

CLIENT GUIDE:

Guidance for employers on religion and belief discrimination in the aftermath of Higgs v Farmor's School

What does this decision mean for employers in reality?

What is acceptable in terms of views expressed in or around the workplace?

What steps can you take to protect your reputation as a business and balance this with the rights of the individual?

There is a fine balancing act between freedom of speech, protecting the rights and beliefs of an individual and those of others and your business as a whole.

Higgs v Farmor's School has effectively changed the legal landscape in terms of the actions of employers in relation to employees who articulate personal views publicly which could cause damage and harm to the business that employs them.

This short guide aims to provide some tips on the practical application of a complicated area of law and the outcome of a case that took seven years to conclude.

Remember always that every case will turn on its own facts and that whilst you may be able to rely on some aspects of another case for guidance you must look in detail at the situation you are dealing with and the context in which you are dealing with it.

What do you do if an employee has articulated (manifested) a belief publicly (social media) which you, as an employer believe is harmful to the business and/or other colleagues?

1. No knee jerk responses.
2. Think rationally and logically.
3. Keep records.
4. Take prompt legal advice from an expert.
5. Follow accepted best practice in employment law situations.
6. What has been said/done – what were the actual words used?
7. Are the words in themselves offensive (i.e. swearing) as well as the views expressed?
8. Is there a *protected* belief (not all beliefs are protected) – is it protected under the Equality Act 2010 – *opinion* is not a protected belief – it runs far deeper than this. The case law gives guidance on this.
9. What has the response to the manifestation of the belief been? What has been the impact? In the workplace? For the business? For the individual? In and out of work?
10. What is the context – was the comment made on social media and does it connect the individual to the business or is it in the private realm entirely?

11. How do you know what has been said? Is it publicly available or within a closed group?
12. What is the role of the individual – the more senior or more sensitive the role of the individual, the more risk posed and more checks and balances have to be applied.
13. What are the rights of that individual when countered against the rights of colleagues and the interests of the business?
14. Articles 9 and 10 of the European Convention on Human Rights (freedom of belief and freedom of speech) are your starting point to determine the rights and freedoms of individuals.
15. The right to freedom of speech is a *qualified* right, not an absolute – there are caveats in terms of it being limited in the interests of public safety, health/morals and the protection of the rights and freedoms of others.
16. The *manifestation* of a belief cannot be used as a tool to harass others – there are limits in terms of respectful discourse within the workplace and the need for an employer to protect all staff from discrimination.
17. Every case that concerns the manifestation of a belief will need to be considered on a case by case basis – there is no one size fits all approach you can adopt.
18. You cannot apply a blanket approach and expect an acceptable and reasoned outcome
19. You must thoroughly investigate – it is important to take all reasonable steps to understand the rights of the individual, the words that were used and the context in which comments were made measured against the needs of the business (are there safeguarding issues/vulnerable clients) and the wellbeing of other colleagues.
20. The right not to be offended does not hold any weight – it has to amount to harassment to be protected – it's more than simply that people are upset.
21. Just because *you* do not agree with what has been said, does not mean it is wrong or cannot be said. Is there scope to disagree in a proportionate and respectful way?
22. You have to ensure that any outcome, in response to any manifestation of a belief is proportionate and objectively justified.
23. If seeking to dismiss an employee as a result of a manifestation of belief, consider:
 - a. Is dismissal a proportionate response?
 - b. Has reasonable consideration been given to alternatives?
 - c. Is the conduct so bad as to deprive someone of their livelihood?

- d. What was the impact on the business – can you evidence any loss of revenue, complaints, damage to reputation? Is there a specific link between the comments made and the impact?
- e. Training can be a good means of re-educating employees about what can and cannot be said and how to be respectful of others.
- f. Mediation can also offer a solution to a heated issue.
- g. Think about the need to revise social media and other company policies in the light of what has happened. Be clear with your employees on what is and is not acceptable in your workplace.
- h. Be aware of legal changes and the associated implications. This is not a straightforward issue, it needs careful consideration and you need to keep an eye on the law which is developing quickly in this area.

24. Try to be impartial and to not conflate your personal views with views of others – rise above. Is what has been said really worthy of disciplinary action?

This area of law developing all the time. It is the key topic of our time and one that didlaw is at the forefront of understanding. We have acted for individuals in these cases and are well placed to advise employers of the key pitfalls and how to approach this dynamic and socially evolving area of law.

Disclaimer: this is a guidance note and is not intended to constitute formal legal advice. In the event of an issue you must take advice on your specific concerns.