



EMPLOYMENT LAW

Culture wars at work: navigating employee rights, beliefs and the law

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Speakers



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What are we going to cover today?



Basics of the law around protected religion, beliefs and other characteristics



Case Study 1: Gender-critical speech and support groups



Case Study 2: Political views expressed on social media



Case Study 3: Changing law on third-party harassment

Who is protected?

Human Rights
Act 1998 /
European
Convention on
Human Rights

Equality and
Human Rights
Commission
Guidance / ACAS
Guidance

Equality Act 2010

Wider
employment
laws and rights

Categories of Protection

- **Protected characteristics:**
 - Age
 - Disability
 - Gender Reassignment
 - Marriage and Civil Partnership
 - Pregnancy and Maternity
 - Race
 - Religion or Belief
 - Sex
 - Sexual Orientation
- Protects **employees, partners, applicants, most workers, employment service users, LLP members and office holders**

Types of Protection

Type	Meaning
Direct Discrimination	• Treated less favourably because of the protected characteristic (PC)
Indirect Discrimination	• Treated the same but put at disadvantage because of the PC (can be justified if proportionate means of achieving legitimate aim)
Harassment	• Subjected to unwanted conduct related to a PC with purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment • Also includes sexual harassment if conduct is of a sexual nature
Victimisation	• Subjected to detriment for doing a protected act (e.g. raising allegations of discrimination or giving evidence about them)
Other Types	• Failure to make reasonable adjustments for disability • Unfavourable treatment due to pregnancy / maternity (or related illness) • Discrimination because of 'something arising' from disability

Protected Beliefs

Grainger Test

- **Genuinely** held
- **Not an opinion or viewpoint** based on the present state of information available
- Relate to a **weighty and substantial aspect of human life and behaviour**
- Attain a certain level of **cogency, seriousness, cohesion and importance**
- Be **worthy of respect in a democratic society**, not be incompatible with human dignity and not conflict with the fundamental rights of others

Convention Rights

- **Article 9** – Freedom of **thought, conscience and religion**, can be limited as necessary in democratic society
- **Article 10** – Freedom of **expression**, can be limited as necessary in democratic society
- **Article 17** – Confirmation that **nothing in these provisions allows individuals to engage in any activity aimed at the destruction of any of the rights and freedoms provided for**, or limit them to any greater extent than the Convention

Case Study 1

Case Study 1

A female employee of a large corporate employer expresses their gender-critical beliefs loudly within the workplace and asks the employer's permission to set up a support group within the workplace for those who share her views. Complaints are received from the employer's existing LGBTQ+ society and from an affected transgender colleague, who say that her views and the proposed support group are making them feel unwelcome at work.

What protections are in play?

Philosophical belief

Gender-critical views protected under *Forstater v CGD Europe*

Gender reassignment

Proposing to undergo, undergoing or has undergone process to reassign sex

Philosophical belief?

Opposition to gender-critical views (gender identity theory) likely to be protected

Decision in ***For Women Scotland*** on meaning of 'sex' / 'man' and 'woman' under the Equality Act 2010 has **increased tension of debate**

Key Case Law

Higgs v Farmor's School

- Court of Appeal **distinguished between two situations**:
 - Dismissal or action because of **expressing a protected belief** will be **unlawful direct discrimination**
 - Dismissal or action because of **objectionable manifestation** of belief may be **lawful** if it is an **objectively justified proportionate response**
- Drew on **separability principle**
- Key is determining the **true reason for the treatment**
- Reaction must still be **proportionate** – looking at objective of the employer and whether the response was appropriate

Examples in Practice

- *Randall v Trent College* – sermon warning against LGBT ideologies in school was an objectionable manifestation
- *Phoenix v TOU* – academic group researching from gender-critical perspective was not an objectionable manifestation; employer **failed to sufficiently protect from harm** caused by backlash / complaints
- *McBride v Scottish Ministers* – use of **internal chat forums / email to provoke debate** and **excessive complaints** to invite discussion of beliefs were objectionable manifestations

Consequences of protections



Practical tips



Fully and **fairly investigate all complaints**, treating them as **equally important** and **meeting with the employees** to ensure that their issues are properly heard and dealt with (even if no action can be taken)



Explain to employees when and how their views are protected, but that these **protections also apply to those whose views they disagree with** or even those they find **offensive** (with very limited exceptions)



Consider the **content, tone and audience of any potential objectionable manifestations**, including any **intrusion on the rights of others** (particularly vulnerable parties), and ensure that **any action taken is proportionate**



Before situations arise, **conduct an Equality Impact Assessment / Risk Assessment** for your workplace and ensure employees receive **training on their and others' rights to freedom of religion and expression**



Avoid having different rules for different support groups, ensuring that **all views are treated equally** save for where there are **lawful exceptions** – this may mean **permitting or prohibiting all groups**



Case Study 2

Case Study 2

An employee of a law firm supports Nigel Farage's recent announcements that Reform UK would ban foreign nationals from social housing and force deportations of certain nationalities. They retweet the BBC's article on this on their personal X account with several 'clapping' emojis to indicate their agreement. They do not use social media as part of their role and their workplace is not listed on their X profile, but their page is publicly available. The posts are seen by other employees and several clients, and the employer receives complaints.

Is there a protected belief?

Belief may **not be protected** if it is **aimed at interfering with the rights of others** (Article 17 and *Grainger*)

- ***Forstater*** – Belief will **only fail this element of the test** if it “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”
- ***Thomas v Surrey and Borders Partnership NHS Foundation Trust*** – Belief in **English nationalism with a significant anti-Muslim element was not protected**, as it shared features with Nazism and was evidenced to include a desire for Muslims to be removed (and the religion banned) from England
- ***Norwood v UK*** – Beliefs of **organiser of British National Party (BNP) were not protected** as the posters displayed were a **public expression of attack on Muslims**. ECtHR confirmed that free speech **permits provocative speech if it does not promote violence**, and that “the general purpose of Article 17 is to **prevent individuals or groups with totalitarian aims from exploiting in their own interests the principles enunciated by the Convention**”

Consequences of protections

Supporting Reform UK?



Unlikely to be protected,
solely support for a
political party



Protection from unfair
dismissal due to Article 10
rights and S108(4)
Employment Rights
Act 1996

Supporting English nationalism?



Possibly protected, may fall foul of the *Grainger* test / Article 17 requirements
depending on details of the belief and infringement on others' rights



Protection from discrimination (including direct, indirect and harassment)
based on protected belief, unless objectionable manifestation
Protection from unfair dismissal due to Article 10 rights and S108(4)
Employment Rights Act 1996

Practical tips



Reinforce **training on employees' rights to freedom of expression**, also consider messaging through **policies and internal social networks** (expressly including **potentially controversial beliefs**), noting **limitations of those rights**



Regulate employees' use of social media so far as is legally permissible, particularly regarding **avoiding public ties to their workplace** and **reminders of requirement for tolerance and respect of others' beliefs**



Assess the likelihood of protection if complaints about expression of a belief are received, establishing **exactly what has been said / done** and the **details** of the belief itself, **without making assumptions or judgments**



Explore ways in which the **expression can be limited by agreement** or the **impact can be mitigated** (but be prepared that the **employee may be resistant to this**) – it **may be that no action by the employer is justified or possible**



Remember that **taking action based on 'reputational risk' will rarely be defensible** unless there is **substantive evidence of a direct impact** – anticipation will not be enough, and any **response must still be proportionate**



Case Study 3

Case Study 3

In November 2026, an insurance organisation plans to run a strategy day at a conference venue in London. A few weeks before the event, a member of staff discovers online that another group has hired a room at this venue for their annual assembly on the same day – the group promotes far-right views, and their leader plans to give a rallying speech during the event. This knowledge is shared amongst the organisation's staff, and several of them raise complaints with the employer asking for a change of venue. They say that they don't want to come into contact with the group in the communal areas or overhear the speech which they believe will be upsetting.

Key Case Law

Current Law

- Employers are liable for **harassment of their employees by other employees**
- No direct legal protection from **harassment by third parties**

Law from October 2026

- Under **Employment Rights Act 2025**, employers will be **liable for harassment related to a protected characteristic (or of a sexual nature)** of their employees **carried out by third parties** from October 2026 onwards
- Direct application likely to be to **harassment by customers / clients** (e.g. sexual harassment at work events, inappropriate emails or communications)
- **BUT** behaviour **does not have to be targeted** – may include anything that has the **purpose or effect** required under the test for harassment
- May therefore capture things that **employees see or hear in the course of their work**, if this constitutes **unwanted conduct related to a protected characteristic or of a sexual nature** and it was **reasonable for it to have the proscribed effect**
- Employers have a defence if they **took all reasonable steps to prevent the harassment**

Practical tips



Consider **what ‘all reasonable steps’ looks like for your workplace**, including **consultation** where necessary, and ensure that it includes a **proper response to any specific incidents that occur**



Be ready to **disclose internal decision-making documents about what reasonable steps have been taken**, and to **defend any steps that weren’t considered reasonable** to take



Remember that **compliance with your duties does not mean you can demand that others discriminate** (e.g. demanding that the venue cancel the group’s booking)



Assess **whether it is reasonable for employees to have the alleged response**, and take steps which are **proportionate to this assessment** and the resulting risk of a harassment claim **compared to the wider circumstances and risks**



Requirement to **work with / alongside people with different views** is **unlikely to constitute harassment**, but risk will be **higher where there is a direct interaction or incident** (or you have **not taken all reasonable preventative steps**)



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