Annex: case analyses

The 2026 Employment Appeal Tribunal decisions

Ngole v Touchstone Leeds [2026] EAT 29 (also reported 2026 WL 00433619); Case No. EA-2024-000980-TH; HHJ James Tayler; 16 February 2026

Facts. Mr Ngole, a Christian, applied to Touchstone Leeds, a mental health and well-being charity with a strong record of serving the LGBTQI+ community, for a discharge mental health support worker role. After discovering media reports of 2015 Facebook posts in which he had stated, in a political debate about the US registrar Kim Davis, that "homosexuality is a sin" and "same sex marriage is a sin whether we like or not", the charity required a second interview and then withdrew or declined to reinstate the offer. His four pleaded beliefs were accepted as protected under s 10.

Principles applied. The EAT applied *Higgs* and *Page* to direct discrimination because of the manifestation of belief. The central distinction is between treatment whose real reason is animus against the belief itself, which is "not in truth a manifestation case at all" and cannot be justified, and treatment because of something objectionable in the way the belief was manifested, which imports a requirement of objective justification into the s 13(1) causation enquiry, co-extensive with Articles 9(2) and 10(2): at [55]–[65] and [74]–[79]. The burden of justification rests on the employer, and the same ratio applies to s 26 ("related to") as to s 13 ("because of"). Where there are multiple reasons for the treatment, each must be analysed separately, applying *Nagarajan*. At [74] Tayler J set out the structured sequence: (1) identify each reason for the treatment; (2) for each reason ask (2.1) whether the objection was to the holding of the belief or to its manifestation; (2.2) if to the manifestation, whether there was something objectionable or inappropriate in it; and (2.3) if so, whether the treatment was prescribed by law and proportionate under the four-stage *Bank Mellat* test.

Outcome. Appeal allowed in part. The tribunal had failed, for each act, to identify and separately analyse the reasons for the treatment. Grounds 2, 8 and 9.2 succeeded insofar as the second-interview requirement and the refusal to reinstate the offer rested on a concern that service users might react to the mere fact that the claimant held the protected beliefs, which would be treatment because of the belief and incapable of justification: at [100]–[108] and [118]–[123]. Grounds 1, 3, 6 and 9.1 were rejected. The affected complaints were remitted to the same Employment Tribunal to apply the paragraph 74 structure.

Subsequent treatment. Westlaw records the status as "appeal outstanding". The Court of Appeal Civil Division listed the case for hearing on 28 to 29 September 2026; no Court of Appeal judgment was identified in official sources checked as at 21 October 2026.

Clifton Diocese v Parker; Case No. EA-2024-000701-OO; reported 2026 WL 01290263; HHJ James Tayler; 12 May 2026

Facts. Ms Parker, who is not Catholic, was head of finance at a Catholic diocese. Performance concerns were recategorised as gross misconduct and she was dismissed. The Employment Tribunal upheld her complaint of direct religion or belief discrimination under s 13, her lack of Catholic faith being the protected characteristic, together with a linked

harassment complaint. The diocese appealed on the tribunal's approach to the burden of proof. The case has no freedom-of-expression dimension and is included for the discrimination and harassment limbs.

Principles applied. Section 136 and the two-stage burden-of-proof analysis in *Igen Ltd v Wong*, approved in *Hewage v Grampian Health Board* and *Efobi v Royal Mail Group Ltd*: at [89]–[95]. At stage one the tribunal must assume there is no other explanation; explanation is relevant only at stage two. Section 136 is not a shortcut around rigorous fact-analysis, and unfairness alone is not evidence of discrimination (*Bahl v Law Society*). At [96]–[97] Tayler J offered "sense check" questions for deciding whether to draw an inference of direct discrimination: identify the act or acts; identify the alleged discriminator A; ask whether A did the act to B; and ask whether there are facts from which, absent any other explanation, the tribunal could decide the act was because of the protected characteristic, noting that acts of other people generally will not assist and that the focus must remain on the statutory wording.

Outcome. Appeal allowed; complaints remitted. Grounds 3, 4 and 5 were made out: the tribunal took an impermissible blanket approach across allegations, treated a lack of explanation as a first-stage factor contrary to *Igen* and *Efobi*, and relied on the acts of other individuals to shift the burden onto a different actor on different acts; the reasoning was perverse or inadequately explained: at [112]–[119]. The linked harassment finding could not stand once the discrimination finding fell.

London Ambulance Service NHS Trust v Garrett [2026] EAT 77 (also reported 2026 WL 01500758); Case No. EA-2024-000972-JOJ; HHJ Auerbach; 29 May 2026

Facts. Mr Garrett, a white British emergency ambulance crew member, was disciplined, receiving a final written warning together with unconscious-bias and allyship training and a written reflection, following a mess-room conversation shortly after the death of George Floyd in June 2020 in which he rejected the concept of systemic racism. The Employment Tribunal, by a majority, upheld three complaints of direct discrimination because of belief and one overlapping complaint of direct race discrimination.

Principles applied. Sections 9, 10, 13 and 39; the *Grainger* criteria for a protected belief, with *McClintock* and *Mackereth*; and the *Eweida* requirement that, to count as a manifestation, the act be "intimately linked" to the belief, a sufficiently close and direct nexus: at [12]–[24]. The EAT drew a normative and descriptive distinction: the protected "treatment belief", that all should be treated equally regardless of colour, is a belief about how things ought to be, whereas the claimant's "no systemic racism belief" is a belief about what is. A person could hold the former while accepting that systemic racism exists, so the latter was not intimately linked to, and therefore not a manifestation of, the protected belief: at [52]–[60]. Postscript guidance at [87]: written reasons should set out the reasoning of the minority and identify which members formed the majority and which the minority, following *Morgan v Welsh Rugby Union*.

Outcome. The employer's appeal was allowed. Ground 1 succeeded: the majority's finding that the no-systemic-racism belief was a manifestation of the protected belief was a fundamental logical flaw, so all three belief-discrimination findings fell with it. The direct race discrimination finding was also perverse, no fact being capable of supporting an inference

that the claimant's own race materially influenced the treatment or shifted the s 136 burden: at [81]–[84]. Applying *Jafri v Lincoln College*, the EAT substituted a decision dismissing all the complaints and quashed the injury-to-feelings award: at [85]–[86].

Cherrington v University of Derby [2026] EAT 107 (also reported 2026 WL 02145637); Case No. EA-2025-000810-AS; Cavanagh J; 27 July 2026

Facts. Mr Cherrington, a university lecturer, was summarily dismissed for gross misconduct after a disciplinary panel found he had used inappropriate and unprofessional language towards students, in incidents characterised as misogynistic, transphobic, ableist, homophobic, boorish and hostile. He argued that the Employment Tribunal had erred by failing to interpret the s 98(4) ERA 1996 fairness test compatibly with Article 10 of its own motion, although he had not pleaded Article 10. The substantive claim was unfair dismissal rather than a substantive Equality Act claim; it is included because the dismissing conduct was language the University treated as potentially harassing or discriminatory towards students.

Principles applied. The interrelationship between Convention rights and unfair dismissal under *X v Y*, Convention rights being "blended" with s 98 via s 3 of the Human Rights Act 1998: at [60]–[67]. Two strands govern when a tribunal must take an unpleaded point: the "shouts out" or fundamental-fairness strand in *Moustache v Chelsea and Westminster NHS Foundation Trust*, and the narrow "as a matter of course" strand: at [86]–[104]. The EAT held that tribunals are not required to consider Convention Articles as a matter of course in every unfair dismissal case, nor Article 10 in every speech-related dismissal; the "matter of course" principle is confined to the most basic, well-established building-block issues. Whether to take an unpleaded Article 10 point is governed by the fact-specific *Moustache* test.

Outcome. Appeal dismissed. Article 10 did not shout out from the pleadings or from the way the case was run; the claimant was dismissed for inappropriate conduct towards students and not for exercising academic free speech, so no chilling-effect concern arose: at [109]–[120]. The alternative argument to raise Article 10 for the first time on appeal was rejected, applying *Secretary of State for Health v Rance*.

University of Bristol v Miller [2026] EAT 84 (also reported 2026 WL 02244875); Case No. EA-2024-000324-RS; Lord Fairley P, Mr Nick Aziz and Dr Gillian Smith MBE; 4 August 2026

Facts. Dr David Miller, an academic sociologist researching Zionism, made statements in February 2021, a public speech on free speech, a comment to the Jewish Chronicle and an on-the-record email to a student journalist, describing political Zionism as inherently racist, imperialist and colonial, and criticising the Jewish Society and the Union of Jewish Students. The University of Bristol summarily dismissed him for gross misconduct. He claimed direct philosophical belief discrimination, harassment related to belief, unfair dismissal and wrongful dismissal.

Principles applied. The *Grainger* criteria as modest threshold requirements, with *Harron*, *Gray v Mulberry*, *R (Williamson)* and *Forstater*: at [110]–[113]. Political beliefs are not excluded from s 10, and a belief need not be a fully-fledged system of thought or a touchstone to all of life: at [138]. The primacy of free speech, and of political speech in particular, must be at the forefront of the tribunal's mind, applying *Higgs* at [61] and [63]. The *Page* and *Higgs* separability-and-justification analysis of s 13 causation, with *Bank Mellat*

proportionality: at [114]–[121] and [149]–[154]. On appellate review, the EAT applied *Shvidler*: an appellate court reviews a first-instance proportionality assessment only for proper self-direction and whether the conclusion was reasonably open.

Outcome. Appeal dismissed on all liability grounds and cross-appeal dismissed. The dismissal stood as direct philosophical belief discrimination which could not be justified, because a material part of the composite reason for dismissal was the claimant's non-objectionable expression of his protected anti-Zionist beliefs, the separable culpable element being only his comments about students. The cross-appeal on harassment was dismissed, so the rejection of the s 26 claim was upheld notwithstanding the successful s 13 claim. The sole successful ground was that the tribunal had not adequately explained the evidential basis for its finding of a 30 per cent chance of lawful dismissal by October 2023; that issue alone was remitted, applying *Polkey* and *Chagger*: at [171]–[173].

Court of Appeal, Supreme Court and Strasbourg authorities

Higgs v Farmor's School [2025] EWCA Civ 109; [2025] ICR 1172

Facts. A pastoral administrator and work experience manager at a secondary school was dismissed for gross misconduct after reposting and commenting on material on her personal Facebook account, in terms critical of relationships education in primary schools and of what she described as gender fluidity teaching. A complaint was made by a member of the public. The facts and the disciplinary process are set out at [1]–[4] and the posts at [9]–[13].

Principles applied. Direct discrimination under s 13 is a "reason why" enquiry, and the Equality Act's protection extends to the manifestation of belief and not merely to its holding: at [93]–[95]. Dismissal merely because an employee has expressed a protected belief, or because others object to it, is unlawful. Where the employer acts because of something objectively objectionable in the manner or circumstances of the manifestation, the action is lawful only if the employer shows that it was a proportionate response, assessed on *Bank Mellat* lines, having regard to the subject matter and tone of the expression, its extent and audience, whether personal views were distinguished from the employer's, power dynamics, the nature of the employer's business, reputational impact and the availability of a less intrusive measure: at [95]. Falk LJ emphasised at [178]–[181] that the tribunal must judge what was actually said and determine objectively what message the words would convey to a reasonable reader, rather than what a hostile reader might wrongly infer, before deciding whether the expression was inappropriate and whether the response was objectively justifiable.

Outcome. The appeal was allowed and a finding of unlawful direct discrimination substituted. The dismissal was disproportionate: there was no evidence of discriminatory treatment of pupils and no evidence of actual reputational harm, and a statement clarifying that the views were personal would have sufficed: at [100]–[104]. Permission to appeal to the Supreme Court was refused on 4 June 2025.

Subsequent treatment. Applied and followed as binding in *Ngole*, *Garrett* and *Miller*.

Page v NHS Trust Development Authority [2021] EWCA Civ 255; [2021] ICR 941

Facts. A non-executive director of an NHS trust, who was also a lay magistrate, gave repeated national media interviews expressing his Christian belief that it was not in a child's best interests to be adopted by a same-sex couple. His term was not renewed.

Principles applied. Underhill LJ at [68] established the separability analysis later adopted in *Higgs*: adverse treatment may be attributable not to the belief itself but to the objectionable manner and circumstances of its manifestation, and such treatment is lawful if objectively justified.

Outcome. The appeal was dismissed. The treatment was because of the manner and circumstances of manifestation, in particular the repeated media appearances without notifying the trust, rather than because of the belief.

Subsequent treatment. Applied and followed in *Higgs*, *Ngole* and *Miller*.

Eweida v United Kingdom (2013) 57 EHRR 8; [2013] IRLR 231

Facts. Four joined applications concerning the manifestation of Christian belief at work: the wearing of a cross by an airline employee and by a nurse, and the refusal by a registrar and by a relationship counsellor to perform duties relating to same-sex couples.

Principles applied. Article 9 protects the holding of a belief absolutely, but its manifestation is qualified. At [82] the Court held that, in order to count as a manifestation, the act in question must be intimately linked to the religion or belief: there must be a sufficiently close and direct nexus between the act and the underlying belief. The possibility of changing employment is not a complete answer, but is relevant to the overall balance of proportionality.

Outcome. Ms Eweida's application succeeded; the remaining three applications failed on proportionality grounds.

Subsequent treatment. Applied in *Higgs*, *Mackereth*, *Ngole* and *Garrett*, the last applying the "intimately linked" requirement to defeat the claim.

Bank Mellat v HM Treasury (No 2) [2013] UKSC 39; [2014] AC 700

Facts. A challenge to a direction made under the Counter-Terrorism Act 2008 requiring the UK financial sector to cease business with an Iranian bank.

Principles applied. Lord Sumption at [20] and Lord Reed at [74] set out the four-stage proportionality test: whether the objective is sufficiently important to justify limiting a fundamental right; whether the measure is rationally connected to the objective; whether a less intrusive measure could have been used; and whether, balancing the severity of the measure's effects against the importance of the objective, a fair balance has been struck.

Outcome. The appeal was allowed; the direction was quashed as disproportionate and procedurally unfair.

Subsequent treatment. Applied in *Higgs*, *Ngole* and *Miller* as the framework for justification in belief manifestation cases.

Unite the Union v Nailard [2018] EWCA Civ 1203; [2019] ICR 28

Facts. A regional officer of a trade union complained of sexual harassment by two branch officials who were not employees of the union, and of the union's failure to deal with her complaints about them.

Principles applied. Underhill LJ at [86]–[108] held that an employer is liable under the Equality Act for third-party harassment only where its own act or omission is itself discriminatory; the tribunal must identify a discriminatory motivation in the employer's own conduct. It is not sufficient that the employer handled badly harassment carried out by someone else.

Outcome. The union's appeal on this issue succeeded in part; the findings against it in respect of the officials' conduct could not stand on the basis relied on.

Subsequent treatment. Remains the statement of the pre-commencement position. Its practical effect is substantially altered, prospectively, by the insertion of EqA s 40(1A)–(1C) with effect from 30 October 2026.

Omooba v Michael Garrett Associates Ltd [2026] EWCA Civ 253

Facts. An actress was removed from a theatrical production after the resurfacing of a social media post expressing her Christian belief about homosexuality, following public backlash and concerns about cast cohesion.

Principles applied. The Court confirmed that s 26 is not a free-standing mechanism for enforcing Convention rights. Convention rights inform the statutory analysis, in particular as part of the other circumstances under s 26(4)(b), but they do not displace the statutory elements, and a violation of a Convention right is not the same thing as a violation of dignity under s 26. Causation remains a matter for the claimant to establish against the particular respondent.

Outcome. The appeal was dismissed: public backlash and genuine commercial and cast-cohesion concerns did not, on the facts, establish discrimination or harassment.

Subsequent treatment.

For Women Scotland Ltd v Scottish Ministers [2025] UKSC 16; [2025] ICR 899

Facts. A challenge to Scottish Government statutory guidance concerning the meaning of "woman" for the purposes of gender representation on public boards.

Principles applied. The Supreme Court held that the words "sex", "man" and "woman" in the Equality Act 2010 refer to biological sex. In the course of its reasoning the Court described the analysis in *Forstater* as "comprehensive and impressive", although the protected status of gender-critical belief was not the issue it was deciding.

Outcome. The appeal was allowed.

Subsequent treatment. The endorsement of *Forstater* is persuasive (from UKSC) only and is not ratio on the *Grainger* threshold.

R (Williamson) v Secretary of State for Education and Employment [2005] UKHL 15; [2005] 2 AC 246

Facts. Head teachers, teachers and parents of independent Christian schools challenged the statutory prohibition on corporal punishment in schools as incompatible with their religious beliefs.

Principles applied. Lord Nicholls at [22]–[23] held that, in deciding whether a belief qualifies for protection, the court is concerned with the genuineness of the belief and not with its validity: the court is not an arbiter of the correctness, rationality or coherence of religious doctrine. The belief must nevertheless relate to a weighty and substantial aspect of human life and behaviour, and attain a certain level of cogency, seriousness, cohesion and importance.

Outcome. The appeal was dismissed on proportionality grounds.

Subsequent treatment. Applied in *Grainger*, *Forstater* and *Miller*.