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Respectful Workplaces, Free Speech and the Equality Act 2010

Religion and Belief in 2026

Discrimination Law Association | Practitioners' Group

Cloisters | 26 October 2026

EqA ss 40(1A)–(1C), 40A(1) and 40B in force 30 October 2026

Why this matters

- Expression of belief, not its holding, is now the battleground
- Five 2026 EAT decisions working out Higgs
- s 26 EqA, not Article 10, is the operative boundary

Ngole · Clifton Diocese · Garrett · Miller · Cherrington — all [2026] EAT.

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Protected belief: a low threshold (s 10 EqA)

THE GATEWAY

- Grainger: the five criteria
- Genuineness = good faith (Williamson)
- Lack of belief protected (Mackereth)

A VERY LOW BAR

- Forstater: only Nazism-type beliefs excluded
- Offence is not exclusion
- Miller: political beliefs count

A GLOSS

- Thomas: point left open on intolerance:
- ***Forstater* may not be last word if a belief espouses intolerance, Thomas declined to set a narrower test;**
- But the logic of A10(2) suggests this is right in the context of harassment.

Manifestation, Articles 9 and 10, and s 13

- s 13 protection extends to manifestation — Higgs
- Art 9: holding absolute, manifestation qualified — Eweida nexus
- Art 10(2): prescribed by law, necessary, legitimate aim
- Objection to manner of expression is lawful only if proportionate

BANK MELLAT (NO 2) [2013] UKSC 39

1. Important objective

2. Rational connection

3. Least intrusive

4. Fair balance

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Ngole [2026] EAT 29: the para 74 sequence

- Animus against the belief itself cannot be justified – less favourable treatment due to belief itself: causation questions do not involve any test of justification
- Same ratio for "related to" in s 26 as "because of" in s 13
- Multiple reasons: analyse each separately

FOR EACH REASON FOR THE TREATMENT

1. Belief held or manifested?
2. Anything objectionable?
3. Prescribed by law?
4. Proportionate? (Bank Mellat)

Service-user reaction to the mere holding of a belief: because of the belief, and unjustifiable.

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The other 2026 EAT refinements

Garrett	[2026] EAT 77 — normative vs descriptive; prove the Eweida nexus
Miller	[2026] EAT 84 — composite reason; Shvidler review standard
Cherrington	[2026] EAT 107 — Article 10 must be pleaded or "shout out"
Clifton Diocese	[2026] EAT 68 — s 136 discipline; linked harassment falls with it

Unfairness alone is not discrimination: Bahl. Igen and Efobi on the s 136 stages.

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Harassment, s 26: the operative boundary

Unwanted conduct · related to a protected characteristic · purpose or effect of violating dignity or creating a proscribed environment.

- To be unlawful, expression must constitute harassment
- Dhaliwal: a "healthy discipline" to take elements separately
- Pemberton: subjective, objective, and all other circumstances

s 39 and s 40 locate it in employment; s 109 vicarious liability; s 40A preventative duty.

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Purpose, effect and reasonableness (s 26(4))

PURPOSE

- Subjective: motive or intention
- Usually established by inference
- If shown, perception not in issue

EFFECT

- Did it in fact have that effect?
- No perception → the limb fails
- Find actual effect; do not substitute

REASONABLENESS

- Perception + other circumstances
- No culture of hypersensitivity
- But sensitising context counts

"Environment" is a state of affairs, but one incident suffices if its effects endure. Convention rights inform, but do not replace, the statutory elements.

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Where the line falls; competing characteristics

- Manner, context, audience, targeting, repetition, impact
- Not the content of the belief; no hierarchy of characteristics
- Miller: a successful s 13 claim does not establish s 26

EMPLOYER LOSES

- Belief treated as hateful — Adams
- Failure to protect — Phoenix
- Acting on service-user reaction — Ngole

EMPLOYER SUCCEEDS

- Even-handed requirement — Mackereth
- No Eweida nexus — Garrett
- Conduct, not speech — Cherrington

s 212 EqA: detriment does not include conduct amounting to harassment — plead in the alternative.

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Policies and contracts as boundary tools

Regulate conduct, not viewpoints.

- Not a legal test: preventive and evidential only
- Objective context for s 26(4) reasonableness
- Say unpopular views may be held and civilly expressed
- Foundation of the s 109(4) all reasonable steps defence

Avoid viewpoint-based prohibitions and definitions keyed to the offence taken by others.

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Investigating a complaint: Person A and Person B

1	**Preserve**	Exact words, audience, reach, timing — never paraphrase
2	**Separate**	Each reason through the Ngole para 74 sequence
3	**Matrix**	Unwanted · related to · purpose or effect · reasonable
4	**Balance**	Arts 9 and 10, Bank Mellat, alternatives rejected
5	**Decide**	Least intrusive adequate response — and record why

A real menu of outcomes: correction, clarification, apology, mediation, training, warning, discipline.

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Third-party harassment: s 40(1A)–(1C) EqA

IN FORCE 30 OCTOBER 2026 · ERA 2025 s 21

An employer must not permit a third party to harass an employee.

SCOPE

- Not the employer; not an employee
- Customers, service users, contractors
- Online or in person

CONDITIONS

- Harassment within s 26
- In the course of employment
- No "all reasonable steps" taken

IN PRACTICE

- Risk assessment by role and setting
- Policy, training, contract terms
- Record controls rejected, and why

Contrast Unite the Union v Nailard [2018] EWCA Civ 1203. Not a licence to suppress protected belief.

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“All reasonable steps”: sexual harassment

IN FORCE 30 OCTOBER 2026 · ERA 2025 ss 20 and 22

s 40A(1) EqA gains the word “all”. A single word — a different standard.

THE DUTY

- Prevent s 26(2) sexual harassment
- Anticipatory, not reactive
- Distinct from the s 109(4) defence

WHAT CHANGED

- All steps reasonable for that employer
- Organisation-wide; online and in person
- Larger employers: more expected

ARCHITECTURE

- Assess, identify controls, then take them
- Plural reporting routes; tailored training
- s 40B: regulations may prescribe steps

Monitor near misses, review, and give a senior person responsibility. Culture, not a paper exercise.

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Questions, discussion and ideas

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THANKS