Neutral Citation Number: [2026] EAT 84

Case No: EA-2024-000324-RS

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London
EC4A 1NL

Date: 04 August 2026

Before:

THE HON. LORD FAIRLEY, PRESIDENT
MR NICK AZIZ
DR GILLIAN SMITH MBE

- -

Between:

University of Bristol **Appellant**

- and -

Dr David Miller **Respondent**

- -
- -

Christopher Milsom and **Danielle Worden**, of Counsel**,** (instructed by **Burges Salmon** LLP) for the **Appellant**
Zac Sammour and **Gianna Seglias**, of Counsel, (instructed by **Rahman Lowe**, Solicitors) for the **Respondent**

Hearing dates: 12 and 13 November 2025

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JUDGMENT

SUMMARY

Discrimination; philosophical belief; harassment; unfair dismissal; remedy

The claimant was summarily dismissed for the stated reason of gross misconduct. He brought complaints in the Employment Tribunal of (i) direct philosophical belief discrimination contrary to sections 10 and 13 of the **Equality Act 2010** ("**EqA**"); (ii) harassment related to belief contrary to section 26 **EqA**; (iii) unfair dismissal contrary to section 98 of the **Employment Rights Act 1996** ("**ERA**"); and (iv) wrongful dismissal at common law.

The Tribunal concluded that the claimant was dismissed because of comments made by him on three occasions during February 2021 in which, amongst other matters, he expressed protected philosophical beliefs. The decision to dismiss the claimant and the refusal of his appeal against that dismissal were each found to be unlawful acts of direct discrimination. The dismissal was held to be unfair, and wrongful. The Tribunal determined, however, that the basic and compensatory awards in the unfair dismissal complaint should each be reduced by 50%. It further concluded that there was a 30% chance that the claimant would have been dismissed fairly and in non-discriminatory circumstances by October 2023 because of further comments made by him in August 2023. It reserved all other decisions on remedy to a further hearing.

The Tribunal dismissed a complaint that the employer's investigating officer had harassed the claimant for a reason related to his beliefs by recommending that disciplinary proceedings be commenced against him. It also dismissed a complaint that the employer had directly discriminated against the claimant by finding him guilty of any misconduct.

The employer advanced multiple grounds of appeal against the findings of liability. It also submitted that the reduction of compensation for contributory fault should have been 100% in both the unfair dismissal and discrimination complaints and that the Tribunal erred or failed to give adequate reasons for its conclusion that there was a 30% chance that the claimant's employment would have ended lawfully in any event by October 2023. The claimant cross-appealed against (a) the rejection of his complaint that it was an act of direct discrimination by the appellant to find him guilty of any misconduct; (b) the dismissal of his harassment complaint; and (c) the Tribunal's conclusions on reduction of compensation in the unfair dismissal complaint on the basis of contributory fault.

Held:

(1) The Tribunal had not erred in any of its conclusions on liability, or in deciding that the basic and compensatory awards in the unfair dismissal complaint should each be reduced by 50%. It had not yet made any appealable decision about remedy in the discrimination complaint.
(2) The Tribunal had not sufficiently explained the basis for its conclusion that there was a 30% chance that the claimant's employment would have ended lawfully in any event by October 2023.
(3) The Tribunal had not erred (a) in rejecting the complaint that it was an act of direct discrimination for the employer to find the claimant guilty of any misconduct; (b) in dismissing the complaint of harassment; and (c) in reducing compensation in the unfair dismissal complaint on the basis of contributory fault.

THE HON. LORD FAIRLEY, PRESIDENT

Introduction

1. The University of Bristol appeals from a reserved judgment dated 5 February 2024 of an Employment Tribunal sitting at Bristol (Regional Employment Judge Pirani, Ms J Kaye and Mr H Launder). Dr Miller was the claimant in the proceedings below. He resists the appeal and has cross-appealed. We will refer to the University as "the appellant" and to Dr Miller as "the claimant".

Overview

2. The claimant was employed by the appellant as a Professor of Political Sociology from 1 September 2018 until 1 October 2021 when he was summarily dismissed for the stated reason of gross misconduct**.** He appealed against his dismissal, but the appeal did not succeed. He then brought complaints before the Employment Tribunal of:

a) direct philosophical belief discrimination contrary to sections 10 and 13 of the **Equality Act 2010** ("**EqA**");
b) harassment related to belief contrary to section 26 **EqA**;
c) unfair dismissal contrary to section 98 of the **Employment Rights Act 1996** ("**ERA**"); and
d) wrongful dismissal at common law.

A further complaint of indirect discrimination was ultimately withdrawn.

3. Having heard evidence over seven days in October and November 2023, and submissions over a further day in December 2023, the Tribunal concluded that the claimant was dismissed because of comments that he had made on three occasions during February 2021. Those comments included, amongst other matters, the expression of philosophical beliefs that were protected by section 10 **EqA**. The appellant's decision to dismiss the claimant and the refusal of his appeal against that dismissal were each found to be unlawful acts of direct discrimination. The dismissal was also found to be unfair in terms of section 98 **ERA**, and wrongful because it was without notice.

4. The Tribunal dismissed a complaint that the appellant's investigating officer had harassed the claimant for a reason related to his beliefs by recommending that disciplinary proceedings be instituted against him. It also rejected a complaint that, irrespective of sanction, the appellant had directly discriminated against the claimant by finding him guilty of any misconduct.

5. The Tribunal determined that the basic and compensatory awards in the unfair dismissal complaint should each be reduced by 50% in terms of sections 122(2) and 123(6) **ERA**. It further concluded that there was a 30% chance that the claimant would have been dismissed fairly and in non-discriminatory circumstances within two months of August 2023 as a result of further comments made by him on social media in August 2023. It reserved all further decisions on remedy to a hearing at a later date.

6. The appellant challenges all of the liability findings made against it. It also submits that, in any event, the reduction of compensation for contributory fault should have been 100% in both the unfair dismissal and discrimination complaints and that the Tribunal erred in its conclusions that there was a 30% chance that the claimant's employment would have ended lawfully in any event by October 2023. It has nine grounds of appeal. These are very lengthy because the majority of them contain multiple sub-grounds (and, in some cases, sub-sub-grounds) each of which alleges a separate error of law.

7. The claimant cross-appeals against (a) the rejection of his complaint that it was an act of direct discrimination by the appellant to find him guilty of any misconduct; (b) the dismissal of his harassment complaint; and (c) the Tribunal's conclusions on reduction of compensation in the unfair dismissal complaint on the basis of contributory fault.

Key facts

8. The claimant's work as an academic sociologist examines concentrations of power in society. One of his research interests is the Zionist movement (ET§22).

9. Throughout his academic career, the claimant has focused his research and teaching upon state and corporate propaganda, public relations and lobbying. He has been published extensively on a diverse range of topics. He has frequently made public statements and expressed views on a range of issues, some of which could be seen as political and controversial (ET § 23).

10. Prior to the events with which this case is concerned the claimant was never subjected by the appellant to any disciplinary process or sanction (ET § 23). During 2020, however, the appellant appointed Ms Aileen McColgan K.C. to investigate a student complaint about comments made by the claimant and related matters of conduct. Ms McColgan produced a report dated 4 December 2020 in which she concluded that there was no formal case to answer by the claimant in relation to any of the matters she had been asked to investigate. The Tribunal made extensive findings of fact about Ms McColgan's investigation and the circumstances surrounding it at ET § 31 to 92. We do not summarise those factual findings, as they are of no direct relevance either to the appeal or the cross-appeal. It is sufficient to note that no disciplinary action was taken against the claimant in relation to the matters which Ms McColgan was asked to investigate in 2020. As will be seen, however, Ms McColgan was asked to prepare a further report about the claimant in 2021. The circumstances which led to that second report are central to the appeal and cross-appeal.

February 2021

11. On 13 February 2021 the Claimant spoke at a public event entitled "Building the Campaign for Free Speech". The event could also be viewed online. The Tribunal's reasons do not record precisely what was said in the claimant's speech, but a transcript of it was produced for the purposes of this appeal. Key extracts from the transcript are:

> "So, free speech, yes, it's an important principle and, of course, we have to defend key cases like Julian Assange and others. But the enemy we face here is Zionism and the imperial policies of the Israeli state. And free speech is not the main problem here, it seems to me: it's a problem but not the main problem...
>
> ...

> It's not just a question of being allowed to say, 'Zionism's bad' or 'Zionism's racism' – which, of course, we should be allowed to say because it is. But it's not just a question of that; it's a question of how we defeat the ideology of Zionism in practice. How do we make sure that Zionism is ended, essentially? I mean, there's no other way than saying that. It's not enough for us to say, 'Zionism is racism', 'Israel is a settler-colonial society'. These are arguments we might make, yes, but the aim of this is not just to say things but to end settler-colonialism in Palestine and to end Zionism as a functioning ideology of the world. And so, that's the thing which worries me most about the idea of freedom of speech is that it diverts our attention from the practical realities, the material ... the material realities of the jackboot on the neck of the Palestinians...
>
> On to the question of the universities...
>
> Now, this is a battle which is going on not just at UCL, but throughout all of the universities in this country. As some of you will know, I've been attacked and complained about by the head of the Bristol Jsoc (the Jewish Society) along with the President of the Union of Jewish Students, both of which organisations are of course formally members of the Zionist movement. Jsocs are a part of the UJS, the UJS is a member of the World Union of Jewish Students, which is a direct member of the World Zionist Organization. And in its constitution, the UJS of course mentions being pro-Israel.
>
> So, those kinds of complaints are being made across the country in different places: one against me in Bristol, there's been one in Warwick – again made by a UJS or JSoc person – and there have been several others. And we will continue to see this attempt to drive the possibility of anybody speaking out about Palestine, or about what Zionism is, or about having any kind of critical account of Zionism as racism or settler-colonialism, etcetera. And we have to fight back against that. And the way to fight back against it is to organise proper debates and to get people to understand the issues, but not to be fooled by the idea that there is some kind of liberal-Zionist panacea which is not as bad as the IHRA in some respects. We have to make sure that we are properly across those debates and can fight back against them when they are launched, which they will be very shortly.
>
> So, this is a problem for freedom of speech – I'm going to finish now – and also for academic freedom. The complaint about me was about a lecture that I gave on Islamophobia, where I said that one of what I've called the 'five pillars of Islamophobia' is parts of the Zionist movement. Now, this is simply a matter of fact: the Zionist movement, parts of it, are engaged in deliberately fostering Islamophobia. It's fundamental to Zionism to encourage Islamophobia and anti-Arab racism, too. And the pressure that they're mounting here is to try and get us to stop teaching this stuff, to stop writing about it and speaking about it in public, and indeed to stop researching it so we can't properly go about researching Zionism, or the Israeli state, or the Ministry of Strategic Affairs (which is of course behind this whole 'antisemitism crisis') because to do so will be somehow, in some way 'antisemitic'.

12. Following the 13 February 2021 speech, the claimant was accused on the social media site, Twitter, of antisemitism. Some of the reporting of what the claimant had said was inaccurate. By way of example, a Tweet on 14 February 2021 wrongly accused the claimant of advocating genocide. Another incorrectly accused him of promoting genocide and ethnic cleansing.

13. Further online criticism of the claimant followed, including from the Bristol Jewish Society ("JSoc"). The claimant reacted to that criticism by providing a comment to the Jewish Chronicle on 17 February 2021 in which he stated:

> "The 'Jewish student groups' you refer to are political lobby groups overseen by the Union of Jewish Students, which is constitutionally bound to promoting Israel.
>
> There is a real question of abuse here - of Jewish students on British campuses being used as political pawns by a violent, racist foreign regime engaged in ethnic cleansing.
>
> The UJS' lobbying for Israel is a threat to the safety of Arab and Muslim students as well as of Jewish students and indeed all critics of Israel…"

14. On 18 February 2021 the claimant sent an "on the record" email to one of the appellant's students, Mr Ben Bloch, who was writing an article for a publication called The Bristol Tab. The email stated:

> Ben
> This is on the record:
>
> Zionism is and always has been a racist, violent, imperialist ideology premised on ethnic cleansing. It is an endemically an anti-Arab and Islamophobic ideology. It has no place in any society.
>
> Bristol's JSoc, like all JSocs, operates under the auspices of the Union of Jewish Students (UJS), an Israel lobby group. The UJS is constitutionally bound to promoting Israel and campaigns to silence critics of Zionism or the State of Israel on British campuses. This campaign of censorship renders Arab and Muslim students, as well as anti-Zionist Jewish students, particularly unsafe.
>
> The UJS and Bristol JSoc have consistently attacked me with a campaign of manufactured hysteria for two years, attempting to have me sacked. The campaign reached new heights of absurdity when a Zionist activist pretended to be a student in one of my classes for which she was not registered, expressly for the purpose of political surveillance.
>
> This is an age-old Israel lobby tactic imported from the US, where academics are routinely harassed for teaching about Zionism and its effects. To be clear, this campaign of censorship, which has attacked British universities, political parties and public institutions, is directed by the State of Israel. Any similar attempt by another racist, militaristic foreign regime - such as Israel's allies in Saudi Arabia or the UAE - to decide what is taught and who is employed in British universities would be laughed out of the room. Israel and its advocates deserve the same treatment."

15. The appellant received a significant volume of correspondence about the claimant's comments. Many of these demanded that disciplinary action be taken against him.

Disciplinary investigation into the claimant's February 2021 comments

16. On 26 February 2021, the appellant appointed Professor Banting, a retired Emeritus Professor, to investigate the statements made by the claimant between 13 and 20 February 2021. It also once again appointed Ms McColgan K.C. as an independent investigator. Her remit, on this occasion, was to prepare a report on whether statements made by the claimant in February 2021 had "exceeded the boundaries of acceptable speech" having regard, amongst other matters, to the **EqA**. In a report dated 28 May 2021, Ms McColgan concluded that there was no formal case to answer that any of the statements made by the claimant had exceeded such boundaries.

Disciplinary proceedings and dismissal

17. Professor Banting nevertheless recommended that disciplinary proceedings be taken against the claimant and that the claimant be invited to attend a disciplinary hearing. The central theme of Professor Banting's concerns was that the claimant had directed critical comments at Jewish students and Jewish student groups. By letter dated 29 July 2021, the claimant was invited to attend a disciplinary hearing. The hearing was ultimately conducted between 8 and 10 September 2021 by Professor Norman, the Dean of the appellant's Faculty of Health Sciences.

18. The outcome of the hearing was that Professor Norman decided that the claimant should be dismissed for the stated reason of gross misconduct. She intimated that decision in a dismissal letter dated 1 October 2021. The dismissal letter ran to 53 pages. In the summary of her conclusions at the start of the letter, Professor Norman stated:

> 1.1 At the heart of this issue are the statements that you made between 13 and 21 February 2021 and the impact and effect those statements subsequently caused. Save for minor clarifications which I have accepted, you have agreed that you made the statements which form the focus of these disciplinary proceedings.
>
> 1.2 I have confirmed my appointment and remit in some detail below. In summary however, as the Appropriate Manager, I am primarily tasked with making findings of fact in relation to the impact and effect of the statements you made, and deciding whether or not you have committed acts of misconduct or gross misconduct in making those statements by reference to the allegations set out in my letter of 29 July. If you have committed acts of misconduct, I am tasked with considering what should be the appropriate sanction, taking into account, amongst other things, the legitimate aims of the University and your rights to freedom of expression and academic freedom.
>
> 1.3 As a Faculty Dean and an academic for over 30 years of my working life, I recognise that freedom of speech and academic freedom are extremely important. I agree entirely with the University's various statements on the importance of upholding and protecting these freedoms and in particular, the ability to discuss difficult and sensitive topics and the right to say things which might cause disagreement or offence. It is for these reasons that I have spent considerable time in reviewing all of the evidence (and in particular your and your representatives' submissions and supporting documentation), deliberating and coming to my various conclusions.
>
> 1.4 I am also firmly of the view that with rights comes responsibility. In all of the circumstances, whilst you are fully entitled to your views and beliefs, I do not believe that you have shown sufficient responsibility, diligence and care both in the various statements that you have made and the manner and way in which you have made them.
>
> 1.5 The statements that you made single out students and student societies. You connected a properly constituted University of Bristol student society to activities that any reasonable person would object to – violence, racism, ethnic cleansing, and making other protected groups feel unsafe. Given the relevant background and context, the manner of your public engagement and the way in which your statements were made was in my view, wrong and inappropriate.
>
> 1.6 Your comments on 13 February were made in an online forum where the students themselves were not present and had no opportunity to reply. The forum was, in reality, an echo chamber of those who would likely amplify and disseminate your comments, and a recording of the event was put on social media. The timing of your comments was also particularly unfortunate, coming just after the conclusion of a previous complaint against you which had been widely reported in the media and amidst on-going discussions with the University about the publication

of Aileen McColgan QC's first report. I consider that you should have foreseen that your comments would receive significant attention. Your subsequent comments were (by your own admission), clearly premeditated.

1.7 The tone of your various comments (and in particular the reference to an attack by the Head of Bristol JSoc, the comments in relation to students and particularly the 'political pawns' comment and your email to Ben Bloch (a University student)) was also inappropriate. Instead of looking to engage in constructive dialogue and debate (for example by seeking to be balanced, nuanced and provide evidence to support particular points of view) it is my view that through your various statements, you were seeking to proselytise and convert others to your cause and/or to provoke a public reaction. The way in which you have expressed your views and the consequences of such expression have brought University students and student societies front and centre into a contentious and highly charged debate and led to an adverse impact on those students and the University.

1.8 I am particularly concerned that you singled out students and student societies for criticism. The relationship between academics and students is much more than a transactional one of education provision. Universities and academics provide not only education, but a safe space for young people to explore different viewpoints. To my mind, singling out students and their societies in the way you did was an abuse of the significant power differential between you and students. You said on several occasions throughout the disciplinary process that students who enter the "game" of political engagement should expect the sort of aggressive discourse that you engaged in. I do not agree. Although, as you acknowledge, it is not possible to know the motivations of the students who responded to your statements, I consider that the President of Bristol JSoc may have felt he had no choice other than to defend himself and the members of the society, rather than this being a "game" he "chose" to play. Additionally, these were students who, even if engaged in political discourse, had very little experience. Universities should be a place where young people can begin to engage safely in such discussions, with people who are similarly matched. Universities are not places where students with opposing views to you should expect to be attacked in a public forum by someone of your level of expertise and years of engagement.

1.9 In your defence, you have, in particular, reiterated your rights to freedom of speech and academic freedom, stated that there is an ongoing campaign against you and criticised the University for not taking more prompt action to publish the findings of Ms McColgan QC's first report in relation to previous complaints against you. I deal with all of these points in detail below. You also identify that some of the "actors" "against you" have also behaved badly. To some extent, I do not disagree, and I have also taken note of this in reaching my decision. However, the inappropriate actions of such "actors", to my mind, do not justify your own.

1.10 For the reasons set out above and in significant detail in this letter, I am clear that your actions amounted to gross misconduct. I note that throughout this process you have failed to show any real contrition or remorse for your actions, despite having a number of opportunities to do so. Equally, the best you appear to have offered for modifying your behaviour and manner of engagement in the future is that you would "debate" the issues. You have not shown any shred of insight into why others might have found your words reprehensible.

1.11 Despite my findings of gross misconduct, I have spent considerable time deliberating as to whether any sanction less than summary dismissal would be appropriate and proportionate in the circumstances, noting your important rights to freedom of speech and academic freedom. However, I have ultimately concluded, for the detailed reasons set out at section 13 of this letter that summary dismissal is the appropriate sanction in this case. It gives me no pleasure at all to reach this outcome, but having fully reflected on your detailed representations in the disciplinary process and the practical viability of your continued employment with the University, I believe it is the correct decision.

19. The Tribunal noted that, later in the dismissal letter, Professor Norman also attached significance to the claimant's expression of the view that Zionism was racist and must be ended. The letter referred, in particular, to the claimant's use of the expression "racist foreign regime" which Professor Norman considered was "inflammatory and unnecessarily aggressive". The letter also concluded that comments about what was said to be a racist regime "did not provide, present or acknowledge the countervailing view."

20. In a written witness statement that was supplemented by her oral evidence to the Tribunal, Professor Norman explained that she had considered three events to be particularly important and relevant in reaching her decision to dismiss. These were: (i) the speech on 13 February 2021; (ii) the comments to the Jewish Chronicle on 17 February 2021; and (iii) the email to Mr Bloch on 18 February 2021.

21. Between ET § 250 and ET § 255, the Tribunal carefully examined Professor Norman's written and oral evidence about her reasons for dismissing the claimant and made findings of fact about those reasons. We will return to that issue in more detail below.

Appeal against dismissal

22. The claimant appealed against his dismissal. The appeal was heard on 7 December 2021 by a panel of three professors. In a 32-page decision dated 23 February 2022, the panel considered and dismissed each of the claimant's grounds of appeal. The Tribunal set out the conclusions of the appeal panel at ET § 154. In the interests of brevity, we do not repeat those conclusions here. In summary, however, the Tribunal found that they were, in their essentials, an endorsement of the reasons of Professor Norman (ET § 320).

Post dismissal events

23. Following his dismissal and the refusal of his appeal, the claimant continued to post on social media. In August 2023, he posted comments on Twitter which included:

> "Judeophobia barely exists these days"
>
> "The facts: 1. Jews are not discriminated against. 2. They are overrepresented in Europe, North America and Latin America in positions of cultural, economic and political power. 3. They are therefore in a position to discriminate against actually marginalised groups."

24. In further posts, the claimant sought to justify his position that Jewish people were not discriminated against in British society.

The case before the Tribunal

25. The specific beliefs founded upon by the claimant were set out in a list of issues that was established in pre-hearing case management. They were that:

(a) political Zionism (which the claimant defines as an ideology that a state for Jewish people ought to be established and maintained in the territory that formerly comprised the British Mandate of Palestine) is inherently racist, imperialistic and colonial; and

(b) political Zionism ought, therefore, to be opposed (ET§ 25 and 209).

26. It was the claimant's position that these were protected philosophical beliefs in terms of section 10 **EqA**. He submitted that his manifestation of those beliefs in February 2021 had played a significant part in the decision to dismiss him (ET § 240). He submitted that the dismissal was, therefore, an act of direct discrimination as well as being (a) unfair in terms of section 98 **ERA**; and (b) wrongful.

27. The claimant further submitted that Professor Banting had unlawfully harassed him contrary to section 26 **EqA** by recommending that he face disciplinary proceedings, and that, irrespective of the level of sanction, Professor Norman's conclusion that he was guilty of any misconduct was an act of direct discrimination, as was the rejection of his appeal by the appeal panel on 23 February 2022.

28. The appellant's position before the Tribunal was that the claimant's beliefs did not qualify for protection under section 10 **EqA** because they: (i) were merely opinions based upon the present state of available information (**McClintock v. Department of Constitutional Affairs** [2008] IRLR 29); (ii) did not serve as a "touchstone" to the claimant's life; (iii) did not attain the necessary level of cogency and were, in some respects, incoherent; and (iv) were incompatible with the rights of others and not worthy of respect in a democratic society (ET § 212). The appellant further submitted that, in any event, the comments made by the claimant did not have a close and direct nexus to his beliefs or, if they did, that the manifestations of them were objectionable and the actions taken against the claimant were objectively justified.

29. At a case management hearing on 20 September 2023, the appellant's Counsel confirmed that the appellant would not suggest to the claimant that he was anti-Semitic. At that same hearing, Counsel confirmed that the appellant did not dismiss the claimant for expressing anti-Semitic views or for breaching the Equality Act. Counsel explained that the appellant's position aligned with the McColgan reports.

30. In relation to the breach of contract complaint, the appellant submitted that summary dismissal of the claimant on 1 October 2021 was for the reason of gross misconduct, was contractually legitimate and was fair in terms of section 98 **ERA**.

31. On the final day of evidence (6 November 2023), the appellant made an application to rely upon three very recent Tweets that had been made by the claimant on 2 and 3 November 2023.

32. In the first Tweet, the claimant responded to a suggestion from another Twitter user that he had shared Hamas propaganda involving her family. The claimant's Tweet stated:

> "No-one wishes your family ill. What Palestinians ask for is that colonists who are arriving from around the world – including extremists from the UK – cease stealing their land and homes, and simply leave.
>
> In reality Zionist colonists who complain about being unsafe in Palestine know they can never be safe on stolen land. Even the first Zionist genocidaires in the late 1800s recognised this, which is why they wanted to deport all of the Palestinians. The answer is to go home.
>
> Zionist colonists, virtually universally subscribe to violent, racist, Jewish supremacist and islamophobic ideas. They would need to be thoroughly vetted and de-radicalised before being re-integrated into the societies they came from."

33. The second and third Tweets were similarly responses to posts by other Twitter users. One was a reply to a post about an Israeli family leaving Israel following a Hamas attack on 7 October 2023. It read:

> "And so it begins.
>
> #DismantleZionism"

The other responded to a post comparing the "savagery" in Gaza to the way that the British, Spanish, French and Portuguese colonised the Americas. The claimant's reply read:

> "There is another way that settler racism and genocide ends.
> That is by decolonisation and liberation.
> Happened in Algeria
> Happened in 'Rhodesia'.
> #PalestineWillBeFree
> #FromtheRivertotheSea
> #DismantleZionism
> #GazaGenocide"

34. The appellant submitted that the clear implication of these Tweets was that the claimant believed that violent opposition to Zionism was acceptable. The claimant opposed the application on the basis of relevance. He challenged the interpretation that the appellant sought to place on the Tweets, submitting that whilst they illustrated his view that violence might be a consequence of Zionism, the Tweets did not imply that he regarded violence as an acceptable means of opposing Zionism.

35. The Tribunal refused to allow the appellant to admit the November 2023 Tweets into evidence. It noted that the claimant had already been cross examined extensively on the issue of whether or not he regarded violence as an acceptable means of opposing Zionism. He had not, however, been cross-examined about other Tweets which had been admitted into evidence on the same basis. The Tribunal also considered that, objectively, the November 2023 Tweets did not evince the claimant's support of violence.

The Tribunal's analysis

Protected beliefs

36. The Tribunal correctly directed itself as to the five "**Grainger** criteria" (**Grainger plc v. Nicholson** [2010] ICR 360, at paragraph [24]).

37. Having considered the evidence, the Tribunal concluded that the beliefs upon which the claimant founded satisfied all five elements of **Grainger** in that they: (i) were genuinely held by him (ET § 215 and 216); (ii) were not merely opinions based upon the present state of information (ET § 217 to 219); (iii) related to a weighty and substantial aspect of human life and behaviour (ET § 220); (iv) attained the requisite degree of cogency, coherence, cohesion and importance (ET § 221 to 231); and (v) were worthy of respect in a democratic society (ET § 232 to 237). At ET § 237, the Tribunal accepted the claimant's evidence that he was not supportive of or "open to" the use of violence as a means of opposing Zionism. It concluded that the beliefs relied upon were protected in terms of section 10 of the **EqA**.

38. **Grainger** III ("related to a weighty and substantial aspect of human life and behaviour") was conceded by the appellant before the Tribunal. We will return to the Tribunal's analysis of the other **Grainger** criteria in more detail below when we consider the first of the appellant's grounds of appeal.

Causation

39. The Tribunal then turned to consider whether the claimant was dismissed because he had manifested his beliefs. It directed itself (at ET § 241) that the relevant test was whether the actions which caused the dismissal had a sufficiently close and direct *nexus* to an underlying belief such that they could properly be understood as a manifestation of that belief (**Higgs v. Farmor's School** [2023] ICR 1072; approved [2025] ICR 1172).

40. The Tribunal noted (ET § 248) that, in the dismissal letter, Professor Norman had referred to and focussed on the claimant's expression of the view that Zionism was racist and must be ended. The dismissal letter referred in particular to the claimant's use of the expression "racist foreign regime", a description which was said to be "inflammatory and unnecessarily aggressive".

41. The Tribunal also took account of Professor Norman's witness statement and oral evidence. At ET § 250 to 257, it stated:

> 250. Professor Norman explained in evidence that, in her view, even if the statements were true, the manner and medium in which the claimant made the statements was inappropriate. For example, in relation to the Bloch email Professor Norman's evidence was to the effect that the claimant could have expressed his views about Zionism "in a more balanced and temperate way".
>
> 251. What were described as "key extracts" from the 13 February statements are set out in the dismissal letter. When Professor Norman was taken to them during cross-examination, she conceded that they each manifested the claimant's beliefs. The extract which references defeating Zionism and referring to Israel as a "settler colonial society" was not acceptable in Professor Norman's view because it "did not respect the beliefs of Zionists". The section which references JSoc and UJS was said by Professor Norman to be "inextricably linked" to sections which clearly manifested the claimant's beliefs about Zionism.
>
> 252. The reference to "pawns" was accepted by Professor Norman as being in the same sentence in which the claimant's beliefs were manifested. Although she explained that, in her view, it was linking students with what was said to be, among other things, a "racist foreign regime" which was problematic, she effectively conceded that had the link been made in a pro-Zionist context, noting that certain student groups were constitutionally bound to promote certain interests, then this would not have been gross misconduct.
>
> 253. Similarly, Professor Norman accepted that the first sentence of the Bloch email is a clear expression of the claimant's anti-Zionist beliefs and what followed was "inextricably linked" to those views. Even if what was set out was true, Professor Norman said that, in her view, the email was "vitriolic".
>
> 254. The dismissal letter goes on to say that use of language such as "Israel is a violent, racist foreign regime engaged in ethnic cleansing" was "inflammatory and unnecessarily aggressive" when linking it with certain student groups. During her

> evidence Professor Norman explained that, in her view, the claimant could have made the same point without being so offensive.
>
> 255. Of necessity cross-examination on these issues was nuanced, during which Professor Norman was asked about her decision-making process not only by taking her to sections of her letter, and the corresponding documents, but also asking her what her decision would have been had sections of the statements been set out in different terms. For example, it was put to her that if the references in the 13 February statement about Zionism being racist and the fact that it needed to be defeated had been removed then what was said would not have been characterised by her as gross misconduct. In response to this she replied: "that did not happen".
>
> 256. On careful analysis of the dismissal letter, the witness statement [of Professor Norman] and cross examination we conclude that what rendered the February 2021 comments misconduct in Professor Norman's mind was that the claimant drew connections between the Jsoc and some Jewish students and Zionism and Israel whilst at the same time expressing the belief that Zionism is a racist, colonial and imperialistic ideology which ought to be opposed. In coming to this conclusion, we note that in Professor Norman's view it was acceptable for the University to have taken no action against the claimant when he provided similar comments about students to the Tab newspaper for an article published in October 2020 without making reference to Zionism in the terms set out above.
>
> 257. We therefore conclude that the claimant's expression of his anti-Zionist beliefs in the February comments had a material impact on Professor Norman's decision. Although the respondent says evidence from its witnesses is "not relevant" to considering whether there was a close and direct nexus between the belief and the statements made, we agree with the views expressed by Professor Norman on this point. It is clear that manifestations of the claimant's belief were writ large in the February 2021 statements. The decision to dismiss was, in the terms of section 13 **EqA**, because of manifestations of the claimant's belief.

Justification

42. Having determined the causation question, the Tribunal then moved on to consider (per **Higgs**) whether, recognising the essential nature of the claimant's rights to freedom of belief and freedom of expression, the measures adopted by the appellant were prescribed by law, promoted legitimate aims and were necessary in a democratic society.

43. It concluded that restrictions to the claimant's right to manifest his beliefs were prescribed by law in the appellant's Free Speech Code of Practice, Diversity and Inclusion Policy and Ordinance 28.

44. The Appellant's Free Speech Code states, *inter alia*:

> Consistent with Article 10(2), restrictions on free speech may be permitted where the restriction is necessary to protect the reputation or rights of others, or in the interests of national security or public safety. This may include where speech which incites hatred or violence, is otherwise unlawful (e.g. harassment/discrimination), or where the exercise of free speech raises serious concerns regarding the safety of students, staff or members of the public.

45. The Tribunal accepted as legitimate and necessary in a democratic society the appellant's aims of:

> "… the protection of the University's reputation and interests and the protection of the rights of others to hold religious beliefs and to associate with the university 'undaunted by harassment, intimidation or hostility'"

46. On the question of whether dismissal was a proportionate response, however, the Tribunal stated (at ET § 305) that:

> "…even on the respondent's analysis what the claimant said was accepted as lawful, was not antisemitic and did not incite violence and did not pose any threat to any person's health or safety."

47. It therefore reasoned (ET § 307) that:

> "The question seems to be whether a written warning or final written warning could have been used without unacceptably compromising the achievement of the legitimate aims."

It concluded (at ET § 314 to 315):

> 314. The University, as an academic institution, ought to be prepared to face and to weather criticism and reputational damage which flows from the exercise by its academics of their rights to speak and think freely and lawfully on areas within or connected to their research and expertise. Overall, dismissing the claimant has not materially protected the University's reputation. We conclude that a less intrusive means than dismissal could have been used by the University without unacceptably compromising the achievement of its objectives. Adopting the balancing acts exercise set out in **Bank Mellat**, when balancing the severity and chilling effects of dismissal against the importance of the legitimate aims identified by the University, we conclude that it was not necessary to dismiss the claimant. However… we also conclude that it would have been proportionate to issue some disciplinary sanction against the claimant short of dismissal.
>
> 315. On the Higgs analysis, the University's reason for dismissing him was therefore the claimant's belief, and the dismissal is accordingly directly discriminatory."

48. At ET § 321, the Tribunal concluded that the rejection of the claimant's appeal against his dismissal was also an act of direct discrimination for the same reasons that it had already found the related dismissal to be directly discriminatory.

Unfair dismissal

49. In the unfair dismissal complaint, the Tribunal concluded (at ET § 318) that the respondent acted unreasonably in treating the claimant's conduct as a sufficient reason for dismissal. The reason for dismissal was tainted by discrimination and the dismissal was outside the range of responses open to a reasonable employer.

50. At ET § 319, however, it stated:

> "Even if we had not found the dismissal to be direct discrimination, we would have found the dismissal to be unfair pursuant to section 98 ERA. As an industrial jury, and taking into account the expertise and experience of the non-legal members on the panel, we consider that dismissal was outside the band of reasonable responses because the actions of the

> claimant did not amount to gross misconduct and also because inadequate attention was given to the possibility of a sanction short of dismissal."

Wrongful dismissal

51. At ET § 495, the Tribunal concluded that the claimant had not committed a repudiatory breach of contract:

> "The relationship between the claimant and the University was not so damaged that trust and confidence was undermined to the extent that the employer should no longer be required to retain the claimant in employment. For the reasons we have already set out, dismissal was disproportionate and was inconsistent with the way in which he and at least one other had been treated."

52. The Tribunal held, therefore, that summary dismissal of the claimant was a breach of his contractual right to notice.

Dismissed complaints

53. The Tribunal did not, however, accept that it was an act of direct belief discrimination for the appellant to conclude that the claimant was guilty of misconduct. As we explain more fully below, whilst the Tribunal could have expressed itself more clearly on this point, we understood from ET § 471 that the particular acts which the Tribunal found to be culpable and blameworthy were the specific comments directed by the claimant at students and student groups. It described this as "aggressive discourse", which was "not appropriate" from someone in the claimant's position. It also noted that this had caused reputational harm to the appellant. Whilst these comments were, in some instances, made at the same time as the claimant's manifestation of his protected beliefs, the Tribunal does not appear to have regarded them as part of such manifestation:

> "It was clearly open to the claimant to articulate his views about Zionism without reference to student and University societies." (ET § 471)

54. For similar reasons, the Tribunal also dismissed the complaint that Professor Banting's recommendation of disciplinary proceedings against the claimant was an unlawful act of belief-related harassment contrary to section 26 **EqA**.

Contributory fault – unfair dismissal

55. At ET § 471, the Tribunal found that:

> "What the claimant said and wrote about students and University student societies contributed to and played a material part in his dismissal."

The Tribunal regarded that aspect of the claimant's conduct as "culpable and blameworthy". Approaching the matter broadly, it concluded that the appropriate level of reduction to both the basic and compensatory awards was 50%.

The claimant's further comments in August 2023

56. Before the Tribunal, the appellant did not seek to suggest that the August 2023 Tweets were antisemitic (ET § 491). In her evidence to the Tribunal, Professor Norman was "equivocal" in her assessment of them (ET § 492). The Tribunal took the view, however, that the August 2023 Tweets were "of a different order" to the February 2021 comments, noting that the claimant did not suggest any coherent link between the August 2023 comments and his protected beliefs. It stated (at ET § 488) that:

> "It is likely that had the claimant not been dismissed comments such as these would have led to further concern both within and outside the University."

57. At ET § 493 it stated:

> "We conclude that there is insufficient evidence for us to conclude with precision, or on the balance of probabilities, that the claimant would have been dismissed. However, there is sufficient evidence for us to conclude that there is a realistic chance that the claimant would have been dismissed by the University after these further actions. Factoring in all the matters set out above and noting that our decision on this matter does involve a considerable degree of speculation, we conclude there is a 30% chance that the claimant would have been fairly dismissed two months after the tweets were made in August 2023. We find that it would have taken the respondent two months to convene a disciplinary hearing. Such a disciplinary hearing would be easier to convene and more straightforward than previous hearings."

The appeal hearing before the Employment Appeal Tribunal

58. In advance of an oral hearing on 12 and 13 November 2025, the parties provided the Appeal Tribunal with extensive written submissions. We were also provided with a Core Bundle and two further Supplementary Bundles.

59. The written submissions for the appellant extended to 92 pages, and those for the claimant to 49 pages. The written submissions were then supplemented by oral submissions over two days. The parties had agreed a division of time of 4 ½ hours each (or one full day each of sitting time) to cover both the appeal and the cross appeal. In the event, the appellant's Counsel used up all of his agreed time allocation on his first speech, leaving himself no time for a reply speech.

60. We set out below a summary of the key elements of each party's position in each of the nine grounds and sub-grounds in the principal appeal and the three grounds in the cross appeal.

The grounds of appeal

Ground 1 – protected belief

Appellant submissions

61. The Tribunal erred in concluding that the claimant's beliefs qualified for protection at all. Six separate sub-points were advanced:

(i) The particular beliefs founded upon were political, and thus outside the scope of section 10 of the **EqA**. Whilst a belief in a political philosophy is capable, in principle, of amounting to a philosophical belief, pure political opinion about the merits of a state's practices is not. The claimant's position on Zionism fell into the latter category.

(ii) The Tribunal erred in law and / or gave inadequate reasons for its conclusion that the beliefs had "the requisite impact" on the claimant's daily life. The Tribunal erred in failing to recognise that the claimant's beliefs did not sufficiently affect how he lived his life or perceived the world (EHRC Code, paragraph 2.58). The finding at ET § 216 was an inadequate factual basis for such a conclusion.

(iii) The Tribunal erred and / or gave inadequate reasons at ET§ 217-219 for concluding that a belief that was grounded in academic scholarship was not simply an opinion based on currently available research (**Grainger** II; **McClintock**). The fact that the claimant's beliefs were grounded in his academic research meant that the expression of those beliefs was an exercise of academic freedom. If that was correct, however, then the beliefs must logically be amenable to change. As such, the beliefs were merely opinions based upon currently available information and were not protected. The Tribunal's conclusion that the claimant's views were not amenable to change was thus inherently inconsistent with the notion of the expression of those beliefs being an exercise of academic freedom.

(iv) The Tribunal erred and / or gave inadequate reasons for concluding that the beliefs had the requisite quality of coherence and cohesion (**Grainger** IV) having regard to the lack of clarity as to (a) the particular form of "Zionism" that the claimant was opposing; and (b) the basis for the belief that this definition of Zionism was "inherently racist" (ET§ 221 to 231). In the absence of such clarity, his beliefs lacked sufficient cogency or coherence.

(v) The Tribunal erred and / or gave inadequate reasons for concluding that the claimant's beliefs were worthy of respect in a democratic society (**Grainger** V) (ET§232 to 237). The expression or manifestation of the claimant's "true" beliefs was not limited to the matters set out by the Tribunal at ET § 209. Rather, it extended to a belief in and support for the use of violence to oppose Zionism. The Tribunal had erred in failing to examine "the totality" of the belief in its consideration of whether or not it was protected. When the beliefs were properly understood, they were incompatible with Art. 17 ECHR and not worthy of respect in a democratic society.

(vi) The Tribunal had erred in refusing to admit documentary evidence bearing upon the "true" nature of the claimant's beliefs on the final day of the hearing (ET § 14 to 17). Specifically, the Tribunal had impermissibly excluded relevant evidence of things said by the claimant in the November 2023 Tweets which clarified the true nature of his beliefs, specifically his openness to the use of violence as a means of opposing Zionism.

62. Paragraphs 51 to 53 of the written submission for the appellant explained this first ground with a rather different emphasis under the heading: "The Ground in Brief":

"51. R's challenge under this ground can be boiled down to the following. The ET impermissibly stripped away inconvenient aspects of C's true beliefs to focus on its "core" [ET § 238]. This led to inadequate reasoning as to the true nature and effect of C's beliefs going so far as to exclude plainly relevant evidence as to the expression of those beliefs.

52. Had the ET considered C's beliefs in their totality, it would have concluded that *his* belief failed to satisfy the *Grainger I, II, IV and V*. As to *Grainger V*, the ET applied an erroneously high threshold for engagement of Art. 17 (*cf* **Thomas v Surrey and Borders Partnership NHS Foundation Trust and anor** [2025] ICR 368). The ET's reasons for concluding the belief was protected were in any event **Meek**-incompliant.

53. Even if it was entitled to conclude that C's belief was protected, it was incumbent on the ET to recognise that the weight of protection it enjoyed was limited since it "scraped" through the threshold: **Williamson**. This was of importance in the overall balancing exercise of assessing whether dismissal / the rejection of the disciplinary appeal was proportionate assuming **Higgs** is good law."

Claimant submissions

63. Counsel for the claimant began by noting that the precise scope of the beliefs with which the Tribunal was concerned was not a matter of any dispute in the proceedings below. He referred us to the agreed description of the beliefs in the list of issues and at ET § 25 and 209. He also drew our attention to the following passages at pages 11 and 17 of a transcript of the first day of the hearing before the Tribunal on 16 October 2023:

> "MR MILSOM…
>
> … I made it clear at the previous preliminary hearing and I make it clear now, I do not seek to suggest an alternative belief. It is not for the respondent in any case to advance, positively advance an alternative belief, any more than it is in a disability case that (*sic*) advance an alternative impairment. The belief put before the Tribunal set out in the preliminary hearing note is that:
>
> 'The claimant believes that political Zionism, an ideology which holds that a state for Jewish people ought to be established and maintained in the territory that formerly comprised the British Mandate of Palestine, is inherently racist, imperialist and colonial, and ought therefore to be opposed.'
>
> That is the claimant's belief as drafted and reconfirmed by him." (page 11)
>
> …
>
> "MR MILSOM: If I can be absolutely clear, I am not seeking to go behind what the claimant says his true belief is." (page 17)

64. Having regard to those passages, and to the way in which the appellant had approached matters below, it was not now open to the appellant to suggest that the Tribunal ought to have found that the "true" nature of the beliefs or their manifestation was other than as set out at ET§ 25 and 209 and thus, that it had erred in failing to do so.

65. In relation to the various sub-grounds within the first ground of appeal:

(i) Sub-ground (i) was inconsistent with **Grainger** at paragraph [28] where Burton J had expressly rejected the notion that political and philosophical beliefs occupied mutually exclusive territory. There was no principled reason why beliefs that are closely connected to political issues should be excluded from the protection of section 10 **EqA**. That submission was also inconsistent with **Higgs** in the Court of Appeal at paragraph [63] and [65].

(ii) Sub-ground (ii) was inconsistent with **Gray v. Mulberry Co (Design) Ltd** [2019] ICR 175. The beliefs did not need to be a "touchstone" for every aspect of the believer's life. It is sufficient that the belief in question "affects a single but important aspect of a person's life". The Tribunal's clear findings of fact at ET§ 216 were sufficient to pass that modest threshold.

(iii) **McClintock** is not authority for the proposition that any belief that is informed to some extent by scientific or empirical research will inevitably fall outside the scope of protection. This was apparent from paragraph [30] of **Grainger** which is to the opposite effect. The Tribunal's finding at ET § 217 that the claimant's research "helped to reinforce" his beliefs about Zionism which were "deeply held and not amenable to change" were, in any event, findings of fact that the claimant's views were indeed beliefs as opposed to mere opinions based upon currently available information.

(iv) Nothing in the claimant's definition of Zionism was unclear or lacking in coherence. On the contrary, his formulation of the belief, as noted by the Tribunal at ET § 209, was perfectly clear. The Tribunal was not required to construct a separate free-standing definition of Zionism. Rather, it required to focus upon the pleaded beliefs (as agreed in the list of issues) and consider the coherence and clarity of *those beliefs*. It was coherent to describe as "racist" an ideology that promoted the establishment of a state for only one race of people (Group A) in a territory that contained a large number of people of a different race (Group B). If the ideology was said also to involve the migration of members of Group A into the territory with the support of an imperial power to dislodge an indigenous population comprised of Group B, it could legitimately and coherently be described as colonial and imperialistic.

(v) Applying **Forstater v. CGD Europe and others** [2022] ICR 1, the appellant's submission that the claimant's beliefs were not worthy of protection in a democratic society had no basis in the findings of fact. As the Tribunal recognised (and accepted) at ET § 237:

> "The claimant explained…that his opposition to Zionism is not opposition to the idea of Jewish self-determination or of a preponderantly Jewish state existing in the world, but rather, as he defines it, to the exclusive realisation of Jewish rights to self-determination within a land that is home to a very substantial non-Jewish population. The claimant also made clear, when cross-examined, and we accept, that he is not and was not supportive or "open to" violence as a means of opposing Zionism."

(vi) The decision not to admit documents produced for the first time on the final day of the evidence was within the Tribunal's case management discretion. The reasons given by the Tribunal (ET § 16 and 17) for its decision not to admit the documents were not said to be perverse. The documents had been produced after the claimant had concluded his evidence during which he had been cross-examined extensively on what the respondent said to be his "true" beliefs, including that the use of violence was an acceptable form of opposition to Zionism. On the evidence, the Tribunal had rightly rejected the submission that the claimant's "true" beliefs supported the use of violence. It had also correctly concluded that the November 2023 documents upon which the respondent sought to place reliance did not suggest otherwise.

Ground 2 - causation

Appellant submissions

66. The appellant challenged the conclusion of the Tribunal that the claimant was dismissed "because of" the manifestations of his beliefs. Six separate points were advanced, each of which was said to amount to an error of law, *viz*:

(i) The Tribunal erred and / or gave inadequate reasons (at ET § 209 and 241 to 257) for concluding that the particular statements which played a material role in the decision to dismiss had a sufficiently close connection to the beliefs relied upon.

(ii) The Tribunal erred in placing "impermissible reliance" upon a factual concession made by Professor Norman, that if the claimant had made comments about students in "a pro-Zionist context" she would not have regarded that as gross misconduct (ET § 252).

(iii) The Tribunal had erred in applying "but for" causation to the reason for the dismissal.

(iv) The Tribunal erred in finding that the reason for dismissal was not simply because of issues that were *separable* from manifestation of the beliefs.

(v) The Tribunal erred in concluding that the manifestation was protected where it (a) amounted to political speech; (b) was proselytising; and (c) amounted to unlawful victimisation.

(vi) The Tribunal erred (at ET § 252) in considering the position of a hypothetical comparator who described students as "pawns" of a laudable cause.

Claimant submission

67. The Tribunal's factual analysis of causation was unimpeachable and disclosed no error of law. The proposed ground was an attempt to revisit a view of the evidence that the respondent had urged upon the Tribunal but which had ultimately been rejected by it.

68. In relation to the six specific sub-grounds:

(i) The statements made by the claimant in February 2021 plainly contained a manifestation of the beliefs that had been defined in the agreed list of issues. On any sensible reading, therefore, the February statements manifested the claimant's anti-Zionist beliefs. As the Tribunal correctly found, those beliefs were "writ large" throughout them (ET § 328).

(ii) The Tribunal had properly and correctly focussed upon Professor Norman's reasons for acting as she did. That was an issue of fact for the Tribunal. It was perfectly entitled to draw conclusions about those reasons from the concession made by Professor Norman (accurately recorded by it at ET§ 252) that if the claimant had referred to student groups in a pro-Zionist context, she would not have regarded that as gross misconduct.

(iii) The Tribunal had not applied "but for" causation. Rather, it had found that the manifestation by the claimant of his anti-Zionist beliefs was a material factor that operated on the mind of Professor Norman. Again, that was a question of fact.

(iv) Sub-ground (iv) was, similarly, an attempt to re-try fact. The Tribunal's conclusions as to Professor Norman's thought processes when dismissing the claimant were clearly summarised out at ET § 256 and 257 and had a basis in the evidence. The Tribunal's conclusion (at ET § 257) that the claimant's expression of his anti-Zionist beliefs had a "material impact" on Professor Norman's decision was one of fact that was open to it, and disclosed no error of law.

(v) The first element of sub-ground (v) was simply a repetition of the ground 1(i) argument that political speech was not protected. This was contrary to both **Grainger** at paragraph [28] and to **Higgs** in the Court of Appeal at para [63]. As the Tribunal had noted on three occasions (ET § 233, 272 and 296), a suggestion that the claimant's speech amounted to unlawful victimisation had not been part of the appellant's case below. That proposition had also not been put to the claimant in cross-examination.

(vi) Sub-ground (vi) was repetitive of sub-ground (iv) and was an attempt to re-try fact. The Tribunal had found that Professor Norman was not neutral as between expressions of anti-Zionist beliefs and expressions of belief that were pro-Zionist (ET § 252). The Tribunal was plainly entitled, in drawing factual conclusions about causation, to consider how Professor Norman would have reacted to the claimant's statements if they had not manifested anti-Zionist beliefs.

Ground 3 – the claimant's appeal against dismissal

Appellant submissions

69. The Tribunal failed to consider the appeal process separately on the specific issue of causation and thus failed to consider at all whether the appeal was rejected *because of* the protected beliefs.

Claimant submissions

70. The Tribunal dealt with the issue of causation in the appeal process at ET § 320 where it stated *inter alia*:

> "…the appeal panel adopted the analysis of Professor Norman in her dismissal letter without any material alteration. Professor Norman's reasons were endorsed by the appeal panel"

Ground 4 – Higgs

Appellant submission

71. **Higgs** had been wrongly decided in both the Employment Appeal Tribunal and the Court of Appeal. The appellant recognised that this argument was bound to fail in the EAT as **Higgs** is binding upon us.

Claimant submission

72. Understandably, Counsel for the claimant submitted, in very brief terms, that we were bound by **Higgs**.

Ground 5 - proportionality

Appellant submissions

73. On the hypothesis that **Higgs** is good law, the Tribunal failed (at ET § 314) properly to apply the proportionality assessment by:

(i) setting the bar of what is "necessary in a democratic society" too high;

(ii) applying proportionality at the time of the hearing rather at the time of the disciplinary process;

(iii) omitting relevant factors from its proportionality assessment;

(iv) substituting its view that a warning would have sufficed;

(v) rejecting the proportionality defence on a basis that Professor Norman was not given a chance to comment upon in evidence;

(vi) placing any weight upon the issue of academic freedom; and

(vii) impermissibly taking into account the absence of a prior warning, the absence of disciplinary sanction against another academic (Professor Greer) who had made comments in the Daily Mail about the student body, Brisoc in late 2021, and the respondent's concession that the speech was not antisemitic.

Multiple sub-sub-grounds of criticism were advanced, particularly under sub-grounds (iii), (iv) and (vii).

Claimant submissions

74. A proportionality assessment is an example of a fact-sensitive decision by a first-instance court. Where the Tribunal below has given correct self-directions on the law, its

conclusions should only be interfered with if they are plainly wrong / perverse (**Shvidler v. Secretary of State for Foreign, Commonwealth and Development Affairs** [2025] 3 WLR 346 at para [161]; **British Airways plc v. Starmer** [2005] IRLR 863). Absent perversity, it is not the role of the EAT to undertake the proportionality assessment again.

75. At ET § 277, the Tribunal noted that Professor Norman was "challenged extensively on the proportionality of her decision" during cross-examination. The issue of proportionality was ultimately one of fact and degree for the Tribunal.

Ground 6 – unfair dismissal

Appellant submission

76. The Tribunal erred in four respects in upholding the unfair dismissal claim by:

(i) regarding the conclusion on the direct discrimination claim as determinative of the unfair dismissal complaint (ET § 318);

(ii) perversely finding that inadequate consideration was given to a sanction short of dismissal (ET § 314 and 319);

(iii) falling into a substitution mindset; and

(iv) reaching a decision that was not supported by an adequate self-direction on the law.

Claimant submission

77. The Tribunal had given correct self-directions on section 98 **ERA** at ET § 203. At ET § 204, it had expressly noted that:

> "As is well known it is not for the Tribunal to substitute its judgment for that of a reasonable employer in deciding whether or not the employer acted reasonably for the purpose of section 98(4). Rather, the Tribunal should ask itself whether or not the decision to dismiss fell within the range of reasonable responses of a reasonable employer."

There was nothing in the Tribunal's reasons to suggest that it had not followed that self-direction.

78. The respondent's case before the Tribunal had included a submission that the dismissal was fair because it was not discriminatory. As a matter of common sense, a dismissal for a discriminatory reason will be outside the range of reasonable responses and unfair. Even if that were not to be accepted as a general principle, it should apply where the conduct that triggers dismissal is speech that is protected by Article 10 ECHR. The interpretative duty under section 3 of the **Human Rights Act, 1998** (per **Higgs**) applies as much to section 98 **ERA** as to section 13 **EqA**.

79. Even leaving the discriminatory element of the decision to dismiss entirely out of account, the Tribunal found that the dismissal was unfair on the basis that it was unreasonable of the respondent to conclude that the claimant's conduct justified that sanction (ET § 319). That conclusion was open to the Tribunal as an industrial jury. In coming to that conclusion,

the Tribunal had expressly made reference to and applied the "band of reasonable responses" test.

Ground 7 – wrongful dismissal

Appellant submission

80. The Tribunal's decision on the wrongful dismissal claim was erroneous. The error of law could be seen in the final sentence of ET § 495 where the Tribunal stated that:

> "…dismissal was disproportionate and was inconsistent with the way he and at least one other had been treated."

Disproportionality and inconsistency of treatment are each irrelevant to a common law claim for breach of contract.

81. The Tribunal had, in any event, reached a conclusion that was erroneous in law, inadequately reasoned and which failed to consider all relevant factors. It had concluded (at ET § 290) that the statements made by the claimant were "not compatible" with his position as a senior member of the appellant's staff. The conduct for which he was dismissed was specifically identified in the respondent's procedures as an example of gross misconduct (ET § 63 and 262). The claimant's conduct, viewed objectively, was plainly repudiatory of his contract.

82. The Tribunal had also failed to note that the claimant's comments amounted to victimisation contrary to section 27 **EqA**.

Claimant submission

83. The Tribunal's analysis of the breach of contract complaint correctly focussed on whether or not the appellant had been entitled summarily to terminate the claimant's contract. For reasons that disclosed no error of law, it concluded that the appellant was not so entitled. Nothing in the claimant's contract or the appellant's policies suggested otherwise.

84. The finding at ET § 290 that the claimant's comments were incompatible with his position as a senior member of academic staff was, at most, a finding of breach. It was not a finding that the breach was repudiatory. It was necessarily implicit in the Tribunal's finding that a sanction short of dismissal would have been appropriate that it had considered whether or not the claimant had evinced an intention not to be bound by the contract. It had plainly concluded that he had not done so.

85. Any suggestion that the claimant's conduct was a breach of the **EqA** was expressly disavowed by the appellant (ET § 233, 272 and 296) and was not, therefore, before the Tribunal.

Ground 8 – contributory fault

Appellant submission

86. The Tribunal erred in not making a 100% reduction to the basic and compensatory awards for unfair dismissal on the ground of contributory fault in circumstances where the claimant was dismissed because of his own repudiatory breach of contract.

87. In any event, the Tribunal should have made the same reduction to any compensation awarded for the direct discrimination complaint in terms of section 13 **EqA**.

Claimant submission

88. The discussion and conclusion on the level of contributory fault at ET § 463 to 472 contained no error of law. On the hypothesis that any reduction was appropriate (that being also the subject of ground 4 in the cross-appeal), the level of any reduction should be assessed broadly (**Hollier v. Plysu Limited** [1983] IRLR 260). That was what the Tribunal had done, taking into account that the conduct for which the claimant was dismissed was not correctly characterised as "gross misconduct".

89. The Tribunal had reserved the issue of compensation in the discrimination complaint to a later date. That was a legitimate case management decision. The appellant remained free at the remedy hearing to argue that the Tribunal should make the same reduction to any compensation awarded for the direct discrimination complaint.

Ground 9 - Polkey / Abbey National

Appellant submission

90. The Tribunal erred (at ET§ 473 to 493) in its application of **Polkey v. A E Dayton Services Limited** [1987] ICR 301 and **Abbey National plc v. Chagger** [2010] ICR 397 to the counter-factual question of whether the claimant's employment might have ended lawfully and fairly in any event.

91. First, it had failed to take sufficient account of the claimant's own evidence (noted in the appellant's submissions at ET § 474) that if he had not been dismissed, he would have used his continued employment as a "launchpad" to leave anyway.

92. Secondly, it had failed to provide adequate reasons for its conclusion that the claimant's employment would have continued until at least October 2023.

93. Thirdly, it had failed to give adequate reasons for its conclusion that there was only a 30% chance that his employment would have ended in October 2023 as a result of comments he made on social media in August 2023.

Claimant submission

94. The Tribunal did not find that the claimant would have left anyway if a lesser sanction of a warning had been imposed. On the contrary, at ET § 486, it had expressly acknowledged

that the full context for the "launchpad" comment was the claimant's evidence that he would have sought to leave *as an alternative* to being dismissed:

> "In other words, the claimant suggested that instead of being dismissed he could have agreed with the respondent that he would leave in due course. Clearly dismissal put a stop to that, in the sense that it made it very much more difficult for the claimant to obtain alternative employment."

95. The second and third objections were simply challenges to findings of fact. The Tribunal did not make a finding of fact that the appellant's statements would have continued unabated had he received a warning.

96. The Tribunal's analysis between ET § 473 and 493, and the conclusion at ET § 493 that there was only a 30% chance that the claimant would have been dismissed by October 2023 were clear and disclosed no error of law. The evidence of the appellant's witnesses on what might have happened as a result of the Tweets in August 2023 was equivocal and inconclusive. In these circumstances, a percentage reduction was appropriate.

The cross-appeal

97. The cross appeal, as presented, contained four grounds. Following consideration under rule 3(7), only grounds 1, 2 and 4 were permitted to proceed to a full hearing.

CA - ground 1 – prescribed by law

Claimant submission

98. The finding of any misconduct in relation to the February comments was not a justified response because it was not "prescribed by law" within the meaning of the ECHR jurisprudence (Article 9(2) ECHR). In particular, there was no breach of the University's policy on Acceptable Behaviour at Work. On the contrary, the manifestation of his belief was within the terms of the Free Speech Code.

Appellant submission

99. The "prescribed by law" requirement is addressed only to state signatories to the ECHR. The EAT in **Higgs** had erred in concluding otherwise. The "prescribed by law" threshold was, in any event, not an onerous one. It was satisfied by rights and obligations under the contract of employment and related policies procedures and the prior investigations including the first McColgan report.

CA - ground 2 – harassment

Claimant submission

100. Subjecting the claimant to any disciplinary proceedings was an act of harassment because:

(a) it was not prescribed by law (per CA ground 1); and

(b) contrary to the Tribunal's conclusion at ET § 334, Professor Banting's investigation was not conducted reasonably or diligently.

Appellant submission

101. Professor Banting's evidence suggested that the conduct which caused him concern was not in any sense "related to" a protected belief or its manifestation, but was a separable feature. This ground failed for the same reasons as ground 1. In any event, the Tribunal had concluded, on the evidence, that it was not reasonable for the claimant to conclude that the environment proscribed by section 26 **EqA** had been created. No properly directed Tribunal could have concluded that Professor Banting's decision had that effect.

CA - ground 4 – contributory fault

Claimant submission

102. The Tribunal erred in its conclusion that there was any contributory fault. This ground is linked to grounds 1 and 2. There was nothing in the appellant's policies that imposed any obligation on staff members to refrain from public comment in relation to students or student groups who were themselves involved in a campaign to have a member of staff removed.

Appellant submission

103. Ground 4 failed for the same reasons as ground 1. The only permissible conclusion open to the Tribunal was that the claimant was guilty of a repudiatory breach of contract.

Relevant law

Belief discrimination

Equality Act, 2010 – protection of belief

104. Section 10 **EqA** defines the protected characteristics of religion and belief:

> **10 Religion or belief**
>
> (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
>
> (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
>
> (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.

105. Section 13(1) **EqA** defines direct discrimination:

> "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."

Convention rights

106. In his extensive analysis of belief discrimination law in **Higgs v. Farmor's School** [2025] ICR 1172, Underhill LJ noted that it is necessary, when considering the protections afforded by the **EqA** for religion or belief, to have regard to Articles 9 and 10 of the ECHR.

107. Article 9 ECHR states:

> **Freedom of thought, conscience and religion**
>
> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

108. Article 10 states:

> **Freedom of expression**
>
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

109. At paragraph [61] of **Higgs**, Underhill LJ stated:

> "The protection of the right of free speech, **including speech expressing a person's religious or other beliefs**, has always been regarded as a cardinal principle of the common law, and it is of course now also protected by the incorporation by the 1998 Act of articles 9 and 10 of the Convention." (emphasis added)

An important free-speech / Article 10 principle that any court or tribunal must have at the forefront of its mind in considering a case involving the expression or manifestation of belief is that:

> "…the protection of freedom of speech is particularly important in the case of 'political speech'- that is, expression of opinion on matters of public and political interest." (**Higgs**, para. [63]).

The meaning of philosophical belief

110. In **Grainger plc and others v. Nicholson** [2010] ICR 360, at paragraph 24, Burton J explained the five characteristics that a philosophical belief must have to qualify for protection:

> "(i) The belief must be genuinely held. (ii) It must be a belief and not, as in **McClintock v. Department of Constitutional Affairs** [2008] IRLR 29, an opinion or viewpoint based on the present state of information available. (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour. (iv) It must attain a certain level of cogency, seriousness, cohesion and importance. (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others."

111. In **Harron v. Chief Constable of Dorset Police** [2016] IRLR 481 Langstaff J noted that there is no material difference between the domestic law approach to what constitutes a philosophical belief under section 10 **EqA** and what constitutes a belief for the purposes of Article 9 ECHR. He also stressed that the **Grainger** criteria are modest threshold requirements and should not set the bar too high or demand too much of those claiming to hold philosophical beliefs (see also **Gray v. Mulberry Co (Design) Ltd** [2019] ICR 175 and **Forstater**).

112. Thus, as Lord Nicholls explained in **R (Williamson) v. Secretary of State for Education and Employment** [2005] 2 AC 246 at paragraph 23:

> "…[A] belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9… The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem... The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention..."

113. In relation specifically to the fifth **Grainger** criterion, and as Choudhury P observed in **Forstater** (at para. [79]:

> "…it is important that in applying Grainger V, Tribunals bear in mind that it is only those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms, that should be capable of being not worthy of respect in a democratic society. Beliefs that are offensive, shocking or even disturbing to others, and which fall into the less grave forms of hate speech would not be excluded from the protection. However, the manifestation of such beliefs may, depending on circumstances, justifiably be restricted under Article 9(2) or Article 10(2) as the case may be."

Manifestation of belief and causation in direct discrimination claims

114. In most cases, the question of whether allegedly discriminatory treatment was "because of" a protected characteristic will be answered by a factual analysis of why the employer acted as it did. This requires the Tribunal to consider the subjective motivations — whether conscious or subconscious — of the putative discriminator, drawing such inferences as are appropriate from the evidence. As Lord Nicholls explained in **Nagarajan v. London Regional Transport** [1999] ICR 877 at 884E:

> "Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on [protected] grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances."

115. The protected characteristic need not have been the sole or even the principal reason for the less favourable treatment, but it must have had a significant or material influence (**Gould v. St John's Downshire Hill** [2021] ICR 1).

116. In **Page v. NHS Trust Development Authority** [2021] ICR 941, at para 68 Underhill LJ explained how claims of direct discrimination because of religion or belief should be approached:

> "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 Employment Appeal Tribunal 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 [circumstances] are not such as to justify the act complained of, they cannot sensibly be treated as separate from an objection to the belief itself."

117. In **Higgs**, Underhill LJ elaborated further on the **Page** guidance at paragraph [74]:

> "In summary, **Page** was decided on the basis that adverse treatment in response to an employee's manifestation of their belief was not to be treated as having occurred "because of" that manifestation if it constituted an objectively justifiable response to something "objectionable" in the way in which the belief was manifested: it thus introduced a requirement of objective justification into the causation element in section 13(1). Further, we held that the test of objective justification was not substantially different from that required under article 9(2) (and also article 10(2)) of the Convention. I should clarify two points about language:
>
>> (1) The word "objectionable"… is evidently a (possibly rather inapt) shorthand for the phrase in para 68 "to which objection could justifiably be taken". Both have the same effect as the word "inappropriate" which is also used.
>>
>> (2) The "way" in which the belief is manifested is a deliberately broad phrase intended to cover also the circumstances in which the manifestation occurs."

Objective justification

118. Detrimental treatment in response to an objectionable manifestation of a belief may be justified where it is (a) prescribed by law; (b) in pursuit of a legitimate aim; and (c) necessary in a democratic society (including being proportionate to the legitimate aim pursued: **Bank Mellatt v. HM Treasury (No 2)** [2014] AC 700).

119. In **R (Miller) v. College of Policing** [2022] 1 WLR 4987, and in **Higgs**, the Court of Appeal explained how the "prescribed by law" requirement operates in an employment context. The employer's rights under the employment contract provide the necessary framework of "law", in the sense in which that term is used in paragraph 2 of articles 9 and 10 (**Higgs**, para. [76]). It is necessary, however, that the relevant provision must be formulated with sufficient precision to enable the employee to regulate their conduct and to foresee to a degree that is reasonable in the circumstances – if need be with appropriate advice – the consequences that any particular action may entail (**Miller** at para. [86]).

120. In **Higgs**, the Court of Appeal endorsed the summary of underlying principles on necessity / proportionality set out by Eady P in the EAT (**Higgs v. Farmor's School** [2023] ICR 1072 at para. [94]):

> "Whether a limitation or restriction is objectively justified will always be context-specific. The fact that the issue arises within a relationship of employment will be relevant, but different considerations will inevitably arise, depending on the nature of that employment….
>
> It will always be necessary to ask (per **Bank Mellat**): (i) whether the objective the employer seeks to achieve is sufficiently important to justify the limitation of the right in question; (ii) whether the limitation is rationally connected to that objective; (iii) whether a less intrusive limitation might be imposed without undermining the achievement of the objective in question; and (iv) whether, balancing the severity of the limitation on the rights of the worker concerned against the importance of the objective, the former outweighs the latter….
>
> In answering those questions, within the context of a relationship of employment, the considerations identified by the intervener are likely to be relevant, such that regard should be had to: (i) the content of the manifestation; (ii) the tone used; (iii) the extent of the manifestation; (iv) the worker's understanding of the likely audience; (v) the extent and nature of the intrusion on the rights of others, and any consequential impact on the employer's ability to run its business; (vi) whether the worker has made clear that the views expressed are personal, or whether they might be seen as representing the views of the employer, and whether that might present a reputational risk; (vii) whether there is a potential power imbalance given the nature of the worker's position or role and that of those whose rights are intruded upon; (viii) the nature of the employer's business, in particular where there is a potential impact on vulnerable service users or clients; (ix) whether A the limitation imposed is the least intrusive measure open to the employer."

121. In **Shvidler v. Secretary of State for Foreign, Commonwealth and Development Affairs** [2026] A.C. 607 at paras. [142] and [161], the Supreme Court noted that, ordinarily, the role of an appellate court in examining a proportionality assessment by a first-instance court is no more than a review to check whether the first instance court's assessment in relation to the proportionality of a measure was arrived at on the basis of a proper self-direction as to the test to be applied and whether the result arrived at was reasonable, in the sense of being within the legitimate parameters of judgment for the judge. In the context of indirect discrimination,

the Court of Appeal has described the test for interference with an objective justification assessment by a first-instance court as that of "perversity": **British Airways plc v. Starmer** [2005] IRLR 863 at para. [34].

Unfair dismissal

122. Section 98(4) **ERA** states that the fairness of an employer's decision to dismiss depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating the employer's reason as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case. As has been stated on many occasions, however, the Tribunal must not substitute its view for that of the employer. The relevant question for the Tribunal is whether dismissal fell within the band (or range) of reasonable responses (**Iceland Frozen Foods v. Jones** [1983] ICR 17).

Wrongful dismissal

123. Any dismissal by an employer in breach of contract will give rise to a claim for wrongful dismissal at common law. The most common type of wrongful dismissal is dismissal with no notice in circumstances where summary dismissal was not justifiable. Summary dismissal will be justifiable where the employee has committed a repudiatory breach. In **Briscoe v. Lubrizol Ltd** [2002] IRLR 607, the Court of Appeal explained that for conduct to be repudiatory, it:

> "must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in his employment".

The court in **Briscoe** stressed that the employee's conduct should be viewed objectively. It follows that an employee may repudiate a contract of employment without having a subjective intention to do so. The issue of whether or not a breach of contract was repudiatory is a question of fact and degree, on which a Tribunal's decision will not readily be interfered with by an appellate court unless the Tribunal has misdirected itself in law or reached a perverse conclusion.

Harassment and victimisation

124. Section 26(1) **EqA** defines harassment:

> **26 Harassment**
>
> (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.

Section 27 **EqA** defines victimisation:

> **27 Victimisation**
>
> (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
>
> (a) B does a protected act, or
>
> (b) A believes that B has done, or may do, a protected act.
>
> (2) Each of the following is a protected act—
>
> (a) bringing proceedings under this Act;
>
> (b) giving evidence or information in connection with proceedings under this Act;
>
> (c) doing any other thing for the purposes of or in connection with this Act;
>
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.

Adjustment of awards in unfair dismissal cases

125. Section 122(2) **ERA** allows a Tribunal to reduce the basic award for unfair dismissal where any conduct of the claimant before the dismissal was such that it would be just and equitable to do so. Section 123(6) **ERA** states that where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding. The amount of any such reductions requires to be assessed broadly. In **Hollier v. Plysu** [1983] IRLR 260, the EAT suggested that in cases of contributory fault by the employee, the percentage reduction should generally fall within the following categories: employee wholly to blame (100 per cent); employee largely to blame (75 per cent); employer and employee equally to blame (50 per cent); employee slightly to blame (25 per cent).

Compensation for unfair dismissal and discrimination – Polkey and Abbey National

126. Where a complaint of unfair dismissal is well-founded, section 123(1) **ERA** states that the amount of the compensatory award:

> "…shall be such amount as the tribunal considers just and equitable in all of the circumstances having regard to the loss sustained by the complainant in so far as that loss is attributable to action taken by the employer."

127. Section 124 of the **EqA** provides that where a Tribunal finds unlawful discrimination, it may order the respondent to pay compensation to the complainant. In terms of section 124(6), the amount of that compensation

> "…corresponds to the amount which could be awarded by the county court…under section 119"

Subject to the qualification that there is no requirement that the loss should have been reasonably foreseeable, the effect of section 124 is that compensation for discriminatory conduct should be assessed in the same way as damages for a statutory tort (**Hurley v. Mustoe (No 2)** [1983] ICR 422, EAT; **Essa v. Laing Limited** [2004] ICR 746).

128. In making a compensatory award for unfair dismissal under section 123 **ERA**, the Tribunal may take account of the likelihood that the employee would have been fairly dismissed in any event at a later date (**Polkey v. A E Dayton Services Limited** [1987] ICR 301). If the tribunal cannot say, on a balance of probability, that the employee would lawfully have been dismissed in any event, but has evidence that there was a realistic chance of such a dismissal, it may reduce compensation by a percentage to reflect that chance (**Software 2000 v. Andrews** [2007] ICR 825).

129. Similarly, the task of a tribunal in assessing compensation for a respondent's discriminatory acts and omissions is to put the claimant in the same position in which he would have been but for the unlawful conduct of the employer (**Ministry of Defence v. Cannock** [1994] ICR 918 at 935 to 936). It is necessary, however, for the tribunal to consider and, if appropriate, take into account the chance (in percentage terms) that the employer might still have caused the same damage lawfully if it had not discriminated: **Abbey National plc v. Chagger** [2010] ICR 397. Part of that exercise may include considering whether the employee might have been dismissed lawfully in any event.

130. Whilst there will inevitably be some level of conjecture in a percentage reduction on this ground, there must be some basis for it in the evidence.

Analysis and decision

131. The following paragraphs contain the unanimous decisions and reasons of the Employment Appeal Tribunal on each of the grounds of appeal and cross appeal.

Ground 1 – protected belief

132. A proposition that featured prominently in the written and oral submissions of Counsel for the appellant under ground 1 was that the Tribunal had erred in failing to have regard to the claimant's "true beliefs" in applying the **Grainger** criteria.

133. The particular beliefs relied upon by the claimant in this case were, however, clearly identified during pre-hearing case management and were recorded by the Tribunal at ET § 25 and 209. It is clear from the transcript that we were shown that, on the first day of the hearing, Counsel for the appellant expressly disavowed any intention on the part of the appellant to suggest that the claimant's beliefs were other than those that had been identified.

134. It is important also to note that there does not seem to have been any suggestion from any of the appellant's witnesses that they acted on the basis of anything other than the contents of the claimant's February 2021 statements or that they placed an interpretative gloss on those statements. In particular, it does not appear that any of the appellant's witnesses gave evidence that they considered that the claimant held "true beliefs" materially different to those identified during pre-hearing case management. That was, of course, entirely consistent with the position taken – we assume on instructions – by the appellant's Counsel on the first day of the hearing.

135. We also note that the Tribunal accepted the claimant's evidence that he did not oppose or hold antipathy towards Jews or Judaism (ET § 237). It accepted his evidence, given in cross-examination, that he was not supportive of or "open to" the use of violence as a means of opposing Zionism. Whilst the relevance and propriety of such cross-examination may be

questionable, it does not seem to have yielded anything about the claimant's beliefs that was different to what had been identified in pre-hearing case management.

136. In these circumstances, we do not consider that it is now open to the appellant to suggest in this appeal that the Tribunal "impermissibly stripped away inconvenient parts of [the claimant's] true beliefs" (Appellant Skeleton at § 51). The concession by the appellant's Counsel on the first day of the hearing was clear and unequivocal, and the issue of "true belief" was thereafter wholly absent from the evidence of any witness from whom the Tribunal heard.

137. Having determined, on the evidence, that the specified beliefs were indeed genuinely held by the claimant, the next task for the Tribunal was to examine what was said by the claimant in the February 2021 comments. That was necessary to enable the Tribunal to identify whether any parts of what was said amounted to an expression of beliefs that were protected. When the reasons of the Tribunal are read as a whole, it concluded that parts of the February 2021 statements contained expressions or manifestations of the claimant's beliefs, whilst other parts – particularly the comments directed at the students and student groups – went beyond such manifestation. We will return to this point in more detail when we consider the grounds 2 and 5 of the principal appeal and the three grounds of the cross-appeal.

138. Turning to the six numbered sub-paragraphs of ground 1:

(i) The appellant's proposition that the beliefs relied upon by the claimant were excluded from protection by virtue of being "political" was expressed in stark terms in the grounds of appeal:

> "Political beliefs are outwith the scope of s. 10 EqA…and / or Art 9 ECHR".

In oral submissions, however, the appellant's Counsel retreated from that position and conceded – correctly in our view – that political beliefs could, in principle, be protected. In **Grainger** at paragraph [28], for example, Burton J expressed the view that beliefs in the political philosophies of Socialism, Marxism, Communism, or free-market Capitalism might well qualify for protection. It is also clear that a protected belief need not be a "fully-fledged system of thought" (**Campbell v. United Kingdom** (1982) 4 EHRR 293 at paragraph [36]). It may relate only to a single issue or cause (see **Grainger** at para. [27]; **Gray v. Mulberry Co (Design) Ltd** [2019] ICR 175 at para. [44] and the cases of **Harron v. Chief Constable of Dorset Police** [2016] IRLR 481, and **Maistry v. BBC** [2014] EWCA Civ 1116 therein cited). As Underhill LJ noted in **Higgs** (at para [65]) a court or tribunal considering a case involving freedom of speech, including the expression of religious or other beliefs, must have at the forefront of its mind the principle that the protection of freedom of speech is particularly important in cases involving "political speech" – that being a convenient shorthand for "the expression of opinion on matters of public and political interest". For the purposes of Article 9 ECHR and section 10 **EqA**, the belief may be protected where it concerns "a fundamental problem" (**R. (Williamson) v. Secretary of State for Education and Employment** per Lord Nicholls). Such a problem may or may not be the subject of political discourse and debate. In light of these principles, we saw no good reason why the beliefs relied upon by the claimant in this case should be excluded from protection simply because they related to an issue of social importance which might, broadly, also be categorised as "political". We therefore reject the suggestion that the Tribunal erred as suggested in ground 1(i).

(ii) We agree with Counsel for the claimant that sub-ground (ii) is inconsistent with **Gray v. Mulberry Co (Design) Ltd** where (at para. [44]) Choudhury P held that a requirement that a belief should affect all or many aspects of a claimant's life in order to qualify "would have amounted to setting the bar too high". Rather, it is sufficient for protection that the belief "affects a single but important aspect of a person's life" (**Grainger** at para. [27]; **Gray** at para [44]). At ET § 216, the Tribunal made these important factual findings:

> "The claimant's beliefs about Zionism and the basis for those beliefs, are set out comprehensively in his statement. These are things that he has incorporated into his teachings and writings. We conclude that they have played a significant role in his life for many years. We are satisfied that they are genuinely held. It is said by the Respondent that the belief was 'not held by the claimant as a belief or touchstone to his life'. However that is not the test set out in the first part of **Grainger**. In any event the beliefs on which he relies did play a significant part in his life."

These findings of fact are clear and are not challenged as perverse. We see no merit, therefore, in sub-ground (ii).

(iii) We also agree with Counsel for the claimant that **McClintock** is not authority for the proposition that a belief that is informed, to any extent, by scientific or empirical research will necessarily fall outside the scope of protection. At paragraph [30] of **Grainger**, Burton J stated:

> "…if a person can establish that he holds a philosophical belief which is based on science, as opposed, for example, to religion, then there is no reason to disqualify it from protection..."

We agree with that observation. It is also clear from **Williamson** that the possibility that a belief may change over the course of a person's life does not, of itself, deprive it of protection. Here, the Tribunal made findings of fact (at ET § 217) that the claimant's academic research "helped to reinforce" his beliefs about Zionism which were "deeply held and not amenable to change". Again, those very clear findings of fact are not challenged as perverse. They allowed the Tribunal properly to conclude that **Grainger** II was satisfied. We accordingly reject sub-ground (iii).

(iv) As was noted in both **Williamson** and **Forstater**, the bar of cogency should not be set too high. Here, the formulation of the belief as recorded in the list of issues and noted by the Tribunal at ET § 25 and 209 was perfectly clear. Whether the claimant's beliefs are right or wrong is not the issue. As the claimant's Counsel correctly submitted, it is coherent to describe as "racist" an ideology that promotes the establishment of a state for only one race of people in a territory that contains a large number of people of a different race. Such an ideology, which supports the migration of members of the first group into the territory with the support of an imperial power to dislodge an indigenous population, could also coherently be described as colonial and imperialistic. We reject the suggestion that the Tribunal erred and / or gave inadequate reasons in concluding that the **Grainger** IV criterion was satisfied. We therefore reject sub-ground (iv).

(v) On **Grainger** V, the Tribunal made factual findings (at ET § 237) that the claimant's opposition to Zionism was not to the idea of Jewish self-determination or to a preponderantly Jewish state existing in the world. Rather, it was opposition to the "exclusive realisation of Jewish rights to self-determination within a land that is home to a very substantial non-Jewish population". As we have already noted, the Tribunal accepted the claimant's evidence in cross-examination that he was not supportive of violence as a means of opposing Zionism. During pre-hearing case management on 20 September 2023, the appellant's Counsel confirmed that the appellant did not suggest that it had dismissed the claimant because anything said or done by him was either antisemitic or a breach of the **EqA** (see ET § 233 and 273). Applying the observations of Choudhury P in **Forstater** (at para. 79) we reject the submission that the Tribunal erred in law and / or failed to give adequate reasons for its conclusion that the claimant's beliefs crossed the low bar of **Grainger** V as being worthy of respect in a democratic society.

(vi) The argument that was presented to the Tribunal on 6 November 2023 when the appellant sought to adduce evidence of the claimant's Tweets of 2 and 3 November 2023 related only to **Grainger** V. For the reasons we have already given, however, the issue of the claimant's "true beliefs" was not before the Tribunal. The November 2023 Tweets were of no relevance to the question of whether the statements made by the claimant in February 2021 were manifestations of the belief on which he founded in this case. The Tribunal did not err in law in concluding that the 2 and 3 November 2023 Tweets were not relevant to that issue in circumstances where the case before it was about the February 2021 comments.

139. For these reasons, we reject ground 1.

Ground 2 – causation

140. We begin by recognising the limited role of an appellate court in relation to the matters with which ground 2 is concerned. The issue of why the claimant was dismissed, and all related sub-issues, were pre-eminently matters of fact for the Tribunal. It is the role of the trial court – and only the trial court – to make findings of fact. The conclusions that the trial court then drew from the evidence it found to be credible and reliable require to be given considerable respect by the appellate court (*cf* **Ravat v. Halliburton Manufacturing and Services Limited** [2012] ICR 389 at para. [35] per Lord Hope).

141. In considering the direct discrimination complaints, the first task for the Tribunal (per **Page**) was to examine the putative discriminators' reasons for acting as they did. That exercise required it to make findings of fact about the thought processes of the decision-maker in question – whether that was Professor Norman or the appeal panel – at the relevant time. The Tribunal then had to consider whether any material part of a putative discriminator's reason for acting as they did was the manifestation of the particular protected belief relied upon by the

claimant. That is exactly what the Tribunal did. Its factual conclusions are not challenged as perverse, and no error of law is apparent in its approach.

142. When the Tribunal's factual findings are read carefully and as a whole, it concluded that two material factors operated cumulatively as the reason for the claimant's dismissal. The first of these was the expression by the claimant of his anti-Zionist beliefs – his characterisation of political Zionism (as he defined it) as racist, imperialistic and colonial, and his belief that it should be opposed. The second was the comments he made about students and student groups. Whilst those two factors were juxtaposed in the claimant's February 2021 comments, they were separate and distinct parts of a composite reason for dismissal. At ET § 471, the Tribunal correctly noted that it was open to the claimant to articulate his views about Zionism without making any reference at all to students and University societies. The Tribunal's factual findings on causation at ET § 256, 257 and 471 demonstrate that it considered that both factors played a material role in the decision to dismiss.

143. Our particular conclusions on each of the six sub-grounds are:

(i) The Tribunal was plainly entitled to the view that parts of the statements made by the claimant in February 2021 included a manifestation of the beliefs upon which he relied (as defined in the list of issues). In terms of **Higgs**, the Tribunal gave a correct self-direction on the need for a sufficiently close and direct nexus between the belief and the manifestation (ET § 241). It then proceeded to apply that test to the evidence at ET § 242 *ff.* On the evidence, the Tribunal was entitled to conclude that the claimant's beliefs about Zionism as he defined it were "writ large" in parts of the February 2021 comments (ET § 328). No error of law is apparent, and the Tribunal's reasons are perfectly clear.

(ii) The Tribunal properly and fully focussed upon Professor Norman's evidence as to the reasons for her decision to dismiss. It was perfectly entitled to draw conclusions about those reasons from the concession made by her – recorded at ET§ 252 – that if the claimant had referred to student groups in a pro-Zionist context, she would not have regarded that as gross misconduct. It was entitled to conclude that the expression of his beliefs about Zionism had "a material impact" upon the decision to dismiss him.

(iii) The Tribunal did not apply "but for" causation. It correctly applied the section 13 **EqA** "because of" test to the evidence of Professor Norman and those who were involved in the appeal process.

(iv) The Tribunal was entitled to have regard to the totality of Professor Norman's evidence. That included her witness statement and her oral evidence in chief and in cross. Its conclusion (at ET § 257) that the claimant's expression of his anti-Zionist beliefs had a material impact on her decision to dismiss was plainly open to it on the evidence, and discloses no error of law.

(v) We have recorded our conclusions on the issue of "political speech" in our analysis of ground 1(i). The Tribunal made no finding that the claimant was proselytising. The appellant conceded in pre-hearing case management that it did not dismiss the claimant because it considered that he had breached the **EqA** (see paragraph 29 above and ET § 233 and 272). The suggestion now made in this appeal that the claimant was dismissed because his speech amounted to unlawful victimisation was expressly disavowed by the appellant and was not a live issue that was before the Tribunal.

(vi) In determining whether the claimant was dismissed for manifesting his protected beliefs, the Tribunal was plainly entitled to consider how Professor Norman would have reacted to the claimant's statements if they had not contained anti-Zionist content. Having regard to the concessions made by Professor Norman and recorded at ET § 252 and 256, the Tribunal did not err in law in reaching the factual conclusion that the claimant's protected beliefs had "a material impact" upon the decision to dismiss him and that he was thus dismissed "because of" the manifestation of his beliefs.

Ground 3 – the claimant's appeal against dismissal

144. We do not accept the appellant's contention that the Tribunal "erred in law and / or provided inadequate reasoning" for its conclusion that the rejection of the claimant's internal appeal against dismissal was because of the manifestation of his protected beliefs. The suggestion in the ground of appeal that there were "no findings as to what operated on the mind of the individual members of the panel" is simply wrong. The Tribunal made extensive findings about the appeal process (ET § 151 to 154). It summarised the conclusions of the appeal panel on the claimant's various grounds of appeal at ET § 154. Thereafter, in its consideration of the evidence about the appeal process at ET § 320 and 321 it noted that:

> "…save in respect of her analysis of the difference between Professor Greer and the claimant, the appeal panel adopted the analysis of Professor Norman in her dismissal letter without any material alteration. Professor Norman's reasons were endorsed by the appeal panel."

145. The reference to Professor Greer was to the appeal panel's conclusion about a comparator relied upon by the claimant. The appeal panel concluded that, in contrast to Professor Greer, the claimant's comments "related to the wider motives, legitimacy or activities of Bristol JSoc (and by implication, its members and / or prospective members)" (ET § 154 (iv)). In other respects, the Tribunal concluded that the panel's reasons were the same as those of Professor Norman.

146. Having regard to the Tribunal's earlier conclusions about the discriminatory nature of the dismissal decision by Professor Norman, there was no error of law in its conclusion that the rejection of the claimant's appeal against that dismissal on essentially identical grounds was, similarly, an act of direct discrimination. We accordingly reject ground 3.

Ground 4 – Higgs

147. Parties were agreed that the decision of the Court of Appeal in **Higgs** is binding upon us. The appellant's Counsel acknowledged, therefore, that this point was advanced only on a formal basis to preserve the appellant's right to take the point in any further appeal. Since **Higgs** is binding upon us, this ground cannot succeed in the Employment Appeal Tribunal.

Ground 5 – justification / proportionality

148. Before turning to the appellant's criticisms of the Tribunal's approach to the issue of justification, we require to make some observations on the scope of the case as it was advanced below, and the findings of fact that were made by the Tribunal.

149. As we have already noted, the Tribunal concluded, on the evidence, that two material factors operated on the mind of the respondent in its decision to dismiss. The first was the expression by the claimant of his beliefs about Zionism. The second was his comments directed at students and student groups. The Tribunal did not identify any aspect of the first factor to which objection could justifiably be taken (per **Page**). The elements of the February 2021 comments that the Tribunal found to be "culpable and blameworthy" were only those directed specifically at the activities of students and student groups.

150. The scope of the protected beliefs relied upon was clearly identified in pre-hearing case management. The beliefs that the claimant submitted were protected were set out by the Tribunal at ET § 25 and 209. Notably, the claimant's formulation of the beliefs upon which he founded in advancing his case of discrimination before the Tribunal did not mention the activities of students or student bodies at all. Whilst, therefore, difficult questions might potentially have arisen as to whether or not his comments about students or student bodies satisfied all five of the **Grainger** criteria, that was not a live issue that was before the Tribunal.

151. Two conclusions inevitably follow. First, a material part of the appellant's composite reason for dismissing the claimant was simply his non-objectionable expression of his protected beliefs. The materiality of that factor in the composite reason for dismissing was such that the dismissal of the claimant was an act of direct discrimination within the first **Page** category that could not be justified in terms of **Higgs**. Secondly, the elements of the claimant's February 2021 comments that related to students and student groups were neither expressions nor manifestations of the particular beliefs upon which he founded in this case. In these circumstances, the application of **Higgs** did not arise, and the issue of justification was not one that required to be determined by the Tribunal.

152. In case we are wrong about that, however, we consider that the Tribunal's consideration and application of the test for justification (at ET § 258 to 315) was clear, comprehensive and logical. The Tribunal's self-directions on the relevant test for justification (at ET § 184 to 194) are clear, full and accurate. The appellant does not suggest otherwise. On the issues of "prescribed by law" and "pursuit of legitimate aims", the Tribunal accepted the arguments advanced for the appellant. Understandably, therefore, the appellant does not seek to challenge those conclusions.

153. The Tribunal then carefully applied the proportionality guidance in **Bank Mellat** and the list of relevant matters identified by Eady P in **Higgs**. It concluded, on grounds that are entirely rational and reasonable, that a less intrusive means than dismissal could have been used by the appellant without unacceptably compromising the achievement of its legitimate aims. In particular, it concluded that the appellant could have given the claimant a warning and could have set out more clearly and consistently what it regarded as acceptable in relation to a member of academic staff making public comments about students and student societies. Having carried out the necessary **Bank Mellat** balancing exercise, The Tribunal's conclusion (summarised at ET § 314) that moving straight to dismissal was disproportionate was within the legitimate parameters of judgment open to it.

154. The role of an appellate court in examining a proportionality assessment by a trial court is, ordinarily, to carry out a review to check (i) whether the first instance court's assessment and was arrived at on the basis of a proper self-direction as to the test to be applied; and (ii) whether the result arrived at was reasonable, in the sense of being within the legitimate parameters of judgment for the decision-maker (**Shvidler**). The litany of criticisms levelled by the appellant at the Tribunal's decision on proportionality (comprising seven "headline" points and thirty separate sub-points) are ultimately no more than expressions of disagreement with the conclusion reached by the Tribunal and an attempt to re-try the issue of proportionality. At no stage, however, does the appellant engage with **Shvidler** by identifying a basis in law that would justify interference by an appellate court with the Tribunal's reasoned conclusion. We therefore see no merit in ground 5.

Ground 6 – unfair dismissal

155. As we have already noted, the Tribunal's reasons, when read as a whole, show that it found "the principal reason" for the dismissal to be a composite one made up of the claimant's expression of his protected beliefs and his comments about students and student bodies.

156. In considering the unfair dismissal complaint, the Tribunal gave legally correct self-directions upon the application of section 98 **ERA** (ET § 203 and 204). It noted, in particular, that its function was not to substitute its view for that of the employer. Rather, the relevant question for it was whether the decision to dismiss fell within the band of reasonable responses (ET § 204).

157. We accept the submission for the appellant that not every act of discrimination by an employer will necessarily amount to a repudiatory breach of contract (see **Amnesty International v. Ahmed** [2009] ICR 1450). There may, however, be cases – this being one – where a decision on proportionality in the context of a discriminatory dismissal will assist to a significant extent in answering the "band of reasonable responses" question under section 98 **ERA**. In this case, the Tribunal found that dismissal of the claimant was an act of direct discrimination because the sanction of dismissal was a disproportionate means of pursuing the employer's legitimate aim. It was disproportionate because the employer did not give the claimant the chance to respond to a warning in relation to conduct that did not – on the Tribunal's analysis – justify immediate dismissal.

158. In these circumstances, the Tribunal concluded that the discriminatory decision to dismiss also fell outside the band of reasonable responses for the purposes of section 98 **ERA**. That was a legitimate approach that was properly open to it. The Tribunal did not simply substitute its view as to what it would have done. Rather, it concluded, as an industrial jury including experienced lay members, that the decision to dismiss for misconduct rather than giving a warning fell outside the band of reasonable responses.

159. We note, also, that at ET § 319 the Tribunal said:

> "Even if we had not found the dismissal to be direct discrimination, we would have found the dismissal to be unfair pursuant to section 98 ERA. As an industrial jury, and taking into account the expertise and experience of the non-legal members of the panel, we consider that dismissal was outside the band of reasonable responses because the actions of the claimant did not amount to gross misconduct and also because inadequate attention was given to the possibility of a sanction short of dismissal."

160. The Tribunal's conclusion could only be interfered with by this Appeal Tribunal if it had improperly substituted its view for that of the employer. In our view, it did not. Ground 6 is simply an expression of disagreement with conclusions that were properly reached by the Tribunal following a correct self-direction on the law. It is an invitation to this Tribunal, which we reject, to usurp the function of the first-instance Tribunal sitting as an industrial jury.

Ground 7 – wrongful dismissal

161. At ET § 494 and 495 the Tribunal examined the complaint of wrongful dismissal. At ET § 494, it stated:

> "The issue here is whether the respondent dismissed the claimant in breach of contract, specifically in breach of its obligation to provide him with notice. The test for determining if there is a repudiatory breach of contract is not whether an employer reasonably believes that there has been such a breach but proof that there has actually been such a breach. Repudiatory conduct is conduct undermining the trust and confidence which is inherent in the particular contract of employment such that the employer should no longer be required to retain the employee in his employment. In determining whether an employee has repudiated the contract of employment, factors such as the nature of the employment and the employee's past conduct could be relevant. We also remind ourselves that the motivation for wanting to dismiss summarily is not relevant."

162. Having given that self-direction, it concluded (at ET § 495):

> "We conclude that the claimant did not commit repudiatory breach of contract. The relationship between the claimant and the University was not so damaged that trust and confidence was undermined to the extent that the employer should no longer be required to retain the claimant in employment. For the reasons we have already set out dismissal was disproportionate and was inconsistent with the way in which he and at least one other had been treated."

163. The Tribunal plainly took the view that what the claimant wrote about students and student societies was blameworthy and contributed to his dismissal (see ET § 471). It noted that the claimant was not in a position of equivalence with the students and that there was a significant power differential. It considered that it was not appropriate for Professors publicly to aim aggressive discourse at students or student groups. It also noted (ET § 279) that the claimant's comments had caused reputational harm to the appellant.

164. The appellant submits that the final sentence of ET § 495 demonstrates an error of law. As was noted in **DPP Law Limited v. Greenberg** [2021] IRLR 1016, however, a Tribunal's reasons must be read fairly and as a whole, without focussing merely on individual passages in isolation, and without being hypercritical. It is clear from ET § 494 and 495, when they are read in context and as a whole, that the Tribunal applied itself to the correct question and concluded – having regard to its earlier conclusions about the nature and gravity of the claimant's conduct – that summary dismissal was not contractually justified. The matters referred to in the final sentence of ET § 495 were not determinative of that question.

165. Nowhere in its reasons did the Tribunal conclude that the claimant's blameworthy conduct reached a level that amounted to "gross misconduct", whether in terms of the appellant's Ordinance 28 or otherwise. Contrary to what is suggested in the ground of appeal, it did not conclude that the claimant's conduct was incompatible with his continued employment. Rather, the Tribunal carefully considered whether, objectively viewed, the

claimant's conduct evinced an intention no longer to be bound by the contract, and concluded that it did not.

166. A suggestion made during the appellant's closing submissions to the Tribunal, and repeated in this appeal, was that some of what was said by the claimant in February 2021 amounted to unlawful victimisation of students who had criticised him. That proposition was contrary to the position intimated on behalf of the appellant at the case management hearing on 20 September 2023 (see paragraphs 16 and 29 above and ET § 233 and 272). It was not pleaded in the appellant's grounds of resistance, nor did it feature in the agreed list of issues. It was, in any event, a fact-sensitive matter, and nothing that we have seen suggests that it was raised in cross of the claimant or otherwise during the evidence. In these circumstances, we do not consider that the Tribunal erred in law in rejecting the suggestion that the claimant fundamentally breached his contract by victimising students in contravention of section 27 of the **EqA**.

167. For these reasons, we conclude that ground 7 is not well founded.

Ground 8 – contributory fault

168. Applying **Hollier v. Plysu** [1983] IRLR 260 to the issue of contributory fault, the Tribunal took a broad approach to its conclusion that some behaviour of the claimant could properly to be regarded as blameworthy and that it contributed to his dismissal (see ET § 471 and our analysis of ground 7 above).

169. On the Tribunal's findings, there was no basis to conclude that the claimant was "wholly to blame" for his dismissal. Its decision that contributory fault lay within the third **Hollier** category of "employer and employee equally to blame" was a matter of judgment for the Tribunal as an industrial jury. In the absence of any error of law, that evaluative conclusion must be respected by the Employment Appeal Tribunal. We agree with the submission on behalf of the claimant that if, in principle, *any* reduction for contributory fault was justified (that being the subject of ground 4 of the cross-appeal), the Tribunal's discussion and conclusion on the level of that reduction at ET § 463 to 472 discloses no error of law.

170. The second part of this ground (a suggestion that the Tribunal should have made an equivalent reduction to compensation in the discrimination claims) does not relate to any part of Judgment of 5 February 2024 that is before us. The Tribunal expressly reserved the issue of compensation in the discrimination complaints to a remedy hearing at a later date. That was a legitimate case management decision, and it is not competent to seek a pre-emptive ruling from this Tribunal on a matter that has been expressly reserved by the trial court and has still to be determined.

Ground 9 – Polkey / Abbey National

171. The reasons given by the Tribunal at ET § 492 and 493 for its implicit conclusion that the claimant's employment would have continued until at least October 2023 are **Meek**-compliant. They set out sufficiently clearly the factors it took into account in its assessment of this issue. The Tribunal did not find that, had the claimant not been dismissed, he would have resigned in any event. The appellant does not seem to have sought to rely upon evidence of any specific conduct by the claimant prior to August 2023 which might have precipitated an earlier lawful dismissal. It was the appellant's position before the Tribunal that ongoing losses would

have been extinguished by, "at the latest", August 2023 (ET § 476 and 482). The additional period of two months was explained by the Tribunal by reference to the length of time it would have taken to conduct an investigation about the August 2023 social media posts.

172. What might then have happened was the subject of paragraph 9 of the Tribunal's Judgment. The Tribunal noted (ET § 493) that it was unable to say that the claimant would have been lawfully dismissed. Correctly, it then went on to consider whether there was a realistic chance of such a dismissal. It concluded that there was, and assessed that chance, in percentage terms, at 30%. On this issue, we do not understand why the Tribunal reached the conclusion it did. We acknowledge that any **Polkey** / **Abbey National** assessment involves a consideration of the degree of likelihood of a counter-factual scenario. That will frequently involve a degree of conjecture. There must, however, be some basis in the evidence for the conclusion reached. The appropriate counterfactual here was the chance of a lawful termination of the claimant's contract. Given the apparently equivocal nature of the evidence about the August 2023 Tweets, and the resultant absence of analysis of whether those Tweets might legitimately and lawfully have been considered by the appellant to amount to misconduct, it is not clear to us on what basis the Tribunal concluded that there was a chance of a lawful dismissal as a result of the August 2023 Tweets or, if there was, that the degree of that chance was 30%. On that single point, we conclude that ground 9 succeeds.

Summary of decision in the principal appeal

173. We uphold ground 9, in part, in the principal appeal. All other grounds are dismissed.

The cross-appeal

CA - ground 1 – prescribed by law

174. The premise of the first ground of the cross-appeal is that the blameworthy misconduct that the Tribunal concluded was properly established consisted only of a manifestation of the claimant's protected beliefs. As we have explained above, however, that is not how we read the Tribunal's reasons.

175. We acknowledge that the Tribunal could, perhaps, have expressed itself more clearly on this issue. We consider, however, that it is tolerably clear from ET § 471 that its conclusions on misconduct related to the things that the claimant said about students and student societies in a public forum. That latter factor, on the Tribunal's findings, materially contributed to his dismissal. The claimant's references to students and student bodies, even in juxtaposition to the expression of his protected beliefs, were not manifestations of any protected belief on which the claimant relied. As the Tribunal noted at ET § 471:

> "It was clearly open to the claimant to articulate his views about Zionism without reference to students and student societies."

The claimant's protected beliefs were only those set out at ET § 209. Those beliefs did not include or make reference to students or student bodies or their activities.

176. We accordingly reject the suggestion that the Tribunal erred in dismissing the complaint that *any* finding of misconduct by the appellant was itself an act of direct discrimination. The

"prescribed by law" requirement of Article 9(2) ECHR was not engaged by the particular misconduct finding that the Tribunal held was well-founded.

CA - ground 2 - harassment

177. Ground 2 of the cross-appeal – which relates to the complaint of harassment by Professor Banting as the appellant's investigating officer – fails for essentially the same reason. On the Tribunal's findings of fact (at ET § 123), the central theme of Professor Banting's concerns was that the claimant had made comments that were directed specifically at Jewish students and Jewish student groups. That was an issue that ultimately contributed materially to the decision to dismiss, but which was separate from the expression manifestation by the claimant of his protected beliefs.

CA - ground 4 – contributory fault

178. Counsel for the claimant accepted that his position on contributory fault largely depended upon success under grounds 1 and 2 of the cross-appeal. As we have already noted, the Tribunal plainly took the view that what the claimant wrote about students and student societies was blameworthy and contributed to his dismissal (see ET § 471). That conclusion was open to it on the evidence. In principle, a reduction to the basic and compensatory awards was also, therefore, open to the Tribunal under sections 122(2) and 123(6) **ERA**.

179. For completeness, we accept that the interpretative duty under section 3 of the **Human Rights Act, 1998** demands that account be taken of the Article 10 ECHR right in determining what amounted to "misconduct". In that regard, however, it is a fair reading of the Tribunal's reasons that it considered the Article 10(2) ECHR qualification and found that it had been established. The appellant's Free Speech Code of Practice referred to reputational harm and risks to student safety as grounds for restriction on free speech (ET § 260). The Tribunal noted the evidence of the potential for health and safety risks to students as a result of the claimant's comments (ET § 279 to 282), whilst also noting (at ET § 305) that there was ultimately no evidence of actual harm. It also found that the comments that amounted to misconduct gave rise to reputational harm (ET § 279). The "prescribed by law" requirement of Article 10(2) ECHR was met.

Summary of conclusions in the cross-appeal

180. All three grounds of the cross-appeal are dismissed.

Disposal and further procedure

181. In light of our decision on ground 9 in the principal appeal, we will set aside paragraph 9 of the Tribunal's Judgment of 5 February 2024 and thereafter remit the **Polkey** / **Abbey National** issue to the same Tribunal to re-determine (if necessary, after hearing further evidence) at the hearing on remedy.