

Safeguarding, Speech and Sanctions: The Belief Cases Employers Can't Ignore

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How far can an employer go in restricting what an employee believes, says or does about it? A wave of 2025-2026 decisions has turned the Higgs framework into a working machine and the results are less predictable than either side of the debate would like.

Everyone in employment law now knows the vocabulary. “*Genuinely held.*” “*Weighty and substantial.*” “*Worthy of respect in a democratic society.*” Since *Grainger plc v Nicholson* [2010] ICR 360 gave us the five-part test for a protected philosophical belief, and *Forstater v CGD Europe* [2022] ICR 1 confirmed just how low the bar for “worthy of respect” really is, the question that matters has shifted decisively from whether a belief is protected to what an employer may lawfully do when an employee acts on it.

That question now has an answer, and it is the four-stage proportionality test from *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, imported wholesale into the Equality Act 2010 by the Court of Appeal in *Higgs v Farmor's School* [2025] EWCA Civ 109. Employers may restrict a genuinely protected belief's manifestation, but only where the restriction is objectively justified: a sufficiently important aim, rationally connected measures, no less intrusive alternative, and a fair balance struck. The Court of Appeal also endorsed nine contextual factors: content, tone, extent, audience, intrusion on others' rights, reputational risk, power imbalance, impact on vulnerable service users, and whether the measure taken was the least intrusive available.

Straightforward enough on paper. In practice, 2025-2026's tribunals have been applying that machinery to widely differing fact patterns, and chambers should be watching where the balance falls in each context.

The academy: *Miller v Bristol* shows the ceiling is high

In *University of Bristol v Miller* [2026] EAT 84, the EAT largely upheld an employment tribunal finding that dismissing a professor for expressing anti-Zionist beliefs, even beliefs the university itself conceded were not antisemitic, did not incite violence and posed no safety risk, was direct

discrimination that could not be justified. The tribunal went further: summary dismissal of an academic risked a chilling effect on academic freedom "to the detriment of society as a whole", and a lesser sanction would have met the university's legitimate aims. Where a material part of the reason for dismissal is simply the non-objectionable expression of a protected belief, the Higgs justification exercise does not even get off the ground; the dismissal falls squarely within the first, unjustifiable, Page category (see *Page v NHS Trust Development Authority* [2021] EWCA Civ 255).

Miller is the clearest signal yet that universities face a genuinely high bar, reinforced by the statutory duty on higher education providers to secure academic freedom under the Higher Education (Freedom of Speech) Act 2023 amendments.

The classroom: safeguarding shifts the balance the other way

Move from lecture hall to classroom and the outcome reverses. In *Lister v New College Swindon* (Case No: 1404223/2022), a lecturer's gender-critical belief, that sex is binary, immutable and not to be conflated with gender identity, was accepted as protected. But his dismissal for refusing to use a transitioning student's name and pronouns, and for conduct that caused the student's attendance to decline, was found proportionate. The tribunal weighed the safeguarding of a vulnerable student and the power imbalance between teacher and pupil heavily against him, particularly once he made clear his conduct would not change.

Dybowski v Bishop of Llandaff Church in Wales High School (Case Nos: 1601681/2023 and 1601682/2023) tells the same story from a different angle. A teacher's beliefs on marriage, abortion, sharia law and biological sex were all protected. What tipped the balance against him was not the beliefs themselves but the trajectory of what he said he intended to do next: express those views to pupils, including refugee children at a designated school of sanctuary, through a proposed debating club. The tribunal's reasoning tracks the Higgs factors precisely: audience, vulnerable service users, and the objectively assessed risk of future harm, not retrospective offence-taking.

The workplace: belief protection is not one-size-fits-all

Corby v ACAS (Case No: 1805305/2022) is a useful reminder that not every strongly held view survives the Grainger gate. The tribunal found the claimant's opposition to critical race theory and preference for "character over race" met all five Grainger criteria and was protected. But his views on sex and feminism, triggered by one colleague's comment on male suicide rates, were dismissed as a narrow personal opinion, not a philosophical belief at all. The lesson for

practitioners: belief discrimination claims should be pleaded and tested belief-by-belief, not as an undifferentiated bundle of grievances.

Recruitment and vetting: Ngole returns to the EAT

Felix Ngole is back in the law reports. Having won his Court of Appeal challenge over removal from his social work course in 2019, he found a conditional job offer withdrawn by Touchstone Leeds after a Google search turned up his earlier media coverage. In *Ngole v Touchstone Leeds* [2026] EAT 29, the EAT held that safeguarding service users was a sufficiently important aim to justify some limitation on Mr Ngole's Article 10 rights; testing his suitability through a second interview was proportionate. But withdrawing the offer outright, without giving him any opportunity to provide assurances, was not. Where objective justification fails, the treatment reverts to being because of the exercise of the protected right: direct discrimination, full stop.

What this means for advice on the ground

Three practical takeaways emerge from this run of decisions. First, the proportionality exercise is genuinely fact-sensitive: chambers should resist the temptation to predict outcomes from the belief alone; the manner and context of manifestation is doing the real work. Second, safeguarding and vulnerable service users remain the single most powerful factor tipping the balance towards the employer, whether the vulnerable party is a pupil, a service user or a member of the public. Third, and most useful for advising employers before they act: least intrusive means is not a box-ticking exercise. Miller and Ngole both show tribunals scrutinising whether a lesser sanction, or a further conversation, was genuinely available before dismissal or withdrawal was resorted to.

The Higgs framework has done its job of giving structure to an area that badly needed it. What 2026 has shown is that structure does not mean predictability, and that is exactly why belief discrimination advice will keep discrimination lawyers busy for years to come.

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