



EMPLOYMENT LAW

# BELIEFS, BACKLASH AND THE WORKPLACE: NAVIGATING THE NEW CULTURE WARS

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# Speakers



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## Gareth's post



Gareth Brahams

26 March at 09:14 · 🧑

If you want to hear my views about how the culture wars are playing out in the workplace and what the law has to say about it, join this webinar. I will be covering our dear friend David Miller but more widely too. So, yes, from Brexit to Gaza to Trump to Trans issues, we are going there...



US06WEB.ZOOM.US

**Welcome! You are invited to join a webinar: BDBF Webinar: "Beliefs, backlash, and the workplace - navigating the new culture wars"....**

From the war in Gaza to trans issues, from the environment to Brexit, we are "going there". In today's polarised world, expressing beliefs at work (or indeed outside of work when colleagues find out about it) can lead to conflict and leg...



Tracey Rosenfeld-Schueler, Alex Newman and 12 others

5 comments



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Most relevant ▼



Danielle Ramdel Lobel-Weiss

Yikes!

3w

Like

Reply



Rachel Brahams

Danielle Ramdel Lobel-Weiss my thoughts exactly! Not sure this is wise!!!

...

3w

Like

Reply

Edited

# What are we going to cover today?

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How the law protects certain religions and beliefs in the workplace

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What beliefs and expressions of belief are protected and what are out of scope

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Where do corporate statements of belief and DEI stand with UK law?

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What rights and obligations do employers have to respond to individual employees' expressions of belief that cause offence to others?

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What is the safe zone for employers?

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# HOW THE LAW PROTECTS PEOPLE WITH CERTAIN BELIEFS

# Protected Characteristics

Age

Race

Religion or  
belief

Gender  
reassignment

Sex

Sexual  
orientation

Pregnancy and  
maternity

Marriage and  
civil  
partnership

Disability

# Belief discrimination claims

Type of discrimination	What does it cover?	Is there a defence?
<b>Direct discrimination</b>	Less favourable treatment because of the belief (includes manifestation of the belief)	Objective justification defence if treatment due to objectionable manifestation
<b>Indirect discrimination</b>	Neutral rules or practices which disadvantage those holding the belief	Objective justification defence
<b>Harassment</b>	Harassment related to the belief	All reasonable steps defence for harassment committed by co-workers
<b>Victimisation</b>	Detrimental treatment for having done a “protected act”, such as complaining about belief discrimination	All reasonable steps defence for victimisation committed by co-workers

# Harassment – the legal definition

Unwanted conduct...

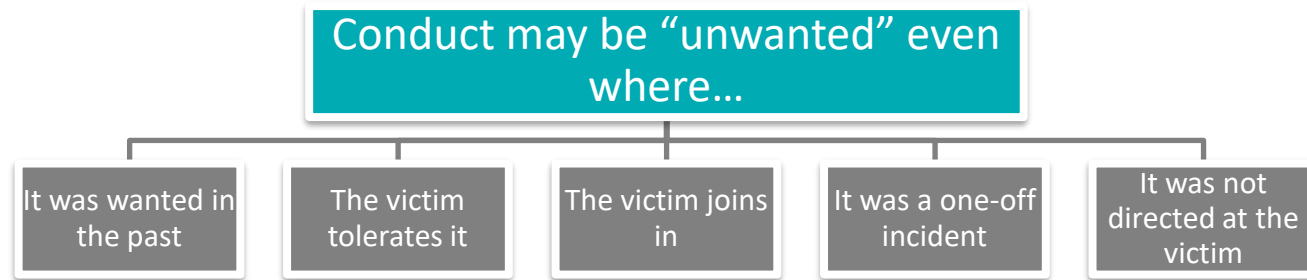
...related to a protected characteristic...

...which has the purpose or effect...

...of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment



# Harassment – the legal definition



**But** was it reasonable for the conduct to have that effect taking account of:

- perceptions of the recipient of unwanted behaviour; and
- all the circumstances of the case

# Belief discrimination claims

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# Unfair Dismissal

## Must:

- be for a fair reason
- be through a fair process
- act reasonably in treating the reason as sufficient for dismissal

## Not under Equality Act 2010

- Available to employees regardless of whether belief is protected

## 2 years' service?

- Not required if relates to political opinions or affiliations
- Becoming Day 1 right?

# WHEN ARE BELIEFS LEGALLY PROTECTED AND WHICH BELIEFS ARE OUT OF SCOPE?

# What beliefs are protected by law?

Equality  
Act 2010  
states:

- Religion is covered
- Religion includes a reference to a lack of religion
- Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief

*Grainger v  
Nicholson* says  
a philosophical  
belief means:

- A belief must be genuinely held
- A belief, not just an opinion or viewpoint
- It relates to weighty and substantial aspect of human life and behaviour
- It has a minimum level of cogency, seriousness, cohesion and importance
- Is worthy of respect in a democratic society and not incompatible with human dignity and not in conflict with the fundamental rights of others

# Beliefs not capable of protection

Membership of the BNP	Membership of the SNP	British nationalism	Extreme English nationalism	Extreme Marxism / Trotskyism
Break the law to stop animal suffering	Vegetarianism	Opposition to political correctness	Employers should not support Black Lives Matter	Anti-feminism
Opposition to same-sex adoptions	Homosexuality is a corrosive force in society	Copyright over own creative works	Fear of catching Covid	Wearing facemasks is associated with slavery
Support for a football club	People should wear poppies in November	9/11 and 7/7 were false flag operations	Jews are not God's chosen people	The Holocaust did not happen

# Beliefs capable of protection

Democratic socialism	UK independence/ Brexit	Scottish independence	Republicanism	Participatory democracy
Climate change	Gender critical beliefs	Anti Critical Race Theory	Higher purpose of public broadcasting	Proper and efficient use of public money
Public service and serving the common good	Ethical veganism	Anti fox-hunting	Stoicism	Life after death and mediums
	Abhorrence of paedophilia and domestic violence	Anti-Zionism		

# The David Miller Case



- Professor of Sociology at Bristol University
- He defined Zionism as *“the belief that a state for Jewish people ought to be established and maintained in the territory formerly comprising the British Mandate of Palestine”*
- He was fervently opposed to Zionism



## Was anti-Zionism a belief or was it an opinion for David Miller?

- UoB said it was an opinion based on research
- Miller said:
  - It was a life-long belief
  - He was not open to having his mind changed
  - His research was done to back up his belief
- ET said it does not need to be a touchstone

# Is Anti-Zionism worthy of respect in a democratic society?

- Anti-Semitism is not, but in Miller, the University conceded that the beliefs held were not anti-Semitic. **This does not bind other Tribunals**
- ET accepted that Prof Miller was not open to violence as a means to opposing Zionism
- According to *Forstater* (a gender critical case)  
*“Only 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 be justifiably restricted under article 9(2) or 10(2).”*

# **CORPORATE EXPRESSIONS OF BELIEF AND DEI INITIATIVES**

## **THE DEI BACKLASH IN THE US: WHAT DOES IT MEAN FOR EMPLOYERS IN THE UK**

# What do we mean by “DEI”?

## Diversity

- Representing different protected characteristics at work, but it could extend further (e.g. social class)

Anti-discrimination training and policies

Flexible working

Paid family leave

Workplace adjustments

Employer supported childcare

Employee assistance programmes

Employee affinity groups and networks

Gender neutral restrooms

Pronouns in emails

Mentoring

Pay audits and pay gap reporting

Preferential treatment in recruitment and promotion

Voluntary diversity targets

Targeted advertising

Blind CVs

Targeted outreach

Diverse hiring panels

Unconscious bias training

Monitoring and reporting DEI metrics

Leadership commitments

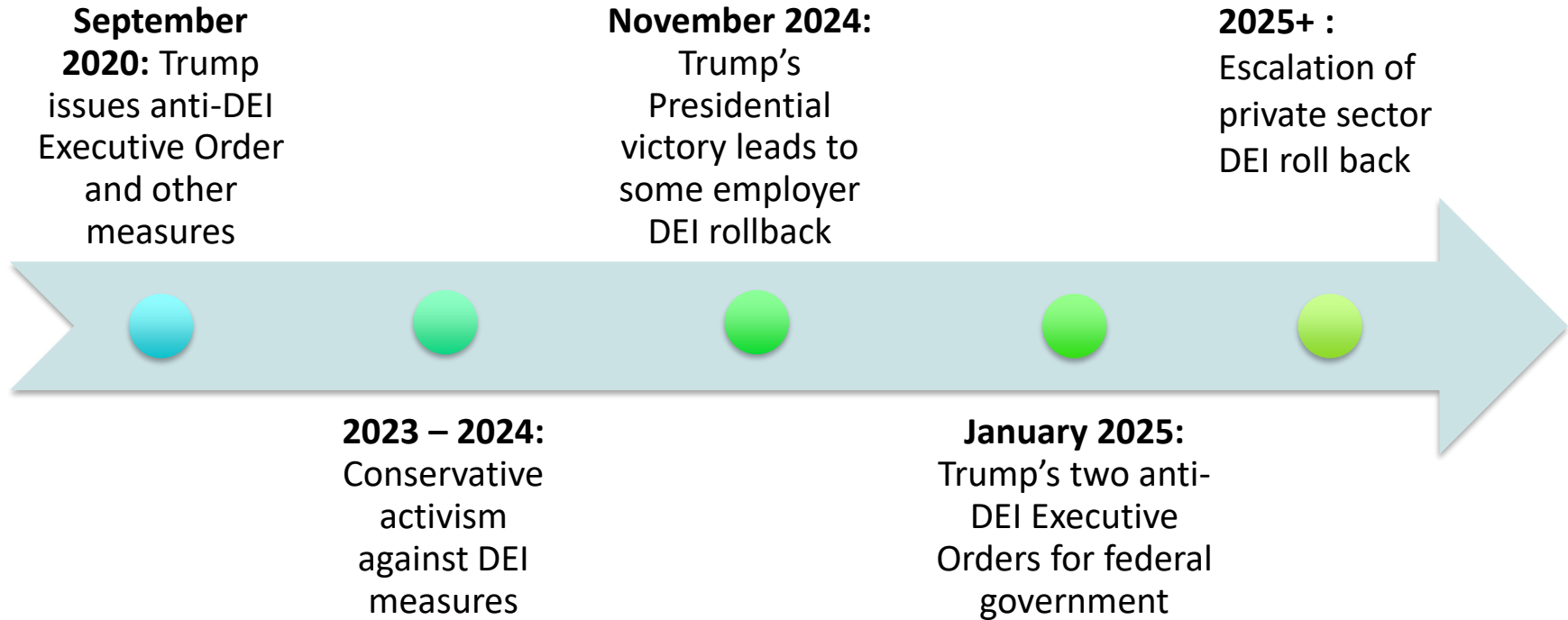
## Equity

- Delivering equality of opportunity through additional resources and opportunities for disadvantaged or underrepresented groups

## Inclusion

- Creating an environment where everyone feels valued, respected, and empowered to contribute

# The DEI backlash in the US



Which DEI measures are being rolled back?	Which US employers?
• Removing diverse hiring targets	McDonalds; Meta; PepsiCo; Google; Harley Davidson
• Removing supplier diversity objectives	Harley Davidson; Walmart; McDonalds; Meta
• Ceasing co-operation with external culture surveys	Ford; Lowe's; Harley Davidson; Accenture
• Disbanding DEI department / discontinuing Chief Diversity Officer role	Meta; PepsiCo; Harley Davidson
• Ending all DEI training	Walmart; Amazon; Meta
• Changing language – dropping “DEI” altogether or changing focus to “inclusion” or “equal opportunities”	Walmart; McDonalds; Google
• Disaffiliation with social and cultural awareness events / issues	Ford; Lowe's; John Deere
• Removing “socially motivated messages” from training materials	John Deere; Harley Davidson
• Ceasing production of an annual DEI report	PepsiCo; Deloitte US
• Removing DEI targets as a measure of staff performance	Accenture; Disney
• Restructuring employee groups to make them accessible to all staff	Ford
• Ending career development programmes for underrepresented groups	Accenture
• Instructing removal of pronouns from staff email signatures	Deloitte US

# Limited response from UK employers

## BT

- Have removed DEI targets from the annual bonus calculations for middle managers

## FCA/PRA

- No plans to take the diversity and inclusion rules forward

## Lloyds Banking Group

- Reduced diversity targets that impact annual bonus payments for senior staff and its wider employee base

## GSK plc

- Removal of diversity targets for leadership roles and suppliers

# Different political, cultural and legal eco-system



## Political

Government were elected on a mandate to expand discrimination protection

Reform campaigned on a manifesto committed to end DEI programmes in the last election



## Cultural

Concept of DEI is well-established

Surveys show it is important to workers



## Legal

Less to rollback

Equality Act does not permit “affirmative action” or positive discrimination

“Positive action” is permitted

Need to comply with UK law



# Potential effects in the UK

Rebranding of DEI

Disaffiliation with  
social causes /events

Employee opposition  
and challenge to  
continued DEI  
measures

# WHY DO EMPLOYERS INTERVENE IN THEIR EMPLOYEES EXPRESSIONS OF BELIEF AND WHEN SHOULD THEY?

# Potential problems for an employer

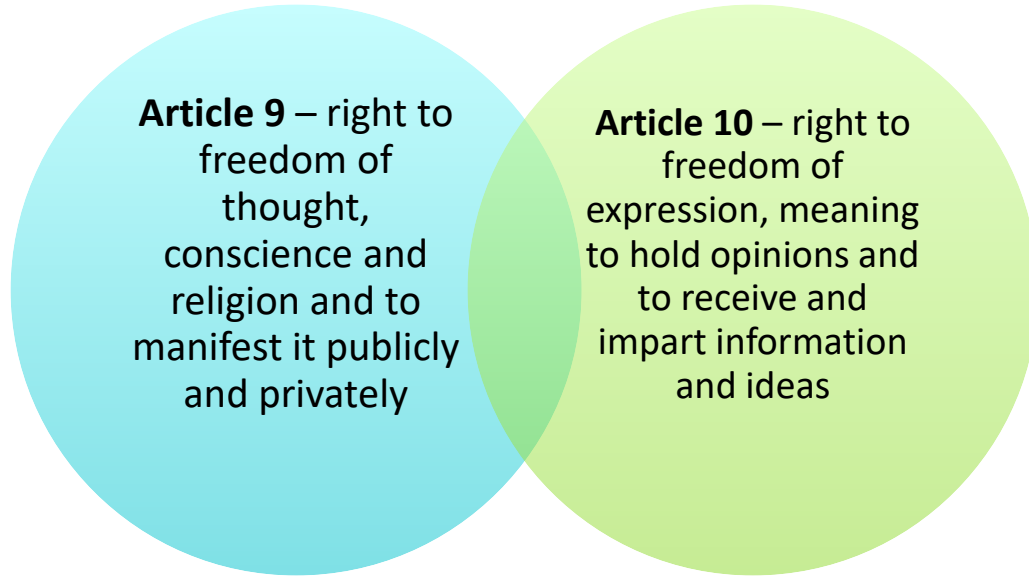
Contrary to organisational values

Harassment of others

Reputational damage

Regulatory breach, criminal offence or civil action

# The human rights backdrop



# Higgs v Farmor's School

- Kristie Higgs employed latterly as a pastoral administrator and work experience manager for this secondary school in Gloucestershire
- She had grown up in the area
- She was a committed Christian
- On a
  - private Facebook group with about 100 people in it
  - written in her maiden name
  - that did not link her with the school, albeit she was a local girl and many would have known where she worked
- She posted what follows - what is written between the asterisks was her own wording. The rest was re-posted

# Post around marriage

**\*\*PLEASE READ THIS! THEY ARE BRAINWASHING OUR CHILDREN!\*\***

On November 7th the Government Consultation into making Relationships Education mandatory in primary schools, and Relationships and Sex Education mandatory in secondary schools closes. Which means, for example, that children will be taught that all relationships are equally valid and 'normal', so that same sex marriage is exactly the same as traditional marriage, and that gender is a matter of choice, not biology, so that it's up to them what sex they are. At the same time it means that expressing and teaching fundamental Christian beliefs, relating to the creation of men and women and marriage will in practice become forbidden – because they conflict with the new morality and are seen as indoctrination into unacceptable religious bigotry. Which means that freedom of belief will be destroyed, with freedom of speech permitted only for those who toe the party line! We say again, this is a vicious form of totalitarianism aimed at suppressing Christianity and removing it from the public arena.

**\*\*\* Please sign this petition, they have already started to brainwash our innocent wonderfully created children and its happening in our local primary school now\*\*\***

# Reposting of US gender- critical posts

- “While normal Americans are busy at work trying to provide for their families, liberal school systems are busy indoctrinating their children. Kindergarten and first grade children are being primed for a gender fluid society. Of course, the schools are introducing the propaganda in the name of anti-bullying campaigns, but we know better. They are busy recruiting children for the transgender roster. Their agenda is not about bullying. They are using our children to promote their gender free society of madness. ... They are stealing the innocence of our children with a devious scheme to supplant traditional gender roles by differentiating a child’s gender assignment at birth with his perceived gender
- Not succumbing to the brainwashing of deranged educators is now a characteristic of bullying. The far-left zealots have hijacked the learning environment, and they insist on cramming their perverted vision of gender fluidity down the throats of unsuspecting school children who are a government mandated captive audience.
- Lying to children and convincing them that they can be anything they want to be when in reality they can’t is a form of child abuse, especially when it entails the changing of one’s genitalia or ingesting hormones. The LBGT [sic] crowd with the assistance of the progressive school systems are destroying the minds of normal children by promoting mental illness. Delusional thinking is a form of psychotic thinking, and we have professionals promoting it to our young kids.”

## Parent complaint

*“Dear Mr Evans,*

*I’ve noticed that a member of your staff who works directly with children has been posting homophobic and prejudiced views against the lgbt community on Facebook.*

*I’m concerned that this individual may exert influence over the vulnerable pupils that may end up in isolation for whatever reason. I find these views offensive and I am sure that when you look into it, you will understand my concern. I’d rather remain anonymous as the person in question is ... . I’ve attached a couple of screen shots so you can see what I’m referring to.”*



# Grounds of dismissal

- Posts were discriminatory against the complainant [in litigation held to be unsustainable – no proof she was an employee]
- Risk of reputational harm (though acknowledgment of no harm to date caused)
- Language may demean LGBT pupils (although none aware and not directed at them)
- Her posts called into question her suitability to work with children as pastoral manager, though no complaint by parent or child about interactions with them
- Online persona not consistent with professional image expected of someone working in the school
- Considered alternatives to dismissal but felt none available as Ms Higgs demonstrated
  - No insight into the impact of the posts on the complainant
  - Had not removed the posts
  - Refusal to commit to not re-posting (only regret was the use of the word brainwashing)

CA (and EAT)  
held:  
The distinction  
between belief  
(which has  
absolute  
protection) and  
manifestation  
of belief (which  
has qualified  
protection)?

- **The posts were held to be expressions of belief:** *“If the claimant’s actions have a sufficiently close and direct nexus to an underlying religion or belief, such that they are properly to be understood as a manifestation of that religion or belief, any limitation would need to be such as is prescribed by law and necessary, in one of the ways identified under article 9(2)”* ECHR which says
- *“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**”*

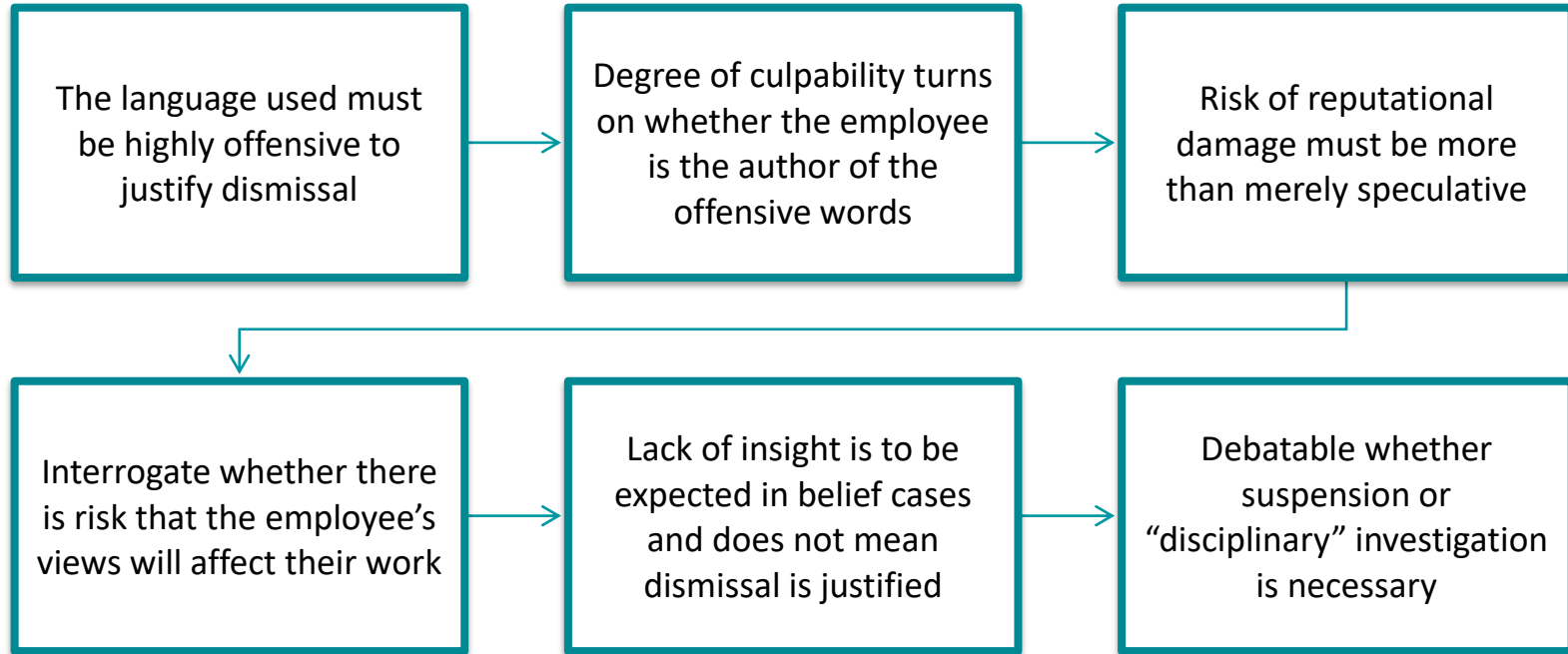
## How did it work in the David Miller case?

- Taught in lectures that Zionism was one of the five pillars of Islamophobia in British society
- In a letter to a student he said *“Zionism is a racist, violent, imperialist ideology premised on ethnic cleansing. It is an endemically anti-Arab and Islamophobic ideology. It has no place in any society”*
- Wrote in the student newspaper that members of the Jewish Society in Bristol were the pawns of Israel (which he considered was a settler, colonialist, racist state)
- He was sacked by the University and won his claim for discrimination who said he should have been subjected to a final written warning rather than been sacked for his conduct

# Was interference justified in Miller case?

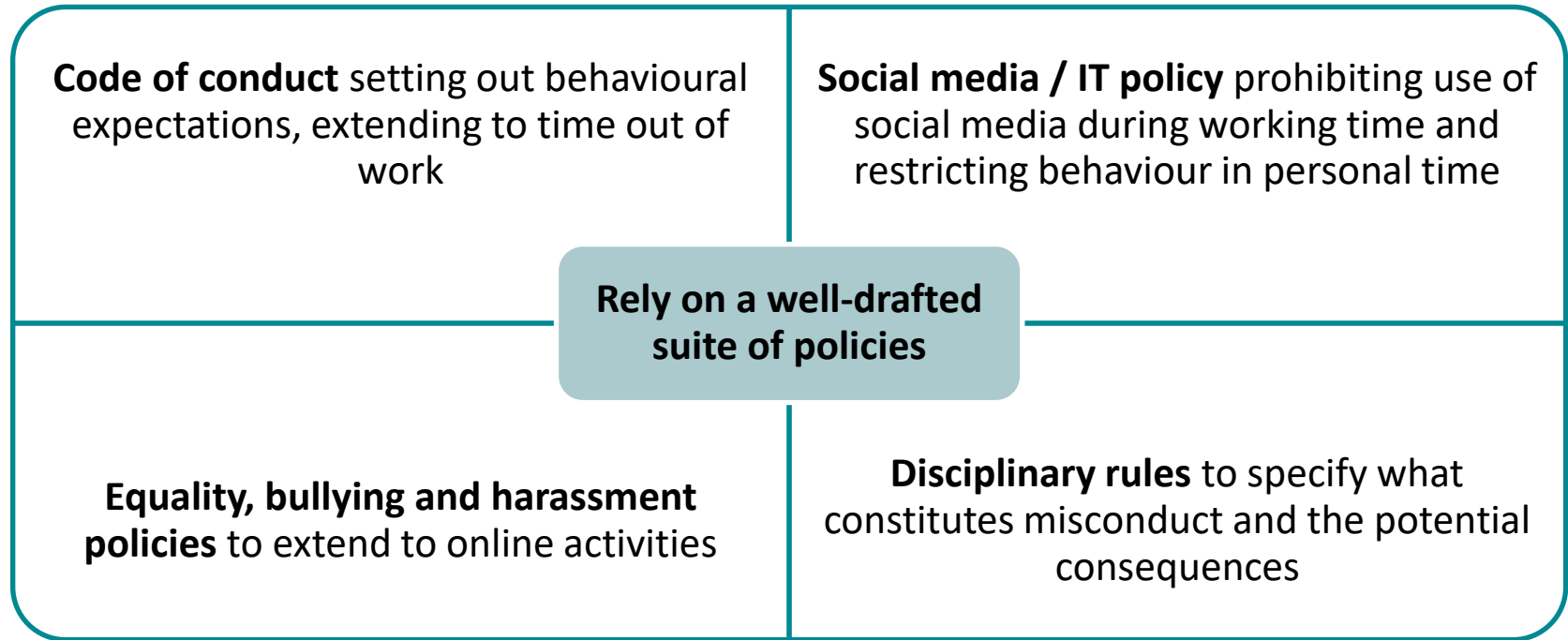
- **There was a legitimate aim**
  - to protect those holding other beliefs; and
  - the University's reputation (although not to counter discrimination, because they had conceded there was none)
- **Was it proportionate?**
  - There was significant harm to UoB's reputation and impact on donations
  - To communicate in the way he did with students and bring students and JSoc front and centre "*was extraordinary and ill judged*"
  - Agreed that there was an imbalance of power between a professor and their students
- **BUT ET took account of**
  - Comments were made related to legitimate areas of academic research
  - Concerned about chilling effect of decision on freedom of speech within an academic institution of dismissing a lecturer for his utterances
- **ET concluded**
  - Claimant should have been given a final written warning not to involve students in and student societies in his public comments
  - Accordingly, his claim that the decision to move the case to a disciplinary hearing was harassment failed but dismissal was held to be unlawful, albeit his compensation reduced because of the chance he would have been fired for crossing the line again at a later date

# Key takeaways from Higgs v Farmor's School



# WHAT SHOULD EMPLOYERS DO?

# Proactive steps



# Reactive steps





# Our contact details



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