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Issue 245



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Whether an employer's actions were because of a belief or because of the inappropriate manifestation of that belief

Whether a fundamentally flawed appeal process can render a dismissal unfair

ERA 2025: A practical implementation timetable for SMEs

Was it necessary to determine if an employer's actions were because of a belief or the inappropriate manifestation of that belief?

In *Ngole v Touchstone Leeds [2026] EAT 29 (16 February 2026)* the Employment Appeal Tribunal (EAT) held that an employment tribunal had erred by failing to determine if a Respondent's actions were because of a job applicant's beliefs, or because of the inappropriate manifestation of those beliefs.

Background

Mr Ngole (the Claimant) applied for a mental health support worker role with Touchstone Leeds (the Respondent) in April 2022. The Claimant had declared his religion to be Christian. The Respondent is a charity providing mental health and wellbeing services.

The purpose of the role was to support vulnerable service users with severe mental health issues during the process of discharge from hospital. Many of the users are LGBTQI+. The job description required the support worker to "operate within the aims, policies and practices" of the Respondent at all times and "be committed to and promote the organisation's equal opportunities and anti-discrimination policies".



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The Claimant was invited to attend an interview on 10 May 2022, scored well and was offered the post on 19 May 2022, subject to two satisfactory references from professional referees, as per their recruitment policy. He provided two references with very little detail and on being asked, provided a third, by someone referred to as a “family friend”.

Due to the difficulties in obtaining full references, the Respondent carried out a Google search of the Claimant’s name. They found news stories about a claim the Claimant had brought against Sheffield University when he had been removed from his course because of Facebook posts where he described homosexuality and same-sex marriages as a sin.

In June 2022 the Respondent decided to withdraw the conditional offer, being concerned that the Claimant held views that were not in “alignment with the Respondent’s vision, values and ethos” and could negatively impact on its services users.

The Claimant challenged this decision, and he was offered a second interview to discuss the issue. This second interview took place in July 2022 and was unsuccessful in reconciling the parties. The Respondent did not reinstate the job offer.

The Claimant complained to the Employment Tribunal that his rights under Article 9 and 10 of the European Convention on Human Rights had been breached and that he had been subjected to harassment, direct discrimination and indirect discrimination under the Equality Act 2010 (EQA) on the basis of religion or belief.

The ET held that the withdrawal of the job offer amounted to direct discrimination and dismissed all his other claims. It held that it was not direct discrimination for the Respondent to require the Claimant to attend a second interview to discuss the issue and provide assurances that his beliefs would not impact services users, nor for it to decide not to reinstate the original offer.

The Claimant appealed the decision to the EAT.

Applicable Law

The Claimant’s complaints were brought under the Equality Act 2010 (EQA). Section 39 EQA makes it unlawful to discriminate in the employment context:

(1) An employer (A) must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer employment;

(b) as to the terms on which A offers B employment;

(c) by not offering B employment.

The complaints relevant to this appeal concerned the arrangements the Respondent made for deciding to whom to offer the role and in not offering the claimant that job.

Direct discrimination is defined by section 13 EQA:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

It is important to note that there is no provision in Section 13 EQA permitting justification of direct discrimination.

Section 4 EQA sets out protected characteristics including “religion or belief”. Section 10 EQA provides that religion means any religion and includes a reference to a lack of religion. The EQA does not refer to the manifestation of religious belief.

Decision

The EAT held that the Tribunal had failed to identify, for each act, the reasons why the Respondent had acted as it did and then analyse each of these reasons. Specifically, it found that the Tribunal had failed to consider what the Respondent thought its

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service users might find objectionable about the Facebook posts and whether what was objectionable was capable of being separated from the Claimant's beliefs. Any objection would likely be a result of learning that the Claimant held beliefs that homosexuality and same-sex marriage were a sin.

The EAT commented that whilst some people might find the Claimant's view objectionable the Respondent accepted that they were protected beliefs. If the Respondent acted because of concern that service users might be upset that the Claimant held these beliefs (rather than by the way they were manifested) this would be direct discrimination which could not be justified.

The case has been remitted to Tribunal and so further consideration awaits.

Comment

[Sophie Macphail](#), Senior Associate in our Employment team comments:

"This case confirms that treating someone less favourably for merely holding or expressing a belief (even one many may find offensive) is likely to amount to direct discrimination.

"On the other hand, where there is an objectionable manifestation of belief, treating an individual less favourably as a result may not be directly discriminatory, provided that the reason for the treatment is clear from the employer's deliberations.

"When considering these issues, employers must assess whether they hold an objection to the manifestation of the belief rather than the holding of the belief itself, and why, and carefully document their reasoning and thought process when making decisions of this nature.

"We recommend you contact us for advice before withdrawing an offer in similar circumstances".

Can a fundamentally flawed appeal process following a dismissal render the dismissal unfair?

Yes, held the Employment Appeal Tribunal (EAT) in *Milrine v DHL Services Ltd*.

Background

Mr Milrine (Claimant) was employed by DHL (Respondent) from 2013 as a HGV driver. Mr Milrine suffered from vertigo and vestibular migraines which led to more than two years continuous absence from work. DHL ultimately dismissed him for medical incapacity in June 2022.

Unsatisfied with the decision to terminate his employment, Mr Milrine appealed. However, the appeal stage deteriorated quickly: the appointed appeal manager refused to hear the appeal, and the replacement manager then failed to attend the rescheduled hearing. DHL informally suggested that Mr Milrine and his representative propose a date and an alternative appeal manager, but this was never formalised in writing. As a result, **no formal appeal ever took place**.

In October 2022, the Claimant presented his claim to the Employment Tribunal (ET) alleging unfair dismissal, disability discrimination, unpaid notice pay and unpaid holiday pay. The matter came before a full ET for 4 days in April 2023. His claim was subsequently dismissed.

Mr Milrine appealed to the EAT, limiting his grounds to challenge the ET's ruling on fairness of dismissal, focussing on the consequences of a materially defective internal appeal process, stating that the ET did not give adequate weight to this aspect of the process when evaluating the fairness of his dismissal.

Applicable Law

Section 98(4) of the Employment Rights Act 1996 (ERA 1996) provides:



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- (4) ...the determination of the question whether the dismissal is fair or unfair ...
- a. Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it [the reason for dismissal] as a sufficient reason for dismissing the employee.

The tribunal must follow a two-stage test. First the employer must first show that the reason for the dismissal falls within one of the fair reasons for dismissal, such as capability, following which the tribunal will assess whether the employer acted reasonably in treating that reason as sufficient to dismiss. This requires an evaluation of the fairness of the procedure followed, judged objectively. This encompasses not only the decision to dismiss but the entirety of the process, including the internal appeal.

The EAT noted that there was no challenge to the ET's findings regarding the fairness of the initial decision to dismiss for long term incapacity, or to its conclusion that the decision was not discriminatory, the sole issue concerned the appeal stage.

The central question was whether a procedurally defective internal appeal process could render a dismissal unfair under s.98 ERA 1996. The EAT also considered whether the ET had failed to apply the principles established in *West Midlands Co-Operative Society v Tipton* and later cases, such as *Tarbuck v Sainsbury's Supermarkets Ltd*, which require tribunals to evaluate the entire dismissal process including the appeal.

Decision

The EAT held that the ET had erred in its approach. Reaffirming the established case law, The EAT emphasised that an internal appeal is not an optional 'add-on' but forms an integral part of statutory fairness. Even when the original decision to dismiss is

reasonable, serious defects at the appeal stage may still render the dismissal unfair.

Applying s.98 of the ERA 1996 and the established authorities that require assessment of the dismissal process as a whole, including any internal appeal, the EAT reviewed both the ET's findings on the capability dismissal and, critically, its handling of the appeal stage. The tribunal had accepted that the appeal process was mishandled but treated those failings as peripheral; the EAT disagreed with this approach.

Relying on *Tarbuck and Tipton*, The EAT highlighted that a properly conducted appeal is central to procedural fairness. Where an employer fails to offer an appeal or conducts it in a way that is wholly defective, this can undermine procedural fairness, even if the original decision to dismiss was reasonable.

In *Milrine*, the procedural failings were substantial: the first appeal manager refusing to hear the case, the replacement failing to attend the hearing and the overall poor communication throughout resulting in no meaningful appeal ever taking place. Taken collectively, these failures were sufficient to render the dismissal unfair under s.98 ERA.

Comment:

This case emphasises the importance of the appeal process and highlights the risk to employers at this stage of the disciplinary process. Employers should ensure that they do not "fall at the last hurdle" and must follow (and complete) a fair appeal process without undue delay.

[Matthew Sheppard](#), Trainee Solicitor, Employment



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ERA 2025: A practical implementation timetable for SMEs

Preparing for the most significant employment law reforms in over a decade

The Employment Rights Act 2025 (“ERA 2025”) will introduce wide ranging reforms to UK employment law, affecting everything from statutory leave to dismissal rights, trade union engagement, record keeping and working time. For SMEs the volume and pace of change can feel daunting.

To help organisations prepare, we’ve set out a practical, step by step implementation timetable covering what’s coming, when, and what actions SMEs should take now.

Why SMEs need to act early

A number of the changes take effect from April 2026, with more arriving in October 2026 and 2027. Several measures significantly increase legal exposure - for example:

- Automatic unfair dismissal protections
From 6 months
- Uncapped compensation for unfair dismissal
from 2027

- Stricter harassment prevention duties
- Expanded rights for variable hours workers
- Enhanced union access and new onboarding obligations

SMEs with lean HR functions will particularly benefit from early preparation.

Where “TBC” appears in the timetable below, organisations should begin preparing in principle now but hold off on making final policy or contractual changes until the commencement regulations are published.

ERA 2025 – SME Timetable

Please see Table 1

The scale and pace of the ERA 2025 reforms mean that most employers will need to start preparing well in advance. If you’re unsure how any of these changes apply to your business, or would like practical guidance on next steps or a tailored implementation plan, our team at Lindsays will be happy to support you.

[Kate Wyatt](#), Partner, Employment




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Table 1

| Date (or expected date) measure comes into force | Detail of the measure | Action points |
|--|--|--|
| 18 Feb 2026 | <p>Trade union/industrial action changes took effect, including:</p> <ul style="list-style-type: none"> • Stronger protection from dismissal for taking part in lawful industrial action • Shorter 10-day notice for industrial action to start • 12-month mandate • Simplified notices • Changes to political funds and picketing <p>Backed by Commencement No.1 Regulations 2026 and DBT guidance on transitional/saving provisions</p> | <p>Brief senior team/line managers on the new thresholds and notice rules.</p> <p>Update staff handbooks and union-relations procedures</p> <p>Train HR on dismissal risk—participation in industrial action now an “automatically unfair” category</p> |
| 6 Apr 2026 | <p>First major commencement window:</p> <ul style="list-style-type: none"> • Statutory Sick Pay (SSP): removes Lower Earnings Limit and waiting days (SSP payable from day one). • Day-one rights to Paternity Leave and Unpaid Parental Leave. • Removal of prohibition on taking paternity leave after a period of shared parental leave • Whistleblowing enhancements (incl. links to harassment disclosures). • Increase to protective award (doubled to 180 days) • Trade union recognition process simplified; • Fair Work Agency (FWA) launches as single enforcement body (7 April) | <p>Payroll/HR: configure SSP rules (eligibility & waiting days).</p> <p>Policies: update Paternity & Parental Leave, Whistleblowing, Sexual harassment, TU consultation/relations processes.</p> <p>Manager training: handling day-one rights and updated timeframes.</p> <p>Compliance: prepare for FWA investigations/record-keeping expectations.</p> |

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| Date (or expected date) measure comes into force | Detail of the measure | Action points |
|--|---|--|
| 1 Oct 2026 (expected) | <p>Second tranche:</p> <p>Sexual harassment: new duty to take all reasonable steps to prevent harassment and a duty not to permit third-party harassment.</p> <p>Union rights: duty to inform workers of their right to join a union; strengthened union access; new rights for reps, including facilities for TU officials and learning reps, time off and facilities for TU equality reps</p> <p>ET time limits extended to 6 months. Tightening of tipping consultative duties.</p> | <p>Harassment prevention: run a “reasonable steps” analysis (risk assessments, bystander training, supplier/venue controls for third-party risk), and document your steps—key for tribunal defence.</p> <p>Union relations: add right-to-join notices to onboarding, intranet and payslips; update site-access protocols.</p> <p>Record keeping: review and update privacy notices and retention periods to ensure dismissal/interview/other relevant data retained for at least 10 months</p> <p>Update: tipping consultation processes</p> |
| 1 Jan 2027 (expected) | <p>Fire and re-hire: dismissals for refusing “restricted” contractual changes treated as automatically unfair (subject to narrow financial-distress exception).</p> <p>Unfair dismissal: qualifying period reduces from two years to six months; statutory compensation cap removed</p> | <p>Contracts/Change control: adopt a structured consultation and alternatives analysis before any contractual change; refresh redundancy/variation processes.</p> <p>Probation/early performance: align probation lengths with 6-month threshold; tighten early-service performance, conduct and documentation practices.</p> <p>Managing disputes: train managers on fair process from week one.</p> |
| 2027 (dates TBC by regulations) | <p>Restrictions on dismissal during/after pregnancy or statutory family leave</p> <p>Power to make regulations on steps to be regarded as reasonable to prevent sexual harassment</p> <p>Zero & low hours work: duty to offer guaranteed hours reflecting a reference period; reasonable notice of shifts; compensation for short-notice cancellations; measures apply to agency workers too.</p> <p>Flexible working: further changes expected to procedures.</p> | <p>Workforce planning & scheduling: map all variable-hours roles; build rota notice standards; configure cancellation pay rules in payroll.</p> <p>Contracts: introduce guaranteed hours offer process post-reference period; update casual/agency terms.</p> <p>Policies: add Bereavement Leave (incl. pregnancy loss), update Flexible Working processes, and if applicable publish Equality Action Plans (Scotland: align with existing gender pay duties where applicable).</p>  |

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| Date (or expected date) measure comes into force | Detail of the measure | Action points |
|---|---|---|
| | <p>Collective redundancies: new organisation-wide threshold alongside the "at one establishment" test.</p> <p>Bereavement leave: new day-one right.</p> <p>Equality action plans: mandatory plans (gender pay gap/menopause) expected to move from voluntary in 2026 to required in 2027 subject to employer size threshold.</p> <p>Holiday pay record-keeping: enhanced duties (six-year retention). (Government indicates 2027 phasing; final dates depend on secondary legislation.)</p> | <p>Records: ensure holiday pay records can be retained/reported for six years.</p> |
| <p>Sector-specific— Social Care in Scotland (2026–27, TBC)</p> | <p>Fair Pay Agreements (FPAs) process provided for social care sectors in Scotland and Wales (England has a parallel route). Dates and details to follow via regulations/Scottish Ministers.</p> | <p>If you operate in or supply to social care in Scotland, track Scottish Government consultations; plan for minimum terms emerging from FPA processes (pay, hours, training).</p> |



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