments which could reasonably have been made, and if so did, the Respondent fail to implement them. Whilst a flawed process can lead to an assumption that there were adjustments available which were not implemented, it does not mean that this is automatically the end of the case.

61. The claim suggests that **RBS v Ashton [2011] ICR 632 EAT** does not apply in this case, because he says in his case there was no process, but we find that there was some process. The Respondent and Claimant did have discussions, and the Respondent had some internal discussions, albeit communication was short. The Respondent says that the Claimant's suggested alternatives would not have solved the problem as they would not have removed the possibility of the Claimant coming into contact with Pride imagery.

62. In evidence, the Claimant tried to present his case as one whereby he would be triggered by semi-permanent displays in his line of sight, but he also said that if he was required to have a meeting with a client wearing a Pride t-shirt, that might trigger him, but he could manage that sort of low-level exposure. His concern was pervasive or semi-permanent imagery.

63. However, when one digs into the answers he gave in cross examination, the information he gave to someone during the application process and the contents of his medical records we are of the view that any exposure to Pride material would result in a real risk of the Claimant being triggered.

64. We know that the Claimant has begun a number of proceedings against other organisations, not all of which are still being pursued, after being

exposed to Pride imagery, for instance, against Stagecoach for having Pride branding on their buses, and against NatWest Bank for having branding in store (**Mark Jennings v NatWest Group Plc [2025] SAC (Civ) 41**). Reference was made to comments in his medical records about an autistic shutdown having seen a stage show including a drag act, of trauma caused by the Pride flag near his home, and seeing rainbow laces on Match of the Day and those all point to the trigger being much more sensitive than the Claimant attempted to convey in his evidence.

65. We remind ourselves that the Claimant said that he is generally at a 7/10 on a stress scale, and it is quite easy to push him up to a 10/10, whereas he says just an ordinary person or barrister, could be around about a 4/10 on the ordinary stress levels. We also remind ourselves that the Claimant initially told the Respondent in the email of 21 June, that "every time I see the visual imagery of the Pride movement, it reminds me of my childhood trauma". We find on balance, that seeing any Pride related material would present a real risk to the Claimant's mental health, and that the adjustments recommended above would not have been sufficient to bring the risk down to a manageable level.

66. However, if we are wrong on that point, we also find that the suggested adjustments are not reasonable. Whilst we heard that arrangements were already in place to ensure that people in the Claimant's position did not have to use special Teams backgrounds or include pronouns and messages, this would not have prevented other people using special backgrounds or including pronouns around the Claimant.

67. Creation of the neutral spaces would have involved members of the team being told to limit and or remove Pride flags, lanyards, badges, etc. They would have created an environment whereby the Claimant's disability and the interplay with his religion would have trumped all else, and those who wanted to show support for Pride, either as members of the community or as allies, would have had to hide their identity and beliefs.

68. This would have potentially resulted in the Respondent then being in breach of their duties as set out in **Eweida v United Kingdom [2013] IRLR 231** ECtHR to allow people to display symbols of their faith and belief. It is always a difficult balancing act when there are competing protected characteristics, but we find that in this situation, the suggestion made by the Claimant would go further than is reasonable.

69. Whilst on the face of it, the request for working from home during Pride celebrations may not be an unreasonable one, particularly in the post-covid world, where remote working is more common, we did hear evidence that for this role it was not possible. We were told that the role required mostly face to face appointments with clients, because that allowed the best support to be given to them to help them back to work. Whilst video or telephone appointments were available to some clients, these had to be taken from the office for professional and data security reasons.

70. We also heard that some clients can be difficult, and that being in the office would mean that managers and colleagues could support staff after a difficult appointment. As such, in this case, we find that the option to work from home would not have been a reasonable adjustment either.

71. Therefore, we find that the adjustment suggested would not have done the job, and neither were they reasonable in any event. Whilst we do feel that the Respondent could have engaged a bit more with the request for adjustments by asking the Claimant for more information or engaging with the head of EDI before making any decision, we are of the view that such course of action would not have changed the outcome.

72. Likewise, the suggestion of a referral to occupational health would possibly have suggested these adjustments to the Respondent, but ultimately, it is not for occupational health to assess the reasonableness of any recommendations. Therefore, the failure to arrange an occupational health referral is unlikely in this scenario to have had any impact on the eventual outcome. For those reasons, we dismiss the claim of failure to make reasonable adjustments.

73. Therefore, we find that all of the Claimant's claims fall to be dismissed.

Employment Judge **D Wright**

Date__29 April 2026_____