

Court of Appeal rules on dismissal of school employee accused of transphobic belief

In *Higgs v Farmor's School* 2025 the Court of Appeal made an important decision in a claim of direct discrimination because of a protected belief. Mrs Higgs, who is a Christian, had been dismissed from her job of pastoral administrator and work experience manager at the school following a complaint by a parent who had seen a facebook post made by Mrs Higgs. In it Mrs Higgs had reposted a post by someone else relating to the teaching in schools of same-sex relationships, same-sex marriage and gender being a matter of choice. She had added the comment "Please read this! They are brainwashing our children!" and encouraged readers to sign a petition. The parent believed that this demonstrated that Mrs Higgs was prejudiced against the LGBT community. Mrs Higgs had gone on to repost posts by others on the same subject matter. Whilst the school found there was no issue with Mrs Higgs' performance of her duties it decided that her facebook posts were discriminatory and there was a risk to the school's reputation as a result. It therefore dismissed her for gross misconduct. Mrs Higgs brought a claim for discrimination because of protected belief under the Equality Act 2010 (EQA). The employment tribunal (ET) found

that all of the beliefs relied on by Mrs Higgs in her claim were protected under the EQA. These included:

- Lack of belief in gender fluidity;
- Lack of belief that someone could change their biological sex or gender;
- Lack of belief in same-sex marriage (as contrary to Biblical teaching), and
- Opposition to sex and relationship education for primary school children.

However, the claim failed because the tribunal found that the reason for her dismissal was not her beliefs themselves but the manner in which she had manifested them. It decided that the language she had used could reasonably lead to readers of the posts concluding that she was transphobic or homophobic. The school had therefore been entitled to find its code of conduct had been breached.

Mrs Higgs' appeal to the Employment Appeal Tribunal (EAT) was successful. It held that the ET had failed to consider whether there was a sufficiently close connection between Mrs Higgs' protected beliefs and

her facebook posts or whether the school's actions had been proportionate taking into account Mrs Higgs' rights to freedom of belief and expression enshrined in the Human Rights Act 1998 (HRA). Mrs Higgs then appealed the EAT's decision to remit the case back to the ET for further consideration. Upholding the further appeal, the Court of Appeal (CA) found that remission to the ET was unnecessary as it was bound to find that the school's decision to dismiss Mrs Higgs was disproportionate. Whilst the school had to investigate the matter, Mrs Higgs' posts, even if one disagreed with them, were not offensive and there was no evidence that the school's reputation had been or was likely to be damaged or that Mrs Higgs' work at the school was affected.





This case illustrates the potential difficulties employers face when dealing with situations involving employees who make statements that manifest their religion or belief which the employer finds objectionable. The caselaw in this area shows that most beliefs are likely to be protected under the EQA and, as this case demonstrates, a different test applies to manifestation of religion or belief cases as applies to other direct discrimination cases requiring a proportionate response from the employer because of employees' HRA rights. In practice this may make it difficult for employers to discipline, let alone dismiss, employees manifesting their religion or belief in or out of work where the employer has concerns. In cases involving risk to reputation, the CA thought that the following were likely to be relevant factors:

- The subject matter of the expression of opinion or belief. The expression of views that have no connection to an employer's business are less likely to risk reputational damage than ones that are closely related to it. In the present case, Mrs Higgs' posts were related to work because they were partly about sex education in schools.
- The manner in which views are expressed. Just because a belief is protected does not give employees free reign to express themselves inappropriately. However, the threshold as to what should be construed as offensive was high.
- Whether it is clear the views expressed are personal or could be those of the employer. This was more likely to be relevant the more senior the employee is.

Employers dealing with workplace situations involving these types of issue will need to take considerable care in how they investigate and resolve them.

ACAS publishes findings and advice about neurodiversity at work

Research has shown that whilst 54.7% of disabled people are in work, the figure is only 31% for those with neurodivergent conditions. In February, the Department of Work and Pensions announced it has established an expert panel to advise government on neurodiversity in order to assist with workplace inclusivity and to improve the employment prospects and opportunities of neurodivergent employees. In March, ACAS published a report written by researchers at Birkbeck College stating that between 15-20% of adults have neurodivergent conditions. ACAS also launched a campaign in March to improve understanding and support for neurodivergent workers with guidance focusing on inclusive hiring practices, making reasonable adjustments and raising workplace awareness.

These developments follow advice published by ACAS in January about neurodiversity to raise awareness and assist in relation to workplace issues likely to arise around workers with neurodivergent conditions. The advice provides information about what is meant by neurodiversity and sets out some examples of neurodivergent conditions such as ADHD, autism, dyslexia, dyspraxia, dyscalculia and Tourette's syndrome. The guidance explains that whilst many employees with neurodivergent conditions do not regard themselves as disabled, many will meet the definition of disability under the Equality Act 2010. Employers are advised to consider whether they have made reasonable adjustments before undertaking any conduct or performance action in relation to neurodivergent staff. The guidance also recommends the following steps to help create a neuroinclusive workplace:

- A review of recruitment processes, ideally allowing applicants to see questions before the interview and consideration of alternatives to competitive interviews.
- Training and support for managers.
- Raising awareness of neurodiversity at work e.g. through training and awareness campaigns.
- Creating a written neurodiversity policy outlining how the organisation supports neurodiversity inclusion.

Employees use of 'shadow AI' at work a risk for companies

A survey by Software AG reported on the BBC found that many employees working in knowledge based roles are using their own AI tools at work without permission from their employers, often because the employer does not provide AI tools. This is a risk for companies if their data and trade secrets are potentially being fed into AI systems that they have no control over. There are apparently thousands of AI tools available including custom versions of Chat GPT. Employers concerned about this risk would be well advised to communicate with staff about what they can and can't do regarding AI in their jobs. A written policy on its use which staff are made aware of may be a sensible practical step for some companies.



Amendments made to the Employment Rights Bill

The Employment Rights Bill 2024/5 continues its progress through the various Parliamentary stages. During the report stage in March the government tabled various amendments to the Bill, including the aspects reported below. Some of these amendments follow on from responses to the various consultations on parts of the Bill that have taken place since its introduction last October.

Under the Bill, zero hours workers (and low hours workers) will gain the following new protections:

- A guaranteed hours contract based on average hours actually worked over a reference period;
- Reasonable notice of shifts; and
- Compensation for short notice of cancelled, curtailed or moved shifts.

The government's amendments will include the extension of these rights to agency workers. Complex provisions will regulate how the rights will be enforceable as against hirers and agencies.

The Bill already makes provisions to amend parental bereavement leave. The government has confirmed it will adopt an amendment tabled by the Women and Equalities committee extending parental bereavement leave to cases where babies die in utero before 24 weeks of pregnancy. Currently, the right only exists for unborn children where the pregnancy has lasted at least 24 weeks.

The Bill had originally sought to change the rules on the duty

on employers to collectively consult about redundancies so that it was triggered when an employer was proposing 20 or more redundancies anywhere across its business. The existing law provides that the duty only arises where 20 or more redundancies are proposed 'at one establishment'. Obviously heeding the concerns of business raised during the consultation that this change was likely to dramatically increase obligations for employers the government has dropped the change. Instead, the duty will be triggered by the current threshold being met at one establishment or a different higher threshold being reached across the business. Regulations will specify what this threshold will be. Until we know what this new threshold will be it is impossible to gauge how significant an additional burden this may be on employers.

As was anticipated from the government's consultation document, the amount of protective awards (which punish employers that fail to comply with the collective consultation rules) is to be doubled from 90 days up to a maximum 180 days' pay per affected employee.

The Bill already amends the rules on statutory sick pay (SSP) to remove the 3 waiting days that apply before it becomes payable and to make employees receiving pay below the lower earnings limit eligible for SSP. An amendment to the Bill changes the rate of SSP to the lower of the prescribed weekly rate (currently £118.75) or a prescribed percentage of a worker's normal weekly earnings.

The government has confirmed that this will be set at 80%.

Another amendment concerns the strengthening of the powers of the new Fair Work Agency (FWA), which will be able to issue notices of underpayment, bring tribunal proceedings on behalf of workers and give legal assistance in employment-related claims, amongst other things. These represent potentially significant developments to the employment law landscape although much will depend on how well resourced the FWA will be.

A further amendment introduces a new obligation on employers to maintain records of compliance with the holiday entitlement and holiday pay duties arising under the Working Time Regulations. These records must be kept for 6 years.

There is no provision within the amendments relating to the expected right to switch off, a reform that has attracted much media attention, and there has been speculation that the government may drop this idea.



Increases to tribunal limits and Vento bands

The annual adjustment to the Vento bands, relating to employment tribunal awards for injury to feelings (mainly applicable in discrimination claims) has been announced taking account of inflation. The new bands which will apply to claims submitted on or after 6 April 2025 are as follows:

- Lower band of **£1,200 to £12,100** (increasing from £1,200 to £11,700) for less serious cases.
- Middle band of **£12,100 to £36,400** (increasing from £11,700 to £35,200) for more serious cases but which do not merit an award in the upper band.
- Upper band of **£36,400 to £60,700** (increasing from £35,200 to £58,700) for the most serious cases.
- Amounts in excess of £60,700 can be awarded in the most exceptional cases.

In addition, the Employment Rights (Increase of Limits) Order 2025 has introduced the annual increase to certain employment tribunal limits taking account of inflation. In cases involving unfair dismissal, the new figures will apply where the effective date of termination falls on or after 6 April 2025. The Order includes the following new figures:

- The limit on a week's pay increases from £700 to £719.
- The maximum compensatory award for unfair dismissal increases from £115,115 to £118,223.
- The minimum basic award for certain unfair dismissals (including health and safety dismissals) increases from £8,533 to £8,763.

Parliamentary committee calls for review of 'inadequate' age discrimination laws

In February, the Women and Equalities committee published a report 'The Rights of Older People'. There are currently 11 million people in the UK aged 65 or over and the report questions whether age discrimination laws in the UK are fit for purpose. It states that ageism is widespread and culturally embedded in the UK and suggests one problem is a perception that age discrimination is not considered as objectionable in society as other forms of discrimination such as sex or race discrimination. The report recommends that the government should commission the Equalities and Human Rights Commission to review age discrimination law and the public sector equality duty set out in the Equality Act 2010. The report gives examples of possible reforms including:

- whether it is appropriate for the defence of objective justification to continue to apply in age discrimination cases; and
- whether employers should be under a 'reasonable steps' preventative duty (as now applies to workplace sexual harassment).

Termination of LLP member was age discrimination

In *Scott v Walker Morris LLP* 2023 an employment tribunal considered Mr Scott's claim for age discrimination following the rejection of his application to continue working beyond the age of 63 under the firm's compulsory retirement policy for its LLP members. Whilst the firm had accepted that the termination of Mr Scott's LLP membership was less favourable treatment on the grounds of age, it argued that the policy was objectively justified because it protected its business interests and promoted inter-generational fairness. The tribunal accepted that the firm had legitimate aims in seeking to avoid difficult issues that could arise around the performance of older staff and enabling workforce and succession planning to ensure it had sufficient partners to run its business. However, it found that on the facts of the case, compulsory retirement was not a proportionate means of achieving the stated legitimate aims. In practice, there seemed to be no evidence that partner performance was a particular issue or that compulsory retirement helped the firm achieve its succession planning goals. Upholding the age discrimination claim, the tribunal found that the firm could have adopted more proportionate and less discriminatory steps to further its legitimate aims such as career conversations with partners and other staff to identify long-term and short-term career aspirations or 'moderated late retirement' where, for example, partners would lose 10% of their equity each year they continued over a certain age.



Employee's dismissal for touching pupil was unfair

In *Hewston v Ofsted* 2025, the Court of Appeal considered the case of an Ofsted inspector, Mr Hewston, who had been dismissed for an incident in 2019 where he had brushed water off the hair or forehead (and touched the shoulder) of a 12 year old pupil who had come in out of the rain. The pupil said in a statement that the incident had made him feel uncomfortable. The school reported the matter to Ofsted and the local authority's safeguarding team. The latter recommended that Ofsted deal with the matter internally with a view to offering training to Mr Hewston. The school then wrote to Ofsted claiming that the child had been put 'at risk' by Mr Hewston's actions. During a disciplinary hearing Mr Hewston stated that he did not realise that what he had done could be gross misconduct but confirmed that he would not do the same thing again because of the stress

caused by the fallout from the incident. Ofsted dismissed him for gross misconduct. Whilst it confirmed that it did not believe Mr Hewston was a risk to children, that he had not caused any harm or safeguarding breach, he had brought Ofsted into disrepute and had shown a lack of remorse in relation to the incident.

Mr Hewston's unfair dismissal claim was rejected by the employment tribunal which found that Ofsted had been entitled to dismiss. However, on appeal the Employment Appeal Tribunal (EAT) took a different view. It noted that Ofsted had found there was no safeguarding issue involved in the case. When considered together with the absence of a 'no touching' policy or any relevant training on the issue, Mr Hewston was right to say that he was unaware he could be dismissed for the incident. The dismissal was

also procedurally unfair given that Mr Hewston had not seen the local authority's response, the school's complaint or the pupil's statement during his disciplinary hearing.

Ofsted appealed to the Court of Appeal on the basis that Mr Hewston had not been dismissed purely because of the incident but also due to his lack of remorse. It argued that Mr Hewston's comments during the disciplinary hearing indicated that he only said that he would not do it again because of the inconvenience of what had followed as opposed to him admitting that he had done anything wrong. The Court of Appeal were not swayed by this argument. It found that the EAT had asked itself the right questions and, what Ofsted termed a lack of remorse, did not render the dismissal fair in this case.

Call for evidence in relation to remote and hybrid working

In March, the House of Lords committee on Home-based Working published a call for evidence to assist in its inquiry into the effects and future development of remote and hybrid working. The inquiry seeks to address the challenges and opportunities for workers and employers in the UK in relation to remote and hybrid working, their effect on productivity and other consequences for the economy and society. Submissions are sought, amongst other things on:

- The challenges and opportunities presented by remote and hybrid working.
- The effects of remote and hybrid working on workers' mental and physical health.

- How worker and employer needs can be balanced to achieve mutually beneficial working arrangements.
- What, if any, policies or legislation the government might implement to assist in this area.
- Why some employers and sectors have sought to return employees to the office whereas others have not.

The committee aims to produce its report by the end of November.



Guidance published on new Neonatal care right

For babies born on or after 6 April 2025 who start to receive neonatal care in the 28-day period from birth, eligible parents may be entitled to up to 12 weeks' neonatal care leave and pay. The right is in addition to other family friendly statutory rights such as maternity and shared parental leave and pay. Neonatal care leave is a day 1 employment right but to be entitled to neonatal care pay (payable at the lower of, currently, £187.18 per week or 90% of the employee's average weekly earnings) a parent must have been employed by their employer

for at least 26 weeks as at the date 15 weeks before the baby was due. Both the government and ACAS have recently published guidance on the new right. The rules are relatively complex so employers are likely to find these resources helpful. The government advice, published on gov.uk, includes separate guides to employees and to employers and guidance on what happens to neonatal care leave and pay in specific situations such as where a company is taken over, ceases trading or becomes insolvent or where an employee is made redundant.

The government's employer guide can be found [here](#) and the ACAS guidance [here](#).



Survey finds 1 in 7 workers suffering abuse

The Skills and Employment survey carried out by researchers at Nuffield College, Oxford, the University of Surrey, UCL, and Cardiff University has found that 1 in 7 workers reported suffering some form of abuse in the workplace including bullying, sexual harassment or violence. Certain occupations such as teaching and nursing involve greater risk. The survey takes place every 6 years. Unsurprisingly, it found that, since

the pandemic, home working had greatly increased but it warns of the inequalities that exist with regard to working arrangements with many workers unable to create suitable workspaces at home due to limited economic means. The survey reveals that the demand for graduates to fill roles continues to increase with over half of roles requiring degrees despite a fall in the number of people graduating from degree courses. A change in attitudes

towards unions was revealed with more than a third of workers in non-unionised workforces stating that if a union was available they would join it. The report also recognised the increasing prevalence of the use of AI in the workplace with 24% of those surveyed stating that they use AI in their work although this tended to be in higher paid, higher skilled roles. It was also more likely to be used by men, the young and those with a degree.



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