

In the Employment Appeal Tribunal

Appeal from Central London Employment Tribunal (EJ Elliott)

Re: expert evidence

Re: remote hearing

BETWEEN:

Seyi Omooba

Claimant/Appellant

-v-

(1) Michael Garrett Associates Ltd (t/a Global Artists)

(2) Leicester Theatre Trust Ltd.

Respondents

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EMPLOYMENT TRIBUNALS

Claimant: Ms S Omooba
Respondents: (1) Michael Garrett Associates Ltd (t/a Global Artists)
(2) Leicester Theatre Trust Ltd

TELEPHONE PRELIMINARY HEARING

Heard at: London Central (in private) **On:** 30 April 2020
Before: Employment Judge Elliott (by telephone)

Appearances

For the claimant: Mr P Strollov, lay representative
For the first respondent: Mr C Millsom, counsel
For the second respondent: Mr T Coghlin, one of Her Majesty's counsel

CASE MANAGEMENT SUMMARY

The hearing

- (1) The full hearing in this matter was due to commence today Thursday 30 April 2020 but in the light of the current pandemic, day 1 has been converted to this telephone preliminary hearing.
- (2) A case management hearing took place on 8 January 2020 before Employment Judge Snelson at which case management orders were made.
- (3) There will be four witnesses for the claimant including herself, two for the first respondent and one for the second respondent, a total of seven witnesses. The hearing requires an allocation of 10 days to include tribunal deliberation time.

The claim

- (4) The claim is for breach of contract, religious harassment, direct and indirect religious discrimination. There is an agreed list of issues.

The claimant's application for expert evidence

- (5) The claimant wished to call expert evidence. She wishes to call Dr Martin Parsons who is said to be an expert in Christian doctrine and Mr Lloyd Evans who is said to be an expert in the theatre industry. The claimant was informed

that leave was necessary for expert evidence and it was made clear to the claimant that the tribunal would not make rulings on matters of religious doctrine. There was some discussion of the case of *Mba v London Borough of Merton* both at EAT and CA level (Case references 2013 ICR 658 and 2014 1 WLR 1501).

- (6) The respondents did not know what these experts intended to say. I therefore ordered that the claimant make an application for leave with the experts reports or statements being submitted to the tribunal and the respondents and in compliance with the principles set out in CPR Part 35 and paragraphs 3.1 - 3.3 of the Practice Direction as to the form and content of an expert's report. Mr Stoilov for the claimant said that in taking their evidence he had already complied with those provisions so he was content with a short time period for the making of his application.

The claimant's application for a remote trial

- (7) The claimant made an application for her trial to take place as soon as possible by Skype or some other electronic means. In support of that application the claimant submitted a witness statement from Mr Paul Huxley a communications manager at an organisation trading as Christian Concern which provides advice on audio and video communications, to the claimant's representatives. The tribunal had a written submission from the claimant's representative and had oral submissions from all three parties which were fully considered.
- (8) The claimant, in common with the majority of claimants whose trial is not taking place, as listed due to Coronavirus, wishes her trial to take place as soon as possible. This issue is being dealt with daily by the tribunal in respect of every full merits hearing that was due to take place since 23 March 2020. The tribunal is not currently listing full merits hearings.
- (9) The tribunal is familiar with Skype for Business and Microsoft Teams. Remote case management hearings and Judicial Mediations are taking place by this mechanism. The tribunal is also familiar with Zoom which is not recommended as it is not considered to offer the necessary security. There are other platforms but the method of conducting a remote hearing requires approval from the President of the Employment Tribunal and this is not yet in place although much work is going on to address the matter.
- (10) The claimant relies on the Presidential Guidance in Connection with the Conduct of Employment Tribunal Proceedings during the Covid-19 Pandemic (effective 18 March 2020) which at paragraph 4 allows electronic communication to conduct hearings of all kinds, where it is compatible with the overriding objective and the overriding objective itself, which in Rule 2(d) states that it includes avoiding delay, so far as compatible with the consideration of the issues.
- (11) Paragraph 10 says: *"It is not common for a substantive issue preliminary hearing or a final hearing to take place by telephone or other electronic means. There are many reasons why this is so. Again it is not our objective to suggest that such hearings should take place by electronic means where that would be contrary to*

the overriding objective." It sets out certain limited circumstances where this could be considered, but it is a matter for the judge to make a decision.

- (12) The respondents do not agree to a remote hearing. The second respondent said it was a 9 day hearing with a three person panel tribunal and three separate legal teams. There was a high level of media interest. Cross-examination will take place over 5 days. The second respondent said the effect of cross-examination would be diminished if it takes place remotely. Witnesses are being publicly accused of unlawful discrimination.
- (13) The second respondent said it impairs the tribunal's ability to judge the witness, it is harder to control the proceeding, it interferes with the proceedings such as people speaking over each other, a line dropping out, with so many involved, the potential for disruption rises significantly. The respondents say "*credibility is all*" in this matter, direct discrimination involves an examination of their thought processes and questions of who knew what and when. There is also a claim for harassment. It is not, on the second respondent's submission, an anodyne examination of documents. The first respondent confirmed that they want a fair and open hearing as soon as possible, in public, to take account of all the matters described. The first respondent agreed with the second respondent's submissions.
- (14) The Presidential FAQs arising from the Covid-19 which can be found on the tribunal's website, make clear at question 1 that the hearing cannot take place as before, if it was due to start on any date between 23 March and 26 June 2020. At present hearings listed to start after 26 June 2020 have not been postponed and "*hopefully*" can still proceed as planned. This will be subject to Government decisions.
- (15) The Courts and Tribunal Service is working hard at present to find suitable methods of conducting remote hearings. It is not something that we are against but there are very many factors to take into account and these are being addressed as quickly as possible.
- (16) The claimant suggested creating a single website specifically for this particular trial. I am unable to make a ruling that carves this case out individually from other cases. The rules of procedure must apply consistently to all and not individually to a claimant who has some particular IT backing.
- (17) The tribunal is not currently satisfied that at present it can meet the requirements of the fundamental principle of open justice on the basis of a remote hearing as set out by the claimant. The overriding objective requires that cases must be dealt with fairly and justly. The hearing must take place in public in the interests of justice and to comply with that principle of open justice. The respondents say that there is extensive public and media interest in the case and that extensive cross-examination will be required where credibility is of "critical importance". Although the claimant says that most of the facts are not in dispute, this is not agreed by the respondents who say that they have extensive cross-examination and indeed five days has been allowed for this. They have a right to this cross-examination. I consider that there are highly contentious issues where the

subtleties of observance of witnesses and the smooth running of the hearing, with the right of public and press to attend and observe, is particularly important.

- (18) The claimant says that there is a great deal of evidence in writing but does not adequately address the question of public or press access to the material other than the suggestion of creating an individual website for her case, a suggestion which I have reject as set out above. The media and public interest in the matter is likely to be high. Cross examination is to take place over five days out of a nine day hearing. This is by no means the ideal test case to conduct a fully remote hearing. The subtleties and nuances of cross-examination require this to take place in public.
- (19) To the extent that the claimant is concerned about possible insolvency of one or both of the respondents, this is a situation that very many claimants face. The pandemic has hit the economy in a way that has not been seen in the lifetime of most people in this country. There is no doubt that theatres and theatrical agents are going through very tough times but the second respondent said there was not an immediate risk of insolvency in any event. Large numbers of respondents face extremely difficult times and possible insolvency. The second respondent has said that the full contract sum would be paid to the claimant on the presentation of an invoice and they agree to pay it. This has been said on an open and not a without prejudice basis. This claimant is not alone in her concerns about the solvency of the respondent. Again her case does not take precedence because of this.
- (20) For these reasons I do not agree to this hearing taking place remotely as matters currently stand. The claimant should continue to keep an eye on future Presidential directions and guidance as the service works on ways to bring about remote hearings in the right circumstances and may renew an application if there is a substantial and relevant change.

Other matters

- (21) The parties are reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- (22) The parties have a bundle in existence and "ready to go".
- (23) The following variations were made to the Case Management Order of Employment Judge Snelson made on 8 January 2020 plus the other Orders made below.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. Application for the claimant to have leave to admit expert evidence

- 1.1 On or before **11 May 2020** the claimant shall, if so advised, make the application for leave to call the expert evidence of Dr Martin Parsons and Mr Lloyd Evans by serving this on the respondents and sending a copy to the tribunal.
- 1.2 The expert's reports should be compliant with the principles set out in CPR Part 35 and paragraphs 3.1 - 3.3 of the Practice Direction as to the form and content of an expert's report.
- 1.3 On or before **26 May 2020** the respondents shall reply to the application by sending their objections or otherwise to the tribunal and the other parties.
- 1.4 If the issue remains in dispute, a telephone hearing will be listed to determine the application, unless all three parties indicate that they consent to the application to be dealt with on the papers.

2. Application for the full merits hearing to take place remotely

- 2.1 The claimant's application for a remote full merits hearing over nine days is refused. The claimant has leave to reapply if there is a significant change in Presidential Guidance or Directions on the issue of remote hearings.

3. Judicial mediation

- 3.1 The respondents are not interested in Judicial Mediation.

4. Electronic bundles

- 4.1 The first respondent is to email a copy of the bundle, the witness statements, any skeleton or opening, any chronology and cast list, and any other relevant document, or a link to a site from which they can be downloaded, to the London Central Bundles inbox (londoncentralbundlesinbox@justice.gov.uk) the day before the hearing

5. Witness statements

- 5.1 The order for exchange of witness statements is varied to 28 days before day 1 of the full merits hearing.

6. Final hearing preparation

- 6.1 By 09:30am on day 1 of the hearing the following parties must lodge the following with the Tribunal:

- 6.1.1 four copies of the bundle(s) by the first respondent.
- 6.1.2 four hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by the first respondent.
- 6.2 Day 1 of the hearing is a tribunal reading day, witnesses need not attend, but representatives should attend at 09:30am to bring documents and to attend to any preliminary matters before the tribunal at 10am.

7. Cast list, skeleton arguments and chronology

- 7.1 The parties shall exchange skeleton arguments three working days before the full merits hearing and bring copies to the tribunal.
- 7.2 The second respondent shall prepare a cast list, for use at the hearing. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the Tribunal is likely to hear.
- 7.3 The claimant shall prepare a short, neutral chronology for use at the hearing.
- 7.4 These documents should be agreed if possible. If they are not agreed, the party who created the document shall state within in the items which are not agreed. The parties do not have leave to submit separate documents.

8. Other matters

- 8.1 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 8.2 **Public access to employment tribunal decisions**
All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.
- 8.3 Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.


Employment Judge Elliott

30 April 2020

Sent to the parties on:

..... 1/5/20

For the Tribunal:

Case Numbers: 2202946/2019
2602362/2019

..........



EMPLOYMENT TRIBUNALS

Claimant: Ms S Omooba
Respondents: (1) Michael Garrett Associates Ltd (t/a Global Artists)
(2) Leicester Theatre Trust Ltd

At: London Central (in private) **On:** 4 June 2020
Before: Employment Judge Elliott

CASE MANAGEMENT ORDER

The claimant's application to adduce expert evidence for the full merits hearing

- (1) At a telephone case management hearing on 30 April 2020 the claimant, through her representative, said that she wished to call expert evidence. She wished to call Dr Martin Parsons who was said to be an expert in Christian doctrine and Mr Lloyd Evans who was said to be an expert in the theatre industry.
- (2) Orders were made so that the claimant was to file the experts' reports with an application to which the respondents were to respond.

Documents considered

- (3) For the purposes of this application, which was considered on paper, the tribunal had before it the following documents:
 - (i) The claimant's application of 13 May 2020.
 - (ii) An expert report of Mr Lloyd Evans, a theatre expert, with CV information and letter of instruction.
 - (iii) An expert report of Dr Martin Parsons, on Christian doctrine, with CV information and letter of instruction.
 - (iv) The second respondent's written submissions of 27 May 2020
 - (v) An email from the first respondent of 27 May 2020 adopting those submissions in their entirety.

The claimant's application and submissions

- (4) The claim is for breach of contract, religious harassment, direct and indirect religious discrimination. There is an agreed list of issues in the case which is relevant to the application and is attached at the end of this Order.

- (5) The claimant's submission is that leave to call expert evidence is "not strictly necessary" and that although it is necessary under the CPR the claimant relies on their being no equivalent provision in the Employment Tribunal Rules of Procedure, citing Rule 41.
- (6) The claimant submits that there is an *obiter* suggestion from the EAT in **Morgan v Abertawe Bro Morgannwg University Local Health Board EAT/0114/19** at paragraph 19, that Tribunal's permission is required to adduce expert evidence in tribunal proceedings. At paragraph 19 Judge Auerbach said:

As De Keyser explains, the CPR do not apply to litigation in Employment Tribunals as such. Nevertheless, in this area, the provisions of CPR 35 and the associated Practice Direction may provide a useful source of guidance by way, at least, of analogy. The opening section within para 36 in De Keyser, and the discussion there under sub point (i), make clear that in the ET, as in the Civil Courts, permission is, in principle, required for expert evidence to be adduced. That is, in essence, because it is opinion evidence rather than evidence of fact.

- (7) The claimant submits that this overlooks the express provision of Rule 41, and is a misinterpretation of **De Keyser Limited v Wilson 2001 IRLR 324**. CPR principles are only relevant, by analogy, to the exercise of the Tribunal's general case management discretion in relation to expert evidence. The claimant submits that in any event, the evidence of Mr Evans and Dr Parsons is relevant and necessary in these proceedings.
- (8) In relation to each expert the claimant submits as follows – this not being a full replication of the submissions – which were fully considered.
- (9) For Mr Evans, the theatre expert, it was submitted that he can assist with testing the credibility of the reasons advanced by the second respondent for removing the claimant from the cast of The Colour Purple and was relevant to issues 12 and 13 in the list of issues. Mr Evans' opinion was also said to be relevant to the objective justification defence on the indirect discrimination claim. The claimant says that the respondents rely on the opinion of the author Alice Walker, as to the claimant's suitability for the role and that they place "heavy reliance" on this. The claimant says that if the respondents rely on this and Mr Evans' report is excluded, the respondents should not be able to rely on their position. The claimant says that Mr Evans' opinion also goes to the question of genuine occupational requirement which the claimant says is not properly particularised in the respondent's pleadings.
- (10) For Dr Parsons, it is said that he puts the claimant's views expressed on FaceBook, in the wider context of Christian sexual ethics and he concludes that her view constitutes a "*fair and reasonable expression of Christian beliefs....*".
- (11) The claimant relies on the principles set out in **Grainger plc v Nicholson 2010 ICR 360** by Burton J at paragraph 24, which is a case about a philosophical belief.

"(i) The belief must be genuinely held. (ii) It must be a belief and not, as in McClintock v Department of Constitutional Affairs [2008] IRLR 29, an opinion or viewpoint based on the present state of information available. (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour. (iv) It must attain a certain level of cogency, seriousness,

cohesion and importance. (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.....”

- (12) The claimant submits that evidence about her beliefs is relevant and necessary in a beliefs discrimination claim especially where the respondents question whether elements of her beliefs satisfy the **Grainger** criteria.
- (13) The claimant has to prove group disadvantage for indirect discrimination and submits that the extent of such group disadvantage is relevant to the issue of justification. The claimant relies on **Mba v London Borough of Merton 2014 1 WLR 1501** which was briefly discussed at the preliminary hearing on 30 April 2020. In **Mba**, the claimant relied on expert evidence of a Bishop to the effect that working on Sundays is unacceptable for many Christians. The Court of Appeal (paragraph 19) indicated that evidence is relevant insofar as evidence of group disadvantage, and of its extent, is required in a case of that nature. The evidence of Dr Parsons in this case, they say is similar in nature to the evidence of Bishop Nazir-Ali in **Mba**, and serves the same purposes. For those reasons it was said to be necessary.

The respondents’ response on the issue of whether leave is required

- (14) The respondents say that permission is required to adduce expert evidence in the Employment Tribunal and they rely on **Morgan** and **De Keyser** (above) The respondents say that what the claimant relies upon in Morgan as being obiter, is part of the ratio of the case.
- (15) The respondents cite the commentary to the White Book in relation to CPR 35

The general power to control evidence may be exercised to exclude evidence that would otherwise be admissible. The power must be exercised to further the overriding objective (Grobelaar v Sun Newspapers, The Times, 12 August 1999, CA). Rule 35.1 indicates that parties and court alike should seek to restrict the excessive or inappropriate use of expert evidence; see r.1.1(2) and r.1.3. In Gumpo v Church of Scientology Religious Education College Inc [2000] C.P. Rep. 38 (QB), reducing the incidence of the inappropriate use of experts to bolster cases was identified as an aim underpinning r.35.1, and one which furthers the overriding objective.

- (16) They set out CPR Rule 35.1 which says that “*Expert evidence shall be restricted to that which is reasonably required to resolve the proceedings*” and submit that this informed by the tribunal’s own overriding objective in **Morgan**. They submit that the burden lies on the party seeking to adduce expert evidence to persuade the court that it will assist the court.

- (17) The respondents also rely on the Practice Direction to CPR 35 which says:

2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

3.2 (6) where there is a range of opinion on the matters dealt with in the report –

(a) summarise the range of opinions; and

(b) give reasons for the expert's own opinion;

Decision on the claimant's application

Is leave required to introduce expert evidence?

- (18) My decision is that leave is required in the employment tribunal to introduce expert evidence. I agree with the respondents' submission that the passage relied upon by the claimant in **Morgan** and relying on paragraph 36 in **De Keyser** is not an *obiter* comment but is part of Judge Auerbach's decision.
- (19) At paragraph 36(i) of De Keyser the EAT said "*(i) Careful thought needs to be given before any party embarks upon instructions for expert evidence. It by no means follows that because a party wishes such evidence to be admitted that it will be*" and at paragraph 36(ix) the EAT said that in relation to expert evidence the tribunal may give formal directions on the matters the expert may or may not address.
- (20) I agree with the respondents' submission that the burden lies on the party seeking to adduce the expert evidence that it will assist the court or tribunal in furthering the overriding objective.
- (21) It simply cannot be a "*free for all*" for parties to decide they will call an expert in the Employment Tribunal with no question of leave being required. The need for that evidence needs to be clear as to why the tribunal should hear or consider opinion evidence rather than evidence of fact and the other party must have the opportunity to contest or answer either the relevance of it in the first place, or to call their own expert evidence in response. It may lead to delays in proceedings if the first time a party is aware that the other party plans to call an expert is at the stage of exchange of witness statements. The risks of postponements of full merits hearings and the need for further case management may come into play. It is not, in my view, in the interests of justice, for parties to have the right to call expert evidence without the need for a decision from the tribunal and the parameters of such leave to be case managed.
- (22) Expert evidence is often used in disability cases with the need for medical experts, whether separate or jointly instructed. This is routinely carefully case managed with the leave of the tribunal.
- (23) Expert evidence should not be introduced unilaterally and without constraint. Apart from the other matters referred to above, it has cost consequences. The overriding objective must be considered before a decision is made as to whether expert evidence should be permitted and consideration given to how it will assist the tribunal in determining, what in this case, is an agreed list of issues.
- (24) I find that for the above reasons leave is required to introduce expert evidence.

The individual experts and whether leave is granted

- (25) Rather than setting out the respondents' response to the application separately, when there is a detailed written submission, I have made reference in my decision below to the respondents' position on the individual points.

Mr Evans

- (26) In his CV Mr Evans describes himself as a "*journalist, playwright, screen-writer, performer*". He sets out his education and professional experience. His CV does not indicate having experience of having produced a play in a large commercial theatre venue such as for the production in question.

- (27) Mr Evans answers three questions on instructions from the claimant's representative. These were:

- (1) In general terms, how important it is for an actor or actress to agree with the ethical views and/or feelings of (a) the character they are playing, (b) the playwright, and/or (c) the Director?*
(2) Would you consider Miss Omooba's religious beliefs to make her unsuitable for the role of Celie in The Colour Purple?
(3) Whether Miss Omooba's involvement in the play would have jeopardised (a) the integrity of the production as a work of art, (b) its commercial success and (c) its overall viability.

- (28) Questions (1) and (2) are not in issue in the proceedings. The List of Issues is set out at the end of this Order. It is not an issue for the tribunal as to whether the claimant should agree with the views of the character, the playwright or the director.

- (29) It is not part of the List of Issues for the tribunal to make a finding as to whether the claimant as the actor should agree with the ethical views of the character, the playwright or the director. This is not part of the respondents' pleaded case. The tribunal is not assisted by Mr Evans' views on this. It is anticipated that a majority of people would agree with him that if it was necessary to agree with the ethical views or feelings of the character, playwright or director, it would be difficult for the art of drama to exist. Nor do his views assist on whether the claimant's religious beliefs made her unsuitable for the role. The issues in this case concern why the respondents acted as they did and those issues identified in the list appended to this Order.

- (30) Despite there being a range of opinions on the matters dealt with in the report Mr Evans does not comply with the Practice Direction as he does not summarise the range of opinions and then give reasons for his opinion.

- (31) As the respondents identify, it is a requirement of PD 35 paragraph 2.2 that the expert should provide objective, unbiased opinions on matters within their expertise, and they should not assume the role of an advocate. I agree with their submission that Mr Evans' comments about other actors' attitudes being "*intolerant*" and by describing their views in paragraph 61 of his report as

“presumptuous and even insulting” is not unbiased and on my finding Mr Evans is seeking to argue the case for the claimant and stepping outside the role of an expert.

- (32) The claimant wishes to rely on Mr Evans’ evidence to test the credibility of the reasons advanced by the second respondent for removing her. I find that Mr Evans cannot assist on the issue of the credibility of another witness. This is a matter for testing in cross-examination not a matter of weighing Mr Evans’ views against the views of the respondents’ witnesses. The matters put forward by Mr Evans can quite properly be put to the respondents’ witnesses in cross-examination for the tribunal to make a decision on their credibility. The fact that Mr Evans might hold a different view will not assist the tribunal on making a decision as to this.
- (33) To the extent that the claimant wishes to rely on Mr Evans on the issue of the justification defence on the indirect discrimination claim, he has not commented on the legitimate aims pleaded by the respondents or the issue of proportionality.
- (34) Mr Evans’ views on what the author of the work, Alice Walker, has said, is not a matter for expert evidence but is a matter for submissions.
- (35) Mr Evans was not instructed to comment on the Genuine Occupational Requirement defence.
- (36) For these reasons I find that Mr Evans’ evidence is not reasonably required to resolve these proceedings as CPR 35.1 restricts such expert evidence. I am not satisfied that he has relevant expertise and he has also stepped outside the role of an expert in preparing his report in not complying fully with PD 35. The tribunal is concerned with the reasons the respondents acted as they did and this can be dealt with adequately through cross-examination. As stated above, the points made by Mr Evans can be put to the respondents’ witnesses in cross-examination. I refuse leave to admit Mr Evans’ opinion evidence.
- (37) The claimant comments that the respondents have taken account of the views of the author of the work Ms Walker and if Mr Evans’ report is not admitted then the respondents should not be able to rely on their position. I do not agree with this submission. The thought processes of the respondents are relevant to the determination of the case. Ms Walker does not hold the status of an expert and is not being called to give evidence.

Dr Parsons

- (38) Dr Parsons is put forward as an expert in Christian Doctrine in relation to homosexuality (his report paragraph 4). The respondents do not accept that he is an expert on Christianity based on his CV which tends to portray him as an expert on the interrelationship between Christianity and Islam. I take no account of the additional research the respondents have done on Dr Parsons’ work as it is not before me and the claimant’s side has not had an opportunity to comment on it. I have only considered the information that is properly before me.

- (39) Much of Dr Parsons' report consists of reciting Biblical verses and commenting upon them. It is not for the tribunal to make findings as to matters of Christian doctrine and it will not do so. The respondents cite Lord Nicholls in **R (Williamson) v Secretary of State for Education and Employment 2005 2 AC 246**, who says at paragraph 22 "...*emphatically, it is not for the court to embark on an inquiry into the asserted belief and judge its "validity" by some objective standard such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant's belief conforms to or differs from the views of others professing the same religion*". This tribunal is no different and is bound by that decision.
- (40) Whether or not the claimant's Facebook post is a fair and reasonable statement of Biblical teaching on sexuality (Dr Parsons' report paragraph 73) is not in issue for the tribunal. The agreed list of issues is informative. It is agreed between the parties that the claimant's religion is a protected characteristic and that she held the beliefs set out in paragraphs 3a and 3b of her Particulars of Claim as to a belief in the truth of the Biblical verses she relies upon. It is not in dispute as to the religious belief held by the claimant on homosexuality. It is agreed that the claimant does not assert that homosexual orientation is wrong, as opposed to the practice of it. Dr Parsons' opinion is not necessary on any of these matters as they are not in dispute and this takes up a large proportion of his report. The tribunal will not make findings in this case as to the Christian doctrine on homosexuality. It is recognised that different Christian denominations may hold different views and it is not for the tribunal to make a ruling on a doctrinal matter such as this.
- (41) It is an issue for the tribunal as to whether the claimant's assertion that "*I do not believe that you can be born gay*" is a religious belief. Dr Parsons' comments on this in paragraphs 74 – 81 of his report will not assist the tribunal on what the claimant herself believed – this is a matter for cross-examination of the claimant. There are different views on this matter amongst Christians themselves. The issue for the tribunal will be a matter for submissions after hearing the claimant's evidence on what she believes and as set out above, the tribunal will not be making a finding as to the correctness of Christian doctrine.
- (42) Dealing with the **Grainger** authority, this sets out the principles to which the tribunal must have regard, but I am unconvinced that the tribunal requires the evidence of an expert on Christian doctrine in order to consider and make decisions on these principles, particularly given the matters which are not in dispute. Tribunals are accustomed to applying those principles without the benefit of expert evidence. It is entirely within the remit of the tribunal to apply the **Grainger** principles in this case without Dr Parsons' or any other expert's views.
- (43) Turning to the claimant's reliance on **Mba**, this was a case about working on Sundays. In that case Bishop Nazir-Ali gave evidence at the employment tribunal that some Christians found working on Sundays unacceptable. This led Lord Justice Maurice Kay to find that the tribunal should have found the application of the Sunday working PCP fell within the Regulations which then applied (prior to the Equality Act 2010) so that the real issue then became whether it was a

proportionate means of achieving a legitimate aim. What Maurice Kay LJ did not do, was to say that the Bishop's evidence had been necessary. He said (Court of Appeal judgment paragraph 18) that if it was necessary to have an evidential foundation that some Christians found it unacceptable to work on Sundays, this was given by Bishop Nazir-Ali.

- (44) In this claimant's case, the respondents acknowledge that some Christians have a belief that homosexual practice is sinful. Evidence (expert or otherwise) is not needed to establish this and as I have said above, the tribunal will not carry out a doctrinal analysis of the correctness of this view.
- (45) Neither in **Mba** from Bishop Nazir-Ali nor in Dr Parsons' report, is there any analysis of the issue of group disadvantage and how this is relevant to the question of justification. Dr Parsons not analyse the question of group disadvantage other than to acknowledge that different groups of Christians may hold different views.
- (46) For the above reasons I have decided that Dr Parsons' report is not reasonably required to resolve the agreed issues in these proceedings and I refuse leave to admit his opinion evidence.

ORDER

Made pursuant to the Employment Tribunal Rules of Procedure

1. Application for the claimant to have leave to admit expert evidence

- 1.1 The claimant's application for leave to admit the expert evidence of Mr Evans and Dr Parsons is refused.



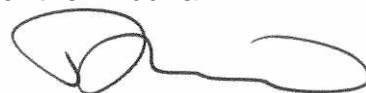
Employment Judge Elliott

4 June 2020

Sent to the parties on:

5 June 2020

For the Tribunal:



IN THE LONDON (CENTRAL) EMPLOYMENT TRIBUNAL

BETWEEN:

SEYI OMOOBA

Claimant

~~and~~

1. MICHAEL GARRETT ASSOCIATES LTD T/A GLOBAL ARTISTS
2. LEICESTER THEATRE TRUST LIMITED

Respondents

LIST OF ISSUES

A. Jurisdiction

1. It is agreed that:
 - a. R1 was an employment services provider pursuant to s. 55 EqA 2010; and
 - b. R2 was C's employer until it terminated her employment on 21 March 2019.

B. Religion and Religious Belief

2. It is agreed that:
 - a. C's Christian religion is a protected characteristic for the purposes of section 10(1) of the Equality Act 2010 ("EqA 2010");
 - b. C held the religious beliefs set out in paragraphs 3.a and 3.b of the particulars of claim, namely (a) a belief in the truth of the Bible, in particular Genesis 2 v 24 and 1 Corinthians 6 v 9 and (b) a belief that although God loves all mankind, He does not love all mankind's acts, in particular she believes that Homosexual practice (as distinct from homosexual desires) is sinful/morally wrong;

- c. C does not assert a belief that homosexuality, as a matter of orientation or desire (as opposed to homosexual practice), is in itself sinful or wrong.
- 3. Is C's assertion in her Facebook post that "*I do not believe you can be born gay*" a religious belief caught by section 10(2) EqA 2010?
- 4. As to the belief set out in paragraph 3.c of the particulars of claim, namely "*that not to speak out in defence of [the beliefs set out in paragraph 3.a and 3.b of the particulars of claim] would be sinful/contrary to her beliefs*":
 - a. Did C hold such belief?
 - b. Was this a belief qualifying for protection under the Equality Act 2010?

C. Religious harassment (s26 EqA 2010)

- 5. Did R1 subject C to unwanted conduct by:
 - a. taking steps to publicise R1's decision to terminate the contract;
 - b. refusing to reconsider the decision to terminate the Contract as communicated by Mr Garrett's email of 28 April 2019; and
 - c. Mr Garrett suggesting in an email of 18 April 2019 that C's conduct had undermined R1's confidence in her?
- 6. It is agreed that:-
 - a. R1's termination of the Claimant's contract on 24 March 2019; and
 - b. R2's termination of C's contract on 21 March 2019
 amounted to "unwanted conduct" within the meaning of section 26(1)(a) EqA 2010
- 7. Was the following conduct "related to" C's religious belief as set out at 2.b above (and/or those set out at 3 and 4 above if the same amount to religious beliefs) within the meaning of section 26(1)(a) EqA 2010:
 - a. R1's alleged acts as set out at 5.a to 5.c and 6.a above;
 - b. R2's termination of C's contract on 21 March 2019?

8. Did the conduct of R1 and/or R2 have the effect of:
- a. violating C's dignity; or
 - b. creating an intimidating, hostile, degrading, humiliating or offensive environment for C?

D. Direct religious discrimination (s13 EqA 2010)

9. Did R1 act as set out at 5.a to 5.c and 6.a above?
10. If so did R1 thereby subject C to a detriment?
11. If so was such conduct done because of C's religion or religious beliefs as set out at 2.b above (and/or those set out at 3 and 4 above if the same amount to religious beliefs)?
12. Did R2 dismiss C because of her religious beliefs as set out at 2.b above?
13. In each case did the respondent treat C less favourably than it treats or would have treated a hypothetical comparator in comparable circumstances?
14. Does less favourable treatment on the grounds of an expression or manifestation of a protected belief constitute direct discrimination? If so, did the respondent in each case treat C less favourably on the grounds of any proven expression or manifestation of a protected belief?
15. In each case did the respondent apply a genuine occupational requirement compliant with Schedule 9 to EqA 2010?

E. Indirect discrimination (s19 EqA 2010)

16. Did R1 apply to C a provision, criteria or practice (PCP) that:

- a. it is unwilling to provide its services to a performer who is subjected to public criticism for a social media post which condemns homosexual practices on religious grounds; and
 - b. it regards such public criticism as sufficient grounds to terminate the contract without notice?

- 17. Did R2 apply to C a PCP that an actor who is known to hold, and/or to have expressed (a) the Biblical teaching on sexual ethics (including on the issue of homosexual practices), and/or (b) a view that homosexual practice is sinful or "not right", is considered unsuitable (i) to be engaged by the Theatre in a performance, and/or (ii) to be engaged by the Theatre for a major part in a performance, and/or (iii) to be engaged for a part of a homosexual character?

- 18. If so, did the respondent in question apply, or would it have applied, the same PCP to others who are not Christian or who did not hold the religious beliefs relied on by C?

- 19. If so, did the PCP put, or would it put, others who are Christian or who hold the religious beliefs relied on by C at a particular disadvantage when compared with others who do not have that religion or who do not hold those religious beliefs, namely that
 - a. (in the case of R1) their ability to benefit from R1's services is or would be diminished?
 - b. (in the case of R2) their ability to perform in plays produced or co-produced by R2 is or would be diminished?

- 20. If so, did the PCP put C at that disadvantage?

- 21. If so, was the respondent's decision to terminate its contract with C a proportionate means of achieving a legitimate aim?
 - a. R1 relies on the following aims singly or together:
 - i. ensuring trust and confidence is retained with all Clients;
 - ii. maintaining and/or promote a positive reputation within the theatre and creative arts industries (including the need to avoid adverse publicity);

- iii. maintaining and/or promoting positive working relationships with key stakeholders including theatre companies;
- iv. fulfilling duties owed to other Clients;
- v. ensuring and promoting the viability of the agency which could not require it to promote a Client which would be unable to obtain work;
- vi. maintaining cohesion and morale within R1's workforce;
- vii. safeguarding C's own welfare which would be undermined were the respondent to continue promoting her and her activities 'throughout the world, in every branch, medium and form of the entertainment industry' as required by the Agreement.

b. R2 relies on the following aims singly or together:

- i. securing the commercial success and viability of the Production;
- ii. securing the artistic integrity and success of the Production, including ensuring that audiences could connect to the greatest possible degree, and without negativity or distraction, with Celie and with the Production as a whole;
- iii. minimising adverse publicity and its effect on members of the cast and production team;
- iv. maintaining the reputation of the respondent, the cast and the production team, and of the Birmingham Hippodrome;
- v. ensuring the harmony, cohesiveness and effectiveness of the cast and production team and a positive working environment for them;
- vi. ensuring the continued participation of other cast and production team members;
- vii. maintaining the standing of *The Color Purple* as an important LGBTQ work of art;
- viii. ensuring the overall viability of the Production.

F. Discrimination: remedy

22. Should the tribunal make a declaration and if so in what terms?

23. Should the tribunal make a recommendation and if so in what terms?
24. What if any loss has C suffered as a result of the unlawful act of the respondent in question, and to what extent should any compensation be adjusted having regard to other causative factors?
25. As to mitigation:
- a. What sums if any has C received by way of mitigation of loss?
 - b. Has C taken all reasonable steps to mitigate her loss?
 - c. Has C failed to mitigate her loss, or caused loss herself, or done an intervening act breaking the chain of causation, by courting publicity in connection with this litigation?
26. If C has suffered any loss as a result of discrimination by either respondent, would part or all of that loss have been suffered anyway if there had been no discrimination?
27. In relation to indirect discrimination:
- a. Was the PCP applied with the intention of discriminating against C?
 - b. If not, is it appropriate to make any award of compensation having regard to the availability of relief by way of declaration or recommendation?¹

G. Breach of contract (R2 only)

28. It is agreed:
- c. that R2 was contractually obliged to give a reasonable period of notice before terminating C's contract;
 - d. that R2 terminated C's contract without notice on 21 March 2019.
29. What was a reasonable period of notice?

¹ Section 124(4) EqA 2010.

30. To what damages (if any) is C entitled for breach of contract?

31. Is the claim vexatious or an abuse of process in whole or in part because R2 has at all times made clear its readiness to pay C the sum of £4,309 for which C has failed to submit an invoice?

- c. C does not assert a belief that homosexuality, as a matter of orientation or desire (as opposed to homosexual practice), is in itself sinful or wrong.
- 3. Is C's assertion in her Facebook post that "*I do not believe you can be born gay*" a religious belief caught by section 10(2) EqA 2010?
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Notice of Appeal from Decision of Employment Tribunal

1. The appellant is (*name and address of appellant*).

Seyi Omooba
8 Pine Close, London E10 5TS

2. Any communication relating to this appeal may be sent to the appellant at (*appellant's address for service, including telephone number if any*).

Christian Legal Centre, 70 Wimpole Street, London W1G 8AX
Tel.: 020 3327 1130 or 0778 739 5060
Email: pavel.stroilov@christianlegalcentre.com

3. The appellant appeals from (*here give particulars of the judgment, decision or order of the employment tribunal from which the appeal is brought including the location of the employment tribunal and the date*).

Para 2.1 of the Case Management Orders by Central London ET (EJ Elliott) dated 30 April 2020 (Claims 2202946/2019 and 2602362/2019): refusal of the Claimant's application for the trial to take place remotely by electronic means

4. The parties to the proceedings before the employment tribunal, other than the appellant, were (*names and addresses of other parties to the proceedings resulting in judgment, decision or order appealed from*).

(1) Michael Garrett Associates
(2) Leicester Theatre Trust Ltd.
See attached note for addresses and legal representatives

5. Copies of—

- (a) the written record of the employment tribunal's judgment, decision or order and the written reasons of the employment tribunal;
 - (b) the claim (ET1);
 - (c) the response (ET3); and/or (*where relevant*)
 - (d) an explanation as to why any of these documents are not included;
- are attached to this notice.

6. If the appellant has made an application to the employment tribunal for a review of its judgment or decision, copies of—

- (a) the review application;
- (b) the judgment;
- (c) the written reasons of the employment tribunal in respect of that review application; and/or
- (d) a statement by or on behalf of the appellant, if such be the case, that a judgment is awaited;

are attached to this Notice. If any of these documents exist but cannot be included, then a written explanation must be given.

7. The grounds upon which this appeal is brought are that the employment tribunal erred in law in that *(here set out in paragraphs the various grounds of appeal)*.

Ground 1: The Tribunal's decision has been materially influenced by an irrelevant and/or improper consideration. The Learned Judge refused to ensure openness of a remote trial by permitting the parties to create a dedicated website where witness statements and other appropriate documents would be made available to the public; on the grounds that this would "[carve] this case out individually from other cases. The rules of procedure must apply consistently to all and not individually to a claimant who has some particular IT backing" (Reasons, para (16)). This approach is plainly contrary to principle;

(a) The Tribunal is required to ensure fairness of proceedings; this includes open justice and equality of arms between the parties. This does not include artificially 'levelling down' the resources (such as 'IT backing') available in different proceedings for the parties to assist the Tribunal in furthering the overriding objective.

(b) It is commonplace for parties in litigation to assist the relevant Courts or Tribunal by making various logistical arrangements for the trial (such as, for example, engaging interpreters, video-links, shorthand writers, Magnum, etc.). There is no reason in principle why the Tribunal should not accept such assistance from the parties if it cannot make such arrangements itself.

(c) The ET Rules give the Tribunal a wide case management discretion, which must be exercised flexibly to further the overriding objective. Ensuring open justice by, inter alia, permitting the Claimant to make the documents available at a dedicated web-site (cooperating with other parties) was within the Learned Judge's discretion. The Learned Judge has erred as to the scope of her discretion and/or by improperly fettering her discretion.

Ground 2: The Tribunal's decision to refuse the application for a remote trial is plainly wrong. The Tribunal has given insufficient weight to the prejudice to the Claimant and/or to the public interest inherent in a last-minute indefinite adjournment of the trial in this case; and failed to mitigate that prejudice. Justice delayed is justice denied.

Signed:



Date:

4/6/2020

NB. The details entered on your Notice of Appeal must be legible and suitable for photocopying or electronic scanning. The use of black ink or typescript is recommended.

In the Employment Appeal Tribunal

BETWEEN:

Seyi Omooba

Claimant/Appellant

-v-

(1) Michael Garrett Associates Ltd (t/a Global Artists)

(2) Leicester Theatre Trust Ltd.

Respondents

Details of the parties and representatives

Claimant/Appellant: Seyi Omooba, 8 Pine Close, London E10 5TS

Appellant's Representatives: Christian Legal Centre, 70 Wimpole Street, London W1G 8AX

Tel.: 020 3327 1130 or 0778 739 5060

Email: pavel.stroilov@christianlegalcentre.com

First Respondent: Michael Garrett Associates, 6th floor, 41-44 Great Queen Street, Covent Garden, London WC2B 5AD

First Respondent's Representative: Elizabeth McGlone, Bindmans LLP, 236 Gray's Inn Road, London WC1X 8HB

Tel. 020 7014 2117

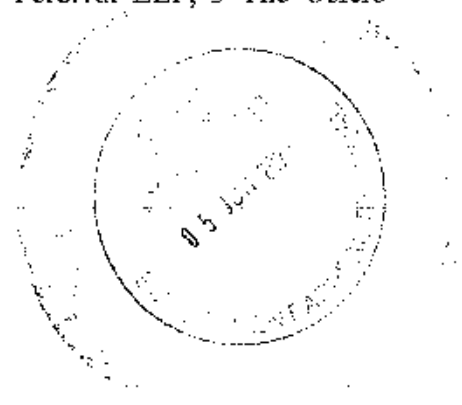
Email: e.mcglone@bindmans.com

Second Respondent: Leicester Theatre Trust Limited, Curve Theatre, 60 Rutland Street, Leicester LE1 1SB

Second Respondent's Representative: Alex Payton, Howes Percival LLP, 3 The Osiers Business Centre, Leicester LE19 1DX

Tel.: 0116 247 3586 or 0780 2225 287

Email: alex.payton@howespercival.com



Notice of Appeal from Decision of Employment Tribunal



1. The appellant is (*name and address of appellant*).
 Seyi Omooba
 8 Pine Close,
 London E10 5TS
2. Any communication relating to this appeal may be sent to the appellant at (*appellant's address for service, including telephone number if any*).
 Pavel Stroilov, Christian Legal Centre, 70 Wimpole Street, London W1G 8AX
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3. The appellant appeals from (*here give particulars of the judgment, decision or order of the employment tribunal from which the appeal is brought including the location of the employment tribunal and the date*).
 The Case Management Order by Central London ET (EJ Elliott) dated 4 June 2020 (Claims 2202946/2019 and 2602362/2019): refusal of the Claimant's application for permission to rely on the experts reports of Mr Evans and Dr Parsons
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 See attached note for addresses and legal representatives
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7. The grounds upon which this appeal is brought are that the employment tribunal erred in law in that *(here set out in paragraphs the various grounds of appeal)*.

Please see attached full Grounds of Appeal.

In summary only:

- (1) The Learned Employment Judge has erred in holding that the Tribunal's permission is required to introduce expert evidence in ET proceedings (paras (18)-(24))
- (2) The Learned Employment Judge misapplied the test of relevance for the admissibility of expert evidence (paras (28)-(29), (33), (35), (45))
- (3) The Learned Employment Judge has erroneously taken into account, and/or accepted, various criticisms of the experts' expertise (paras (26)) and impartiality (paras (30)-(31))
- (4) The Learned Employment Judge misdirected itself as to the test of 'bias' for an expert witness (para (31)). Alternatively, her finding of 'bias' in para (31) is perverse.
- (5) The Learned Employment Judge has misapplied (paras (39)-(42)) the principle in *R (Williamson) v Secretary of State for Education and Employment* (2005) 2 AC 246.
- (6) The Learned Employment Judge has erred in holding that Dr Parson's report was not relevant to the issue of group disadvantage and/or justification of indirect discrimination. (paras (43)-(45))

Signed: Pavel Stroilov (Representative) Date: 17 July 2020

NB. The details entered on your Notice of Appeal must be legible and suitable for photocopying or electronic scanning. The use of black ink or typescript is recommended.

In the Employment Appeal Tribunal

Appeal from Central London Employment Tribunal (EJ Elliott)

Claims 2202946/2019 and 2602362/2019

Appeal against the refusal to admit expert evidence submitted on behalf of the Claimant

BETWEEN:

Seyi Omooba

Claimant/Appellant

-v-

(1) Michael Garrett Associates Ltd (t/a Global Artists)

(2) Leicester Theatre Trust Ltd.

Respondents

GROUND OFS OF APPEAL

Background

1. The Claimant/Appellant is a devout Christian and a professional actress. In March 2019, she was removed from a lead role in a cast, and lost the contract with her agency, after another actor uncovered her historic Facebook post, made some five years ago as a 20-year-old student, which read:

"Some Christians have completely misconceived the issue of Homosexuality, they have begun to twist the word of God. It is clearly evident in 1 Corinthians 6:9-11 what the Bible says on this matter. I do not believe you can be born gay, and I do not believe homosexuality is right, though the law of this land has made it legal doesn't mean it is right. I do believe that everyone sins and falls into temptation but it's by the asking of forgiveness, repentance and the grace of God that we overcome and live how God ordained us to. Which is that a man should leave his father and mother and be joined to his wife, and they shall become one flesh. Genesis 2:24. God loves everyone, just because He doesn't agree with your decisions doesn't mean He doesn't love you. Christians we need to step up and love but also tell the truth of God's word. I am tired of lukewarm Christianity, be inspired to stand up for what you believe and the truth #our God is three in one #God (Father) #Jesus Christ (Son) #Holy Spirit."

2. The discovery entailed a social media campaign against the Claimant, and had catastrophic consequences for her professional career.
3. Her claims for discrimination and harassment on the grounds of religious beliefs are against the theatre which removed her from the cast (R2), and against her former agency who terminated her contract (R1).
4. In support of her claims, she sought to rely on the following expert evidence:
 - a. The expert report of a theatre expert, Mr Lloyd Evans, discussing whether her stated beliefs made her unsuitable for the role (especially in the light of a lesbian romance featured in the play), and whether her involvement would have jeopardised (as the Respondents had pleaded) the integrity of the production as a work of art, its commercial success, and its overall viability.
 - b. The expert report of an expert in Christian doctrine, Dr Martin Parsons, putting her stated beliefs in the context of Christian theology and ethics.
5. At a case management hearing, the Employment Judge directed that a formal application be made for permission to rely on that expert evidence. After the application was made, the Learned Employment Judge refused it, without a hearing. The Claimant now seeks permission to appeal against that decision.

GROUND 1: The Learned Employment Judge has erred in holding that the Tribunal's permission is required to introduce expert evidence in ET proceedings (paras (18)-(24)).

6. The Court's permission is required to rely on expert evidence under the Civil Procedure Rules, r. 35.4(1), but the CPR does not apply to Employment Tribunal proceedings. There is no analogous provision in the ET Rules.
7. Further, r. 41 of the ET Rules expressly provides that the Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.
8. The passage from *Morgan v Abertawe Bro Morgannwg University Local Health Board* UKEAT/0114/19 (12 September 2019), para 19, quoted by the Learned Employment Judge in para (6), is *obiter*. *Morgan* appeal was against a stringent limitation imposed by the ET on the expert evidence the Claimant was permitted to adduce (the expert report was limited to a review of medical notes). The EAT overturned the decision, on the grounds that the ET wrongly concluded that a wider report could not be of any assistance to the Claimant. The point on whether permission for expert evidence is

required in principle had, at most, only peripheral relevance, was not contentious, and was not fully argued.

9. In particular, there is no reference to r. 41 of the ET Rules in *Morgan*. The observation that permission is required “*in essence, because it is opinion evidence rather than evidence of fact*” suggests that the EAT tended to view the issue through the lens of the civil law of evidence, overlooking Rule 41.
10. The guidance given in *De Keyser Limited v Wilson* [2001] IRLR 324 (paras 36-37) goes no further than to suggest that the Civil Procedure Rules and the authorities decided under it *may, by analogy*, provide helpful guidance to the correct approach to expert evidence in Employment Tribunals. It does not say that the permission is required to rely on expert evidence in ET in the same sense as where CPR r. 35.4 applies.
11. It is submitted that the correct approach to admitting expert evidence in ET proceedings is as follows:
 - a. Relevance, or probative value, of the evidence is the only strict condition of admissibility.
 - b. The Tribunal has general discretion to control the evidence as a matter of case management, which must be exercised in accordance with the overriding objective. That discretion can be used to control the evidence in a number of ways, for example, by putting limits on the number of factual witnesses, on the size of witness statements, on the size of the trial bundle, etc. Expert evidence may be controlled or excluded in exactly the same way, and applying the same principles.
 - c. In that context, the principles developed under the CPR in relation to admissibility of expert evidence may be relevant, by analogy, to the appropriate exercise of the ET’s case management discretion – insofar as the CPR principles are themselves aimed at achieving the overriding objective (as is often the case).
12. In the present case, the Learned Employment Judge has gone further than simply applying the CPR principles by analogy to exercise proper case management advancing the overriding objective. She misdirected herself that there was a strict legal test which the applicant must satisfy before being granted leave to adduce expert evidence; in other words, that the position was identical to that under the CPR. This is an error of law.

GROUND 2: The Learned Employment Judge misapplied the test of relevance for the admissibility of expert evidence (paras (28)-(29), (33), (35), (45)).

13. The reasoning of the Learned Employment Judge in the paragraphs identified above appears to proceed on a false premise that the expert evidence is only relevant if the expert is asked, and answers, the very questions identified in the List of Issues as the questions for the Tribunal.
14. That is manifestly wrong in law. The rule of common law (now abolished in civil proceedings by s. 3 of Civil Evidence Act 1972, but surviving in criminal proceedings) is that an expert may not give opinion evidence on an ultimate issue in the case. Despite the abolition of that rule in civil proceedings, distinguishing between (a) questions which may be properly asked of an expert and (b) questions which are for the Court/Tribunal to resolve, remains fundamental. Those are plainly two different categories. It is not necessary, and it is rarely proper, to ask the expert to answer that very question which is agreed to be an issue for the Tribunal to resolve at the trial. The test of *relevance* of expert evidence is entirely different.
15. With respect, the Learned Employment Judge has conflated these two entirely different concepts: *relevant* questions for an expert and *ultimate* issues for the Tribunal: paras (28)-(29), (33), (35), (45) of the judgement.
16. The questions asked of the experts may still be relevant even if those question do not appear on the agreed List of Issues. Conversely, the fact that an expert does not address an issue found on the List directly does not mean that the expert's evidence is not relevant to that issue.
17. Applying the correct test of relevance, the Learned Judge should have acknowledged that:
18. The three questions answered in Mr Evans's report are closely interrelated. All are relevant to the Respondent's reasons for removing the Claimant from the cast. For example, many of the points made in Mr Evans's report could be properly put to the decision-maker in cross-examination as to his reasons. Because the decision-maker is a senior theatre manager, who is extremely likely (quite properly) to rely on his theatre expertise in explaining and justifying his reasons, it is also appropriate for the Claimant to rely on expert evidence of Mr Evans to question the plausibility of the Respondent's stated reasons. The reasoning in paras (28)-(29) of the judgement is therefore erroneous.

19. The Learned Judge's view in para (29) that "a majority of people would agree" with Mr Evans's view is not a good reason for excluding his evidence. If she is right about that, far from being excluded, his evidence (or parts of it) should be agreed as common ground between the parties. There is no indication that this is likely to happen. The Tribunal hearing the case at the trial may well take a different view, and require some evidential support for a submission whereby Mr Evans's opinion would be attributed to "a majority of people".
20. Mr Evans's report is relevant to the *justification* issue in the indirect discrimination claim. The assertion in para (33) of the judgement that Mr Evans "has not commented on the legitimate aims pleaded by the respondents" is simply wrong: see for example Issue 21(b)(i), (ii) and (viii) on the agreed List of Issues. Mr Evans's evidence is also relevant to sub-issues he does not directly discuss, for example, 21(b)(iii) and (vii). The evidence is relevant to whether there is a rational connection between the PCP and the legitimate aims, and if so, to proportionality. The fact that the expert does not directly discuss proportionality is not surprising, as that is a matter for the Tribunal.
21. Mr Evans's evidence is directly relevant to whether the Respondents have a *genuine occupational requirement* that an actor does not hold such beliefs as the Claimant, and if yes, whether that requirement is proportionate. Mr Evan's evidence shows that the Claimant's beliefs are not a genuine obstacle to playing the role of Celie or any other role. The fact that Mr Evans does not specifically analyse the Respondents' pleadings (which is a paradigm matter for submissions, and ultimately, for the Tribunal) does not undermine the relevance of his evidence.
22. Finally, it is only fair that the Claimant should rely on expert evidence to rebut the opinion evidence on the same issues which the Respondents have been allowed to rely on: namely, the opinions of the authors of the novel and of the musical. Heavy reliance placed on that opinion evidence by both Respondents is illustrated by the fact that both have quoted from it at length in their respective Grounds of Resistance (R1's paras 12 and R2's para 10). Para (37) of the Judgement is a basic misunderstanding of the submissions made on behalf of the Claimant, where Ms Walker's opinion was expressly described as a "*post factum* opinion". Neither party has suggested that, as a matter of fact, "the respondents have taken account of the views of the author of the work Ms Walker" – those views were only expressed well after the events, and in response to the Claimant's claim. Ms Walker's opinion is opinion evidence which is in no material way

different to Mr Evans's. The fact that she is not called as a witness is simply the Respondents' choice; this affects the weight to be given to her opinion evidence, but not its nature or relevance. In those circumstances, it is manifestly unfair to permit the Respondents to rely on opinion evidence on a particular issue, but to bar the Claimant from rebutting that opinion by her own expert evidence.

GROUND 3: The Learned Employment Judge has erroneously taken into account, and/or accepted, various criticisms of the experts' expertise (paras (26)) and impartiality (paras (30)-(31)).

23. Those are quintessentially forensic points which need to be put to experts in cross-examination, which may or may not then affect the weight given to their evidence. Such criticisms are irrelevant to admissibility, and it is unfair to accept such criticisms without them being put in cross-examination.
24. Thus, as a playwright and a theatre critic reviewing plays for a major national magazine, Mr Evans has the expertise to give the opinions he gives in his report, e.g. about the Claimant's suitability for the role of Celie or how her involvement would have affected the integrity of the production as a work of art. He is not "a quack, a charlatan or an enthusiastic amateur" – the categories ruled out in *R. v Robb* (1991) 93 Cr.App.R. 161, 166. He is a theatre expert. To be one, he does not have to have a direct experience of involvement in productions with a high degree of similarity to *The Colour Purple* at Leicester Curve Theatre – a requirement of that nature would be extravagantly strict and impractical. Lack of a particular type of theatrical experience may or may not undermine the reliability of his opinion to some extent. This is a paradigm cross-examination point, and emphatically not one about relevance/admissibility.
25. The criticism in para (30) of the judgement is unparticularised. It is not even clear to which of the matters covered in Mr Evans's report that criticism relates. It is not clear on what evidential basis the Learned Judge asserts that there is "a range of opinions on the matters dealt with in the report". As she had no other theatre expert evidence before her, the only evidence from which she could draw that conclusion was Mr Evans's report itself. In fact, the report does discuss the range of opinions where there is one (and gives his own reasoned opinion as required): see, for example, paras 57-60 on possible jeopardy of the commercial success of the production, or paras 29-53 on the Claimant's suitability for the role.

26. Insofar as necessary, it is submitted that the Learned Employment Judge's findings in paras (26) and (30) are *perverse*.

GROUND 4: The Learned Employment Judge misdirected itself as to the test of 'bias' for an expert witness (para (31)). Alternatively, her finding of 'bias' in para (31) is *perverse*.

27. There is no evidence whatsoever of actual bias on the part of Mr Evans: for example, that he has an interest in the outcome of the proceedings, or that he has any personal reasons to favour one party over the other.
28. The extremely serious finding of 'bias' (presumably, intended as a finding of actual bias, not even apparent bias) is based solely on the comment made in paragraph 61 of his report.
29. In the context of discussion of whether the Claimant's involvement would have jeopardised commercial success of the production, the expert notes (in fairness to the Respondent) that there was a social media campaign against the Claimant, which included threats to boycott the production unless she is removed from the cast. He then explains (para 57): "*However, whether that would have jeopardised its commercial success is a complex question with several imponderables*". There is then a discussion of various matters relevant to that "complex question" including the following in para 61:

It's worth considering the assumptions made by those threatening a boycott. Miss Omooba did nothing more than express a religious belief which provoked fury among certain actors. The attitude of these actors strikes me as intolerant. And their assumption that play-goers would share their illiberal view seems to me presumptuous and even insulting to the people who support the theatre.

30. The expert here states his opinion to the effect that certain individuals' threats to organise the boycott might well have turned out to be empty threats because the public's attitude would be more tolerant of the Claimant's beliefs. The Learned Judge is entitled to disagree with the expert's opinion, but it is a reasoned and rational opinion on a relevant matter within the expert's area of expertise. The point may be forcefully made; but that does not begin to evidence bias.

31. The comprehensive overview of various situations which may substantiate a finding of bias on the part of an expert in Chapter 6 of Hodgkinson's and James's *Expert Evidence: Law and Practice, 5th Ed* does not even mention the possibility of a finding of bias based on the substance of the expert's report, or comments made there.
32. At best, some forensic points might be put in cross-examination attacking the objectivity or impartiality of Mr Evans's opinion. Whether such an attack should succeed in any degree is a paradigm matter for the Tribunal hearing the case at the trial.
33. That is not the same thing as ruling out the expert on the grounds of bias, for which there is no basis whatsoever in this case.
34. With respect, the Learned Judge appears to have confused the notion of bias with that of opinion evidence which is simply more helpful to one party's case than to the other's. The former is unacceptable for an expert; the latter is wholly unremarkable in expert evidence.

GROUND 5: The Learned Employment Judge has misapplied (paras (39)-(42)) the principle in *R (Williamson) v Secretary of State for Education and Employment* (2005) 2 AC 246.

35. The general principle in *Williamson* should be considered and applied in the light of *Grainger v Nicholson* [2010] ICR 360, where that principle was considered and applied specifically to cases of beliefs discrimination in Employment Tribunal. In particular, *Grainger* has established in paras 24 and 32 that the substantive evidence about the Claimant's beliefs is relevant and necessary in such a claim; and does not violate the *Williamson* principle.
36. That being so, the Claimant is entitled, if she so chooses, to rely on expert evidence which puts her beliefs in the doctrinal context of Christian theology and ethics.
37. This is especially so where the Respondents expressly question whether elements of her pleaded beliefs satisfy the criteria in *Grainger*, para 24 (**Issues 3-4** on the agreed list). Dr Parson's evidence directly explains (paras 74-81 and 98-100 of the report) how the contested elements are properly part of the Christian beliefs system; his evidence as to the wider doctrinal context is also relevant.
38. The Learned Judge's observation that application of *Grainger* criteria to the Claimant's beliefs is a matter for the Tribunal misses the point. The fact that a particular issue is

for the Tribunal to decide does not mean that a party may not adduce evidence relevant to that issue.

39. There is no suggestion in *Grainger* (or any other authority) that the evidence on the Claimant's beliefs must necessarily be limited to Claimant's own witness statement. Any evidence which is relevant to the *Grainger* issue is *prima facie* admissible.

GROUND 6: The Learned Employment Judge has erred in holding that Dr Parson's report was not relevant to the issue of group disadvantage and/or justification of indirect discrimination. (paras (43)-(45))

40. The Claimant has to prove group disadvantage as part of her indirect discrimination case (Issue 19 on the agreed list); and the extent of such group disadvantage is relevant to the issue of justification (Issue 21): see *Mba v Merton LBC* [2013] EWCA Civ 1562. In *Mba*, the claimant relied on expert evidence of a Bishop to the effect that working on Sundays is unacceptable for many Christians. The Court of Appeal (para 19) indicates that evidence is relevant insofar as evidence of group disadvantage, and of its extent, is required in a case of that nature. The evidence of Dr Parsons in this case is similar in nature to the evidence of Bishop Michael Nazir-Ali in *Mba*, and serves the same purposes.
41. The Learned Judge's suggestion that such evidence is not necessary is (perhaps unfortunately) contradicted by *Trayhorn v The Secretary of State for Justice (Religion or Belief Discrimination)* [2017] UKEAT 0304_16_0108 (01 August 2017), where that interpretation of *Mba* was expressly rejected by the EAT. More recently, the EAT followed *Trayhorn* on that point in *Page v. Lord Chancellor & Anor* [2019] UKEAT 0304_18_1906 (19 June 2019).
42. The issue of group disadvantage is live in these proceedings (Issue 19); contrary to what para (44) of the Learned Judge's decision may suggest, it is not agreed. Under *Mba*, *Trayhorn*, and *Page*, the Claimant has to prove her case on that issue by evidence. In this case, like in *Mba*, the natural and obvious method of proving group disadvantage is by expert evidence which shows that the Claimant's beliefs are shared by many other Christians. Indeed, it is difficult to see what other evidence of group disadvantage would be available in a case of this nature to a typical Claimant.
43. Additionally, the evidence of this nature informs the Tribunal's analysis of the proposed justification of indirect discrimination: see *Mba*.

44. For those reasons, it is erroneous and unfair to exclude the expert report of Dr Parsons, thus depriving the Claimant of her substantive evidence on two of the crucial issues in the case.

A related appeal

45. The EAT should be aware that the Claimant/Appellant has also filed an application for permission to appeal against a different case management decision made by the same Employment Judge in the same case (a refusal of the Claimant's application for the trial, adjourned indefinitely in connection with Covid-19 pandemic, to take place remotely via electronic means). That application was submitted on 5 June 2020.

46. The Tribunal may find it convenient to consider both appeals together.

Pavel Stoilov

Claimant's/Appellant's Representative

17 July 2020

Enclosures:

- 1) EAT Form 1
- 2) Details of the parties and their representatives
- 3) The decision of the ET
- 4) ET1 (Omooba v MGA)
- 5) Particulars of Claim (Omooba v MGA)
- 6) ET3 (Omooba v MGA)
- 7) Grounds of Resistance (Omooba v MGA)
- 8) ET1 (Omooba v LTT)
- 9) Particulars of Claim (Omooba v LTT)
- 10) ET3 (Omooba v LTT)
- 11) Grounds of Resistance (Omooba v LTT)
- 12) Expert report of Mr Evans
- 13) Expert report of Dr Parsons

RE: UKEATPA/0521/20/DA & UKEATPA/0522/20/DA Ms S Omooba v (1) Michael Garrett Associates Ltd (t/a Global Artists) (2) Leicester Theatre Trust Ltd

Elizabeth McGlone <E.McGlone@bindmans.com>

Fri 07/08/2020 21:28

To: LONDONEAT <londoneat@Justice.gov.uk>

Cc: Pavel Stroilov <pavel.stroilov@christianlegalcentre.com>; 'Alex Payton' <alex.payton@howespercival.com>

Dear Sir or Madam

We act for Michael Garrett Associates Ltd (t/a Global Artists), the First Respondent to these appeals ("R1"). We write to confirm R1's agreement with the position set out by R2 below in respect of the potential appeals and that proposed in relation to costs.

We have copied our email to those representing both the appellant and R2.

Kind regards

Elizabeth McGlone


Partner, Employment and Professional Discipline

E e.mcglone@bindmans.com


T +44 (0)20 7833 4433

F +44 (0)20 7837 9792

D +44 20 7014 2117

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236 Gray's Inn Road
London WC1X 8HB
DX 37904 King's
Cross
www.bindmans.com

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From: Alex Payton <alex.payton@howespercival.com>

Sent: 07 August 2020 16:05

To: LONDONEAT <londoneat@Justice.gov.uk>

Cc: Elizabeth McGlone <E.McGlone@bindmans.com>; Pavel.stroilov@christianlegalcentre.com

Subject: RE: UKEATPA/0521/20/DA & UKEATPA/0522/20/DA Ms S Omooba v (1) Michael Garrett Associates Ltd (t/a Global Artists) (2) Leicester Theatre Trust Ltd

Importance: High

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UKEATPA/0521/20/DA and UKEATPA/0522/20/DA

Ms S Omooba v (1) Michael Garrett Associates Ltd (t/a Global Artists) (2) Leicester Theatre Trust Ltd.

-

Dear Sir or Madam

We act for Leicester Theatre Trust Ltd, the second respondent to these potential appeals (“**R2**”). We write in response to the application, made on behalf of the prospective appellant (“**the appellant**”) by email on 4 August 2020 (copy below), that these appeals to be expedited.

In summary, R2’s position is that:

1. the appeals are frivolous and permission to appeal should be refused, and the appeals should be determined to be “wholly without merit” in accordance with paragraph 10.1(c) of the EAT Practice Direction;
2. however the application for expedition is not opposed.

There are two potential appeals:

1. UKEATPA/0521/20/DA: a challenge to the decision of the employment tribunal (“**ET**”) that the hearing of this matter should not be conducted by way of remote hearing;
2. UKEATPA/0522/20/DA: a challenge to the ET’s decision to refuse permission to the claimant to rely on expert evidence.

We begin by observing that these appeals are against case management orders of the ET, which are quintessentially a matter of discretion for the ET. The ET exercised its discretion permissibly and there is no real prospect of either appeal succeeding.

In addition, the first appeal (UKEATPA/0521/20/DA) is academic:

- The appellant does not say that she would prefer a remote hearing to an in-person hearing, she simply assumes (albeit incorrectly) that a remote hearing might have been listed sooner. Her point is distilled in Ground 2 of the grounds of appeal: “*justice delayed is justice denied*”.
- The full merits hearing has now been listed, before a full 3-person ET, for 9 days beginning on 21 January 2021.
- Due to the unavailability of counsel, R1 has applied for that hearing date to be moved by a few days, which the other parties have not opposed, and the ET has requested the parties’ availability for February 2021.
- The expedited timetable now sought by the appellant anticipates the EAT giving judgment by 7 December 2020, only a couple of months before the likely hearing date.
- So even if the EAT were to find that the ET erred in not ordering a remote hearing, it would not be feasible for the date of the full merits hearing to be brought forward. There is no remedy which the EAT could provide (unhelpfully, and in breach of paragraph 3.5 of the Practice Direction, the notice of appeal fails to state what order the appellant is seeking).
- The appeal is therefore academic and unnecessary.
- R2 reserves its position on costs in the event that it is pursued further.

However R2 does not oppose the application for expedition. It is better that the potential appeals on interlocutory issues are determined before the 9-day full merits hearing takes place.

The EAT is respectfully invited to determine, on the sift, that each of the appeals is “wholly without merit” in accordance paragraph 10.1(c) of the EAT Practice Direction.

We have of course copied this email to the appellant's representative and to the first respondent.

Yours faithfully

Alex Payton

Director

Howes Percival LLP

Leicester

Direct Dial: 0116 2473586

Mobile: 07802 225287

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From: Pavel Stroilov <pavel.stroilov@christianlegalcentre.com>

Sent: 04 August 2020 19:23

To: LONDONEAT <londoneat@Justice.gov.uk>

Cc: Elizabeth McGlone <E.McGlone@bindmans.com>; Alex Payton <alex.payton@howespercival.com>

Subject: Application to expedite: Omooba v Michael Garrett Associates and Anr.

Attention: This email originated outside Howes Percival LLP. Please be extra vigilant when opening attachments or clicking links.

Dear Sirs,

Seyi Omooba v (1) Michael Garrett Associates (t/a Global Artists) and (2) Leicester Theatre Trust Ltd. - ET ref. 2202946/2019 and 2602362/2019

I refer to the two applications for permission to appeal against interlocutory orders in the case above:

- (1) The application submitted by hand on 4 June 2020 (appeal against the refusal of the application for the trial to take place remotely); and
- (2) The application submitted by email on 17 July 2020 at 1:07 am (appeal against the refusal of the application to adduce expert evidence).

We still have not heard from the Tribunal in response to either application, and having telephoned the EAT office today, I understand that neither appeal has as yet been progressed. Accordingly, there are no EAT reference numbers. I attach copies of both Notices of Appeal with all the enclosures.

I act for the Appellant Miss Omooba. This is an application on behalf of the Appellant **to expedite both appeals**, to ensure that a final decision is reached in good time before the start of the ET trial, **now listed for 21 January - 2 February 2020**. The Tribunal is respectfully invited to expedite both appeals as follows:

- Permission decision on papers before 28 September 2020;
- Any permission hearing (if needed) before 19 October 2020;
- The full hearing (or a rolled-up hearing) before 16 November 2020;
- Any reserved judgement to be handed down before 7 December 2020.

The Appellant requests this expedition for the following reasons:

1. It is self-evidently important that the final decision is reached as to whether the Claimant should be permitted to rely on expert evidence in good time before the trial. If the appeal is heard after the trial and the Claimant succeeds, that would mean that the trial had been wasted.
2. In the event the Claimant's expert evidence is admitted, the Respondents may wish to obtain their own expert evidence to counter it, and should be given reasonable time to do so.
3. It is convenient to consider both appeals together.
4. In the event of a significant deterioration of Covid-19 situation before the trial dates in January-February 2020, so that an in-person trial cannot take place, the outcome of the appeal in relation to the 'remote' trial would be very significant to ensure that the correct course of action is taken.
5. The unsuccessful party or parties should be given reasonable time to seek to pursue an expedited appeal in the Court of Appeal if so advised.

For those reasons, the Tribunal is respectfully invited to expedite both appeals.

Correction of my contact details

Additionally, please note that there is a typo in my email address given in both appeal notices, for which I apologise. The correct address is pavel.stroilov@christianlegalcentre.com. I attach the amended appeal notices as well as the original ones, but suggest that only the amended notices should be kept on the Tribunal file to avoid confusion.

The respective legal representatives for both Respondents have been copied into this email.

Regards,

Pavel Stroilov

Appellant's Representative

List of enclosures:

01. Original EAT Form 1 (experts appeal)
- 01a. Original EAT Form 1 (remote trial appeal)
- 01b. Amended EAT Form 1 (experts appeal)
- 01c. Amended EAT Form 1 (remote trial appeal)
- 01d. Grounds of Appeal (experts appeal)
02. Amended details of the parties and their representatives
03. The decision of the ET (re experts)
- 03a. The decision of the ET (re remote trial)
04. ET1 (Omooba v MGA)
05. Particulars of Claim (Omooba v MGA)
06. ET3 (Omooba v MGA)
07. Grounds of Resistance (Omooba v MGA)
08. ET1 (Omooba v LTT)
09. Particulars of Claim (Omooba v LTT)
10. ET3 (Omooba v LTT)
11. Grounds of Resistance (Omooba v LTT)
12. Expert report of Mr Evans (experts appeal)
13. Expert report of Dr Parsons (experts appeal)
14. Witness statement of Paul Huxley (remote trial appeal)

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Pavel Stroilov
020 3327 1130

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RE: UKEATPA/0522/20/DA & UKEATPA/0521/20/DA- Ms S Omooba v 1) Michael Garrett Associates Ltd (t/a Global Artists) 2) Leicester Theatre Trust Ltd

Elizabeth McGlone <E.McGlone@bindmans.com>

Fri 14/08/2020 19:29

To: LONDONEAT <londoneat@Justice.gov.uk>

Cc: Alex Payton <alex.payton@howespercival.com>; Pavel Stroiлов <pavel.stroiлов@christianlegalcentre.com>

Dear Sir/Madam

We write by way of update and further to the submissions sent by the Second Respondent on 7 August 2020 to confirm that the final hearing in the Employment Tribunal claim will now be heard on 1-11 February 2021.

We have copied our email to the representatives of both the Second Respondent and the Claimant.

Kind regards

Elizabeth McGlone


Partner, Employment and Professional Discipline

E e.mcglone@bindmans.com

T +44 (0)20 7833 4433

F +44 (0)20 7837 9792

D +44 20 7014 2117

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236 Gray's Inn Road
London WC1X 8HB
DX 37904 King's
Cross
www.bindmans.com

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☐ Mr

☐ Mrs

☐ Miss

☐ Ms

1.2*

First name (or names)

1.3*

Surname or family name

1.4

Date of birth

/

/

Are you? ☐ Male ☐ Female

1.5*

Address

Number or name

Street

Town/City

County

Postcode

1.6

Phone number

Where we can contact you during the day

1.7

Mobile number (if different)

1.8

How would you prefer us to contact you?
(Please tick only one box)

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Whatever your preference please note that some documents cannot be sent electronically

1.9

Email address

1.10

Fax number

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2.1*

Give the name of your employer or the person or organisation you are claiming against (If you need you can add more respondents at 2.4)

2.2*

Address

Number or name

Street

Town/City

County

Postcode

Phone number

ET1 - Claim form (08.17)

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If Yes, please give the Acas early conciliation certificate number.

- If No, why don't you have this number?
- ☐

Another person I'm making the claim with has an Acas early conciliation certificate number
- ☐

Acas doesn't have the power to conciliate on some or all of my claim
- ☐

My employer has already been in touch with Acas
- ☐

My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

2.4 If you worked at a different address from the one you have given at 2.2 please give the full address

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.5 If there are other respondents please tick this box and put their names and addresses here.

☐

(If there is not enough room here for the names of all the additional respondents then you can add any others at Section 13.)

Respondent 2

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.6

Do you have an Acas early conciliation certificate number?

☐ Yes

☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

Respondent 3

2.7

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.8

Do you have an Acas early conciliation certificate number?

☐ Yes

☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.Acas.org.uk

If Yes, please give the Acas early conciliation certificate number

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

3 Multiple cases

- 3.1 Are you aware that your claim is one of a number of claims against the same employer arising from the same, or similar, circumstances? ☐ Yes ☐ No

If Yes, and you know the names of any other claimants, add them here. This will allow us to link your claim to other related claims.

4 Cases where the respondent was not your employer

- 4.1 If you were not employed by any of the respondents you have named but are making a claim for some reason connected to employment (for example, relating to a job application which you made or against a trade union, qualifying body or the like) please state the type of claim you are making here. (You will get the chance to provide details later):

Now go to Section 8

5 Employment details

If you are or were employed please give the following information, if possible.

- 5.1 When did your employment start?

Is your employment continuing?

☐ Yes ☐ No

If your employment has ended, when did it end?

If your employment has not ended, are you in a period of notice and, if so, when will that end?

- 5.2 Please say what job you do or did.

6 Earnings and benefits

6.1 How many hours on average do, or did you work each week in the job this claim is about? hours each week

6.2 How much are, or were you paid?

Pay before tax

£

☐ Weekly

☐ Monthly

Normal take-home pay

(Incl. overtime, commission, bonuses etc.)

£

☐ Weekly

☐ Monthly

6.3 If your employment has ended, did you work (or were you paid for) a period of notice? ☐ Yes ☐ No

If Yes, how many weeks, or months' notice did you work, or were you paid for?

weeks

months

6.4 Were you in your employer's pension scheme? ☐ Yes ☐ No

6.5 If you received any other benefits, e.g. company car, medical insurance, etc, from your employer, please give details.

7 If your employment with the respondent has ended, what has happened since?

7.1 Have you got another job? ☐ Yes ☐ No

If No, please **go to section 8**

7.2 Please say when you started (or will start) work.

7.3 Please say how much you are now earning (or will earn).

£

8 Type and details of claim

8.1* Please indicate the type of claim you are making by ticking one or more of the boxes below.

- ☐ I was unfairly dismissed (including constructive dismissal)
- ☐ I was discriminated against on the grounds of:
- | | |
|---|--|
| <input type="checkbox"/> age | <input type="checkbox"/> race |
| <input type="checkbox"/> gender reassignment | <input type="checkbox"/> disability |
| <input type="checkbox"/> pregnancy or maternity | <input type="checkbox"/> marriage or civil partnership |
| <input type="checkbox"/> sexual orientation | <input type="checkbox"/> sex (including equal pay) |
| <input type="checkbox"/> religion or belief | |

☐ I am claiming a redundancy payment

☐ I am owed

- ☐ notice pay
- ☐ holiday pay
- ☐ arrears of pay
- ☐ other payments

☐ I am making another type of claim which the Employment Tribunal can deal with.

(Please state the nature of the claim. Examples are provided in the Guidance.)

8.2* Please set out the background and details of your claim in the space below.

The details of your claim should include **the date(s) when the event(s) you are complaining about happened**. Please use the blank sheet at the end of the form if needed.

9 What do you want if your claim is successful?

9.1 Please tick the relevant box(es) to say what you want if your claim is successful:

- ☐ If claiming unfair dismissal, to get your old job back and compensation (reinstatement)
- ☐ If claiming unfair dismissal, to get another job with the same employer or associated employer and compensation (re-engagement)
- ☐ Compensation only
- ☐ If claiming discrimination, a recommendation (see Guidance).

9.2 What compensation or remedy are you seeking?

If you are claiming financial compensation please give as much detail as you can about how much you are claiming and how you have calculated this sum. (Please note any figure stated below will be viewed as helpful information but it will not restrict what you can claim and you will be permitted to revise the sum claimed later. See the Guidance for further information about how you can calculate compensation). If you are seeking any other remedy from the Tribunal which you have not already identified please also state this below.

10 Information to regulators in protected disclosure cases

- 10.1 If your claim consists of, or includes, a claim that you are making a protected disclosure under the Employment Rights Act 1996 (otherwise known as a 'whistleblowing' claim), please tick the box if you want a copy of this form, or information from it, to be forwarded on your behalf to a relevant regulator (known as a 'prescribed person' under the relevant legislation) by tribunal staff. (See Guidance). ☐

11 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

11.1 Name of representative

11.2 Name of organisation

11.3 Address

Number or name

Street

Town/City

County

Postcode

11.4 DX number (if known)

11.5 Phone number

11.6 Mobile number (if different)

11.7 Their reference for correspondence

11.8 Email address

11.9 How would you prefer us to communicate with them? (Please tick only one box)

☐

Email

☐

Post

☐

Fax

11.10 Fax number

12 Disability

12.1 Do you have a disability?

☐

Yes

☐

No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as your claim progresses through the system, including for any hearings that maybe held at tribunal premises.

13 Details of additional respondents

Section 2.4 allows you to list up to three respondents. If there are any more respondents please provide their details here

Respondent 4

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Do you have an Acas early conciliation certificate number?

☐

Yes

☐

No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐

Another person I'm making the claim with has an Acas early conciliation certificate number

☐

Acas doesn't have the power to conciliate on some or all of my claim

☐

My employer has already been in touch with Acas

☐

My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

Respondent 5

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Do you have an Acas early conciliation certificate number?

☐

Yes

☐

No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐

Another person I'm making the claim with has an Acas early conciliation certificate number

☐

Acas doesn't have the power to conciliate on some or all of my claim

☐

My employer has already been in touch with Acas

☐

My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

14 Final check

Please re-read the form and check you have entered all the relevant information.

Once you are satisfied, please tick this box. ☐

Data Protection Act 1998.

We will send a copy of this form to the respondent and Acas. We will put the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics. Information provided on this form is passed to the Department for Business Energy and Industrial Strategy to assist research into the use and effectiveness of employment tribunals.

15 Additional information

You can provide additional information about your claim in this section.

If you're part of a group claim, give the Acas early conciliation certificate numbers for other people in your group. If they don't have numbers, tell us why.



It is important to us that everyone who has contact with HM Courts & Tribunals Service, receives equal treatment. We need to find out whether our policies are effective and to take steps to ensure the impact of future policies can be fully assessed to try to avoid any adverse impacts on any particular groups of people. That is why we are asking you to complete the following questionnaire, which will be used to provide us with the relevant statistical information. **Your answers will be treated in strict confidence.**

Thank you in advance for your co-operation.

Claim type

Please confirm the type of claim that you are bringing to the employment tribunal. This will help us in analysing the other information provided in this form.

- (a) ☐ Unfair dismissal or constructive dismissal
- (b) ☐ Discrimination
- (c) ☐ Redundancy payment
- (d) ☐ Other payments you are owed
- (e) ☐ Other complaints

Sex

What is your sex?

- (a) ☐ Female
- (b) ☐ Male
- (c) ☐ Prefer not to say

Age group

Which age group are you in?

- (a) ☐ Under 25
- (b) ☐ 25-34
- (c) ☐ 35-44
- (d) ☐ 45-54
- (e) ☐ 55-64
- (f) ☐ 65 and over
- (g) ☐ Prefer not to say

Ethnicity

What is your ethnic group?

White

- (a) ☐ English / Welsh / Scottish / Northern Irish / British
- (b) ☐ Irish
- (c) ☐ Gypsy or Irish Traveller
- (d) ☐ Any other White background

Mixed / multiple ethnic groups

- (e) ☐ White and Black Caribbean
- (f) ☐ White and Black African
- (g) ☐ White and Asian
- (h) ☐ Any other Mixed / multiple ethnic background

Asian / Asian British

- (i) ☐ Indian
- (j) ☐ Pakistani
- (k) ☐ Bangladeshi
- (l) ☐ Chinese
- (m) ☐ Any other Asian background

Black / African / Caribbean / Black British

- (n) ☐ African
- (o) ☐ Caribbean
- (p) ☐ Any other Black / African / Caribbean background

Other ethnic group

- (q) ☐ Arab
- (r) ☐ Any other ethnic group
- (s) ☐ Prefer not to say

Disability

The Equality Act 2010 defines a disabled person as 'Someone who has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities'.

Conditions covered may include, for example, severe depression, dyslexia, epilepsy and arthritis.

Do you have any physical or mental health conditions or illnesses lasting or expected to last for 12 months or more?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Marriage and Civil Partnership

Are you?

- (a) ☐ Single, that is, never married and never registered in a same-sex civil partnership
- (b) ☐ Married
- (c) ☐ Separated, but still legally married
- (d) ☐ Divorced
- (e) ☐ Widowed
- (f) ☐ In a registered same-sex civil partnership
- (g) ☐ Separated, but still legally in a same-sex civil partnership
- (h) ☐ Formerly in a same-sex civil partnership which is now legally dissolved
- (i) ☐ Surviving partner from a same-sex civil partnership
- (j) ☐ Prefer not to say

Religion and belief

What is your religion?

- (a) ☐ No religion
- (b) ☐ Christian (including Church of England, Catholic, Protestant and all other Christian denominations)
- (c) ☐ Buddhist
- (d) ☐ Hindu
- (e) ☐ Jewish
- (f) ☐ Muslim
- (g) ☐ Sikh
- (h) ☐ Any other religion (please describe)
- (i) ☐ Prefer not to say

Caring responsibilities

Do you have any caring responsibilities, (for example; children, elderly relatives, partners etc.)?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Sexual identity

Which of the options below best describes how you think of yourself?

- (a) ☐ Heterosexual/Straight
- (b) ☐ Gay /Lesbian
- (c) ☐ Bisexual
- (d) ☐ Other
- (e) ☐ Prefer not to say

Gender identity

Please describe your gender identity?

- (a) ☐ Male (including female-to-male trans men)
- (b) ☐ Female (including male-to-female trans women)
- (c) ☐ Prefer not to say

Is your gender identity different to the sex you were assumed to be at birth?

- (f) ☐ Yes
- (g) ☐ No
- (h) ☐ Prefer not to say

Pregnancy and maternity

Were you pregnant when the issue you are making a claim about took place?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Thank you for taking the time to complete this questionnaire.

Employment Tribunals check list

Please check the following:

1. Read the form to make sure the information given is correct and truthful, and that you have not left out any information which you feel may be relevant to you or your client.
2. Do not attach a covering letter to your form. If you have any further relevant information please enter it in the 'Additional Information' space provided in the form.
3. Send the completed form to the relevant office address.
4. Keep a copy of your form posted to us.

If your claim has been submitted on-line or posted you should receive confirmation of receipt from the office dealing with your claim within five working days. If you have not heard from them within five days, please contact that office directly. If the deadline for submitting the claim is closer than five days you should check that it has been received before the time limit expires.

You have opted to print and post your form. We would like to remind you that forms submitted on-line are processed much faster than ones posted to us.

If you want to submit on-line please go back to the form and click the submit button, otherwise follow the check list before you post the completed form to the relevant office address.

A list of our office's contact details can be found at the hearing centre page of our website at – www.gov.uk/guidance/employment-tribunal-offices-and-venues; if you are still unsure about which office to contact please call our Employment Tribunal Customer Contact Centre (Mon – Fri, 8.30am – 5pm) they can also provide general procedural information about the Employment Tribunals.

Phone: 0300 123 1024 (England & Wales)

Phone: 0141 354 8574 (Scotland)

Or

Textphone: 18001 0300 123 1024 (England & Wales)

Textphone: 18001 0141 354 8574 (Scotland)

In the Employment Tribunal

BETWEEN:

Seyi Omooba

Claimant

-v-

Michael Garrett Associates Ltd (t/a Global Artists)

Respondent

PARTICULARS OF CLAIM

1. The Claimant is a professional actress/performer. The Respondent is a ‘talent agency’, who offers its services to represent actors and other creative professionals in securing offers of employment and other work, and to promote and advance their professional careers.
2. On 18 September 2014, the Claimant (at that time, a 20-year-old student) made the following post on her private Facebook page:

“Some Christians have completely misconceived the issue of Homosexuality, they have begun to twist the word of God. It is clearly evident in 1 Corinthians 6:9-11 what the Bible says on this matter. I do not believe you can be born gay, and I do not believe homosexuality is right, though the law of this land has made it legal doesn’t mean it is right. I do believe that everyone sins and falls into temptation but it’s by the asking of forgiveness, repentance and the grace of God that we overcome and live how God ordained us to. Which is that a man should leave his father and mother and be joined to his wife, and they shall become one flesh. Genesis 2:24. God loves everyone, just because He doesn’t agree with your decisions doesn’t mean He doesn’t love you. Christians we need to step up and love but also tell the truth of God’s word. I am tired of lukewarm Christianity, be inspired to stand up for what you believe and the truth #our God is three in one #God (Father) #Jesus Christ (Son) #Holy Spirit.”

(“the Facebook post”)

3. The Facebook post represents the Claimant’s deeply held religious beliefs. In summary these are:
 - a. Her belief in the truth of the Bible, in particular Genesis 2 v 24 and 1 Corinthians 6 v 9-11.
 - b. Her belief that although God loves all mankind, He does not love all mankind’s acts, in particular she believes that Homosexual practice (as distinct from homosexual desires) is sinful/morally wrong.
 - c. Her belief that not to speak out in defence of these beliefs, would be sinful/contrary to her beliefs.
4. Under Articles 9 and/or 10 ECHR, the Claimant was entitled to hold and express those beliefs without interference. The Claimant relies on those beliefs as a *protected characteristic* under s. 10 of the Equality Act 2010, and/or for the purposes of Article 9 ECHR.
5. Further and in any event, the Claimant relies on her Christian religion as a relevant *protected characteristic*.
6. In August 2016, the Claimant entered a written contract with the Respondent, whereby the Claimant appointed the Respondent as her exclusive agent. In August 2018, the parties agreed a number of amendments to that contract, which are not material to the present case. The full amended contract, dated 13 August 2018 (**“the Contract”**) is appended herewith as **Appendix 1**. The Claimant relies on the following material terms:
 - By **Clause 2** of the Contract, the Contract would continue in force indefinitely until and unless terminated by either party by giving **two calendar months’ notice in writing**.
 - By **Clause 3** of the Contract, the Respondent was obliged, for the entire duration of the contract, to (a) represent the Claimant’s interests to the best of the Respondent’s ability with a view to promoting and advancing her career; and (b) use reasonable endeavours to secure for the Claimant offers of suitable employment or engagement by third parties.

- Under **Clause 5**, and as detailed therein, the Respondent was entitled to a substantial commission on such income as the Claimant derived from her professional work.
7. Pursuant to that Contract, between August 2016 and March 2019, the Respondent arranged for a large number of successful professional engagements and opportunities for the Claimant; from which both parties derived substantial benefit.
 8. On 15 March 2019 an actor, Mr Aaron Lee Lambert ("**Mr Lambert**") posted a screenshot of the Claimant's Facebook Post on his Twitter page, accompanied by Mr Lambert's verbal attack on the Claimant's character and her beliefs. In the subsequent days, the Claimant was subjected to further criticism on social media because of her Christian beliefs expressed in the Facebook Post. On 21 March 2019, two theatres announced they were terminating the Claimant's engagement in the performance where she was to play the leading part. That caused further widespread publicity adverse to the Claimant and her beliefs, including damaging statements on social media, in national media, and abroad.
 9. On 21 March 2019 the Respondent, acting by the Agent, Bobbie Chatt ("**Ms Chatt**"), advised the Claimant "not to make public comment at this point", and in any event, not to make any statement without informing and consulting the Respondent. The Claimant complied with that advice and made no public statement.
 10. On 24 March 2019 a Nigerian web-site, YNaija.com, published a satirical article by Mr Bernad Dayo ("**Mr Dayo**") depicting the Claimant as 'homophobic'. It depicted the Claimant as saying "through her publicist": "I was born this way, homophobia is a natural reaction to homosexuality which is an aberration". For the avoidance of doubt, the Claimant never made any such statement, through a publicist or otherwise.
 11. On the same day, 24 March 2019, the Respondent, acting by Mr Michael Garrett ("**Mr Garrett**"), emailed the Claimant as follows: "*Following your statement of 24th March 2019, of which we were unaware prior to publication, I am writing to inform you that your agreement for representation with Global Artists has been terminated, effective from today, 24th March 2019*".

12. The Respondent's decision to terminate the contract was reported in the media within hours of the said email. It must be inferred that the Respondent deliberately took steps to publicise its decision in the media.
13. Following the receipt of the aforesaid email from Mr Garrett, the Claimant spoke with Mr Garrett and then with Ms Chatt. The Claimant clearly explained that she was not responsible for the statement attributed to her.
14. On or before 25 March 2019, Mr Dayo and the editor of YNaija.com publicly pointed out that the article was published with the following disclaimer: "This post is clearly satirical and shouldn't be taken seriously". In the Twitter discussion in response to the article, Mr Dayo tweeted "It's satire!".
15. By letter of 25 March 2019, the Claimant drew those comments to the attention of Mr Garrett and again reassured him that she had not made any public statement, such as depicted in the article or at all.
16. Mr Garrett responded by email of 18 April 2019, where he stated:

"As you will appreciate, a fundamental consideration of the Agency Agreement is that of mutual confidence between us and in our professional relationship.

"Having now had a period to reflect on the matters at hand and the circumstances surrounding these unfortunate events, it is regretful we feel that the confidence has been irretrievably eroded.

"As such the position set out in my e-mail of 24 March 2019 stands and is final."

17. For the avoidance of doubt, the Claimant denies that she had committed a repudiatory or any breach of the Contract, or did anything that could reasonably undermine the relationship of mutual trust and confidence with the Respondent.
18. It must be inferred, from all the facts and circumstances pleaded above, that in making the decision to terminate the Contract, the Respondent (a) was fully aware that the Claimant did not make any such statement as was attributed to her in Mr Dayo's article, (b) made that decision in response to public criticism of the Claimant's religious beliefs by various third parties and/or (c) ultimately, terminated the contract because of the Claimant's religious beliefs.

Liability under the Equality Act 2010

19. The Respondent is an ‘employment service provider’ within the meaning of s. 55 of the Equality Act 2010, and is liable for any direct or indirect discrimination and/or harassment of the Claimant under s. 55(2) and s. 55(3) respectively.
20. Further or in the alternative, various parts in performances and other engagements which the Respondent secured and would secure for the Claimant were ‘personal offices’ within the meaning of s. 49 of the Equality Act 2010. On the premises, the Respondent was “a relevant person” under s. 49(6)-(7), and is liable under that section for any direct or indirect discrimination and/or harassment of the Claimant.

Harassment

21. The Claimant relies on the following unwanted conduct of the Respondent:
 - a. Improper/premature termination of the Contract on 24 March 2019 as pleaded in para 11 above;
 - b. Steps taken to publicise the Respondent’s decision to terminate the Contract on and/or around 24 March 2019 as pleaded in para 12 above;
 - c. The refusal to reconsider the decision to terminate the Contract, as communicated by Mr Garrett’s email of 18 April 2019, as pleaded in para 16 above;
 - d. The untrue suggestion in Mr Garrett’s email of 18 April 2019 (ibid.) that the Claimant’s conduct had undermined the Respondent’s confidence in her.
22. The said unwanted conduct was related to the Claimant’s protected characteristic(s), namely her religious beliefs pleaded in paras 2-3 above and/or her Christian religion.
23. The said unwanted conduct had the purpose and/or effect of violating the Claimant’s dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

Direct discrimination

24. Further or in the alternative, the Respondent directly discriminated against the Claimant because of her religious beliefs pleaded in paras 2-3 above. The Claimant

relies on all matters pleaded in para 23 above, cumulatively and/or individually, as less favourable treatment.

Indirect discrimination

25. In further alternative, the Respondent applied the following provisions, criteria or practices (PCPs):

(1) The Respondent is unwilling to provide its services to a performer who is subjected to public criticism for a social media post which condemns homosexual practices on religious grounds.

(2) The Respondent regards such public criticism as sufficient grounds to terminate the contract without notice.

26. The said PCPs put actors/performers who share (a) the Claimant's Christian religion and/or (b) the Claimant's beliefs pleaded in paras 2-3 above, at a particular disadvantage, as their ability to benefit from the Respondent's services is diminished.

27. On the premises, the Respondent indirectly discriminated against the Claimant on the grounds of her religion and/or religious beliefs.

AND THE CLAIMANT SEEKS:

(1) Compensation under s. 124(a) of the Equality Act 2010 for

- a. Injury to feelings;***
- b. Lost earnings;***
- c. Reputational damage;***
- d. Loss of publicity;***
- e. Loss of chance and***
- f. Other consequential losses***

(2) A declaration under s. 124(2)(b) of the Equality Act 2010

(3) A recommendation under s. 124(2)(c) of the Equality Act 2010

(4) Interest

(5) Further and other relief

(6) Costs

Claim form

Official Use Only			
Tribunal office			
Case number		Date received	

You must complete all questions marked with an ‘*’

1 Your details

1.1

Title

☐ Mr

☐ Mrs

☐ Miss

☐ Ms

1.2*

First name (or names)

1.3*

Surname or family name

1.4

Date of birth

/

/

Are you?

☐ Male

☐ Female

1.5*

Address

Number or name

Street

Town/City

County

Postcode

1.6

Phone number

Where we can contact you during the day

1.7

Mobile number (if different)

1.8

How would you prefer us to contact you?
(Please tick only one box)

☐ Email

☐ Post

☐ Fax

Whatever your preference please note that some documents cannot be sent electronically

1.9

Email address

1.10

Fax number

2 Respondent’s details (that is the employer, person or organisation against whom you are making a claim)

2.1*

Give the name of your employer or the person or organisation you are claiming against (If you need you can add more respondents at 2.4)

2.2*

Address

Number or name

Street

Town/City

County

Postcode

Phone number

ET1 - Claim form (08.17)

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© Crown copyright 2017

2.3* Do you have an Acas early conciliation certificate number?

☐ Yes☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

- If No, why don't you have this number?
- ☐ Another person I'm making the claim with has an Acas early conciliation certificate number
- ☐ Acas doesn't have the power to conciliate on some or all of my claim
- ☐ My employer has already been in touch with Acas
- ☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

2.4 If you worked at a different address from the one you have given at 2.2 please give the full address

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.5 If there are other respondents please tick this box and put their names and addresses here.

☐

(If there is not enough room here for the names of all the additional respondents then you can add any others at Section 13.)

Respondent 2

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.6

Do you have an Acas early conciliation certificate number?

☐ Yes

☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

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☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

Respondent 3

2.7

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

2.8

Do you have an Acas early conciliation certificate number?

☐ Yes

☐ No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.Acas.org.uk

If Yes, please give the Acas early conciliation certificate number

If No, why don't you have this number?

☐ Another person I'm making the claim with has an Acas early conciliation certificate number

☐ Acas doesn't have the power to conciliate on some or all of my claim

☐ My employer has already been in touch with Acas

☐ My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

75

Page 3

3 Multiple cases

- 3.1 Are you aware that your claim is one of a number of claims against the same employer arising from the same, or similar, circumstances? ☐ Yes ☐ No

If Yes, and you know the names of any other claimants, add them here. This will allow us to link your claim to other related claims.

4 Cases where the respondent was not your employer

- 4.1 If you were not employed by any of the respondents you have named but are making a claim for some reason connected to employment (for example, relating to a job application which you made or against a trade union, qualifying body or the like) please state the type of claim you are making here. (You will get the chance to provide details later):

Now go to Section 8

5 Employment details

If you are or were employed please give the following information, if possible.

- 5.1 When did your employment start?

Is your employment continuing?

☐ Yes ☐ No

If your employment has ended, when did it end?

If your employment has not ended, are you in a period of notice and, if so, when will that end?

- 5.2 Please say what job you do or did.

6 Earnings and benefits

6.1 How many hours on average do, or did you work each week in the job this claim is about? hours each week

6.2 How much are, or were you paid?

Pay before tax

£

☐ Weekly

☐ Monthly

Normal take-home pay

(Incl. overtime, commission, bonuses etc.)

£

☐ Weekly

☐ Monthly

6.3 If your employment has ended, did you work (or were you paid for) a period of notice? ☐ Yes ☐ No

If Yes, how many weeks, or months' notice did you work, or were you paid for?

weeks

months

6.4 Were you in your employer's pension scheme? ☐ Yes ☐ No

6.5 If you received any other benefits, e.g. company car, medical insurance, etc, from your employer, please give details.

7 If your employment with the respondent has ended, what has happened since?

7.1 Have you got another job? ☐ Yes ☐ No

If No, please **go to section 8**

7.2 Please say when you started (or will start) work.

7.3 Please say how much you are now earning (or will earn).

£

8 Type and details of claim

8.1* Please indicate the type of claim you are making by ticking one or more of the boxes below.

- ☐ I was unfairly dismissed (including constructive dismissal)
- ☐ I was discriminated against on the grounds of:
- | | |
|---|--|
| <input type="checkbox"/> age | <input type="checkbox"/> race |
| <input type="checkbox"/> gender reassignment | <input type="checkbox"/> disability |
| <input type="checkbox"/> pregnancy or maternity | <input type="checkbox"/> marriage or civil partnership |
| <input type="checkbox"/> sexual orientation | <input type="checkbox"/> sex (including equal pay) |
| <input type="checkbox"/> religion or belief | |

☐ I am claiming a redundancy payment

☐ I am owed

- ☐ notice pay
- ☐ holiday pay
- ☐ arrears of pay
- ☐ other payments

☐ I am making another type of claim which the Employment Tribunal can deal with.
(Please state the nature of the claim. Examples are provided in the Guidance.)

8.2* Please set out the background and details of your claim in the space below.

The details of your claim should include **the date(s) when the event(s) you are complaining about happened**. Please use the blank sheet at the end of the form if needed.

9 What do you want if your claim is successful?

9.1 Please tick the relevant box(es) to say what you want if your claim is successful:

- ☐ If claiming unfair dismissal, to get your old job back and compensation (reinstatement)
- ☐ If claiming unfair dismissal, to get another job with the same employer or associated employer and compensation (re-engagement)
- ☐ Compensation only
- ☐ If claiming discrimination, a recommendation (see Guidance).

9.2 What compensation or remedy are you seeking?

If you are claiming financial compensation please give as much detail as you can about how much you are claiming and how you have calculated this sum. (Please note any figure stated below will be viewed as helpful information but it will not restrict what you can claim and you will be permitted to revise the sum claimed later. See the Guidance for further information about how you can calculate compensation). If you are seeking any other remedy from the Tribunal which you have not already identified please also state this below.

10 Information to regulators in protected disclosure cases

- 10.1 If your claim consists of, or includes, a claim that you are making a protected disclosure under the Employment Rights Act 1996 (otherwise known as a 'whistleblowing' claim), please tick the box if you want a copy of this form, or information from it, to be forwarded on your behalf to a relevant regulator (known as a 'prescribed person' under the relevant legislation) by tribunal staff. (See Guidance). ☐

11 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

- 11.1 Name of representative
- 11.2 Name of organisation
- 11.3 Address
- Number or name
- Street
- Town/City
- County
- Postcode
- 11.4 DX number (if known)
- 11.5 Phone number
- 11.6 Mobile number (if different)
- 11.7 Their reference for correspondence
- 11.8 Email address
- 11.9 How would you prefer us to communicate with them? (Please tick only one box) ☐ Email ☐ Post ☐ Fax
- 11.10 Fax number

12 Disability

- 12.1 Do you have a disability? ☐ Yes ☐ No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as your claim progresses through the system, including for any hearings that maybe held at tribunal premises.

13 Details of additional respondents

Section 2.4 allows you to list up to three respondents. If there are any more respondents please provide their details here

Respondent 4

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Do you have an Acas early conciliation certificate number?

☐

Yes

☐

No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐

Another person I'm making the claim with has an Acas early conciliation certificate number

☐

Acas doesn't have the power to conciliate on some or all of my claim

☐

My employer has already been in touch with Acas

☐

My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

Respondent 5

Name

Address

Number or name

Street

Town/City

County

Postcode

Phone number

Do you have an Acas early conciliation certificate number?

☐

Yes

☐

No

Nearly everyone should have this number before they fill in a claim form. You can find it on your Acas certificate. For help and advice, call Acas on 0300 123 1100 or visit www.acas.org.uk

If Yes, please give the Acas early conciliation certificate number.

If No, why don't you have this number?

☐

Another person I'm making the claim with has an Acas early conciliation certificate number

☐

Acas doesn't have the power to conciliate on some or all of my claim

☐

My employer has already been in touch with Acas

☐

My claim consists only of a complaint of unfair dismissal which contains an application for interim relief. (See guidance)

14 Final check

Please re-read the form and check you have entered all the relevant information.

Once you are satisfied, please tick this box. ☐

Data Protection Act 1998.

We will send a copy of this form to the respondent and Acas. We will put the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics. Information provided on this form is passed to the Department for Business Energy and Industrial Strategy to assist research into the use and effectiveness of employment tribunals.

15 Additional information

You can provide additional information about your claim in this section.

If you're part of a group claim, give the Acas early conciliation certificate numbers for other people in your group. If they don't have numbers, tell us why.



It is important to us that everyone who has contact with HM Courts & Tribunals Service, receives equal treatment. We need to find out whether our policies are effective and to take steps to ensure the impact of future policies can be fully assessed to try to avoid any adverse impacts on any particular groups of people. That is why we are asking you to complete the following questionnaire, which will be used to provide us with the relevant statistical information. **Your answers will be treated in strict confidence.**

Thank you in advance for your co-operation.

Claim type

Please confirm the type of claim that you are bringing to the employment tribunal. This will help us in analysing the other information provided in this form.

- (a) ☐ Unfair dismissal or constructive dismissal
- (b) ☐ Discrimination
- (c) ☐ Redundancy payment
- (d) ☐ Other payments you are owed
- (e) ☐ Other complaints

Sex

What is your sex?

- (a) ☐ Female
- (b) ☐ Male
- (c) ☐ Prefer not to say

Age group

Which age group are you in?

- (a) ☐ Under 25
- (b) ☐ 25-34
- (c) ☐ 35-44
- (d) ☐ 45-54
- (e) ☐ 55-64
- (f) ☐ 65 and over
- (g) ☐ Prefer not to say

Ethnicity

What is your ethnic group?

White

- (a) ☐ English / Welsh / Scottish / Northern Irish / British
- (b) ☐ Irish
- (c) ☐ Gypsy or Irish Traveller
- (d) ☐ Any other White background

Mixed / multiple ethnic groups

- (e) ☐ White and Black Caribbean
- (f) ☐ White and Black African
- (g) ☐ White and Asian
- (h) ☐ Any other Mixed / multiple ethnic background

Asian / Asian British

- (i) ☐ Indian
- (j) ☐ Pakistani
- (k) ☐ Bangladeshi
- (l) ☐ Chinese
- (m) ☐ Any other Asian background

Black / African / Caribbean / Black British

- (n) ☐ African
- (o) ☐ Caribbean
- (p) ☐ Any other Black / African / Caribbean background

Other ethnic group

- (q) ☐ Arab
- (r) ☐ Any other ethnic group
- (s) ☐ Prefer not to say

Disability

The Equality Act 2010 defines a disabled person as 'Someone who has a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities'.

Conditions covered may include, for example, severe depression, dyslexia, epilepsy and arthritis.

Do you have any physical or mental health conditions or illnesses lasting or expected to last for 12 months or more?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Marriage and Civil Partnership

Are you?

- (a) ☐ Single, that is, never married and never registered in a same-sex civil partnership
- (b) ☐ Married
- (c) ☐ Separated, but still legally married
- (d) ☐ Divorced
- (e) ☐ Widowed
- (f) ☐ In a registered same-sex civil partnership
- (g) ☐ Separated, but still legally in a same-sex civil partnership
- (h) ☐ Formerly in a same-sex civil partnership which is now legally dissolved
- (i) ☐ Surviving partner from a same-sex civil partnership
- (j) ☐ Prefer not to say

Religion and belief

What is your religion?

- (a) ☐ No religion
- (b) ☐ Christian (including Church of England, Catholic, Protestant and all other Christian denominations)
- (c) ☐ Buddhist
- (d) ☐ Hindu
- (e) ☐ Jewish
- (f) ☐ Muslim
- (g) ☐ Sikh
- (h) ☐ Any other religion (please describe)
- (i) ☐ Prefer not to say

Caring responsibilities

Do you have any caring responsibilities, (for example; children, elderly relatives, partners etc.)?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Sexual identity

Which of the options below best describes how you think of yourself?

- (a) ☐ Heterosexual/Straight
- (b) ☐ Gay /Lesbian
- (c) ☐ Bisexual
- (d) ☐ Other
- (e) ☐ Prefer not to say

Gender identity

Please describe your gender identity?

- (a) ☐ Male (including female-to-male trans men)
- (b) ☐ Female (including male-to-female trans women)
- (c) ☐ Prefer not to say

Is your gender identity different to the sex you were assumed to be at birth?

- (f) ☐ Yes
- (g) ☐ No
- (h) ☐ Prefer not to say

Pregnancy and maternity

Were you pregnant when the issue you are making a claim about took place?

- (a) ☐ Yes
- (b) ☐ No
- (c) ☐ Prefer not to say

Thank you for taking the time to complete this questionnaire.

Employment Tribunals check list

Please check the following:

1. Read the form to make sure the information given is correct and truthful, and that you have not left out any information which you feel may be relevant to you or your client.
2. Do not attach a covering letter to your form. If you have any further relevant information please enter it in the 'Additional Information' space provided in the form.
3. Send the completed form to the relevant office address.
4. Keep a copy of your form posted to us.

If your claim has been submitted on-line or posted you should receive confirmation of receipt from the office dealing with your claim within five working days. If you have not heard from them within five days, please contact that office directly. If the deadline for submitting the claim is closer than five days you should check that it has been received before the time limit expires.

You have opted to print and post your form. We would like to remind you that forms submitted on-line are processed much faster than ones posted to us.

If you want to submit on-line please go back to the form and click the submit button, otherwise follow the check list before you post the completed form to the relevant office address.

A list of our office's contact details can be found at the hearing centre page of our website at – www.gov.uk/guidance/employment-tribunal-offices-and-venues; if you are still unsure about which office to contact please call our Employment Tribunal Customer Contact Centre (Mon – Fri, 8.30am – 5pm) they can also provide general procedural information about the Employment Tribunals.

Phone: 0300 123 1024 (England & Wales)

Phone: 0141 354 8574 (Scotland)

Or

Textphone: 18001 0300 123 1024 (England & Wales)

Textphone: 18001 0141 354 8574 (Scotland)

In the Employment Tribunal

BETWEEN:

Seyi Omooba

Claimant

-v-

Leicester Theatre Trust Ltd

Respondent

PARTICULARS OF CLAIM

1. The Claimant is a professional actress. The Respondent is a theatre in Leicester.
2. On 18 September 2014, the Claimant (at that time, a 20-year-old student) made the following post on her private Facebook page:

“Some Christians have completely misconceived the issue of Homosexuality, they have begun to twist the word of God. It is clearly evident in 1 Corinthians 6:9-11 what the Bible says on this matter. I do not believe you can be born gay, and I do not believe homosexuality is right, though the law of this land has made it legal doesn’t mean it is right. I do believe that everyone sins and falls into temptation but it’s by the asking of forgiveness, repentance and the grace of God that we overcome and live how God ordained us to. Which is that a man should leave his father and mother and be joined to his wife, and they shall become one flesh. Genesis 2:24. God loves everyone, just because He doesn’t agree with your decisions doesn’t mean He doesn’t love you. Christians we need to step up and love but also tell the truth of God’s word. I am tired of lukewarm Christianity, be inspired to stand up for what you believe and the truth #our God is three in one #God (Father) #Jesus Christ (Son) #Holy Spirit.”

(“the Facebook post”)

3. The statement represents the Claimant’s deeply held religious beliefs. In summary these are:

- a. Her belief in the truth of the Bible, in particular Genesis 2 v 24 and 1 Corinthians 6 v 9-11.
 - b. Her belief that although God loves all mankind, He does not love all mankind's acts, in particular she believes that Homosexual practice (as distinct from homosexual desires) is sinful/morally wrong.
 - c. Her belief that not to speak out in defence of these beliefs, would be sinful/contrary to her beliefs.
4. Under Articles 9 and/or 10 ECHR, the Claimant was entitled to hold and express those beliefs without interference. The Claimant relies on those beliefs as a *protected characteristic* under s. 10 of the Equality Act 2010, and/or for the purposes of Article 9 ECHR.
5. Further and in any event, the Claimant relies on her Christian religion as a relevant *protected characteristic*.
6. In or around January 2019, the Claimant (acting by her agent, Michael Garrett Associates Ltd (t/a Global Artists) ("**Global Artists**")) entered a contract ("**the Contract**") with the Respondent (and another theatre which is the respondent to a separate claim). It is averred that the Contract was in the nature of an employment contract. The material terms of that contract were communicated to the Claimant in the document appended herewith as **Appendix 1**. In particular, the material terms were:
 - a. The Claimant was to play the part of 'Celie' in the performance 'The Colour Purple' co-produced by the Respondent.
 - b. The rehearsals would take place from 28 May to 28 June 2019.
 - c. Previews would take place from 28 June to 2 July 2019
 - d. The performance would be first staged at the 'National Press Night' at Leicester Curve Theatre on 3 July 2019
 - e. The performance would be further staged as Leicester Curve Theatre until 13 July 2019
 - f. The performance would be further staged at Birmingham Hippodrome Theatre from 16 to 20 July 2019

- g. In respect of her work, the Claimant was entitled to £550 per week rehearsal salary and £550 per week performance salary, expenses and allowances.
7. Due to the subsequent termination of the Claimant's relationship with Global Artists, the Claimant is not in a position to access the full terms of that contract at the time of pleading. Full disclosure is sought from the Respondent. In any event, it is averred that the contract contained the following further express or implied terms:
- a. A reasonable notice was required for any premature termination of the contract.
 - b. The Respondent would not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between the parties;
 - c. The Respondent was required to treat the Claimant fairly in connection with the contract.
8. On 15 March 2019 another actor, Mr Aaron Lee Lambert ("**Mr Lambert**") posted a screenshot of the Claimant's Facebook Post on his Twitter page, accompanied by Mr Lambert's verbal attack on the Claimant's character and her beliefs. In the subsequent few days, the Claimant was subjected to further criticism on social media because of her Christian beliefs expressed in the Facebook Post.
9. On 21 March 2019 the Respondent and its co-producer published a statement to announce that the Claimant "*will no longer be involved with the production*". That decision was widely republished in the media and on social media, and attracted numerous public comments which were adverse to the Claimant. Subsequently, the Respondent and its co-producer engaged a different actress to play the part previously assigned to the Claimant. By acting as aforesaid, the Respondent has caused permanent serious damage to the Claimant's current and future professional standing and reputation.
10. The Respondent thereby breached the Contract, and/or terminated it without a reasonable cause and/or without giving proper notice to the Claimant.

11. Further or alternatively, the Respondent was a 'principal' within the meaning of s. 41 of the Equality Act 2010. Further or in further alternative, a part in a theatrical performance is a 'personal office' within the meaning of s. 49 of the Equality Act 2010.
12. By terminating the Contract, the Respondent harassed the Claimant in relation to her religious beliefs pleaded in paras 2-3 above. In particular, that act of the Respondent had the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
13. Further or in the alternative, the Respondent directly discriminated against the Claimant because of her religious beliefs pleaded in paras 2-3 above.
14. In further alternative, the Respondent applied the following provisions, criteria or practices (PCPs). The actor who is known to hold, and/or to have expressed (a) the Biblical teaching on sexual ethics (including on the issue of homosexual practices), and/or (b) a view that homosexual practice is sinful or "not right", is considered unsuitable (i) to be engaged by the Theatre in a performance, and/or (ii) to be engaged by the Theatre for a major part in a performance, and/or (iii) to be engaged for a part of a homosexual character.
15. The said PCPs put actors who share (a) the Claimant's Christian religion and/or (b) the Claimant's beliefs pleaded in paras 2-3 above, at a particular disadvantage, as their ability to perform in plays produced or co-produced by the Respondent is diminished.
16. On the premises, the Respondent indirectly discriminated against the Claimant on the grounds of her religion and/or religious beliefs.

AND THE CLAIMANT SEEKS:

- (1) General and/or aggravated and/or exemplary damages for breach of contract (including damages for damage to reputation, loss of chance and for loss of publicity)***
- (2) Compensation under s. 124(a) of the Equality Act 2010 for***

- a. Injury to feelings;*
- b. Lost earnings;*
- c. Reputational damage; and*
- d. Other consequential losses*

(3) A declaration under s. 124(2)(b) of the Equality Act 2010

(4) A recommendation under s. 124(2)(c) of the Equality Act 2010

(5) Interest

(6) Further and other relief

(7) Costs

Response form

Case number	
-------------	--

You must complete all questions marked with an *

1 Claimant's name

1.1	Claimant's name	
-----	-----------------	--

2 Respondent's details

2.1*	Name of individual, company or organisation	
------	---	--

2.2	Name of contact	
-----	-----------------	--

2.3*	Address	
	Number or name	
	Street	
	Town/City	
	County	

	Postcode	
--	----------	--

	DX number (If known)	
--	----------------------	--

2.4	Phone number	
	Where we can contact you during the day	

	Mobile number (If different)	
--	------------------------------	--

2.5	How would you prefer us to contact you? (Please tick only one box)	<input type="checkbox"/> Email <input type="checkbox"/> Post <input type="checkbox"/> Fax	Whatever your preference please note that some documents cannot be sent electronically
-----	---	---	--

2.6	Email address	
-----	---------------	--

	Fax number	
--	------------	--

2.7	How many people does this organisation employ in Great Britain?	
-----	---	--

2.8	Does this organisation have more than one site in Great Britain?	<input type="checkbox"/> Yes <input type="checkbox"/> No
-----	--	--

2.9	If Yes, how many people are employed at the place where the claimant worked?	
-----	--	--

3 Acas Early Conciliation details

- 3.1 Do you agree with the details given by the claimant about early conciliation with Acas? ☐ Yes ☐ No

If No, please explain why, for example, has the claimant given the correct Acas early conciliation certificate number or do you disagree that the claimant is exempt from early conciliation, if so why?

4 Employment details

- 4.1 Are the dates of employment given by the claimant correct? ☐ Yes ☐ No

If Yes, please **go to question 4.2**

If No, please give the dates and say why you disagree with the dates given by the claimant

When their employment started

When their employment ended or will end

I disagree with the dates for the following reasons

- 4.2 Is their employment continuing? ☐ Yes ☐ No

- 4.3 Is the claimant's description of their job or job title correct? ☐ Yes ☐ No

If Yes, please **go to Section 5**

If No, please give the details you believe to be correct

5 Earnings and benefits

- 5.1 Are the claimant's hours of work correct? ☐ Yes ☐ No

If No, please enter the details you believe to be correct.

hours each week

- 5.2 Are the earnings details given by the claimant correct? ☐ Yes ☐ No

If Yes, please **go to question 5.3**

If No, please give the details you believe to be correct below

Pay before tax
(Incl. overtime, commission, bonuses etc.)

£

☐ Weekly

☐ Monthly

Normal take-home pay
(Incl. overtime, commission, bonuses etc.)

£

☐ Weekly

☐ Monthly

- 5.3 Is the information given by the claimant correct about being paid for, or working a period of notice? ☐ Yes ☐ No

If Yes, please **go to question 5.4**

If No, please give the details you believe to be correct below. If you gave them no notice or didn't pay them instead of letting them work their notice, please explain what happened and why.

- 5.4 Are the details about pension and other benefits e.g. company car, medical insurance, etc. given by the claimant correct? ☐ Yes ☐ No

If Yes, please **go to Section 6**

If No, please give the details you believe to be correct.

6 Response

6.1* Do you defend the claim?

☐

Yes

☐

No

If No, please **go to Section 7**

If Yes, please set out the facts which you rely on to defend the claim.

(See Guidance – If needed, please use the blank sheet at the end of this form.)

7 Employer's Contract Claim

- 7.1 Only available in limited circumstances where the claimant has made a contract claim. (See Guidance)
- 7.2 If you wish to make an Employer's Contract Claim in response to the claimant's claim, please tick this box and complete question 7.3 ☐
- 7.3 Please set out the background and details of your claim below, which should include all important dates (see Guidance for more information on what details should be included)

8 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

8.1	Name of representative	<input type="text"/>
8.2	Name of organisation	<input type="text"/>
8.3	Address	
	Number or name	<input type="text"/>
	Street	<input type="text"/>
	Town/City	<input type="text"/>
	County	<input type="text"/>
	Postcode	<input type="text"/>
8.4	DX number (if known)	<input type="text"/>
8.5	Phone number	<input type="text"/>
8.6	Mobile phone	<input type="text"/>
8.7	Their reference for correspondence	<input type="text"/>
8.8	How would you prefer us to communicate with them? (Please tick only one box)	<input type="checkbox"/> Email <input type="checkbox"/> Post <input type="checkbox"/> Fax
8.9	Email address	<input type="text"/>
8.10	Fax number	<input type="text"/>

9 Disability

9.1 Do you have a disability? ☐ Yes ☐ No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as the claim progresses through the system, including for any hearings that maybe held at tribunal premises.

Please re-read the form and check you have entered all the relevant information.
Once you are satisfied, please tick this box. ☐

Employment Tribunals check list and cover sheet

Please check the following:

1. Read the form to make sure the information given is correct and truthful, and that you have not left out any information which you feel may be relevant to you or your client.
2. Do not attach a covering letter to your form. If you have any further relevant information please enter it in the 'Additional Information' space provided in the form.
3. Send the completed form to the relevant office address.
4. Keep a copy of your form posted to us.

Once your response has been received, you should receive confirmation from the office dealing with the claim within five working days. If you have not heard from them within five days, please contact that office directly. If the deadline for submitting the response is closer than five days you should check that it has been received before the time limit expires.

You have opted to print and post your form. We would like to remind you that forms submitted on-line are processed much faster than ones posted to us. If you want to submit your response online please go to www.gov.uk/being-taken-to-employment-tribunal-by-employee.

A list of our office's contact details can be found at the hearing centre page of our website at – www.gov.uk/guidance/employment-tribunal-offices-and-venues; if you are still unsure about which office to contact please call our Customer Contact Centre - see details below

General Data Protection Regulations

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.

For details of the standards we follow when processing your data, please visit the following address <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>.

To receive a paper copy of this privacy notice, please call our Customer Contact Centre - see details below

Please note: a copy of the claim form or response and other tribunal related correspondence may be copied to the other party and Acas for the purpose of tribunal proceedings or to reach settlement of the claim.

Customer Contact Centre

England and Wales: 0300 123 1024

Welsh speakers only: 0300 303 5176

Scotland: 0300 790 6234

Textphone: 18001 0300 123 1024 (England and Wales)

Textphone: 18001 0300 790 6234 (Scotland)

(Mon - Fri, 9am -5pm), they can also provide general procedural information about the Employment Tribunals.

In the Central London Employment Tribunal

BETWEEN:-

Ms Seyi Omooba

Claimant

- and -

Michael Garrett Associates Ltd

t/a Global Artists

Respondent

--

Grounds of Resistance/Further & Better Particulars

Amended 21 January 2020

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1. The Respondent denies that it has any liability to the Claimant as alleged or at all whether in the civil jurisdiction or any other. In particular:-
 - i. Whilst the Respondent concedes that it was for present purposes an employment services provider pursuant to s55 EqA 2010 it denies that it discriminated or harassed the Claimant as alleged or at all;
 - ii. Further and alternatively the Claimant has suffered no loss as a consequence of any EqA 2010 contravention for which the Respondent is liable.
2. The Respondent is aware of concurrent proceedings presented by the Claimant

3. Save where otherwise stated:-

- i. The contents of the ET1 Particulars (the Particulars) are denied and the Claimant is put to strict proof as to the same;
- ii. All paragraph references (“[]”) are to the paragraphs in the Particulars;
- iii. Reference to “Respondent” shall be taken to refer to Michael Garrett Associates t/a Global Artists whether directly or by way of its employees and/or agents acting on its behalf.

Related Proceedings

4. In box 15 of the ET1 form the Claimant alludes to proceedings against the Birmingham Hippodrome issued in the West Midlands ET (**do we have a case number?**). The Respondent is also aware of live proceedings against the Leicester Theatre Trust Ltd (the registered charity operating the Curve Theatre) issued in the East Midlands ET (case No. 2602361/2019). Plainly it is in the interests of all parties for the claims to be consolidated as the Claimant recognises in Box 15 (at least in relation to one of the two other claims). It is understood that preliminary hearings have now been listed in each claim for the purposes of case management but it is only in the present claim that a full merits hearing has been listed. Given that this Tribunal is the first to have offered a trial date the Respondent suggests that matters be consolidated and heard in London Central ET. This has been discussed with other affected Respondents without objection.

The Background

The Agency Relationship

5. The Respondent is a London-based talent agency representing actors and creative professionals (hereafter “Clients”) working in theatre, film, television and musical theatre in the United Kingdom and worldwide. It is contractually required to promote each Client and act in the best interests of each client in the pursuit of paid work in the entertainment industry. That representation and promotion must of

course be guided by the nature and sensitivities of that industry. To the extent set out above [1] is admitted. It is further admitted that the ET has jurisdiction over this claim since in relation to the employment in issue the Respondent was an employment services provider as defined by s55 EqA 2010.

6. The Respondent had acted as the Claimant's agent since August 2016. The Respondent avers that the following provisions of the Agreement which was applicable at the material time are material:-

- i. Once a fixed period of 12 months had expired the contract was terminable at will on two months notice: clause [2(a)];
- ii. The obligations owed to each Client required the Respondent to:-
 - i. "represent your interests to the best of our ability with a view to promoting and advancing your career and advise and guide you in relation to the Entertainment Activities" clause [3(a)] and
 - ii. "use reasonable endeavours to secure for you offers of suitable employment or engagement by third parties for the provision and use of your services by those third parties:" clause [3(b)];
- iii. Provide those matters identified at clause [9(a)] on termination "if applicable." The Respondent maintains that this obligation is in practice only applicable where an alternative agent has been found and/or there has been a request for these items by the artist at the point of termination;
- iii. Conversely, the Claimant was required to:-
 - i. "carry out and perform all Engagements conscientiously, to the best of your ability and in accordance with the terms of that applicable Engagement and the directions of the applicable Hirer:" clause [4(a)];
 - ii. "maintain your membership of "Spotlight" and ensure that your CV/profile is kept up to date:" clause [4(e)];

- iii. “keep us fully informed of any matters...which otherwise concern you and your ability to perform engagements and which we may need to notify to any potential Hirer:” clause [4(g)];
- iv. “represent, warrant and undertake...that...you are and will remain a member in good standing of the British Actors’ Equity:” clause [8(f)]. Insofar as any losses flow from a breach of this undertaking, representation or warranty the Claimant was required to fully indemnify the Respondent for the same;
- iv. The Respondent was at no stage liable to pay the Claimant any sum. Nor was there any guarantee of the Claimant receiving a particular amount of work or revenue: clause [10(b)]. Instead, the Claimant agreed to pay the Respondent commission on all “gross monies” in accordance with clause [5].

To the extent set out above the Respondent admits [6] of the Claim.

7. The Respondent avers that there are three important aspects to its role as an agent on the face of the Terms and in practice:-
 - i. It is critical that trust and confidence remains between agency and each client;
 - ii. The Respondent cannot act for any one client in such a manner which would endanger the trust and confidence with its many others. To do so would not only jeopardise its contractual obligations to those other artists but would run entirely counter to its business model which is based on the payment of commission as a percentage of each artist’s earnings. It was partly for this reason that the client must “acknowledge that...we represent and shall continue to represent other clients:” [10(b)]. At the material time the Respondent had an estimated 335 Clients shared across 7 individual agents;
 - iii. With a view to fulfilling its duties to all clients it was imperative to avoid lasting reputational damage with all providers of work and the entertainment community at large;

- iv. The Respondent could not act in the interests of one Client to the extent that it could risk lasting damage to its working relationships with the many others with whom it had contracted.
8. The Claimant is put to strict proof as to [7] and its legal relevance. "Substantial" is a relative concept.

The Color Purple

9. In 2016 the Curve Theatre (the Curve) obtained the rights for the production of *The Color Purple* based on the contemporary classic novel by Alice Walker. This was a joint production along with the Birmingham Hippodrome.
10. In or around November 2018 the Respondent submitted the Claimant to audition for the role of "Nettie" in the production. The Claimant auditioned for the role on 23 November 2018 and was invited for a recall to take place on 30 November. At the recall audition, the Claimant was asked to sing a solo for a different character, Celie. The Claimant was offered the role on 3 December and following negotiations the Respondent confirmed acceptance of the role of Celie for the Claimant on 10 January 2019 on her behalf and with her full knowledge and authorisation.
11. Rehearsals for the production were arranged for late May 2019. Performances at the Curve were scheduled from 3-13 July 2019 with the Birmingham Hippodrome following from 16-20 July 2019. The Claimant was to be engaged by way of a written or implied contract of employment between 28 May to 20 July 2019 pursuant to which the Curve was to be the employer as defined by s83 EqA 2010. The Respondent therefore concedes that in relation to the production it was an employment service provider pursuant to s55 EqA 2010. It follows that this court does not have jurisdiction to consider the discrimination complaints in that:-

- i. The EqA established mutually exclusive jurisdictions. Claims as regards s55 EqA 2010 sit within Part V (Work) and therefore can only be heard by the ET. The Claimant has issued concurrent proceedings in the ET: whilst regarding those proceedings as baseless on their merits the Respondent will concede that those proceedings are within the ETs jurisdiction in principle and respond accordingly;
- ii. The proposition that a theatre agent engaged with individuals on a private contractual basis is in some sense engaged in the “provision of a service to the public or a section of the public” (as required by s29 EqA 2010) is wholly misconceived. Since this is the only basis on which it is said that this court has jurisdiction to entertain an EqA 2010 complaint it has no jurisdiction. [26] is therefore denied in full.

12. Celie is the main character in both the novel and production. Central to both is the loving and redemptive lesbian relationship between Celie and another character, Shug Avery. Through that relationship both works challenge the view that homosexuality is a sin: such was the strength of feeling by Ms Walker that she wrote a letter in direct response to her discovery that the Claimant was to play the role in the following terms:-

Celie, the character she would have played, is based on the life of my grandmother, Rachel, a kind and loving woman brutally abused by my grandfather...

It is safe to say, after a frightful life serving and obeying abusive men, who reaped in place of “making love,” my grandmother, like Celie, was not attracted to men. She was, in fact, very drawn to my grandfather’s lover, a beautiful woman who was kind to her, the only grown person who ever seemed to notice how remarkable and creative she was. In giving Celie the love of this woman, in every way love can be expressed, I was clear in my intention to demonstrate that she too, like all of us, deserved to be seen, appreciated, and deeply loved by someone who saw her as whole and worthy.

Because I believe, and know, that sexual love can be extraordinarily holy, whoever might be engaging in it, I felt I had been, I felt I had been able to return a blessing of love to a grandmother who had always offered only blessing and love, when I was a child, to me.

In much of my work I encourage the reader to question everything. I have been urging a questioning of all the so called “holy” books for over forty years. The Bible, like the Koran, like the Talmud, and others that claim to teach the best way for people to live, must be interrogated, questioned and respectfully deconstructed. Love, however it may be expressed, is to be honoured and welcomed into the light of our common survival as a consciously human race.

13. The musical version in which the Claimant was due to star expressly embraces the same theme. The Respondent prays in aid the view of librettist Marsha Norman:-

Shug Avery awakened in Celie the capacity to love, and the desire to be loved physically and emotionally. In her life, in the novel and in our musical adaptation, Celie is gay. Alice Walker says she is gay. When she wakes up sexually and experiences real love, it is with Shug Avery. Celie is gay.

14. So too did the Curve’s production. As Director Tinuke Craig put it on 17 March 2019:-

The show explores issues of gender and of sexuality. I have no intention of shying away from the lesbian relationship at the heart of the story.

15. It has since become clear that the Claimant’s intended portrayal of an iconic LGBTQ role would have been directly in conflict with that of the original author, librettist and the Curve’s Production team. The Respondent prays in aid the Claimant’s appearance on the Radio 4 *Today* programme aired on 2 October 2019 in which she stated as follows:-

I don’t think she is a lesbian character...you could have your opinion but I’m not a hypocrite, I will interpret *The Color Purple* in my way.

The Facebook Post

16. The Claimant was scheduled to attend a launch event on 18 March 2019 at which she was to sing one of Celie's solo numbers. She was publicly announced to play the role of Celie on 14 March 2019.

17. On 15 March a Facebook post from the Claimant in 2014 was re-published on Twitter by *Hamilton* cast member Aaron Lee Lambert who is understood to have over 3500 Twitter followers (The Facebook post). The italicised text at [2] is an accurate transposition of the Claimant's Facebook post but its contents bear repeating:-

Some Christians have completely misconceived the issue of Homosexuality, they have begun to twist the word of God. It is clearly evident in 1 Corinthians 6.9-11 what the Bible says on this matter. I do not believe you can be born gay, and I do not believe that homosexuality is right, though the law of this land has made it legal doesn't make it right. I do believe that everyone sins and falls into temptation but it's by the asking of forgiveness, repentance and the grace of God that we overcome and live how God ordained us to. Which is that a man should leave his father and mother and be joined to his wife and they shall become one flesh Genesis 2:24. God loves everyone just because He doesn't agree with your decisions doesn't mean He doesn't love you. Christians we need to step up and love but also tell the truth of God's word. I am tired of lukewarm Christianity, be inspired to stand up for what you believe and truth #our God is three in one #God (Father) #Jesus Christ (Son) #Holy Spirit.

18. The Respondent does not dispute the assertion in [1] that the Claimant was "at that time a 20-year old student." Insofar as this is said to have relevance, however, the Claimant's case is incoherent since she maintains that this remained her belief at the point of re-publication. As she confirmed in the course of her interview on *Today* in October 2019:-

Oh yes, I most definitely stand by those comments...I definitely stand by the word of God.

19. The re-publication of the Facebook post was accompanied by the following comment by Mr Lambert:-

@Seyiomooba Do you still stand by this post? Or are you happy to remain a hypocrite? Seeing as you've now been announced to be playing an LGBTQ character, I think you owe your LGBTQ peers an explanation. Immediately.

20. Given its particular demography the Claimant's "LGBTQ peers" formed a sizeable proportion of the theatre community. It is denied insofar as relevant that the accompanying comment of Mr Lambert constituted a "verbal attack" as alleged at [8] or at all. Further and in any event the Respondent cannot be held liable for the same.

The Aftermath of the Facebook Post

21. Mr Lambert's tweet gave rise to widespread and sustained anger, consternation and upset directed not only at the Claimant but also at the theatre companies and the Respondent as well.

22. The Respondent prays in aid the following non-exhaustive illustrations:-

- i. The Grounds of Resistance advanced by the Leicester Theatre Trust Ltd resisting that claim are appended with LTTs consent. The Respondent adopts [1]-[59] of the same and in particular [19]-[27] which pleads to the reaction of the public, the cast/production team and the theatre. These (vividly) illustrate the difficulties the Respondent would face in continuing to act for the Claimant. The Respondent estimates that it has secured work for its Clients at productions involving the Curve on approximately 100 occasions in the last five years and two further occasions since the termination of its contract with the Claimant. It could not continue to act for the Claimant to the extent of jeopardising its relationship with the theatre or its duties owed to other Clients;

- ii. There was considerable public hostility towards both the Claimant and the Respondent in the aftermath of publication. On social media the Claimant was described as a “creature” who had offended “the church of musical theatre.” Continuing to promote her as agent risked exposing her to further opprobrium;
- iii. Other Clients were vocal in their concerns as to continued representation of the Claimant and asked whether the Respondent would continue to represent the Claimant in the circumstances. Any person that asked was given the ““rule of silence” directive” and simply told that the Respondent was not able to comment. The very fact that others asked made it plain, however, that the Respondent found itself in a situation of potential conflict between the interests of the Claimant and those of other Clients;
- iv. The Respondent relies upon the dedication and loyalty of its small workforce comprising 12 personnel, five of whom are gay. Two of them made it clear that they would consider their position with the Respondent should it continue to promote the Claimant in accordance with the contract. There was a real risk of destabilising a small workforce by continuing to promote the Claimant. This is severable from both the Claimant’s belief and/or any manifestation of the same.

The Actions of the Respondent

- 23. The Respondent sought to stem the damage both to the Claimant’s reputation and the theatre companies in the immediate aftermath of the publication. On the evening of 15 March the Curve and Hippodrome put out a “holding” post and asked for a comment from the Claimant the following day which it could view and consider prior to publication. The Respondent took all reasonable steps to assist in this process.
- 24. The Claimant presented various incarnations of a statement. In each the Claimant refused to retract any aspect of the original Facebook post. The final version, sent by the Claimant on 16 March, stated as follows:-

The law protects my freedom of expression as well as freedom of thought, conscience and religion. With regard to the role of Celie, I will not disregard that Celie falls in love with Shug or that Celie believes in God and is black, There is so much to Celie. The role of an actor is to play characters different from myself.

25. This failed to grasp the consequences of the original post and the scale of offence it had caused within the theatre community. The Curve and Hippodrome requested that this statement should not be released until they had fully considered their positions. Meanwhile the Respondent steadfastly refused to provide any media comment on the issue despite multiple requests for the same. Such requests included an email from a *Metro* journalist on 16 March:-

...I was wondering if you could put me in touch with one of your clients, Seyi Omooba.

It is in relation to Ms Omooba's recent casting in *The Color Purple*. Since her casting, it has been pointed out on Twitter that she is playing an LGBT character, despite saying she does not think 'homosexuality is right.'...I was hoping if I could chat with you (sic.) client to ask if she still stands by those views?

26. On 17 March, at the Curve's request, the Respondent asked the Claimant to confirm if her statement on 16 March remained her final position on the matter. The Claimant confirmed that it was indeed "my final decision on the situation."

27. Meanwhile the Respondent received unsolicited correspondence from the public including an email of 17 March 2019:-

Saddened to learn of the anti-LGBY sentiments of Ms Omooba.

28. The Respondent continued to receive requests for media comment from an array of outlets including Gay Star News Ltd and the Stage. In the ordinary course of

events it would be the role of the Respondent as a Client's agent to respond to such media requests.

Termination of the Claimant's Engagement on *The Color Purple*

29. The Leicester Theatre Trust Ltd was deeply concerned as to the impact which the Claimant continuing in the production would have in the manner set out at [25] Grounds of Resistance. Its CEO Mr Chris Stafford consequently decided that it was not practicable to retain the Claimant in the role of Celie and concluded that it was necessary to terminate her engagement. This decision, supported by the Birmingham Hippodrome, was communicated to the Claimant by email of 21 March 2019. The Claimant was paid £4,309 representing the total sum which she would have been paid had the contract been performed in full. The Respondent informed the Claimant on at least two occasions that payment of this sum was contingent on the production of an invoice which the Claimant has thus far refused to provide. The Respondent has at no stage sought to recover any commission. The Respondent avers that the decision by the theatre companies to terminate the Claimant's engagement was entirely legitimate and in no way tainted by a contravention of EqA 2010.

The Claimant's Termination from the Production

30. Having terminated the Claimant's engagement and faced considerable media scrutiny it was necessary for the theatre companies to announce a casting change to the public. A press release was drafted and the Claimant was afforded the opportunity to comment on its contents prior to issue. She chose not to do so.

31. The press release followed on the evening of 21 March 2019:-

On Friday 15 March a social media post dating from 2014 which was written by The Color Purple cast member Seyi Omooba was re-posted on Twitter. The comments made by Seyi in that post have caused significant and widely expressed concerns both on social media and in the wider press.

Following careful reflection it has been decided that Seyi will no longer be involved with the production,. This decision was supported by the Authors and Theatrical Rights Worldwide.

The audition process, as ever, was conducted professionally and rigorously, led by an exceptional casting director with actors who are evaluated on what they present in the audition room. We do not operate a social media screening process in the casting of actors.

No further comment will be made at this time.

Events After the Claimant's Termination from the Production

32. Following the Claimant's release from the production, a number of media outlets including the Guardian and the BBC continued in efforts to elicit statements from the Respondent or the Claimant. By email of 22 March a BBC representative sought comment "on the nature of (the Claimant's) departure" from the production. It was clear to the Respondent that there was a wider issue beyond the immediate production which endangered the Respondent's business reputation and its ability to discharge obligations to other Clients.

33. Meanwhile the public hostility towards the Claimant and Respondent escalated. By way of example on 22 March 2019 the Respondent received an email with the subject heading "May She Rust in Peace" which stated as follows:-

A black woman who is homophobic?? I hope she rots in no-peace. She's done what she hoped to achieve but hopefully real life will shove a bomb in her cunt...I would! ANY OFFERS

34. The Respondent avers that it would be deleterious both to its work and the wellbeing of the Claimant to expose her to such a public response. The advice set out at [9] was therefore entirely sensible and had both the purpose and effect of minimising the likelihood of the Claimant being exposed to harassment.

Termination of the Agent Agreement

35. On 24 March 2019 a Nigerian website YNaija.com published an article by Mr Bernad Dayo depicting the Claimant as homophobic. It is denied – as alleged at [10] – that this was written with the intention or effect of being a satirical piece. The article depicted the Claimant as saying “through her publicist” “I was born this way, homophobia is a natural reaction to homosexuality which is an aberration.” It is now understood that the Claimant does not advance this statement as her belief and/or a manifestation of any protected belief.
36. The Respondent puts the Claimant to proof as to her assertion that she had no prior knowledge or control over the contents of the article. The Respondent avers that it had no knowledge of this article or played any role in its contents: the first it became aware of its existence and/or contents was at the point of publication.
37. The Respondent believed that this statement had emanated from the Claimant. It had no reason to suspect otherwise. Having concluded that the Claimant had made further statements without its knowledge or authorisation, the Respondent decided the appropriate course was to terminate the contractual arrangement between them. The confidence which was necessary in order to maintain the agency agreement had eroded. Further and alternatively the Respondent could not adhere to the obligations owed to other Clients – and maintain an appropriate image in the theatre industry – were the Claimant to remain a Client.
38. To the extent that [17] is legally material to the claims before this ET it is denied and the Claimant is put to proof as to the same.
39. Consequently on 24 March 2019 Mr Garrett emailed the Claimant in the following terms (original emphasis):-

Following your statement of 24th March 2019, of which we were unaware prior to publication, I am writing to inform you that your agreement for representation with Global Artists has been terminated, effective from today, 24th March 2019.

In respect of payment due from the production of *The Color Purple* you should invoice the Leicester Theatre Trust directly for any monies due to you. I can confirm that agency commissions will NOT be due on this sum.

40. [18] is denied in full. "The facts and circumstances pleaded" in no way give rise to the assertions in [18]. It is specifically denied that the Claimant's contract was terminated or treated less favourably because of a protected belief.

41. It is robustly denied as alleged at [21(b)] or at all that the Respondent released any details as to the Claimant's termination. The Respondent prays in aid an email of 24 March 2019 from Mr Michael Garrett to confirm that "the 'rule of silence' on this subject will remain in place until further notice." The 'rule of silence' has not to date been revoked in that the Respondent has maintained a 'no comment' approach to any media contact.

Events Since Termination

42. On 25 March 2019 the Claimant requested that the Respondent reconsider its position on termination. A similar request was made on 16 April to which the Respondent responded in the terms pleaded at [16]. Subject to any order of this Court the Respondent does not wish to reinstate and/or enter a fresh Agency Agreement with the Claimant.

43. By 28 March the Claimant had accepted that the agreement had terminated in that she emailed Ms Chatt as follows (emphasis added):-

Hi Bobbie, *I know you're not my agent any more* but in regards to Girl from the North Country do you know whether they went another way, or do I have to contact them for such information now.

44. At some point thereafter the Claimant placed herself in breach of the terms of the agreement in that she disappeared from the Spotlight link. The Respondent did not remove the Claimant from Spotlight, this could only have been done by her.

45. On or around 29 September 2019 the Claimant solicited media attention with a view to raising the profile of her litigation including the *Today* interview in which she reiterated her position. Mr Matt Hemley of *The Stage* appeared alongside the Claimant in that interview and stated as follows:-

Well like you say I wrote about this this week and um it is a deeply offensive comment that she made on Facebook to the LGBT+ community, er, which make up a large proportion of the theatre company, so by making those comments, what she's done is cause hurt and upset and outrage among people that she's worked alongside and not just that, people who have employed her because many people who run theatres are homosexual and of course audiences who come to see her who actually pay money to, to watch her on stage, they make up a large proportion of theatre audiences too...

46. The Respondent prays in aid these comments which accurately illustrate the market risks of continuing to act as the Claimant's agent given the demographics of the theatre community.

Liability under Equality Act 2010

47. For reasons stated above the county court has no jurisdiction to determine any EqA 2010 complaint whether under s29 EqA 2010 or at all: [26] is therefore denied in its entirety. What follows is without prejudice to the lack of jurisdiction.

The Claimant's Belief

48. The Respondent admits that the Claimant is Christian and that Christianity constitutes a protected belief for the purposes of s10. [5] is therefore admitted.

49. As to [3(a)] it is accepted that as a Christian the Claimant believed in the Bible and the passages cited therein. The significance of the word “truth” (if any) is not understood and the Respondent reserves its position accordingly.

50. As to [3(b)]:-

- i. It is accepted that the Claimant believed homosexual practice is sinful/morally wrong. The Facebook post did not, however, distinguish between homosexuality and homosexual practices. Instead it stated, “I do not believe that homosexuality is right.” Significantly, the Claimant does not advance this as an expression of the Claimant’s beliefs in her claim. It was this comment which attracted significant adverse attention;
- ii. The Claimant is put to proof that the belief that homosexuality (as opposed to homosexual practice) is “not right” was held by her and/or is capable of being a protected belief for the purposes of s10 EqA 2010.

51. As to [3(c)] in which the Claimant asserts that “her belief that not to speak out in defence of these beliefs, would be sinful/contrary to her beliefs:-”

- i. The assertion is hopelessly vague. The Claimant’s beliefs were not “under attack.” To the best knowledge of the Respondent the Facebook post was an unsolicited outpouring by the Claimant in which the Claimant directly challenges “lukewarm Christians.” As to Mr Dayo’s article, the Claimant now maintains that this did not reflect the Claimant’s beliefs at all;
- ii. [3(c)] is circular in that it postulates as a belief the need to speak out in defence of a belief;
- iii. To the extent that the Claimant seeks to establish that she believed it would be sinful or wrong not to speak out in the manner she did in her Facebook post,

including in particular by announcing that “I do not believe that you can be born gay, and I do not believe homosexuality is right:”-

- i. The Claimant is put to strict proof as to whether she held this belief;
- ii. This belief does not qualify for protection under s10;
- iii. This is at best the manifestation of a belief rather than a belief in itself;
- iv. The Claimant is not understood to advance that Mr Dayo’s article is a facet of that belief. To the extent that the Claimant does seek that assertion the same is denied and (a)-(c) above are repeated.

52. Further and alternatively the Respondent avers as follows:-

- i. The comment “I do not believe that you can be born gay” is not said to be a belief of the Claimant. The Respondent does not accept that it is capable of constituting a protected belief. This comment was the subject of much of the public hostility towards the Facebook post: the Respondent avers that it was not causally connected to any aspect of the Claimant’s protected belief;
- ii. The Claimant does not aver that the contents of the 24 March press article were an expression or manifestation of her belief;
- iii. It is accepted that the Claimant has an unqualified right to hold a protected belief in accordance with Article 9 ECHR. The right to express or manifest any such belief is qualified as is any right to freedom of expression. The Claimant is put to strict belief as to the material bearing her Convention rights may have in the determination of her statutory complaints.

Harassment

53. [21]-[23] are denied in full. Further and without prejudice to the denial in general terms:-

- i. [21] is denied on its factual terms and the Claimant is put to strict proof as to the same. In particular:-

- (a) The termination of the agreement was neither improper nor premature. This was not a knee-jerk reaction but instead a considered response after the release of the Claimant by the production and prompted by the attribution to the Claimant of comments she now alleges never to have made and unrelated to her belief;
 - (b) The Respondent took no steps to publicise termination;
 - (c) The Respondent did evaluate (even if only momentarily) its position on receipt of requests to reinstate the agreement. It concluded, however, that such a route was unwise;
 - (d) The email of 18 April represented the genuine views of the Respondent in general and Mr Garrett in particular.
- ii. It is denied that any proven conduct is remotely capable of giving rise to the purpose or effect proscribed by s26 EqA 2010 and summarised at [29]. Conversely, continuing to expose the Claimant to the hostility which she had generated would risk violating her dignity or giving rise to an offensive/humiliating environment;
 - iii. Any proven conduct was in no way related to the Claimant's belief/s as alleged at [23] or at all. It is not understood how conduct is so "related."

Direct Discrimination

54. [24] is denied in full. In addition to those matters set out at [53] above the Respondent avers as follows:-

- i. The Claimant does not advance a complaint as to the mere fact of termination: her complaints are confined to the "premature" or "improper" nature of the same. To the extent that a complaint simply of termination is before the court the Respondent maintains that the termination was untainted by the Claimant's protected belief;

- ii. It is denied that the Claimant was treated less favourably because of her protected belief/s. A hypothetical comparator in materially similar circumstances would have been treated in just the same way;
- iii. It is denied that less favourable treatment on the grounds of an expression or manifestation of a protected belief constitutes direct discrimination. Alternatively the Respondent avers that the following amount to genuine occupational requirements pursuant to Sch.9(1) EqA 2010:-
 - (a) A client must not jeopardise concurrent duties owed to other Clients;
 - (b) A client must not undermine the Respondent's working relationships with theatre companies and the theatre community at large; and/or
 - (c) A client must not undermine the professional reputation of the Respondent.
- iv. The application of these requirements were a proportionate means of achieving the following legitimate aims:-
 - (a) Fulfilling the contractual duties owed to others and/or the Respondent's commercial objectives; and/or
 - (b) Fostering good relations within the theatre community and/or prospective audiences.
- v. In respect of (iii)-(iv) above the Respondent further relies upon the defence of genuine occupational requirement advanced by the Curve in accordance with Sch.9(5)(1). The Respondent does not rely upon any specific statement made by a person with power to offer work for the purposes of Sch.9(5)(3) but prays in aid the circumstances which gave rise to the legitimate termination of her employment with the Curve as indicative of the wider difficulties the Respondent would face in continuing to promote the Claimant had she remained a contracted Client.
- vi. At all material times the Respondent acted because of considerations severable from the Claimant's belief and set out at [58] below.

Indirect Discrimination

55. [25]-[27] are denied in full.

56. As to [25] the PCPs advanced are hopeless in both fact and law. The Respondent adopted no such PCPs and these cannot in any event found a complaint of indirect discrimination. The Respondent would have treated individuals who posted the same material without the Claimant's belief in just the same way. It would similarly have treated a gay actor who attacked "lukewarm homosexuals" for their toleration of religious people or practices in just the same way. This is indicative of the fact that the PCPs are unviable.

57. The Respondent denies both general and particular disadvantage as alleged at [26] and puts the Claimant to strict proof as to the same.

58. Any proven conduct on the Respondent's part was objectively justified by reference to the following aims whether individually or cumulatively:-

- i. Ensuring trust and confidence is retained with all Clients;
- ii. Maintaining and/or promote a positive reputation within the theatre and creative arts industries (including the need to avoid adverse publicity);
- iii. Maintaining and/or promoting positive working relationships with key stakeholders including theatre companies;
- iv. Fulfilling duties owed to other Clients;
- v. Ensuring and promoting the viability of the agency which could not require it to promote a Client which would be unable to obtain work;
- vi. Maintaining cohesion and morale within the Respondent's workforce;
- vii. Safeguarding the Claimant's own welfare which would be undermined were the Respondent to continue promoting her and her activities "throughout the

world, in every branch, medium and form of the entertainment industry” as required by the Agreement.

59. As such there has been no contravention of the Equality Act 2010. Alternatively, it is denied that the Claimant has sustained any loss whatsoever from any contravention.

Remedy

60. It is denied that the Claimant is entitled to any element of the relief sought. Further and in particular:-

- i. No losses flow from any proven breach of contract;
- ii. Any losses are attributable to her comments, Mr Dayo’s article and/or the Claimant’s subsequent conduct;
- iii. Further and to the extent that any distinct loss is caused by the unlawful action of a third party the Respondent should not be held liable for the same.

61. The claims are without merit. The Claimant is not entitled to any measure of damages or compensation. The claims are accordingly resisted in their entirety.

Christopher Milsom

14 November 2019

Amended 21 January 2020

Response form

Case number 2602362/2019

You must complete all questions marked with an '*'

1 Claimant's name

1.1 Claimant's name Seyi Ormooba

2 Respondent's details

2.1* Name of individual, company or organisation Leicester Theatre Trust Limited

2.2 Name of contact Chris Stafford

2.3* Address
Number or name Curve Theatre

Street 60 Rutland Street

Town/City Leicester

County Leicestershire

Postcode L E 1 1 S B

DX number (if known)

2.4 Phone number
Where we can contact you during the day

Mobile number (if different)

2.5 How would you prefer us to contact you?
(Please tick only one box)☒ Email☐ Post☐ Fax

Whatever your preference please note that some documents cannot be sent electronically

2.6 Email address c.stafford@curvetheatre.co.uk

Fax number

2.7 How many people does this organisation employ in Great Britain?

94

2.8 Does this organisation have more than one site in Great Britain?

☐ Yes☒ No

2.9 If Yes, how many people are employed at the place where the claimant worked?

3 Acas Early Conciliation details

- 3.1 Do you agree with the details given by the claimant about early conciliation with Acas? ☒ Yes ☐ No

If No, please explain why, for example, has the claimant given the correct Acas early conciliation certificate number or do you disagree that the claimant is exempt from early conciliation, if so why?

4 Employment details

- 4.1 Are the dates of employment given by the claimant correct? ☐ Yes ☒ No

If Yes, please go to question 4.2

If No, please give the dates and say why you disagree with the dates given by the claimant

When their employment started

When their employment ended or will end

I disagree with the dates for the following reasons

See Grounds of Resistance

- 4.2 Is their employment continuing? ☐ Yes ☒ No

- 4.3 Is the claimant's description of their job or job title correct? ☒ Yes ☐ No

If Yes, please go to Section 5

If No, please give the details you believe to be correct

5 Earnings and benefits

- 5.1 Are the claimant's hours of work correct? ☐ Yes ☐ No

If No, please enter the details you believe to be correct.

hours each week

- 5.2 Are the earnings details given by the claimant correct? ☐ Yes ☒ No

If Yes, please go to question 5.3

If No, please give the details you believe to be correct below

Pay before tax
(Incl. overtime, commission, bonuses etc.)

£550.00

☒ Weekly ☐ Monthly

Normal take-home pay
(Incl. overtime, commission, bonuses etc.)

£

☐ Weekly ☐ Monthly

- 5.3 Is the information given by the claimant correct about being paid for, or working a period of notice? ☐ Yes ☐ No

If Yes, please go to question 5.4

If No, please give the details you believe to be correct below. If you gave them no notice or didn't pay them instead of letting them work their notice, please explain what happened and why.

- 5.4 Are the details about pension and other benefits e.g. company car, medical insurance, etc. given by the claimant correct? ☐ Yes ☐ No

If Yes, please go to Section 6

If No, please give the details you believe to be correct.

6 Response

6.1* Do you defend the claim?



Yes



No

If No, please go to Section 7

If Yes, please set out the facts which you rely on to defend the claim.

(See Guidance - If needed, please use the blank sheet at the end of this form.)

Please see attached Grounds of Resistance

7 Employer's Contract Claim

- 7.1 Only available in limited circumstances where the claimant has made a contract claim. (See Guidance)
- 7.2 If you wish to make an Employer's Contract Claim in response to the claimant's claim, please tick this box and complete question 7.3 ☐
- 7.3 Please set out the background and details of your claim below, which should include all important dates (see Guidance for more information on what details should be included)

8 Your representative

If someone has agreed to represent you, please fill in the following. We will in future only contact your representative and not you.

8.1	Name of representative	Alex Payton
8.2	Name of organisation	Howes Percival LLP
8.3	Address	
	Number or name	3 The Osiers Business Centre
	Street	
	Town/City	Leicester
	County	Leicestershire
	Postcode	L E 1 9 1 D X
8.4	DX number (if known)	710913 Leicester Meridian
8.5	Phone number	0116 247 3586
8.6	Mobile phone	0780 2225 287
8.7	Their reference for correspondence	124019.25
8.8	How would you prefer us to communicate with them? (Please tick only one box)	<input checked="" type="checkbox"/> Email <input type="checkbox"/> Post <input type="checkbox"/> Fax
8.9	Email address	Alex.payton@howespercival.com
8.10	Fax number	0116 247 3539

9 Disability

9.1 Do you have a disability? ☐ Yes ☒ No

If Yes, it would help us if you could say what this disability is and tell us what assistance, if any, you will need as the claim progresses through the system, including for any hearings that maybe held at tribunal premises.

Please re-read the form and check you have entered all the relevant information.

Once you are satisfied, please tick this box. ☐

Employment Tribunals check list and cover sheet

Please check the following:

1. Read the form to make sure the information given is correct and truthful, and that you have not left out any information which you feel may be relevant to you or your client.
2. Do not attach a covering letter to your form. If you have any further relevant information please enter it in the 'Additional Information' space provided in the form.
3. Send the completed form to the relevant office address.
4. Keep a copy of your form posted to us.

Once your response has been received, you should receive confirmation from the office dealing with the claim within five working days. If you have not heard from them within five days, please contact that office directly. If the deadline for submitting the response is closer than five days you should check that it has been received before the time limit expires.

You have opted to print and post your form. We would like to remind you that forms submitted on-line are processed much faster than ones posted to us. If you want to submit your response online please go to www.gov.uk/being-taken-to-employment-tribunal-by-employee.

A list of our office's contact details can be found at the hearing centre page of our website at – www.gov.uk/guidance/employment-tribunal-offices-and-venues; if you are still unsure about which office to contact please call our Customer Contact Centre - see details below

General Data Protection Regulations

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.

For details of the standards we follow when processing your data, please visit the following address <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>.

To receive a paper copy of this privacy notice, please call our Customer Contact Centre – see details below

Please note: a copy of the claim form or response and other tribunal related correspondence may be copied to the other party and Acas for the purpose of tribunal proceedings or to reach settlement of the claim.

Customer Contact Centre

England and Wales: 0300 123 1024

Welsh speakers only: 0300 303 5176

Scotland: 0300 790 6234

Textphone: 18001 0300 123 1024 (England and Wales)

Textphone: 18001 0300 790 6234 (Scotland)

(Mon - Fri, 9am -5pm), they can also provide general procedural information about the Employment Tribunals.

Continuation sheet

IN THE MIDLANDS (EAST) EMPLOYMENT TRIBUNAL

B E T W E E N:

SEYI OMOOBA

Claimant

-and-

LEICESTER THEATRE TRUST LIMITED

Respondent

G R O U N D S O F R E S I S T A N C E

1. Introduction

1. The respondent denies the claimant's claims. In particular:
 - a. it did not subject the claimant to unlawful discrimination of any kind;
 - b. although the respondent terminated the claimant's contract early, it stated unconditionally that it would pay her contract fees in full, and despite reminders the claimant has failed to invoice for those sums. The claim for breach of contract is misconceived and an abuse of process;
 - c. the claimant has suffered no loss, and her claim for relief is denied (and is in large part misconceived).
2. In these grounds of resistance, except where the contrary expressly appears,
 - a. no admission is made as to the contents of the particulars of claim; and

- b. references to paragraph numbers are to paragraphs in the particulars of claim.

2. Related proceedings

3. In box 15 of the ET1 the claimant refers to another claim arising from the same facts which she has brought against another respondent, Birmingham Hippodrome Theatre Trust, in the Midlands (West) Employment Tribunal. The respondent also understands that the claimant has issued proceedings against her former agent, Global Artists. The respondent's position is that if this claim is to be heard together with either or both of those two claims, it should be in the Midlands (East) Employment Tribunal.

3. The facts

The respondent

4. The respondent is a registered charity and operates Curve Theatre in Leicester ("Curve"). Curve has developed a reputation for producing, programming and touring a bold and diverse programme of musicals, plays, new work, dance and opera.
5. The respondent is part-funded by Arts Council England ("the Arts Council"). Under the terms of that funding the respondent is required to demonstrate its contribution to the Arts Council's Creative Case for Diversity in its programme. In line with that obligation and with its own ethos, the respondent is committed to producing work which reflects the diversity of the local community and contemporary England; this includes among other things celebrating and showcasing LGBTQ stories, characters and content.

The Color Purple

6. In 2016 the respondent obtained the rights for the production of *The Color Purple*, based on the Pulitzer Prize-winning 1982 novel of the same name by Alice Walker ("the Production").

7. The Production was a joint production along with the Birmingham Hippodrome. Rehearsals were arranged for late May 2019 and performances at Curve from 3 to 13 July 2019 and at Birmingham Hippodrome from 16 to 20 July 2019.
8. In December 2018 the respondent offered the claimant the role of Celie. Her engagement, for the period 28 May to 20 July 2019, was agreed between the parties in January 2019. The Production's cast was publicly announced on 14 March 2019.
9. Both the novel and musical production of *The Color Purple* are works of great significance for people from the LGBTQ and Black communities, groups which have a shared history of being ostracised and marginalised in society. The novel and the musical stage adaptation bring race, sexuality and gender rights together in a life-affirming and ultimately celebratory story. The Production reflected the respondent's ethos as a theatre and was a statement of intent which supported its aims in relation to diversity including contributing to the Creative Case for Diversity.
10. Central to *The Color Purple* is a profoundly positive, loving and redemptive lesbian relationship involving Celie, the main character, and another character, Shug Avery.¹ The novel, the musical work and the Production seek to challenge views, including the view that homosexuality is wrong or a sin. The author of the novel, Alice Walker, wrote in an open letter published in October 2019 on hearing that the claimant had brought this claim:

Celie, the character she would have played, is based on the life of my grandmother, Rachel, a kind and loving woman brutally abused by my grandfather [...]

It is safe to say, after a frightful life serving and obeying abusive men, who raped in place of "making love," my grandmother, like Celie, was not attracted to men. She was, in fact, very drawn to my grandfather's lover, a beautiful woman who was kind to her, the only grown person who ever seemed to notice how remarkable and creative she was. In giving Celie the love of this woman, in every way love can be expressed, I was clear in my intention to demonstrate that she too, like all of us, deserved to be seen, appreciated, and deeply loved by someone who saw her as whole and worthy.

¹ This aspect of the work is more directly and explicitly addressed in the novel, the musical work and the Production than it was in the 1985 film by Stephen Spielberg.

Because I believe, and know, that sexual love can be extraordinarily holy, whoever might be engaging in it, I felt I had been able to return a blessing of love to a grandmother who had always offered only blessing and love, when I was a child, to me.

In much of my work I encourage the reader to question everything. I have been urging a questioning and reconsideration of all the so called "holy" books for over forty years. The Bible, like the Koran, like the Talmud, and others that claim to teach the best way for people to live, must be interrogated, questioned, and respectfully deconstructed. Love, however it may be expressed, is to be honored and welcomed into the light of our common survival as a consciously human, race.

11. The musical version of *The Color Purple* embraces the same theme. The librettist of the musical, Marsha Norman, is of the view (which her co-writers share) that:

Shug Avery awakened in Celie the capacity to love, and the desire to be loved physically and emotionally. In her life, in the novel, and in our musical adaptation, Celie is gay. Alice Walker says she is gay. When she wakes up sexually and experiences real love, it is with Shug Avery. Celie is gay.

12. The respondent and its production team regarded the lesbian nature of Celie as essential and non-negotiable. The Director, Tinuke Craig, wrote on 17 March 2019:

[T]he show explores issues of gender and of sexuality. I have no intention of shying away from the lesbian relationship at the heart of the story.

13. Unknown to the respondent at the time, the claimant held a directly conflicting view. In an interview with the *Today* programme on Radio 4 on 2 October 2019 given as part of a publicity drive in connection with this litigation, the claimant was asked why, given her views, she had taken the part of an LGBT character. The claimant replied:

I don't think she is a lesbian character ... I will interpret *The Color Purple* in my way.

14. Accordingly, although she did not express it at the time and so it was not taken into account at the time, it is now clear that the claimant approached the part of Celie with a fundamentally and irreconcilably conflicting view of *The Color Purple* and Celie from

that held by the authors of the novel, the writers of the musical, the respondent, and the Director. The claimant must have been aware of this conflict: she acknowledges in paragraph 14(iii) that Celie was regarded by the respondent as a "homosexual character." This conflict in interpretation on a central and non-negotiable element of the work would have created insuperable difficulties had the Production progressed with the claimant in the role of Celie.

The terms of the claimant's engagement

15. It is admitted that the claimant was in the respondent's "employment" within the meaning of section 83(2)(a) of the Equality Act 2010 (and in light of this the respondent does not plead to the claimant's alternative case that she was a contract worker and/or office holder). She was not employed by the Birmingham Hippodrome Theatre Trust.
16. A written contract was not issued to the claimant prior to the termination of the engagement, beyond a casting advice note ("CAN") setting out the principal terms of engagement. However the respondent accepts that a binding agreement was entered into. Had her engagement not been terminated, she would shortly have been issued with a contract on the respondent's standard written terms, which had been prepared but not yet sent to her by that point. The claimant's description of the main terms of her contract with the respondent in paragraph 6 is admitted. As to the implied terms pleaded at paragraphs 7.a to 7.c:
 - a. it is admitted that the contract was terminable on reasonable notice. In the event of the cancellation of the Production, reasonable notice would (as per the respondent's standard terms) have been two weeks;
 - b. it is admitted that the respondent owed the claimant a duty of mutual trust and confidence. However this term has no application in relation to decisions to terminate employment, and no breach of this term is anyway identified;

- c. it is denied that there was an implied duty “to treat the claimant fairly in connection with the contract,”² and no breach of such term is anyway identified.

The claimant's Facebook post

17. On 15 March 2019, immediately following the announcement of the cast of the Production, a Facebook post from the claimant in 2014 was re-published on Twitter by *Hamilton* actor Aaron Lee Lambert, who has over 3,500 Twitter followers. The claimant's Facebook post was as follows:

Some Christians have completely misconceived the issue of Homosexuality, they have begun to twist the word of God. It is clearly evident in 1 Corinthians 6:9-11 what the bible says on this matter. I do not believe you can be born gay, and i do not believe homosexuality is right, though the law of this land has made it legal doesn't mean its right. I do believe that everyone sins and falls into temptation but its by the asking of forgiveness, repentance and the grace of God that we overcome and live how God ordained us too. which is that a man should leave his father and mother and be joined to his wife, and they shall become one flesh. Genesis 2:24. God loves everyone, just because he doesn't agree with your decisions doesn't mean he doesn't love you. Christians we need to step up and love but also tell the truth of God's word. I am tired of lukewarm Christianity, be inspired to stand up for what you believe and the truth #our God is three in one #God (father) #Jesus Christ (son) #Holy Spirit.

18. Mr Lambert added:

@Seyiomoooba Do you still stand by this post? Or are you happy to remain a hypocrite? Seeing as you've now been announced to be playing an LGBTQ character, I think you owe your LGBTQ peers an explanation. Immediately.

The public reaction

19. Mr Lambert's tweet gained rapid traction, and there immediately followed an intense and sustained outpouring of anger and negative publicity on social media and in the wider press. The criticism focussed on the claimant's remarks that “I do not believe you can be born gay, and I do not believe homosexuality is right” (which as set out below

² See eg *Chakrabarty v Ipswich Hospital NHS Trust* [2014] EWHC 2735 (QB) at [114] and *North West Anglia NHS Foundation Trust v Gregg* [2019] EWCA Civ 387 at [114]-[115].

are not alleged to be, and do not on any view constitute, protected beliefs). This criticism came both from members of the LGBTQ community and from others who considered that the claimant's views as expressed in her Facebook post were intolerant, hurtful, offensive, and homophobic. The view was repeatedly expressed that it was hypocritical, offensive and unsustainable for the claimant to play Celie, an iconic LGBTQ character immersed in an important and positive lesbian narrative (and one which was, as set out above, written by the author as a "sexual love" which was "extraordinarily holy").

20. There were widespread calls, including from high-profile and influential individuals, for a boycott of the Production and/or the two theatres in the event that the claimant remained in the role. Some simply said they would now not attend; some encouraged others not to attend either; and some called directly for a concerted boycott, picketing and protests. The respondent was naturally concerned at the prospect of protests either outside the theatres, or even during performances. The respondent's Artistic Director feared that the claimant would be "booed offstage". Alistair Smith, the Editor of *The Stage*, wrote in that publication on 20 March 2019 that

if she [the claimant] stays the production is likely to be met with significant protests and maybe even walk-outs or cancellations.

21. There were repeated calls for refunds for members of the public who had already bought tickets. At least one critic said they would refuse to review the Production.
22. It was therefore immediately clear that the viability of the Production was gravely at risk.

The effect on the cast and production team

23. Further, the publication of the claimant's Facebook post and the accompanying furore had a serious impact on the cast and production team of the Production. Key individuals among the cast and production team (a number of whom are members of the LGBTQ community) made clear that they were not prepared to work alongside her.

24. For example:

- a. the actor playing Shug Avery (who would be required to undertake intimate sexual scenes with Celie) told the respondent via her agent that she was not prepared to play Shug alongside the claimant. She also said that she felt under attack that in the context of the ongoing media storm and that she was being inundated with messages through social media, as well as via texts and email;
- b. the Musical Director of the Production told the respondent that if the claimant remained in role, he would not be prepared to work on the Production;
- c. the Director, Tinuke Craig, told the respondent that with the claimant in the role she did not believe it was possible for the necessary working environment to be created or maintained so as to fully achieve her artistic vision:

I believe it is paramount that I create a relaxed, safe and inclusive environment in my rehearsal room. It should be a space where everyone (the cast, the creative team, crew and production) feels comfortable and respected. This is key for the good of the company and for the good of the show. Without this I don't believe I can fully achieve my artistic vision. This would be true of any of my productions but it is especially true for *The Colour Purple*, as the show explores issues of gender and of sexuality. I have no intention of shying away from the lesbian relationship at the heart of the story, and in order to portray it truthfully it is necessary to have a safe, non-judgmental, open working environment. In the light of recent events, I feel it would not be possible to create such an environment with Seyi Omooba in the role. I have already heard from our Deputy Stage Manager who is a member of the LGBTQ+ community and who feels deeply uncomfortable about the prospect of working with her, and I suspect there will be many more members of our company, LGBTQ+ or otherwise, who feel the same.

The respondent's reaction

25. In these circumstances the respondent was deeply concerned as to the impact which the claimant continuing in the role would have in:

- a. jeopardising the commercial success and viability of the Production;

- b. jeopardising the integrity and success of the Production as a work of art. It was clear that the negative reaction to the claimant in the role of Celie would adversely impact on the audience's ability to connect with her in that role (a connection which was essential to the integrity and success of the Production) and with the Production, and act as an unwelcome and damaging distraction from the performance;
- c. damaging the reputations of the respondent, of the Birmingham Hippodrome, and of the individuals involved in the Production;
- d. generating continued unpleasant and unwelcome adverse publicity for members of the cast and production team;
- e. jeopardising the harmony and cohesion and effectiveness of the cast and production team and creating a poor working environment for them;
- f. risking the departure of other members of the cast and production team;
- g. damaging the standing of *The Color Purple* itself as an important LGBTQ work of art; and
- h. jeopardising the overall viability of the Production.

26. The respondent and the Birmingham Hippodrome sought to mitigate the damage by publishing a holding statement on 16 March 2019 saying simply that the views expressed in the claimant's Facebook post

in no way reflect the views held by our two theatres. We will be looking into the matter and will issue a full response in due course.

Despite then coming under sustained criticism for not being more vocal in distancing itself from the claimant or her views, the respondent refrained from further comment

for several days until after the conclusion of the claimant's engagement, at which point it issued the neutrally-worded press release referred to at paragraphs 30 to 31 below.

27. In a further effort to mitigate the damage and to find a workable way forward the respondent gave the claimant, through her agent, the opportunity to retract or modify her previous statement or to distance herself from it. The claimant refused to do so and on 16 March 2019 she stated her position in writing in uncompromising terms:

The law protects my freedom of expression as well as freedom of thought, conscience and religion. With regard to the role of Celie, I will not disregard that Celie falls in love with Shug or that Celie believes in God and is black. There is so much to Celie. The role of an actor is to play characters different from myself. As for the personal faith I will stand firm.

She confirmed on 17 March 2019 that this statement was her "final decision on the situation."

The decision to terminate the claimant's engagement

28. As a result of the concerns as summarised at paragraph 25 above, Chris Stafford, the respondent's CEO, decided that it was not practicable to continue with the Production with the claimant in the role of Celie and that it was necessary to terminate her engagement. He considered that the only realistic alternative would have been to cancel the Production. Birmingham Hippodrome agreed with this decision.
29. By emailed letter dated 21 March 2019 the respondent informed the claimant in writing that it was terminating her engagement with immediate effect. The letter informed the claimant that she would be paid £4,309 representing the total sum which she would have been paid had the contract been performed in full. No condition was attached to the payment of this sum, although the claimant was told via her agent that she needed to invoice the respondent for it. Despite being told this by her agent at least twice, she has chosen not to do so. The respondent remains prepared to pay this sum upon receipt of an invoice from the claimant. It is surprising that the claimant has omitted to mention this obviously relevant fact in her ET1.

30. The respondent had come under intense and sustained criticism for not having updated the public since issuing its holding statement on 16 March 2019. It was now obviously necessary for the respondent and Birmingham Hippodrome to publish a press release informing the public of the casting change. They prepared a draft press release and offered the claimant, through her agent, the opportunity to comment on it before it was issued. She did not do so.
31. The press release was issued on the evening of 21 March 2019. It was written in appropriate, neutral and factual terms, as follows:

On Friday 15 March a social media post dating from 2014, which was written by the *The Color Purple* cast member Seyi Omooba, was re-posted on Twitter. The comments made by Seyi in that post have caused significant and widely expressed concerns both on social media and in the wider press.

Following careful reflection it has been decided that Seyi will no longer be involved with the production. This decision was supported by the Authors and Theatrical Rights Worldwide.

The audition process, as ever, was conducted professionally and rigorously, led by an exceptional casting director with actors who are evaluated on what they present in the audition room. We do not operate a social media screening process in the casting of actors.

No further comment will be made at this time.

The allegation of damage to the claimant's reputation

32. It is denied that the claimant suffered any damage to her standing or reputation by reason of the respondent's actions.
- a. By the time the respondent decided to terminate her engagement, the damage to the claimant's reputation had already been done. She was the subject of intense and

widespread public criticism by reason of the publication and circulation of her Facebook post, criticism which had nothing to do with the respondent.

- b. The respondent did nothing to worsen or add to the damage to the claimant's reputation.
 - c. If the claimant's engagement had not been cancelled then the respondent would have been forced to cancel the Production. This would itself have caused enormous further damage to the claimant's reputation. Fairly or not, and regardless of how the reasons for cancellation might have been publicly presented by the theatres, the claimant would inevitably have been widely portrayed and perceived among the theatre-going public and commentators as responsible for the failure of a high-profile production and for the resulting negative impact on her fellow cast members and the production team.
 - d. Even if the Production had somehow been able to continue, at least for a time, with the claimant as Celie,
 - i. the public criticism of the claimant would not have gone away; on the contrary it would have escalated, becoming more intense and more damaging in the lead up to, and during, the scheduled performances of the Production;
 - ii. the startling fact that the claimant did not regard Celie as a lesbian character (see paragraph 13 above) would inevitably have emerged and become known, which would have further fanned the flames of adverse criticism and further jeopardised the cohesion and effectiveness of the cast and production team.
33. Overall, far from causing damage to the claimant's reputation, the respondent's termination of her engagement mitigated the damage that her reputation would otherwise have continued to sustain.

4. Response to the claimant's claims

Breach of contract

34. It is admitted that the respondent was in technical breach of the claimant's contract by terminating it without notice. However:

- a. the respondent simultaneously told the claimant that she would be paid in full all sums which she would have received under the contract, so she has suffered no recoverable loss;
- b. by not invoicing for the £4,309 which the respondent had unconditionally said it would pay, despite reminders from her agent, she has failed to mitigate her loss;
- c. having failed to invoice for this sum, her claim for compensation for the same amount is vexatious and an abuse of process.

35. If (which is not clear) the claimant asserts that the respondent's press release amounted to a breach of contract, that claim is misconceived since:

- a. at the time the press release was published, the contract between the parties was at an end so no relevant contractual duties remained in existence;
- b. the press release could not arguably amount to a breach of contract anyway;
- c. the tribunal lacks jurisdiction to consider the claim because the alleged breach occurred after termination.³

Religious discrimination

The claimant's religion and religious beliefs

³ *Miller Bros Ltd v Johnston* [2002] ICR 733 at [12] and [29]; *Peninsula Business Services v Sweeney* UKEAT/1096/02 at [46]-[54].

36. It is admitted that the claimant's Christian religion is a protected characteristic for the purposes of section 10 of the Equality Act 2010. It is noted that the claimant relies on this for the purposes of her indirect discrimination claim only.

37. It is admitted that the claimant had an unqualified right under Article 9.1 ECHR to hold religious beliefs. She had a qualified right under Articles 9.1, 9.2 and 10 ECHR to manifest or express religious beliefs.

38. It is admitted that the claimant held the beliefs set out in paragraphs 3.a and 3.b. The claimant is however invited to clarify the sense in which she uses the word "truth" in paragraph 3.a.

39. As stated in paragraph 19 above, the focus of the adverse public criticism of the claimant's views was on her statement that "*I do not believe that you can be born gay, and I do not believe homosexuality is right.*" It is denied that this remark was protected under section 10 of the Equality Act 2010. Its two connected elements will be considered in turn.

40. "*I do not believe that you can be born gay*"

- a. It is not the claimant's case that her assertion that "*I do not believe that you can be born gay*" is a religious belief (or for that matter a philosophical belief).
- b. For the avoidance of doubt, the respondent would anyway deny that such a belief amounts to a religious or philosophical belief for the purposes of section 10 of the Equality Act 2010.

41. "*I do not believe homosexuality is right*"

- a. In paragraphs 3.b and 14 the claimant explicitly distinguishes "homosexual practice" from "homosexual desires." It is noted that the claimant therefore does

not assert a religious belief that homosexuality as a sexual orientation is sinful or morally wrong.

- b. Importantly this distinction was not spelled out in her Facebook post, in which she expressed the broad judgment that “I do not believe homosexuality is right”, a judgment given in the context of expressing her opinion about sexual orientation (“I do not believe that you can be born gay”).

42. At paragraph 3.c the claimant asserts a “*belief that not to speak out in defence of those beliefs would be sinful/contrary to her beliefs*”. As to this:

- a. the relevance of a need to speak out “in defence” of her beliefs is not understood. The context of the Facebook post suggests that the claimant was not seeking to “defend” her own beliefs but rather to attack those “lukewarm” Christians who held different beliefs;
- b. paragraph 3.c is circular (she says she has a “belief” that not speaking out would be “contrary to her beliefs”), and the basis on which she held such belief, or religious belief, is neither explained by the claimant nor admitted by the respondent;
- c. insofar as the claimant seeks to say that she believed that it would be sinful or wrong not to speak out in the manner she did in her Facebook post, including in particular by announcing that “*I do not believe that you can be born gay, and I do not believe homosexuality is right*”, this is not a belief which qualifies for protection under the Equality Act 2010. It is not admitted that it was a genuinely held belief. Moreover any such belief anyway lacked the necessary level of cogency, seriousness, cohesion and importance, and it is not worthy of respect in a democratic society, it is incompatible with human dignity, and it is in conflict with the fundamental rights of others.

43. Except as set out above, no admissions are made as to paragraphs 3.a to 3.c.

Harassment

44. It is denied that by terminating the contract the respondent subjected the claimant to harassment related to her religious belief.
45. It is denied that the termination of the claimant's contract was "related to" the claimant's religious belief within the meaning of section 26(1)(a) of the Equality Act 2010.
46. Moreover the termination of the contract, while doubtless disappointing to the claimant, did not violate her dignity and neither did it create an intimidating, hostile, degrading, humiliating or offensive environment for her. On the contrary (and among other things) it actively *reduced* the likelihood and extent to which the claimant might be exposed to such an environment: paragraph 32 above is repeated.

Direct discrimination

47. It is denied that the respondent directly discriminated against the claimant because of her religious beliefs as alleged or at all. The respondent did not terminate the claimant's contract because of her religious beliefs, but because of its practical concerns as set out in paragraph 25 above.⁴
48. Further the respondent did not treat the claimant less favourably than it treats or would have treated a comparator in comparable circumstances. It would have treated in precisely the same way an actor playing the role of Celie who was not Christian, or not religious at all, but who had publicly stated that "*I do not believe you can be born gay, and I*

⁴ For the avoidance of doubt, although this is not how the claimant puts her direct discrimination case, neither did the respondent dismiss the claimant due to the *expression* of her views but because of the properly separable practical considerations identified in paragraph 25 above. A claim of that sort is anyway the providence of alleged indirect, not direct, discrimination. If the tribunal were against the respondent on these points, then the respondent would argue in the alternative that, in the particular circumstances prevailing at the time, it was a genuine occupational requirement that the person playing Celie should not have publicly expressed the views which the claimant had done, and the respondent would rely on the same legitimate aims as it does in defence of the claim of indirect discrimination.

do not believe homosexuality is right", or publicly expressed other views antipathetical to homosexuality or to the lawful activities of gay people, with the adverse practical consequences described in paragraph 25 above.

Indirect discrimination

49. It is denied that the respondent indirectly discriminated against the claimant on the grounds of her religion or religious beliefs.

50. It is denied that the respondent applied any of the provisions, criteria or practices (PCPs) alleged in paragraph 14. None of those pleaded PCPs takes proper account of the particular circumstances which prevailed at the time of the decision to terminate the claimant's contract as described above.

51. It is denied that the alleged PCPs placed the claimant or those with whom she shared a relevant characteristic at a particular disadvantage compared with others as alleged or at all.

52. In any event, the respondent's decision to terminate the claimant's contract, with payment of what she would have earned under that contract, was a proportionate means of achieving a legitimate aim. The respondent relies on the following aims singly or together:

- a. securing the commercial success and viability of the Production;
- b. securing the artistic integrity and success of the Production, including ensuring that audiences could connect to the greatest possible degree, and without negativity or distraction, with Celie and with the Production as a whole;
- c. minimising adverse publicity and its effect on members of the cast and production team;

- d. maintaining the reputation of the respondent, the cast and the production team, and of the Birmingham Hippodrome;
- e. ensuring the harmony, cohesiveness and effectiveness of the cast and production team and a positive working environment for them;
- f. ensuring the continued participation of other cast and production team members;
- g. maintaining the standing of *The Color Purple* as an important LGBTQ work of art;
- h. ensuring the overall viability of the Production.

53. The respondent will rely on the following factors (among others) to show that its actions were a proportionate means of achieving the said aims:

- a. the significance of the damage and harm which would have been caused (to the respondent and others including the claimant herself) in the event that the claimant had remained in the role of Celie;
- b. the fact that the likely immediate result of not removing the claimant was that the Production would have been cancelled;
- c. the lack of any realistic alternatives to ending the contract other than to keep the claimant in the role of Celie (none having been identified by the claimant either then or since);
- d. the fact that the claimant was given the opportunity to retract or modify the remarks made in her Facebook post;
- e. the fact that the engagement which was terminated related to just one particular production, and it was not a permanent role;

- f. the respondent's decision that it would pay the claimant in full for the contract, meaning that she suffered no financial loss.

5. Remedy

54. The claimant's claim for compensation for breach of contract, set out in paragraph (1) of the claim for relief, is misconceived. As a matter of law, none of the heads of damages claimed can be awarded in an action for wrongful dismissal. The claimant has suffered no recoverable loss.
55. The claimant's claim for compensation for discrimination is denied. The claimant is put to proof as to her claimed losses, the causation of those losses, and her efforts to mitigate them (and the respondent may seek to argue that the claimant has failed to take all reasonable steps in this regard).
56. The claimant's claim for reputational damage is specifically denied. Paragraph 32 above is repeated. To the extent that the claimant's reputation was damaged, it was damaged by her own expression of her views about homosexuality, which was widely circulated on social media and the wider press, and by the widespread criticism of the claimant which this had engendered, prior to and entirely independently of the respondent's decision to terminate her engagement. The respondent's actions did not contribute in any way to that reputational damage.
57. The claimant has chosen to court publicity in relation to this claim through national and international media outlets including the *Daily Mail*, CNN and the BBC. The respondent is not responsible for any further damage to the claimant's reputation which those actions may have brought about.
58. If, which is denied, the claimant has suffered any loss as a result of any discriminatory action by the respondent, the respondent will contend that the same (or greater) loss would have been suffered in the absence of unlawful discrimination and any award should be reduced to nil to reflect this.

59. It is understood that the claimant has brought claims elsewhere against Birmingham Hippodrome and her former agent, Global Artists. Insofar as any distinct loss has been caused by the unlawful action of a third party, the respondent should not be held liable for it. Further, in respect of any claim for losses caused jointly by the respondent and a third party, the claimant must give credit for sums that have been or will be received from that third party.

6. Conclusions

60. In conclusion:

- a. the claimant's claims are without merit; and
- b. the claimant's claims for compensation are denied in any event.

TOM COGHLIN QC



EMPLOYMENT APPEAL TRIBUNAL

Fifth Floor, Rolls Building, 7 Rolls Buildings,
Fetter Lane, London, EC4A 1NL
Telephone : 020 7273 1073
Facsimile : 01264 785 028

Mr P Stoilov
Christian Legal Centre
70 Wimpole Street
London
W1G 8AX

Our Reference: UKEATPA/0521/20/DA



4 September 2020

Dear Sir

Ms S Omooba

v

- 1) Michael Garrett Associates Ltd (t/a Global Artists)
- 2) Leicester Theatre Trust Ltd

I am writing with reference to your Notice of Appeal in the above case from the Decision of an Employment Tribunal sitting at London Central and promulgated on 1 May 2020.

Under Section 21 of the Employment Tribunals Act 1996, this Appeal Tribunal only has jurisdiction to hear appeals from Employment Tribunal Decisions on questions of law, i.e. where it is argued that the Tribunal made some mistake in its interpretation or application of the law in reaching its decision. This means that it is not the function of this Appeal Tribunal to re-hear the facts of a case or to review an Employment Tribunal's decision on those facts.

The appeal has been referred to His Honour Judge James Tayler in accordance with Rule 3(7) of the Employment Appeal Tribunal Rules 1993 (as amended) and in His opinion your Notice of Appeal discloses no reasonable grounds for bringing the appeal. He states:

On 30 April 2020 a telephone Preliminary Hearing for Case Management was held on what was to have been the first day of the final hearing. As was the case for a large number of claims in the Employment Tribunal the final hearing could not proceed because of the Coronavirus pandemic.

The Claimant before the Employment Tribunal (I shall continue to refer to her as the Claimant) argued that the matter should be listed for a remote hearing as soon as possible by Skype or some other electronic means. Ground 2 of the notice of appeal contends that the decision to refuse the application for a remote trial is "plainly wrong" and that insufficient weight was given to the prejudice to the Claimant and the public interest in avoiding a last-minute indefinite adjournment of the trial.



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It is a matter of Case Management discretion for the Employment Tribunal to determine whether a remote hearing is appropriate. The Employment Judge had proper regard to the relevant Presidential guidance (see paragraph 10), the importance of open justice and the overriding objective in ensuring that cases are dealt with fairly and justly (see paragraph 17).

It is clear from the decision as a whole that the Employment Judge considered that the case raised contentious issues that were likely to involve extensive cross-examination. The Employment Judge decided that a remote hearing would not be appropriate in such circumstances. The Employment Judge was fully entitled to place emphasis on the importance of the subtleties of observing witnesses and the importance of ensuring the smooth running the hearing, with the right of public and Press access being ensured.

The Employment Judge did leave open the possibility of a further application if there was a significant shift in the guidance and experience of remote hearings.

The decision taken by the Employment Judge fell well within the ambit of her discretion. It would have been surprising had it been decided that case of this nature was suitable for remote determination.

Ground 1 of the notice of appeal relates to a subsidiary part of the Employment Judge's reasoning in respect of public access to documentation. The Claimant suggested that a specific website could be set up on which it would be possible to view documents and witness statements. The Employment Judge felt this would involve a departure from normal Employment Tribunal procedures and, therefore, could not be permitted. The Employment Judge was considering how public access to documentation could be dealt with were the matter permitted to proceed by way of remote hearing. The Employment Judge determined that a remote hearing would not be permitted. Accordingly, even if it could be appropriate, were a remote hearing permitted, for the parties to assist in making documentation available via a website they set up for the purposes, that would have made no difference to the decision taken because for other legitimate reasons a remote hearing was not considered to be appropriate in this case.

I also note that the matter is now listed for hearing in January 2021. It seems unlikely that a much speedier date could have been fixed whatever type of hearing was decided upon. I consider that the notice of appeal does not disclose any reasonable grounds for bringing an appeal.





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Facsimile : 01264 785 028

For the above reasons the learned Judge considers that this Appeal has no reasonable prospect of success and that, in accordance with Rule 3(7), no further action will be taken on it.

Your attention is drawn to Rule 3(10) of the EAT Rules. A copy of Rule 3 is enclosed with this letter.

Yours faithfully

PP DA

Miss N Daly
Registrar

cc The Respondent
London Central Employment Tribunal (ref: 2202946/2019 2202362/2019)



Extract from Employment Appeal Tribunal Rules 1993 (as amended)

Institution of appeal

- 3 (1) Every appeal to the Appeal Tribunal shall, subject to paragraphs (2) and (4), be instituted by serving on the Tribunal the following documents—
- (a) a notice of appeal in, or substantially in, accordance with Form 1, 1A or 2 in the Schedule to these rules;
 - (b) in the case of an appeal from a judgment of an employment tribunal a copy of any claim and response in the proceedings before the employment tribunal or an explanation as to why either is not included; and
 - (c) in the case of an appeal from a judgment of an employment tribunal a copy of the written record of the judgment of the employment tribunal which is subject to appeal and the written reasons for the judgment, or an explanation as to why written reasons are not included;
 - (d) in the case of an appeal made pursuant to regulation 38(8) of the 1999 Regulations or regulation 47(6) of the 2004 Regulations or regulation 35(6) of the Information and Consultation Regulations or regulation 57(6) of the 2007 Regulations from a declaration or order of the CAC, a copy of that declaration or order; and
 - (e) in the case of an appeal from an order of an employment tribunal a copy of the written record of the order of the employment tribunal which is subject to appeal and (if available) the written reasons for the order;
 - (f) in the case of an appeal from a decision or order of the Certification Officer a copy of the decision or order of the Certification Officer which is subject to appeal and the written reasons for that decision or order.
- (2) In an appeal from a judgment or order of the employment tribunal in relation to national security proceedings where the appellant was the claimant—
- (i) the appellant shall not be required by virtue of paragraph (1)(b) to serve on the Appeal Tribunal a copy of the response if the response was not disclosed to the appellant; and
 - (ii) the appellant shall not be required by virtue of paragraph (1)(c) or (e) to serve on the Appeal Tribunal a copy of the written reasons for the judgment or order if the written reasons were not sent to the appellant but if a document containing edited reasons was sent to the appellant, he shall serve a copy of that document on the Appeal Tribunal.
- (3) The period within which an appeal to the Appeal Tribunal may be instituted is—
- (a) in the case of an appeal from a judgment of the employment tribunal—
 - (i) where the written reasons for the judgment subject to appeal—
 - (aa) were requested orally at the hearing before the employment tribunal or in writing within 14 days of the date on which the written record of the judgment was sent to the parties; or
 - (bb) were reserved and given in writing by the employment tribunal 42 days from the date on which the written reasons were sent to the parties;
 - (ii) in an appeal from a judgment given in relation to national security proceedings, where there is a document containing edited reasons for the judgment subject to appeal, 42 days from the date on which that document was sent to the parties; or
 - (iii) where the written reasons for the judgment subject to appeal—
 - (aa) were not requested orally at the hearing before the employment tribunal or in writing within 14 days of the date on which the written record of the judgment was sent to the parties; and
 - (bb) were not reserved and given in writing by the employment tribunal

- 42 days from the date on which the written record of the judgment was sent to the parties;
- (b) in the case of an appeal from an order of an employment tribunal, 42 days from the date of the order;
 - (c) in the case of an appeal from a decision of the Certification Officer, 42 days from the date on which the written record of that decision was sent to the appellant;
 - (d) in the case of an appeal from a declaration or order of the CAC under regulation 38(8) of the 1999 Regulations or regulation 47(6) of the 2004 Regulations or regulation 35(6) of the Information and Consultation Regulations or regulation 57(6) of the 2007 Regulations, 42 days from the date on which the written notification of that declaration or order was sent to the appellant.
- (4) In the case of an appeal from a judgment or order of the employment tribunal in relation to national security proceedings, the appellant shall not set out the grounds of appeal in his notice of appeal and shall not append to his notice of appeal the written reasons for the judgment of the tribunal.
 - (5) In an appeal from the employment tribunal in relation to national security proceedings in relation to which the appellant was the respondent in the proceedings before the employment tribunal, the appellant shall, within the period described in paragraph (3)(a), provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought.
 - (6) In an appeal from the employment tribunal in relation to national security proceedings in relation to which the appellant was the claimant in the proceedings before the employment tribunal—
 - (a) the appellant may, within the period described in paragraph (3)(a)(ii) or (iii) or paragraph 3(b), whichever is applicable, provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought; and
 - (b) a special advocate appointed in respect of the appellant may, within the period described in paragraph 3(a)(ii) or (iii) or paragraph 3(b), whichever is applicable, or within 21 days of his appointment, whichever is later, provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought or providing supplementary grounds of appeal.
 - (7) Where it appears to a judge or the Registrar that a notice of appeal or a document provided under paragraph (5) or (6)—
 - (a) discloses no reasonable grounds for bringing the appeal; or
 - (b) is an abuse of the Appeal Tribunal's process or is otherwise likely to obstruct the just disposal of proceedings,
 he shall notify the Appellant or special advocate accordingly informing him of the reasons for his opinion and, subject to paragraph (10), no further action shall be taken on the notice of appeal or document provided under paragraph (5) or (6).
 - (7ZA) Where a judge or the Registrar has taken a decision under paragraph (7), and also considers that the notice of appeal or document provided under paragraph (5) or (6) is totally without merit, the judge or Registrar may order that the appellant or special advocate is not entitled to have the matter heard before a judge under paragraph (10), with such order to be included as part of the notice issued under paragraph (7).
 - (7A) In paragraphs (7), (7ZA) and (10) reference to a notice of appeal or a document provided under paragraph (5) or (6) includes reference to part of a notice of appeal or document provided under paragraph (5) or (6).
 - (8) ...
 - (9) ...
 - (10) Subject to paragraph (7ZA), where notification has been given under paragraph (7) and within 28 days of the date the notification was sent, an appellant or special advocate expresses dissatisfaction in writing with the reasons given by the judge or Registrar for his opinion, he is entitled to have the matter heard before a judge who shall make a direction as to whether any further action should be taken on the notice of appeal or document under paragraph (5) or (6).



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Fifth Floor, Rolls Building, 7 Rolls Buildings,
Fetter Lane, London, EC4A 1NL
Telephone : 020 7273 1073
Facsimile : 01264 785 028

Our Reference: UKEATPA/0522/20/DA

Mr P Stoilov
Christian Legal Centre
70 Wimpole Street
London
W1G 8AX



04 September 2020

Dear Sir

Ms S Omooba

v

- 1) Michael Garrett Associates Ltd (t/a Global Artists)
- 2) Leicester Theatre Trust Ltd

I am writing with reference to your Notice of Appeal in the above case from the Decision of an Employment Tribunal sitting at London Central and promulgated on 5 June 2020.

Under Section 21 of the Employment Tribunals Act 1996, this Appeal Tribunal only has jurisdiction to hear appeals from Employment Tribunal Decisions on questions of law, i.e. where it is argued that the Tribunal made some mistake in its interpretation or application of the law in reaching its decision. This means that it is not the function of this Appeal Tribunal to re-hear the facts of a case or to review an Employment Tribunal's decision on those facts.

The appeal has been referred to His Honour Judge James Tayler in accordance with Rule 3(7) of the Employment Appeal Tribunal Rules 1993 (as amended) and in His opinion your Notice of Appeal discloses no reasonable grounds for bringing the appeal. He states:

The Claimant before the Employment Tribunal (I shall continue to refer to her as the Claimant) wished to rely upon expert evidence. The Employment Judge concluded that to rely on such evidence the Claimant must obtain the permission of the Employment Tribunal.

At Ground 1 the Claimant contends that the Employment Judge was wrong to hold that permission is required to introduce expert evidence before the Employment Tribunal. It is contended that this is incompatible with rule 41 of Employment Tribunal Rules 2013, which was not specifically referred to by the Employment Appeal Tribunal in Morgan. I am satisfied that where a party seeks to rely on an expert report and/or to call an expert witness there is a requirement for the permission of the Employment Tribunal. That general principle is established by the decisions and De Keyser and Morgan.



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Rule 41 does not provide for an evidential free for all but for the Employment Tribunal to regulate its own proceedings. In so doing it must follow the guidance given by the EAT and other appellate courts, which in certain case, such as deciding whether to permit expert evidence, has regard to, without being bound by, the CPR. The Claimant appears to have had no regard to the guidance set out in De Keyser in seeking to introduce expert evidence. If the Claimant considered that the Employment Tribunal was likely to be assisted by genuinely independent expert evidence about religious doctrine or the workings of the theatre one would have expected attempts to have been made to agree experts that might be jointly instructed to give such evidence.

At Ground 2 it is contended that the Employment Judge misapplied the test of relevance in requiring that the expert evidence should answer the specific questions identified in the list of issues. I do not accept that that was what was decided by the Employment Judge on a fair reading of the determination. The Employment Judge decided overall whether the expert evidence would provide sufficient assistance in determining the issues. The Employment Judge was entitled to conclude that expert evidence was not required to consider the issues of justification and occupational requirement. The Employment Judge correctly noted that the relevance of the Alice Walker's comments would be a matter for submission.

At Ground 3 it was contended that the Employment Judge erroneously took into account and/or accepted various criticisms of the expert's expertise and impartiality. The Employment Judge was entitled to have regard to the approach adopted in CPR rule 35 and the corresponding practice direction. Uncontroversially, those provision require that an expert should provide objective, unbiased opinions on matters within their expertise and should not assume the role of advocate. Experts are also required to summarise the range of opinion on a subject and give reason reasons for their own opinion. The Employment Judge who had read the reports in full was in a position to determine whether the reports gave sufficient regard to these principles.

At Ground 4 it is alleged that the Employment Judge misdirected herself as to the issue of bias. It is clear that the Employment Judge considered that the report of Mr Evans was not unbiased in the sense that he assumed the role of advocate. She was entitled to reach that conclusion

At Ground 5 it is alleged that the Employment Judge misapplied R (Williamson) v the Secretary of State for Education and Employment. I consider that the Employment Judge was entitled to conclude that expert evidence would not assist in determining what belief the Claimant held. That



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would be a matter to be established on having heard the Claimant's evidence (see paragraph 41).

At Ground 6 it is contended that the Employment Judge erred in holding that Dr Parsons report was not relevant to the issues of group disadvantage/justification of indirect discrimination. The Employment Judge was entitled to take into account that the consequence of the decision of the Court of Appeal in Mba is that is not necessary that a view is held by all, or most, adherents to a religion. The Employment Judge was entitled to take account of the fact that it was accepted by the Respondent that the Claimant held the religious belief set out at paragraph 2b of the list of issues and that it was acknowledged by the Respondent that some other Christians also hold those views. In those circumstances the Employment Judge was entitled to conclude that it would not be necessary to have expert evidence on the issue of group disadvantage. The Employment Judge correctly decided that expert evidence was not required to determine the objective issue of whether if the Respondent has a legitimate aim or aims and whether it's decision was a proportionate means of achieving the legitimate aim or aims.

I consider that the notice of appeal does not disclose any reasonable grounds for bringing the appeal

For the above reasons the learned Judge considers that this Appeal has no reasonable prospect of success and that, in accordance with Rule 3(7), no further action will be taken on it.

Your attention is drawn to Rule 3(10) of the EAT Rules. A copy of Rule 3 is enclosed with this letter.

Yours faithfully

PD *DA*

Miss N Daly
Registrar

cc The Respondent
London Central Employment Tribunal (ref: 2202946/2019 2202362/2019)



Extract from Employment Appeal Tribunal Rules 1993 (as amended)

Institution of appeal

- 3** (1) Every appeal to the Appeal Tribunal shall, subject to paragraphs (2) and (4), be instituted by serving on the Tribunal the following documents—
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 - (b) in the case of an appeal from a judgment of an employment tribunal a copy of any claim and response in the proceedings before the employment tribunal or an explanation as to why either is not included; and
 - (c) in the case of an appeal from a judgment of an employment tribunal a copy of the written record of the judgment of the employment tribunal which is subject to appeal and the written reasons for the judgment, or an explanation as to why written reasons are not included;
 - (d) in the case of an appeal made pursuant to regulation 38(8) of the 1999 Regulations or regulation 47(6) of the 2004 Regulations or regulation 35(6) of the Information and Consultation Regulations or regulation 57(6) of the 2007 Regulations from a declaration or order of the CAC, a copy of that declaration or order; and
 - (e) in the case of an appeal from an order of an employment tribunal a copy of the written record of the order of the employment tribunal which is subject to appeal and (if available) the written reasons for the order;
 - (f) in the case of an appeal from a decision or order of the Certification Officer a copy of the decision or order of the Certification Officer which is subject to appeal and the written reasons for that decision or order.
- (2) In an appeal from a judgment or order of the employment tribunal in relation to national security proceedings where the appellant was the claimant—
- (i) the appellant shall not be required by virtue of paragraph (1)(b) to serve on the Appeal Tribunal a copy of the response if the response was not disclosed to the appellant; and
 - (ii) the appellant shall not be required by virtue of paragraph (1)(c) or (e) to serve on the Appeal Tribunal a copy of the written reasons for the judgment or order if the written reasons were not sent to the appellant but if a document containing edited reasons was sent to the appellant, he shall serve a copy of that document on the Appeal Tribunal.
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 - (bb) were reserved and given in writing by the employment tribunal 42 days from the date on which the written reasons were sent to the parties;
 - (ii) in an appeal from a judgment given in relation to national security proceedings, where there is a document containing edited reasons for the judgment subject to appeal, 42 days from the date on which that document was sent to the parties; or
 - (iii) where the written reasons for the judgment subject to appeal—
 - (aa) were not requested orally at the hearing before the employment tribunal or in writing within 14 days of the date on which the written record of the judgment was sent to the parties; and
 - (bb) were not reserved and given in writing by the employment tribunal

42 days from the date on which the written record of the judgment was sent to the parties;

- (b) in the case of an appeal from an order of an employment tribunal, 42 days from the date of the order;
 - (c) in the case of an appeal from a decision of the Certification Officer, 42 days from the date on which the written record of that decision was sent to the appellant;
 - (d) in the case of an appeal from a declaration or order of the CAC under regulation 38(8) of the 1999 Regulations or regulation 47(6) of the 2004 Regulations or regulation 35(6) of the Information and Consultation Regulations or regulation 57(6) of the 2007 Regulations, 42 days from the date on which the written notification of that declaration or order was sent to the appellant.
- (4) In the case of an appeal from a judgment or order of the employment tribunal in relation to national security proceedings, the appellant shall not set out the grounds of appeal in his notice of appeal and shall not append to his notice of appeal the written reasons for the judgment of the tribunal.
- (5) In an appeal from the employment tribunal in relation to national security proceedings in relation to which the appellant was the respondent in the proceedings before the employment tribunal, the appellant shall, within the period described in paragraph (3)(a), provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought.
- (6) In an appeal from the employment tribunal in relation to national security proceedings in relation to which the appellant was the claimant in the proceedings before the employment tribunal—
- (a) the appellant may, within the period described in paragraph (3)(a)(ii) or (iii) or paragraph 3(b), whichever is applicable, provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought; and
 - (b) a special advocate appointed in respect of the appellant may, within the period described in paragraph 3(a)(ii) or (iii) or paragraph 3(b), whichever is applicable, or within 21 days of his appointment, whichever is later, provide to the Appeal Tribunal a document setting out the grounds on which the appeal is brought or providing supplementary grounds of appeal.
- (7) Where it appears to a judge or the Registrar that a notice of appeal or a document provided under paragraph (5) or (6)—
- (a) discloses no reasonable grounds for bringing the appeal; or
 - (b) is an abuse of the Appeal Tribunal's process or is otherwise likely to obstruct the just disposal of proceedings,
- he shall notify the Appellant or special advocate accordingly informing him of the reasons for his opinion and, subject to paragraph (10), no further action shall be taken on the notice of appeal or document provided under paragraph (5) or (6).
- (7ZA) Where a judge or the Registrar has taken a decision under paragraph (7), and also considers that the notice of appeal or document provided under paragraph (5) or (6) is totally without merit, the judge or Registrar may order that the appellant or special advocate is not entitled to have the matter heard before a judge under paragraph (10), with such order to be included as part of the notice issued under paragraph (7).
- (7A) In paragraphs (7), (7ZA) and (10) reference to a notice of appeal or a document provided under paragraph (5) or (6) includes reference to part of a notice of appeal or document provided under paragraph (5) or (6).
- (8) ...
- (9) ...
- (10) Subject to paragraph (7ZA), where notification has been given under paragraph (7) and within 28 days of the date the notification was sent, an appellant or special advocate expresses dissatisfaction in writing with the reasons given by the judge or Registrar for his opinion, ~~he is entitled to have the matter heard before a judge who shall make a direction~~ as to whether any further action should be taken on the notice of appeal or document under paragraph (5) or (6).

In Central London Employment Tribunal

BETWEEN:

Seyi Omooba

Claimant

-v-

(1) Michael Garrett Associates Ltd (t/a Global Artists)

(2) Leicester Theatre Trust Ltd.

Respondents

Witness statement of Paul Huxley

I, Paul Huxley of Christian Concern, 70 Wimpole Street, London W1G 8AX, SAY as follows:

1. I am a Communications Manager at CCFON Ltd (trading as ‘Christian Concern’). I provide advice on audio and video communication tools to the Christian Legal Centre (CLC). I am experienced in using and providing support for various mainstream audio-video communication platforms, including video conferencing tools.
2. During the preparation of this statement, I have discussed various issues with my line-manager, Mr Marsh, and sought his advice. Mr Marsh has several years of experience in providing IT services and support, and is currently responsible for the provision of IT services to CLC.
3. Christian Legal Centre is providing *pro bono* legal representation and other support to the Claimant in this case, Miss Seyi Omooba.
4. I make this witness statement in support of the Claimant’s application for the final hearing in this case to take place by video-link.
5. Unless indicated otherwise, all facts and matters in this statement are within my own knowledge and are true. Where I refer to a fact or matter that is not within my own knowledge, it is true to the best of my information and belief.

6. I am aware that:
 - a. The trial in this case, previously listed for 30 April – 7 May 2020, has been postponed due to the Coronavirus epidemic.
 - b. The Claimant wishes the trial to take place as soon as possible, and in the event the Coronavirus restrictions are still in place, to take place remotely via electronic means.
 - c. The Respondents disagree that the trial can take place remotely, and in particular have expressed concerns that there will be a lot of public and media interest in the trial, which cannot be adequately accommodated if the trial takes place remotely.
7. From a technical perspective, there are a number of ways in which a remote trial can be organised. I am aware that the Tribunal usually uses Skype for Business and therefore begin from that option, but I also highlight below some alternative options.

Skype for Business

8. Skype for Business provides functionality for large scale ‘attendance’ and viewing of a Skype for Business meeting through the Skype Meeting Broadcast platform (<https://support.microsoft.com/en-gb/office/schedule-a-skype-meeting-broadcast-c3995bc9-4d32-4f75-a004-3bc5c477e553?ui=en-us&rs=en-gb&ad=gb>). The platform is provided by Microsoft and is built to enable up to 10,000 to attend and view a broadcast meeting. Broadcast meetings can easily be configured to allow ‘anonymous’ attendance. If set up in this way, members of the public would access the broadcast through a publicised link and would not need to sign in or identify themselves to observe the trial but simply view it on a webpage. Those who join the hearing via the broadcast platform would be able to hear everything that is said and see video from the hearing but would not be able to participate in the hearing.
9. Participants in the hearing would need to join the hearing using the Skype for Business application. Versions of this application are available for common device platforms, and for some common web browsers. These tools are available free of charge and are generally easy to install. In some circumstances, participants may need to create an account with Microsoft but this is a simple step and there is no charge for doing so.

10. The designated operator of the broadcast ('host') would control when the broadcast began. Any initial setup and testing of connections with participants could therefore be conducted before the broadcast began, if necessary.
11. During the hearing, the audio from all participants would be heard on the broadcast (unless participants were muted by the host or chose to mute themselves). The host would use the platform's functionality to switch the video feed on the broadcast to the current speaker. This is a simple task for the host to perform.
12. The Skype Meeting Broadcast can be viewed retrospectively for some time after the event. In addition, the platform provides functionality for the meeting to be recorded, and for the recordings to be downloaded after the hearing. Therefore, the Tribunal would have an option to arrange for a recording of the hearing to be made, and then might make it available to the parties and/or the public.
13. The Skype Meeting Broadcast platform allows a custom hyperlink to be placed on the broadcast page. This functionality could be used to provide a link to a webpage where documents pertinent to the hearing could be posted in a timely manner to be accessible by members of the public or media.

Zoom

14. The Zoom platform (<https://zoom.us/>) provides an alternative to Skype for Business for audio-video meeting facilities. It is currently used in a variety of commercial and public body settings, as well as in personal and not-for-profit contexts. The platform has received extensive media coverage during the Coronavirus outbreak, and participants in the hearing may well have already used the platform in a personal or professional context. The platform has reportedly been used by the Cabinet of HM Government, and by Parliament (for Select Committee hearings, for example), suggesting that it is capable of being used effectively by multiple participants, and for the purpose of scrutiny and examination of witnesses and evidence.
15. For meeting participants, the platform provides similar meeting functionality to Skype for Business. Depending on the settings chosen, participants can see and hear all other participants in the meeting or focus on the contribution of a particular participant.
16. To participate in the hearing, participants can use either dedicated applications provided by Zoom or common web browsers of the type found on most devices. The dedicated Zoom applications are freely available for common device platforms (e.g.

Windows, Mac, iPhones, iPads, Android) and easy to install. Many individuals are likely to already have these applications installed. Depending upon the settings chosen by the host, participants may need to create an account with Zoom but this is a simple step and there is no charge for doing so.

17. The Zoom platform provides in-built functionality for a meeting to be broadcast to a wider audience using various publicly available platforms, such as YouTube. The hearing could therefore easily be relayed to YouTube where members of the public and of the media could follow the proceedings without charge and without the need to sign-in. It should also be relatively straightforward to embed the YouTube stream on other webpages, meaning that the hearing could be viewed on a dedicated webpage or website, where other information, such as court documents, could also be provided.
18. The YouTube platform allows such broadcasts to be viewed by members of the public after the event (although the originator can choose to delete them or make them unavailable if so desired). The Zoom platform also provides functionality to record the meeting such that it can be viewed and made available after the meeting, if required. Thus, in various ways, a record of the hearing could be made publicly accessible if so desired.
19. The Zoom platform also provides ‘breakout room’ functionality allowing meeting participants to enter virtual meeting spaces that each include only a subset of the participants in the main meeting. Properly configured, this functionality could be used, for example, to enable one or more parties to break off from the main hearing proceedings and confer privately for a period. Alternatively, I could make suggestions as to how similar functionality could be achieved using additional tools.
20. Hosting the type of meeting required for the hearing would require a paid Zoom account. (likely to be less than £50). If the Tribunal does not already have access to such an account, I would suggest that the parties share the cost of procuring one for the necessary period.

Alternative platforms and technologies

21. I am aware of a variety of other platforms and products (for example, Google Meet / Hangouts, Jitsi Meet, Streamyard) that could be considered, either alone or combined, as alternatives to Skype for Business and Zoom. Since in broad terms, their functionality will be similar to Skype for Business and Zoom, I will not provide a

detailed comparison of their functionality relative to Skype for Business and Zoom here but would be happy to do so if required. I mention these alternatives here simply to highlight the existence of a range of products and solutions that enable the facilitation of effective online meetings combined with an ability to broadcast such meetings to a wider audience. These technologies are now widely available, easy to use, familiar to many people, effective and either low cost or free of charge. I am, therefore, confident that an effective solution can be found to achieve the twin aims of smooth running of proceedings in a ‘virtual’ context, and freely available public access to those proceedings.

Assistance with hosting and broadcast

22. I expect the Tribunal will want to operate and control the system itself, but the CLC is happy to offer any technical assistance, alone or jointly with IT representatives of the other legal teams, with the setup and preparation for, and/or the hosting and facilitation of the technology for the hearing.

Access to the witness statement and the bundle

23. CLC would be happy to make pdf versions of the witness statements available for download on its website as soon as they are admitted in evidence. The same can be done for the pdf version of trial bundle (with appropriate redactions). Alternatively, it would be possible to upload individual documents once they are mentioned in open court. It would be straightforward to create a dedicated page on an existing website linked to CLC, with links for members of the public and/or the media to download the appropriate documents and/or to observe the on-line hearing.
24. The other parties’ legal advisors may, of course, do the same. CLC would be willing to cooperate with the Respondents’ legal advisors and their IT teams to ensure effective open justice in this case.
25. It would also be relatively straightforward to create a simple webpage at a dedicated URL, agreed by the Tribunal and parties, where these links could be posted. There might be a small cost involved in procuring a URL and webhosting facilities for the relevant period. I would suggest that the cost of this be shared between the parties.
26. As indicated above, depending on the platform chosen for the broadcast facility, it should be possible to provide a link on the broadcast page to a webpage providing

document links, or to integrate the broadcast facility and document links even more closely.

Conclusion

27. For those reasons, I believe that, despite the length and complexity of this trial and the anticipated level of public and media interest in it, it is entirely practical to organise this trial remotely.
28. I believe that the facts stated in this statement are true.

Paul Huxley

27 April 2020

In Central London Employment Tribunal

BETWEEN:

Seyi Omooba

Claimant

-v-

(1) Michael Garrett Associates Ltd (t/a Global Artists)

(2) Leicester Theatre Trust Ltd.

Respondents

Expert report of David Lloyd Evans

1. I, **David Lloyd Evans**, have been instructed by Seyi Omooba's legal representatives, Christian Legal Centre, to provide an expert opinion in relation to her removal from the cast of *The Color Purple*.
2. I understand my duty to the Tribunal as an independent expert witness, and I have complied with that duty. I am aware of the requirements of Civil Procedure Rules Part 35, Practice Direction 35A, and the Guidance for the Instruction of Experts in Civil Claims 2014.
3. In this report, references in square brackets are to **[volume / pdf page number / bundle page number]** in the agreed trial bundle.
4. In my report I have used the word 'play' to refer to various kinds of dramatic work, including *The Color Purple*. Technically the show is a musical, but that distinction isn't relevant to this report.

Qualifications and relevant experience

5. I am a theatre-maker and a professional theatre critic. I have reviewed plays for *the Spectator* since 2003. I've covered the West End, the London fringe and the Edinburgh festival. In the last 17 years I've seen and reviewed roughly 1600 plays.
6. I have written and produced my own plays in London and at Edinburgh. I've had experience holding auditions, casting actors for roles, and working as an assistant to the director.
7. I have also written drama for Radio Four and BBC TV.
8. At school I studied drama as part of my O- and A-levels in English literature. I took classics at Oxford (Balliol) where I read Aeschylus, Sophocles and Euripides in the original.

My instructions, and material relied on in preparing this report.

9. I am asked by the instructing lawyers (Christian Legal Centre) to address the following issues in this report:
 - (1) How important it is for an actor or actress to agree with the ethical views and/or feelings of (a) the character they are playing, (b) the playwright, and/or (c) the Director?
 - (2) Would you consider Miss Omooba's religious beliefs to make her unsuitable for the role of Celie in *The Colour Purple*?
 - (3) Whether Miss Omooba's involvement in the play would have jeopardised (a) the integrity of the production as a work of art, (b) its commercial success and (c) its overall viability.
10. I have been provided with, and considered, the following material:
 - (1) Particulars of Claim against Leicester Theatre Trust Ltd.;
 - (2) Particulars of Claim against Michael Garrett Associates (t/a Global Artists);
 - (3) Ground of Resistance on behalf of Leicester Theatre Trust Ltd.;
 - (4) Amended Grounds of Resistance on behalf of Michael Garrett Associates;
 - (5) The order of the Employment Tribunal dated 8 January 2020;
 - (6) *The Colour Purple* script;
 - (7) The letter from Alice Walker [G/42/981]

(8) Statement from the authors of the musical [G/48/987]

11. Additionally, I have read reviews of the production of *The Color Purple* at Leicester Curve in the *Guardian* and the *Stage*.
12. I have also read a synopsis of the original novel by Anne Walker, and I watched the film version directed by Steven Spielberg.

Issue 1: How important is it for an actor or actress to agree with the ethical views and/or feelings of (A) the character they are playing and (B) the playwright and/or (C) the director?

13. It is not of any importance for an actor to agree with the ethical views or the feelings of a character in a play. Were that necessary, the art of drama would not exist, and many of the plays we regard as classics would be impossible to stage.
14. Consider one of the corner-stones of dramatic literature, '*The Agamemnon*', by Aeschylus. Briefly, the action is as follows. Agamemnon returns home from the Trojan War with a captive princess, Cassandra. He finds his wife, Clytemnestra, having an affair with a local grandee, Aegisthus. Clytemnestra is enraged by the presence of Cassandra. She kills Agamemnon in his bath with an axe.
15. The characters in this play condone a range of actions and attitudes that we, in the modern age, find repugnant. Agamemnon is a war-monger who keeps a sex-slave. His wife murders him in revenge for his liaison with Cassandra.
16. It would be impossible to produce this work if the actors cast as Agamemnon and Clytemnestra had to embrace the moral universe of their characters. How many actors share Agamemnon's belief that wars of aggression are permissible and that taking a sex-slave as a spoil of war is acceptable? How many actresses would claim that an unfaithful wife is entitled to chop her husband to pieces in the bath if she finds he has been unfaithful to her?
17. Does the same apply to the feelings of the character? In my opinion, it does.
18. Consider Shakespeare's '*Othello*'. Othello is tricked into believing that his faithful wife, Desdemona, is an adulteress. Basing his judgement on flawed evidence, Othello murders her.
19. It would take a superhuman effort to cast Othello in this play if the search were restricted to actors who sympathise with Othello's jealous feelings and who believe that

he is justified in murdering his wife. Even if such an actor could be found, the rest of the cast would probably consider him too dangerous to be allowed into the rehearsal room. And no one, (especially the actress playing Desdemona), would be willing to perform alongside him.

20. The same principle applies to the ethical views of the playwright. Few of us would agree that a man is entitled to shoot another man dead with a pistol. This is exactly what the Jacobean dramatist, Ben Jonson, did when he killed a colleague, Gabriel Spenser, in a duel. Jonson pleaded guilty to manslaughter. But it would be an eccentric actor who declined a role in a work by Ben Jonson because the playwright was a successful duellist.
21. In relation to the ethical views and feelings of the director, the matter is more complicated. It would be an unwise actor who probed too deeply into the ethical views of a director and turned down work because of a disagreement over some moral issue. Most actors would consider the views of the director as something best ignored.
22. The issue of the director's feelings is as follows. It's not necessary for an actor to agree with the director's feelings unless those feelings are expressed in relation to the actor's performance. In that case it's extremely important for the actor to agree with the director's feelings.

Issue 2: Would you consider Miss Omooba's religious beliefs to make her unsuitable for the role of Celie in *The Color Purple*?

23. I would not.
24. As argued above, it is fallacious to claim that an actor must endorse the moral code of the character they are playing. The fallacy is based on a misunderstanding of the actor's craft and how it differs from the work of other artists.
25. Consider a writer, a painter or a composer. An artist of this kind must be entirely seized by the passions, feelings and thoughts they wish to express in their work. If they are not sincere about their work then it is unlikely to succeed artistically.
26. An actor is under no such obligation.
27. The actor assumes a mask and convinces the audience that the mask, or persona, is real. After leaving the stage, the actor removes the mask and returns to their true personality. The ability to switch between an on-stage and an off-stage self is the essence of the

actor's talent. The more skilful they are, the greater their capacity to disguise their own nature and to inhabit the character they are playing. This leaves actors open to the charge that they are insincere people. However it is exactly this quality of insincerity, (or the power to dissemble, if you like), that enables them to practise their trade. Miss Omooba's accuser, Mr Lambert, unwittingly acknowledges this when he calls her a 'hypocrite'. The word derives from the Greek for 'actor.'

28. *The Color Purple* is set in the American South during the first half of the 20th century where weekly attendance at church was almost universally practised. If Miss Omooba is deemed unsuitable because of her personal beliefs, the same might be said of cast members who are not devout Christians.

29. In coming to my conclusion on this issue, I have taken into account (a) the significance of the lesbian affair between Celie and Shug in the musical and (b) the views of the authors of the novel and of the musical. I discuss those two sub-issues below.

Concerning the role of lesbianism in the story

30. The musical version of *The Colour Purple* gives lesbianism and Celie's affair with Shug much more prominence than they had in Steven Spielberg's film, where it is presented as a short fling. It seems clear from the script of the musical that Celie is a lesbian and that Shug is bisexual. They have an affair but it doesn't become a lifelong romance because Shug has a preference for men. It does not necessarily follow that the show promotes lesbianism. It features lesbianism; it also features jazz and cooking but it doesn't promote them. The story involves scenes of rape, incest and misogynistic violence but, again, it doesn't promote these activities.

31. Another way to look at the question of lesbianism and whether the play promotes it or not is to observe the internal choices made by the authors. It's normal for a dramatist to underline the essence of their work at the two most emphatic moments of the play, namely, at the end of the first act before the interval, and at the conclusion of the play before the curtain falls. At the end of the first act Celie is seen clutching a letter from her sister. 'She's alive. Nettie's alive,' she says. At the end of the play, Celie has the closing line, 'Nettie. My Nettie home.' By making these choices, the authors are sending a strong signal that the play centres around family kinship and the relationship between Celie and her sister. Romance and lesbian love are elements in the play but they are not crucial to it. Anyone claiming that *The Color Purple* 'promotes' lesbian

love would have to explain why the script ignores the two best chances to broadcast this message by omitting any mention of lesbianism at the end of act one and at the end of the play.

32. It's worth looking at the show's publicity material which doesn't mention lesbianism. Audiences are invited to see a drama that 'celebrates life, love and the strength to stand up for who you are.' If that is a reference to homosexuality it's an exceptionally coy one. In addition, play-goers are warned to expect 'themes of rape, abuse and incest, with overt racism and sexism.' This list of themes doesn't include homosexuality nor its negative converse, homophobia.
33. The Guardian's review of the show at Leicester Curve doesn't mention lesbianism or homosexuality. It talks of 'female empowerment' and of Shug Avery as a character 'unapologetically driven by her passions.'
34. Let me address the suggestion that the actor playing Celie would be unsuitable for the role if she disagreed with the interpretation that the character is a lesbian. It seems clear enough that Celie is a lesbian and it's also clear that Ms Omooba sincerely believes that lesbianism is at variance with the precepts of her faith. But it would be bizarre to suggest that an actress would be unsuitable for a role if she disagreed morally with the actions of her character. If that were the case, an actress would have to agree morally with all her character's word and deeds.
35. It's important not to misunderstand the actor's craft. Acting is about imitation, about creating credible resemblances, about appearing to be the thing you are not. And a talented actress can easily present herself as a character whose morality she personally disparages.
36. Celie is more than just a lesbian. She's also a victim of incestuous rape. She states that her father, known as Pa, who has raped many times, has rights over the baby produced as a result of his most recent rape. Celie says, 'He the baby's daddy. It's his to decide, I guess.' I doubt if anyone alive would agree with that moral position.
37. Similar instances occur throughout the story. The leading female characters are strongly for and against Christianity. Celie is a devout believer. 'This life'll soon be over. Heaven lasts always.' Shug is proud of her lack of faith. 'Don't say church to me,' she says. It would be eccentric to insist that the actresses playing Celie and Shug must be Christian and atheist, respectively. And consider Shug's first words to Celie 'You're

ugly.’ This is a monstrously cruel insult given that Shug is having an affair with Celie’s husband. Must the actress playing Shug believe that such unkindness is morally acceptable?

38. Likewise Celie’s father endorses Mister’s right to whip Celie. ‘She gon’ be his wife, he do what he want,’ says Pa. And Mister claims that a beating will be good for Celie. ‘Wives is like chirren. Nothin better for ‘em than a good, sound beating’. It would be impossible to find actors who hold the moral positions of these characters. Pa believes that violence against women is justified. Mister says that women benefit from violence. I think it’s fair to say that virtually all men nowadays profoundly reject that out-of-date moral code. So it seems in all four of these roles, (Celie, Shug, Pa and Mister), the actors must conceal their disapproval of the characters they are playing. If they can’t do so, their performances will fail.

Alice Walker’s letter

39. The author of the novel, Alice Walker, has written a letter about this case [G/42/981]. The producers seem to value her comments highly. But I wasn’t convinced by her argument and I set out a response to it below.

40. Alice Walker, the author, makes her views clear about Miss Omooba’s case:

‘Playing the role of Celie while not believing in her right to be loved, or to express her love in any way she chooses, would be a betrayal of women’s rights to be free.’

41. This is an overstatement. Celie is a fictional creation in a novel that became a film and later a musical. It’s fanciful to suggest that the choices of Celie – who let us remember doesn’t exist – represent ‘women’s rights to be free’.

42. Although Alice Walker speaks with great authority as the writer of the book she is still capable of delivering an erroneous judgement about the actors in a dramatisation of her work. And she makes it clear that she has made a judgement against Ms Omooba by calling her religious beliefs ‘a betrayal.’

43. She goes on:

‘As an elder I urge all of us to think carefully about what I am saying even as you, Oluwaseyi Omooba, sue the theatre for voiding your contract. And

this is just an episode in your life; your life, your work, and your growth will continue in the real world.'

44. The phrase 'your growth will continue in the real world' gives the impression that Miss Omooba's views are not yet fully formed and are likely to undergo further development. It's unclear from what authority Ms Walker makes this assessment of Miss Omooba's beliefs.
45. It's worth considering how Ms Walker's judgement would apply to a play like Shakespeare's 'Julius Caesar'. In this play Brutus murders the tyrant, Caesar, in order to defend the freedom of the Roman people.
46. Is it essential that the actor playing Brutus should believe that killing a dictator is justified? I would say not. And if the actor happens not to believe that the killing of a dictator is justified, would that actor's belief amount to 'a betrayal of men's rights to be free'.
47. Clearly not.
48. Brutus's killing of Caesar is the action of a character in a play. This single act of simulated violence on stage does not represent all men or all men's rights. Likewise, if the actor playing Brutus disapproves of Brutus's actions then that actor is not compromising all men's 'rights to be free'.
49. Yet this is the charge Ms Walker is levelling against Ms Omooba. She is saying that Ms Omooba's religious beliefs are 'a betrayal of women's rights to be free.'
50. This is a musical, not a pivotal moment in the history of feminism.
51. A genuine example of 'a betrayal of women's rights to be free' might be found in the laws that prevented women in Britain from voting until 1918.
52. The religious beliefs of an actor in a musical do not meet the standard Ms Walker wishes to set.
53. However, it's easy to see how Ms Walker might have convinced herself that her hugely successful novel, and the Oscar-nominated film it spawned, have a greater cultural significance than they actually bear.

Issue 3: Would Miss Omooba's involvement in the play have jeopardised (A) the integrity of the production as a work of art, (B) its commercial success and (C) its overall viability?

54. The answer to (A) is no. As outlined above, Miss Omooba's personal beliefs would not have affected her ability to play 'Celie' and would not have jeopardised the integrity of the production. The same answer applies to questions (B) and (C).
55. In a general way, this question seeks to discover if a theatre-maker can contribute successfully to a dramatic work in which the characters and the actions portrayed are at variance with the artist's personal faith. The example of Martin Scorsese is instructive. He's a cradle Catholic who still practises today and yet he has made many films in which the characters deliver speeches and perform actions which are not condoned by the teachings of Catholicism.
56. Two of Martin Scorsese's best known films are *Mean Streets* and *Goodfellas*. Both films involve characters who engage in violence, extortion and drug-dealing which are contrary to the precepts of Catholicism. In neither of those films are those actions – or sins as Catholics would call them – condemned. At the end of *Goodfellas*, the main character is on a witness protection scheme and is unable to operate as a criminal. This might be an opportunity for him to redeem himself morally and atone for his previous wrong-doing. But he seems to feel no sense of salvation or moral relief in his new life. On the contrary, he expresses his frustration that the excitement of gangsterism is no longer part of his experience. It's not surprising then that *Goodfellas* is regarded as a film that glamorises violent crime and makes the lives of gangsters attractive and appealing.
57. As regards the allegation that Miss Ommoba's involvement could have jeopardised commercial success of the production, I am aware that there was a campaign against Miss Omooba on social media, which included threats to boycott the production. However, whether that would have jeopardised its commercial success is a complex question with several imponderables.
58. My first reaction is to state the truism that all publicity is good publicity. Having promoted and produced plays myself, I know how hard it is to get any coverage at all, even on the arts pages of newspapers and websites. And a publicist cannot be satisfied with a single mention, or a single interview, or a single feature. A show needs to be mentioned multiple times in different publications before it will cut through to the public. And the great prize, as far as publicity is concerned, is to get the production off the arts pages and into the news pages where it will gain more attention and perhaps

even become a ‘water-cooler’ topic. My view is that ‘public anger’ would benefit the production from a commercial point of view. And all the publicity derived from the ‘anger’ would have the additional advantage of being free.

59. The question of threats to boycott the production is harder to judge without knowing how successful any boycott would have been. It might easily have backfired. People like to do things they’ve been told they must not do, and a boycott of the show could, perversely, have boosted the box-office. It’s easy to threaten a boycott but harder to make it work in the way the boycotters intend. Because Miss Omooba was removed from the show before a boycott was in place no one can rule on its ability to affect the show’s commercial prospects.
60. Although my reaction, as a producer, would be to welcome any ‘public anger’ about a show, I can’t say with certainty that my attitude would have been shared by the theatre itself or its publicity agents. Theatres know how to promote shows to play-goers but the business of managing a controversy in the news might be beyond their experience. It seems likely that they responded to the threat by acceding to the wishes of the boycotters.
61. It’s worth considering the assumptions made by those threatening a boycott. Miss Omooba did nothing more than express a religious belief which provoked fury among certain actors. The attitude of these actors strikes me as intolerant. And their assumption that play-goers would share their illiberal view seems to me presumptuous and even insulting to the people who support the theatre.

Summary of conclusions

62. It is not of any importance for an actor to agree with the ethical views or the feelings of a character in a play, the playwright, or the director.
63. I do not consider that Miss Omooba’s religious beliefs make her unsuitable for the role of Celie in *The Colour Purple* (despite acknowledging that the lesbian affair between Celie and Shug is made relatively prominent in the musical version).
64. I do not agree with Alice Walker’s comment to the effect that if Celie was played by Miss Omooba, that “would be a betrayal of women’s rights to be free”. For the reasons detailed above, with all due respect, I find that comment bizarre.

65. I do not agree that Miss Omooba's involvement in the play would have jeopardised the integrity of the production as a work of art or its overall viability.

66. I do not agree that Miss Omooba's involvement in the play would have jeopardised the commercial success of the production. However, bearing in mind the threats of a boycott made against the theatre, I acknowledge that the theatre may have had genuine fears about that at the time.

Statement of Truth

67. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Lloyd Evans

12 May 2020

In Central London Employment Tribunal

BETWEEN:

Seyi Omooba

Claimant

-v-

(1) Michael Garrett Associates Ltd (t/a Global Artists)

(2) Leicester Theatre Trust Ltd.

Respondents

Expert report of Dr Martin Parsons

1. I, Dr Martin David Parsons have been instructed by Christian Legal Centre representing the claimant, to prepare an expert report.
2. My principal qualifications to act as an expert witness in this case include the following:
A first class honours degree in Theology and a PhD in Biblical Theology and Missiology (Brunel University, 2005). I am also the author of a major academic book on Christology published in the USA. I have been elected as a member of the following learned societies: Tyndale Fellowship for Biblical Research and I am a Fellow of the Higher Education Academy (FHEA). I have been faculty member of the Oxford Centre for Religion and Public Life where I was involved in supervising postgraduate research in association with the University of Stellenbosch, South Africa. I have also previously been Head of Research and Director of Studies at the international headquarters of a Christian organisation specialising in freedom of religion or belief. I have previously been an expert witness for a number of cases in the UK court system. I have attached my CV as appendix 1.

3. I have been provided with the following material:
 - a) Letter of instruction.
 - b) Particulars of Claim against Leicester Theatre Trust Ltd.;
 - c) Particulars of Claim against Michael Garrett Associates (t/a Global Artists);
 - d) Ground of Resistance on behalf of Leicester Theatre Trust Ltd. Your attention is drawn, in particular, to paragraphs 38-42.
 - e) Amended Grounds of Resistance on behalf of Michael Garrett Associates. Your attention is drawn, in particular, to paragraphs 49-52.
 - f) The order of the Employment Tribunal dated 8 January 2020.
4. My instructions were to prepare an expert report on:
 - (1) The Christian doctrine in relation to homosexuality;
 - (2) In the context of my evidence on Issue (1), to comment on Miss Omooba's stated beliefs and the Respondents' pleadings in relation to those beliefs.

Christian doctrine in relation to homosexuality

- A) Biblical teaching on sexuality
5. The Bible begins with the story of creation which climaxes with the creation of man and woman. Genesis 1:26-27 who are stated to be, as male and female, made in the image of God:
6. ²⁶ *"Then God said, 'Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground.'*
- ²⁷ ***So God created mankind in his own image,
in the image of God he created them
male and female he created them."***
7. Briefly, this is of enormous significance to the Christian faith because the Bible sets out a story of salvation history, whereby man is created in the image of God. Through man's rebellion against God sin enters the world as a powerful spiritual force and corrupts both the world generally and particularly human nature so that whilst man still reflects the image of God, this is now a broken and distorted image. God however, sets up a

plan of redemption which culminates in God himself becoming incarnate as Jesus Christ. The Bible describes Jesus as both fully God and also fully and indivisibly man, who like the first Adam before the fall reflects the uncorrupted image of God. After Jesus' death and resurrection he sent the Holy Spirit to those who chose to follow him to renew and transform them, so that they too are increasingly transformed back to reflect the image of God i.e. becoming man as God originally created man to be.¹

8. As Professor Gordon Wenham observes this chapter and its themes are “*pervasive and its theology so fundamental to the Biblical worldview. Here we have the principle themes of Biblical theology displayed in epigrammatic brevity*”.²
9. The image of God is also central to Christian understanding of human uniqueness. Genesis 1:26-27 highlights three important aspects of this:
 - i. Man is the last of God's creatures to be brought into existence and the crown or peak of creation.
 - ii. Man alone is created in the image of God and in this crucial respect is unique among God's creatures.
 - iii. Man's creaturely supremacy and uniqueness find expression in the dominion which he alone is given, and which he alone is fitted to exercise, “over all the earth”.³

The nature of man as male and female in the Bible

10. Genesis 1:26-27 is foundational to understanding the concept of man being made in the image of God in both the Old Testament and New Testament. The Hebrew text of Genesis 1:27 exhibits a parallelism whereby the second and third lines expand on the meaning of the first lines.
11. “*So God created mankind in his own image,
in the image of God he created them;
male and female he created them.*”

¹ Colossians 1:5-20; Romans 8:29; 1 Corinthians 15:49; 2 Corinthians 3:18; Colossians 3:10.

² Gordon J Wenham *Genesis 1-15 Word Biblical Commentary* (Milton Keynes:Word,1991):39. Professor Wenham was Professor of Old Testament at the University of Gloucestershire.

³ Philip Edgcumbe Hughes *The True Image: the Origin and Destiny of Man in Christ* (Grand Rapids,Mi:Eerdmans/Leicester:IVP,1989):3. The author was Vice Principal of Tyndale Hall, Bristol.

12. By doing so, as Professor Wenham observes, it highlights “*the sexual distinctions within mankind*” and foreshadows the blessing of the marriage relationship between man and woman which occurs in the following verse.⁴
13. “²⁸ *God blessed them and said to them, ‘Be fruitful and increase in number; fill the earth and subdue it. Rule over the fish in the sea and the birds in the sky and over every living creature that moves on the ground.’*”
14. The Hebrew parallelism is also important because it points to the complementarity inherent in the marriage relationship between man and woman as reflecting something of the nature of God. The distinctiveness of male and female are therefore of fundamental importance to Biblical Theology. It is repeated again in Genesis 5:1-2:
15. “*This is the written account of Adam’s family line. When God created mankind, he made them in the likeness of God. ² He created them male and female and blessed them. And he named them ‘Mankind’ when they were created.*”
16. The unequivocal distinctions between male and female are repeated throughout the Bible. Both the unequivocal distinction and complementarity of female and male are emphasised in Genesis 2:18 where God announces the creation of woman with the words:
17. “¹⁸ *The LORD God said, “It is not good for the man to be alone. I will make a helper suitable for him.”*
18. In the New Testament the distinction and complementarity of male and female are similarly emphasised. Jesus’ response to a question about divorce presupposes that his hearers understand this and directly cites this understanding of Genesis 1:26-27: “*‘Haven’t you read’, he replied, ‘that at the beginning the Creator made them male and female...’*”⁵

The effect of the fall on sexuality

19. Both the Old Testament and New Testament portray sin as a powerful spiritual force which once allowed into the world corrupted all aspects of our human nature, including sexuality.

⁴ Gordon J Wenham *Genesis 1-15 Word Biblical Commentary* (Milton Keynes:Word,1991):32-33.

⁵ Matthew 19:4 cf also Mark 10:6.

20. While Genesis 1-2 portrays a perfect relationship between one man and one woman, the effect of sin is to shatter that relationship. The third chapter of Genesis portrays this relationship as descending into mutual recrimination and blame as well as shame at their own nakedness.
21. By Genesis 4:19 the monogamous relationship of Genesis 2 is depicted as having now become degraded into polygamy.⁶
22. By the time of the Exodus it is clear that a whole range of sexual practices have emerged – all of which God instructs his people are wholly contrary to his intention for human relationships. These include sexual relationships with animals⁷ and same sex sexual relationships.⁸ For example:
23. Leviticus 18:22-23 instructs men among the people of God
“Do not lie with a man as one lies with a woman, it detestable.”
24. While the following verse instructs women
“Do not have sexual relations with an animal and defile yourself with it. A woman must not present herself to an animal to have sexual relations with it; that is a perversion.”
25. Is important to note that the Biblical text does not indicate either i) that such practices did not exist, nor does it imply ii) that people would not have desires to carry out such sexual acts.
26. Rather, it indicates that engaging in such acts is a perversion of the sexual relationships which the God created for husband and wife to enjoy within the context of marriage. The Biblical text therefore urges the people of God to exercise moral restraint and not give into the temptation to give free reign to sexual desires in other contexts.
27. This is clear from the opening verses of Leviticus chapter 18 which implies that such practices were far from rare both in Egypt, which the Israelites had just left and in Canaan, where they were heading.

⁶ J.A. Thompson ‘Marriage’ in J.D. Douglas, N. Hillyer, F.F. Bruce, D. Guthrie, A.R. Millard, J.I. Packer and D.J. Wiseman (eds) *New Bible Dictionary* (Leicester:IVP, 2nd edn,1992):742-46. The author was Reader in Middle Eastern Studies at the University of Melbourne, Australia.

⁷ Exodus 22:19; Leviticus 18:23; 20:15-16; Deuteronomy 27:21.

⁸ Leviticus 18:22; 20:13.

28. *“¹The LORD said to Moses, ² ‘Speak to the Israelites and say to them: I am the LORD your God. ³ You must not do as they do in Egypt, where you used to live, and you must not do as they do in the land of Canaan, where I am bringing you. Do not follow their practices. ⁴ You must obey my laws and be careful to follow my decrees. I am the LORD your God. ⁵ Keep my decrees and laws, for the person who obeys them will live by them. I am the LORD.’”*

29. There then follows a long list of sexual relationships which whilst the Israelites might be tempted to engage in, but towards which they are nonetheless exhorted to exercise moral restraint when they experience these sexual desires.

30. These illicit sexual relationships include:

- a) Sexual relationships with close blood relatives (Leviticus 18:6-14)
- b) Sexual relationships with non-blood close relatives such as one’s daughter in law (Leviticus 18:15-16)
- c) Sexual relationships with two persons who themselves have a blood relationship (Leviticus 18:17-18)
- d) Sexual relationships during a woman’s menstrual period (Leviticus 18:19)
- e) Sexual relationships with another man’s wife i.e. adultery (Leviticus 18:20)
- f) Sexual relationships between a man and a man (Leviticus 18:22)
- g) Sexual relationships between a woman and an animal (Leviticus 18:23)

31. The text concludes with a strongly worded statement that all such acts both a) defile the individuals who engage in them b) lead to the judgement of God i.e. they are sinful:

²⁴ “‘Do not defile yourselves in any of these ways, because this is how the nations that I am going to drive out before you became defiled. ²⁵ Even the land was defiled; so I punished it for its sin, and the land vomited out its inhabitants. ²⁶ But you must keep my decrees and my laws. The native-born and the foreigners residing among you must not do any of these detestable things, ²⁷ for all these things were done by the people who lived in the land before you, and the land became defiled. ²⁸ And if you defile the land, it will vomit you out as it vomited out the nations that were before you.

32. It then goes on to state that these acts are therefore fundamentally incompatible with being part of God’s people who are called to be a holy people (Exodus 19:6), different

from those around them. As such anyone who habitually engages in such acts must be excluded from the people of God:

²⁹ “‘Everyone who does any of these detestable things—such persons must be cut off from their people. ³⁰ Keep my requirements and do not follow any of the detestable customs that were practiced before you came and do not defile yourselves with them. I am the LORD your God.’

^{19:1} The LORD said to Moses, ² “Speak to the entire assembly of Israel and say to them: ‘Be holy because I, the LORD your God, am holy.’”

33. The claim has been made by a number of scholars in recent years that OT injunctions against homosexuality relate solely to homosexual acts conducted in the context of pagan idolatry. Whilst, idolatry clearly does form part of the context for these injunctions, it is far from clear that these injunctions were limited to this. Indeed, the wide ranging nature of such injunctions implies that all sexual activity outside of the context of heterosexual marriage is a corruption of the God’s intention in creating men and women as sexual beings.

34. This theme of sin corrupting human nature including sexuality leading to a variety of sexual practices which deviate from the creator’s intention for humanity continues in the New Testament.⁹

35. The first chapter of the Apostle Paul’s letter to the Romans in fact develops the theme of sin corrupting human nature further by saying that this abandoning of the Creator’s plan for human sexuality leads to a people suppressing their moral consciences when they engage in such acts and persuading themselves that they are morally good.

¹⁸ The wrath of God is being revealed from heaven against all the godlessness and wickedness of people, who suppress the truth by their wickedness, ¹⁹ since what may be known about God is plain to them, because God has made it plain to them.

²⁰ For since the creation of the world God’s invisible qualities—his eternal power and divine nature—have been clearly seen, being understood from what has been made, so that people are without excuse.

⁹ Romans 1:21-32; 1 Corinthians 6:9.

²¹ For although they knew God, they neither glorified him as God nor gave thanks to him, but their thinking became futile and their foolish hearts were darkened.

²² Although they claimed to be wise, they became fools

²³ and exchanged the glory of the immortal God for images made to look like a mortal human being and birds and animals and reptiles.

²⁴ Therefore God gave them over in the sinful desires of their hearts to sexual impurity for the degrading of their bodies with one another.

²⁵ They exchanged the truth about God for a lie, and worshiped and served created things rather than the Creator—who is forever praised. Amen.

²⁶ Because of this, God gave them over to shameful lusts. Even their women exchanged natural sexual relations for unnatural ones. ²⁷ In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men, and received in themselves the due penalty for their error.

²⁸ Furthermore, just as they did not think it worthwhile to retain the knowledge of God, so God gave them over to a depraved mind, so that they do what ought not to be done.

²⁹ They have become filled with every kind of wickedness, evil, greed and depravity. They are full of envy, murder, strife, deceit and malice. They are gossips, ³⁰ slanderers, God-haters, insolent, arrogant and boastful; they invent ways of doing evil; they disobey their parents;

³¹ they have no understanding, no fidelity, no love, no mercy.

³² Although they know God's righteous decree that those who do such things deserve death, they not only continue to do these very things but also approve of those who practice them."

36. The Biblical text makes clear that homosexual acts are in themselves sinful, whether or not they are associated with idolatry. As J.D. Douglas observes:

"In Rom. 1 Paul condemns homosexual acts, lesbian as well as male, in the same breath as idolatry (vv.23-27), but his theological canvass is broader than that of Lev. [i.e. Leviticus]. Instead of treating homosexual behaviour as an expression of idolatrous worship, he traces both to the bad 'exchange' fallen man has made in departing from his Creator's intention (vv.25ff). Seen from this angle every homosexual act is unnatural

(para physin v.26), not because it cuts across the individual's natural sexual orientation (which, of course it may not) or infringes OT law (contra McNeill), but because it flies in the face of God's creation scheme for human sexual expression."¹⁰

37. 1 Corinthians 6:9-21 states:

"⁹ Or do you not know that wrongdoers will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers nor men who have sex with men^[a] ¹⁰ nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the kingdom of God. ¹¹ And that is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God.

¹² "I have the right to do anything," you say—but not everything is beneficial. "I have the right to do anything"—but I will not be mastered by anything. ¹³ You say, "Food for the stomach and the stomach for food, and God will destroy them both." The body, however, is not meant for sexual immorality but for the Lord, and the Lord for the body. ¹⁴ By his power God raised the Lord from the dead, and he will raise us also. ¹⁵ Do you not know that your bodies are members of Christ himself? Shall I then take the members of Christ and unite them with a prostitute? Never! ¹⁶ Do you not know that he who unites himself with a prostitute is one with her in body? For it is said, "The two will become one flesh."^[b] ¹⁷ But whoever is united with the Lord is one with him in spirit."^[c]

¹⁸ Flee from sexual immorality. All other sins a person commits are outside the body, but whoever sins sexually, sins against their own body. ¹⁹ Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; ²⁰ you were bought at a price. Therefore honour God with your bodies.

38. 1 Timothy 1:9-10

⁹ We also know that the law is made not for the righteous but for lawbreakers and rebels, the ungodly and sinful, the unholy and irreligious, for those who kill their fathers or mothers, for murderers, ¹⁰for the sexually immoral, for those practicing

¹⁰ J.D. Douglas 'Homosexuality' in J.D. Douglas, N. Hillyer, F.F. Bruce, D. Guthrie, A.R. Millard, J.I. Packer and D.J. Wiseman (eds) *New Bible Dictionary* (Leicester:IVP, 2nd edn,1992):488. Dr Douglas lectured at Singapore Bible College and was the author or editor of more than 30 major theological books. The *contra* reference is to J.J. McNeill *The Church and the Homosexual* (Kansas: Andrews and McMeel (1976).

homosexuality, for slave traders and liars and perjurers—and for whatever else is contrary to the sound doctrine ¹¹ that conforms to the gospel concerning the glory of the blessed God, which he entrusted to me.

39. New Testament scholars have drawn attention to the parallels between this list and the 10 commandments (Exodus 20:1-17) and in particular, to the fact that they appear to expand on general principles set out in the 10 commandments.
40. Donald Guthrie, one of the twentieth century's leading New Testament scholars, comments on 1 Timothy 1:9 (NIV *Neither the sexually immoral nor idolaters nor adulterers nor men who have sex with men*) NB quotations below are from the King James Version (KJV), Revised Standard Version (RSV) and the Greek New Testament. *"Whoremongers (RSV 'immoral persons') and them that defile themselves with mankind (arsenokoitai, RSV 'sodomites') are perhaps similarly regarded as extreme violations of the command not to commit adultery."*¹¹
41. Similarly, Hebrews 13:4 *"Marriage should be honoured by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral."*
42. The New Testament also emphasises the OT teaching noted above (s.22-28) that habitually engaging in sexual practices outside of heterosexual marriage is incompatible with membership of the covenant people of God, which in the New Testament has become the church.
43. The New Testament requirement that members of the church seek to live according to the basic teachings of the Gospel, central to which is repentance from habitual sin is rooted in the teaching of Jesus recorded in Matthew 18:15-17 that his followers should not associate with anyone (here termed a Christian 'brother' or 'sister') who

¹¹ Donald Guthrie *The Pastoral Epistles: An Introduction and Commentary* (London: Tyndale Press, 1957): 61-61. Dr Guthrie's obituary in the *Independent* 18 September 1992 <<https://www.independent.co.uk/news/people/obituary-donald-guthrie-1552013.html>> [accessed 20 February 2020] began by stating: *"There can be very few New Testament scholars today who are not in one way or another indebted to and influenced by the numerous writings, spread across some 36 years, of Donald Guthrie"* and continued *"To scholars, Guthrie is best known for his magisterial New Testament Introduction, initially published in three volumes, beginning in 1960. This established itself as the standard work on the subject, accepted as such by New Testament scholars of all persuasions. The fourth, revised, edition appeared as recently as 1990. In 1981 appeared his New Testament Theology, a massive 1,000 pages of condensed learning, representing the fruit of 30 years of teaching theology to undergraduates. He wrote commentaries on the Pastoral Epistles and Hebrews in the Tyndale New Testament series and on Galatians for the Century Bible. In 1982 was honoured with a Festschrift to mark his retirement."*

claims to be a follower of Christ, but habitually practices sin which they are unwilling to repent of.

44. *“¹⁵ If your brother or sister sins go and point out their fault, just between the two of you. If they listen to you, you have won them over. ¹⁶ But if they will not listen, take one or two others along, so that ‘every matter may be established by the testimony of two or three witnesses.’¹⁷ If they still refuse to listen, tell it to the church; and if they refuse to listen even to the church, treat them as you would a pagan or a tax collector.*
45. In the New Testament this is by no means limited to sexual ethics, but also includes for example a lifestyle characterised by greed, laziness and refusal to work creating factions or not accepting basic Christian doctrine such as Jesus Christ having come in the flesh.¹² However, even then, it is emphasised that the suspension of that person from the membership of the church is not to be regarded as a punitive action, but to be treated as an act of pastoral care to bring them back to repentance. As Paul in 2 Thessalonians 3:15 concludes *“Yet do not regard him as an enemy but warn him as a brother.”*
46. However, it is important to emphasise that the New Testament does not at any point suggest or imply that Christians should distance themselves from non-Christians who engage in such practices. Indeed, 1 Corinthians 5 is emphatic that these injunctions apply in this life **solely** to Christians who have effectively abandoned the central aspect of the Christian faith i.e. repentance from sin.
47. *“It is actually reported that there is sexual immorality among you, and of a kind that even pagans do not tolerate: A man is sleeping with his father’s wife. ² And you are proud! Shouldn’t you rather have gone into mourning and have put out of your fellowship the man who has been doing this? ³ For my part, even though I am not physically present, I am with you in spirit. As one who is present with you in this way, I have already passed judgment in the name of our Lord Jesus on the one who has been doing this. ⁴ So when you are assembled and I am with you in spirit, and the power of our Lord Jesus is present, ⁵ hand this man over to Satan for the destruction of the flesh,^{[a][b]} so that his spirit may be saved on the day of the Lord.*
- ⁶ Your boasting is not good. Don’t you know that a little yeast leavens the whole batch of dough? ⁷ Get rid of the old yeast, so that you may be a new unleavened batch—as*

¹² 2 Thessalonians 3:6-15; Titus 3:10; 2 John 7-10.

you really are. For Christ, our Passover lamb, has been sacrificed. ⁸ Therefore let us keep the Festival, not with the old bread leavened with malice and wickedness, but with the unleavened bread of sincerity and truth.

⁹ I wrote to you in my letter not to associate with sexually immoral people—¹⁰ not at all meaning the people of this world who are immoral, or the greedy and swindlers, or idolaters. In that case you would have to leave this world. ¹¹ But now I am writing to you that you must not associate with anyone who claims to be a brother or sister^[e] but is sexually immoral or greedy, an idolater or slanderer, a drunkard or swindler. Do not even eat with such people.

¹² What business is it of mine to judge those outside the church? Are you not to judge those inside? ¹³ God will judge those outside. “Expel the wicked person from among you.”^[d]

48. This is in effect saying little more than that in order to belong to the church, one must accept and live by the basic teaching of the church. In that sense it is little different from any organisation with a specific ethos (such as for example those campaigning on animal welfare, or the rights of particular groups of people), requiring its members to have lifestyles compatible with the ethos of those organisations in order to continue in membership.

Biblical teaching on homosexual practice and orientation

49. It is important to understand that the central theme of the Bible is God’s plan of salvation whereby he rescues man from the effects of his rebellion and sin by Christ’s redemptive death on the cross and sending of the Holy Spirit to renew and transform mankind from the corrupting effects of sin back into being man as God originally created man to be, in the image of God. The Bible does not therefore seek to present a systematic treatise on other subjects, but does refer to other subjects in relation to this story of salvation history. In particular, it draws attention to specific acts which are sinful, amongst which are homosexual sexual acts.
50. As such, the Bible only specifically addresses the issue of homosexual actions. It does not directly address the question of homosexual orientation. As Dr J.D. Douglas comments:

*“The Bible says nothing specifically about the homosexual condition (despite the rather misleading RSV translation of 1 Corinthians 6:9), but its condemnations of homosexual conduct are explicit.”*¹³

51. However, the Bible makes a clear distinction between temptation and sin. Put simply, temptation is not sin. The Bible states that everyone is tempted – including even Jesus.¹⁴ Hebrews 4:15 specifically states that Jesus was “*tempted in every way, just as we are—yet he did not sin.*”

Miss Omooba’s stated beliefs and the Respondents’ pleadings in relation to those beliefs

The claimant’s citation of biblical teaching on sexuality and specifically homosexuality

52. I have examined the statement made by the claimant as a 20 year old student on 18 September 2014 (para 20 of particulars of claim). They constitute a fair and reasonable expression of Christian beliefs, as those beliefs have historically been held by the overwhelming majority of the Christian church throughout history.

53. I have also examined the statement made in October 2019 on the *Today* programme (s.18 revised Grounds of Resistance) which claims that her beliefs represent Biblical beliefs

“Oh yes, I most definitely stand by those comments...I definitely stand by the word of God.”

¹³ J.D. Douglas ‘Homosexuality’ .in J.D. Douglas, N. Hillyer, F.F. Bruce, D. Guthrie, A.R. Millard, J.I. Packer and D.J. Wiseman (eds) *New Bible Dictionary* (Leicester:IVP, 2nd edn,1992):488. Dr Douglas lectured at Singapore Bible College and was the author or editor of more than 30 major theological books.

¹⁴ 1 Corinthians 10:13.

Again, I find the claimant's statement to be a fair and reasonable expression by an ordinary Christian (i.e. without formal theological training) of what the Bible teaches on marriage, sexuality and homosexuality.

54. The claimant cited two particular sections of the Bible as well as other aspects of Biblical teaching. I will deal with these in the order in which they appear in the Facebook post made by the claimant on 18 September 2014 (Particulars of Claim s.2):

"Some Christians have completely misconceived the issue of Homosexuality, they have begun to twist the word of God. It is clearly evident in 1 Corinthians 6:9-11 what the Bible says on this matter. I do not believe you can be born gay, and I do not believe homosexuality is right, though the law of this land has made it legal doesn't mean it is right. I do believe that everyone sins and falls into temptation but it's by the asking of forgiveness, repentance and the grace of God that we overcome and live how God ordained us to. Which is that a man should leave his father and mother and be joined to his wife, and they shall become one flesh. Genesis 2:24. God loves everyone, just because He doesn't agree with your decisions doesn't mean He doesn't love you. Christians we need to step up and love but also tell the truth of God's word. I am tired of lukewarm Christianity, be inspired to stand up for what you believe and the truth #our God is three in one #God (Father) #Jesus Christ (Son) #Holy Spirit."

- a) 1 Corinthians 6:9-11

55. 1 Corinthians 6:9-11 states

⁹ "Or do you not know that wrongdoers will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral nor idolaters nor adulterers nor men who have sex with men^[a] ¹⁰ nor thieves nor the greedy nor drunkards nor slanderers nor swindlers will inherit the kingdom of God. ¹¹ And that is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God."

56. The basic meaning of this verse is that only those who have repented of their sins and evidenced that by seeking to exercise moral restraint in the face of temptation, will enter the Kingdom of God. This central aspect of New Testament teaching is then illustrated with specific examples:
57. *“Neither the sexually immoral nor idolaters”*: the word πόρνοι (*pornoi*) is a general term for those who are sexually immoral. It refers to any sexual relationship outside of heterosexual marriage. It is used for example, in the Septuagint (Greek translation of the Old Testament that was current at the time the New Testament was written) in Hosea 5:4 to refer to prostitution. It designates any sexual activity outside of marriage.
58. *“Nor adulterers nor men who have sex with men.”* The first word μοιχοὶ (*moichoi*) refers to adulterers i.e. it reinforces the earlier statement that no one who habitually seeks to engage in sexual activity outside of marriage will enter the kingdom of God. It is an habitual, unrepentant attitude to sin which is in view.
59. The final two examples μαλακοὶ (*malakoi*) and ἀρσενικοῖται (*arsenokoitai*) need to be understood together. There has been some debate about the meaning of these terms. That debate centres around i) how their usage in the New Testament relates to their usage in other ancient Greek literature; ii) in recent years there has been an attempt to claim that the condemnation of homosexual acts in the New Testament only refers to pederasty (i.e. sexual relations with boys).
60. In relation to the first: It is important to understand these words in their New testament context, rather than in relation to their etymology or their usage elsewhere as it is a fundamental principle of biblical exegesis that the meaning of a word is determined by its context. Thus, although μαλακοὶ (*malakoi*) may possibly be used in some other ancient Greek literature to mean “effeminate”, the text of 1 Corinthians 6:9 clearly focuses on those habitually engaging in certain acts. Professor C.K. Barrett translates this verse as

“fornicators’ (to be taken broadly), idolaters, adulterers, catamites, sodomites (the passive and active partners respectively in male homosexual relations)”.¹⁵

61. While pederasty appears to have been common in the ancient world it is clear from other parts of Paul’s New Testament epistles that: i) any sexual relationships outside of marriage (which is exclusively understood in heterosexual terms in both the Old Testament and the New Testament) is illicit; ii) that this includes any form of homosexual acts.
62. It should be noted that the Bible makes a distinction between the temptation or inclination to do a particular act and the act itself. It is only engaging in the act itself which is sinful. The temptation itself is not sinful and is regarded as part of the human condition.
63. It is important to note that the emphasis here is that temptation can be resisted – even though all do sin. For whilst as Romans 3:22-23 puts it *“without distinction all have sinned and fall short of the glory of God”*, we do so by choice and the New Testament emphasises God’s help (“grace”) is available to resist giving into temptation¹⁶ i.e. the Bible does not suggest that anyone is born with an uncontrollable urge to commit a particular sin, that they are incapable of resisting.
64. Rather, as James 1:14-15 puts it, sin happens when one entertains temptation and gives in to it.

“each person is tempted when they are dragged away by their own evil desire and enticed. ¹⁵ Then, after desire has conceived, it gives birth to sin; and sin, when it is full-grown, gives birth to death.”

¹⁵ C.K. Barrett *The First Epistle to the Corinthians* (London: A & C Black, 1971):140. C.K. Barrett DD, FBA was Professor of Divinity at Durham University.

¹⁶ 1 Corinthians 10:13.

65. The claimant's Facebook statement "*I do believe that everyone sins and falls into temptation but it's by the asking of forgiveness, repentance and the grace of God that we overcome and live how God ordained us to*" is a reasonable and fair statement of this aspect of biblical teaching and Christian belief.

66. Verse 11 is of particular significance. "*And that is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God.*"

The clear implication of this is that some of the Christians in the church at Corinth were previously habitually practising the things listed in verses 9-10 of which sexual immorality, including both adultery and men having sex with other men are given as examples.

67. The Apostle Paul states that although some of the Corinthian Christians used to habitually engage in such practices, not only had they ceased to do so, but as a result of their turning to Christ they "*were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ and by the Spirit of our God.*".

68. This is a central aspect of Christian teaching commonly referred to as the doctrine of sanctification. It means that the Holy Spirit works in the Christian's life to both i) negatively to undo the corruption caused by sin and ii) positively to incrementally, but increasingly transform the Christian into being the true humanity that God originally created man to be. As Professor Louis Berkhof observed "It is essentially a work of God, though insofar as he employs means, man can and is expected to cooperate with those means."¹⁷

¹⁷ Louis Berkhoff *Systematic Theology* (Edinburgh: Banner of Truth, 1949):532. The author was Professor at Calvin Seminary, Grand Rapids, Michigan. The book cited is widely regarded as a standard work of Reformed Christian Theology around the world.

b) Genesis 2:24

69. The claimant's Facebook post stated: *I do believe that everyone sins and falls into temptation but it's by the asking of forgiveness, repentance and the grace of God that we overcome and live how God ordained us to. Which is that a man should leave his father and mother and be joined to his wife, and they shall become one flesh. Genesis 2:24.*

70. It is helpful to set these verses in the context of the preceding verses (Genesis 2:20-24):

"But for Adam^[f] no suitable helper was found. ²¹ So the LORD God caused the man to fall into a deep sleep; and while he was sleeping, he took one of the man's ribs^[g] and then closed up the place with flesh. ²² Then the LORD God made a woman from the rib^[h] he had taken out of the man, and he brought her to the man. ²³ The man said, 'This is now bone of my bones and flesh of my flesh; she shall be called "woman," for she was taken out of man. ²⁴ That is why a man leaves his father and mother and is united to his wife, and they become one flesh."

71. Professor Gordon Wenham describes verse 24 as the biblical text "*applying the principles of the first marriage to every marriage*".¹⁸

72. Similarly, Derek Kidner comments on the central importance of these verses: "*the New Testament draws much of its teaching on the sexes from this crowning paragraph of the chapter...the sexes are complimentary: the true partnership is expounded by the terms that are used (a helper fit for him, 18,20 RSV; literally a help as opposite him)*".¹⁹

73. I therefore conclude that the claimant's Facebook post cited above is a fair and reasonable statement of biblical teaching on sexuality.

¹⁸ Gordon J Wenham *Genesis 1-15 Word Biblical Commentary* (Milton Keynes:Word,1991):70. Professor Wenham lectures in Old Testament at Trinity College, Bristol and was Professor of Old Testament at the University of Gloucestershire. He is widely recognised as a leading international authority on the Pentateuch.

¹⁹ Derek Kidner *Genesis: An Introduction and Commentary* (Leicester:IVP,1967):65. The author was formerly warden of Tyndale House, Cambridge.

The claimant's statement: "I do not believe you can be born gay and I do not believe homosexuality is right, though the law of this land has made it legal doesn't mean it is right."

74. I take the claimant's statement that she does not believe you can be born gay to be a statement of her belief as a Bible believing Christian for the reasons set out below:

75. In Romans Chapter 1 the Apostle Paul makes clear that homosexuality was not how God created man, but is a corruption of human nature:

76. "Therefore God gave them over in the sinful desires of their hearts for the degrading of their bodies with one another...because of this God gave them over to shameful lusts. Even their women exchanged natural relations for unnatural ones. In the same way, the men also abandoned natural relations with women and were inflamed with lust for one another..." (Romans 1:24-27).

77. The text of the Greek New Testament here is particularly emphatic that this is not the natural state of humanity, as God created them to be. As Dr Leon Morris comments: "Paul's word for 'abandoned' is a rather strong one...Paul is saying in strong terms that men were burned up with a powerful but unnatural passion."²⁰

78. Dr Morris is also emphatic that the Apostle Paul's assertion that homosexuality is an 'unnatural passion' is NOT derived from first century culture or worldview, but was in many respects diametrically opposed to it, adding that "This is sharply different from the general attitude among Greeks and Romans of the day, for they preferred this kind of love to heterosexual love."²¹

²⁰ Leon Morris *The Epistle to the Romans* (Leicester:IVP/Grand Rapids,Mi:Eerdmans,1988):92-93 on Romans 1:27. The author was Principal of Ridley College, Melbourne, Australia, visiting Professor of New Testament at Trinity Evangelical Divinity School, helped produce the NIV and ESV translations of the Bible, authored or co-authored over fifty books and was the editor of the *Tyndale New Testament Commentary* series.

²¹ Leon Morris *The Epistle to the Romans* (Leicester:IVP/Grand Rapids,Mi:Eerdmans,1988):93 on Romans 1:27.

79. Similarly, Professor David F Wright whilst acknowledging that some of the conceptual categories relating to homosexuality are extremely recent in origin, was emphatic that the Apostle Paul regarded homosexual activity as contrary to how God had created man to be:
80. “Certainly Paul could not have envisaged some facets of contemporary debates, such as ‘monogamous’ same-sex relationships between persons of homosexual preference. It is nevertheless a safe conclusion that, whatever might be said about individual orientations or dispositions, Paul could only have regarded all homosexual erotic and genital behaviour as contrary to the creator’s plan for human life, to be abandoned on conversion.”²²
81. It is therefore clear that the claimant’s Facebook statement “*I do not believe you can be born gay, and I do not believe homosexuality is right, though the law of this land has made it legal doesn’t mean it is right.*” is a statement of the claimant’s Christian beliefs, which are based on the teaching of the Bible that a) homosexual sexual acts are sinful; and/or b) more broadly, rejecting the idea of there being any moral equivalence between heterosexual marriage and same sex relationships.

The Christian doctrine of the Bible – the truth of the Bible

82. The particulars of claim s.3 state that the Facebook post the claimant made in 2014 represent her “deeply held religious beliefs. In summary these are:
- a. Her belief in the truth of the Bible, in particular Genesis 2 v 24 and 1 Corinthians 6 v 9-11.
 - b. Her belief that although God loves all mankind, He does not love all mankind’s acts, in particular she believes that Homosexual practice (as distinct from homosexual desires) is sinful/morally wrong.

²² David F Wright ‘Homosexuality’ in Gerald F Hawthorne, Ralph P Martin and Daniel G Reid (eds) *Dictionary of Paul and His Letters* (Downers Grove, IL/Leicester: IVP, 1993): 413-15. The author was Professor of Patristic & Reformed Christianity at the University of Edinburgh.

- c. Her belief that not to speak out in defence of these beliefs, would be sinful/contrary to her beliefs. “

83. The claimant’s 2014 Facebook post concludes by stating

“I am tired of lukewarm Christianity, be inspired to stand up for what you believe and the truth #our God is three in one #God (Father) #Jesus Christ (Son) #Holy Spirit.””

84. In s.38 of the original Grounds of Resistance the respondents state: *“It is admitted that the claimant held beliefs set out in paragraphs 3a and 3b. The claimant is however invited to clarify the sense in which she uses the word truth in paragraph 3a.”*

85. The biblical understanding of truth is that God is truth i.e. the ultimate source and authority for all truth. However, God has revealed himself to man by revelation, in particular by the incarnation by which God, as Jesus. This is exemplified in Jesus’ statement in John 14:6

“I am the way the Truth and the Life, No one comes to the Father except through me.”

86. However, God has also revealed himself in the Bible, with Jesus’ prayer for his disciples Jesus in John 17:16-18 specifically referring to God’s word as “truth”

“They are not of the world, even as I am not of it. ¹⁷ Sanctify them by the truth; your word is truth. ¹⁸ As you sent me into the world, I have sent them into the world.”

87. In Christian theology biblical truth is authoritative because it is divine revelation. As Professor J.I Packer puts it:

“Scripture expresses and mediates the authority of God, which means, formally, his right to be believed when he speaks and obeyed when he commands.”

Adding that at the reformation

*“The Reformers coined the slogan **sola Scriptura**: Scripture alone....the Bible remains the decisive and final authority, the norm by which all teaching of tradition and the church is to be tested.”*²³

88. Biblical truth therefore represents the word of an all knowing, infallible God. It is therefore understood to be of a wholly different order to human knowledge derived from other sources.

89. Attitudes to “biblical truth” in the western church today can broadly be categorised as either:

- a) Evangelical – holding to the reformation emphasis on *sola Scriptura* i.e. believing that the Bible is the inspired word of God and the sole ultimate source of authority.
- b) Catholic – broadly speaking, holding both the Bible and a particular tradition of interpretation as authoritative.
- c) Liberal – which rejects the ultimate authority of the Bible, while still self-identifying as Christian. Professor J.I. Packer describes Liberalism as *“A purpose of adapting the substance of faith, however conceived to current naturalistic and anthropocentric viewpoints, abandoning traditional dogmas when necessary.”*²⁴

90. Whilst liberals have sought to persuade some denominations to adopt positions that positively affirm same sex relationships, it would be wholly wrong to conclude that this position represents either: i) the teaching of the Bible; ii) the historic understanding of Christian sexual ethics held by Christians for the overwhelming majority of church history; or iii) the majority opinion of the global Christian church today.

²³ J.I. Packer ‘Scripture’ in Sinclair B Ferguson, David Wright and J.I. Packer (eds) *New Dictionary of Theology* (Leicester:IVP,1988):627-31. J.I. Packer was Professor of Systematic Theology at Regent College, Vancouver.

²⁴ J.I. Packer ‘Liberalism and Conservatism in Theology’ in Sinclair B Ferguson, David Wright and J.I. Packer (eds) *New Dictionary of Theology* (Leicester:IVP,1988):384-86.

91. The claimant's Facebook post and her subsequent affirmation of it suggests that she is an Evangelical Christian and adopting a position that is at least broadly consistent with historic Christian understanding of marriage and sexual ethics.

Lukewarm Christianity

92. The claimant's Facebook post ended by stating: "*Christians we need to step up and love but also tell the truth of God's word. I am tired of lukewarm Christianity, be inspired to stand up for what you believe and the truth #our God is three in one #God (Father) #Jesus Christ (Son) #Holy Spirit.*"

93. The phrase 'lukewarm Christianity' appears to reflect the condemnation of the Laodicean church in the book of Revelation (the final book of the Bible):

94. "¹⁴*To the angel of the church in Laodicea write:*

*These are the words of the Amen, the faithful and true witness, the ruler of God's creation. ¹⁵ I know your deeds, that you are neither cold nor hot. I wish you were either one or the other! ¹⁶ So, **because you are lukewarm**—neither hot nor cold—I am about to spit you out of my mouth. ¹⁷ You say, 'I am rich; I have acquired wealth and do not need a thing.' But you do not realize that you are wretched, pitiful, poor, blind and naked. ¹⁸ I counsel you to buy from me gold refined in the fire, so you can become rich; and white clothes to wear, so you can cover your shameful nakedness; and salve to put on your eyes, so you can see.*

¹⁹ Those whom I love I rebuke and discipline. So be earnest and repent. ²⁰ Here I am! I stand at the door and knock. If anyone hears my voice and opens the door, I will come in and eat with that person, and they with me."

95. The passage has been well known among Christians as exhorting them not to be lukewarm, but rather fervent in their faith. It has also had a wider impact on both the English language and British culture more generally, particularly through William

Holman Hunt's famous painting depicting v.20 which currently hangs in Keble College, Oxford, St Paul's Cathedral and Manchester Art Gallery.²⁵

96. Whilst the New Testament condemns 'lukewarm' Christianity, the opposite has often been the case historically with Evangelicals, such as for example, John Wesley condemned by other members of the church, as "enthusiasts", who on a number of occasions actively sought to persecute him and his followers.²⁶

97. As such it would be wholly wrong to conclude that because a number of liberal Christians have sought to persuade some denominations to adopt positions that positively affirm same sex relationships, that this in any sense absolves other Christians from following the teaching of the Bible in respect of sexual ethics.

The claimant's statement that not to speak out in defence of these beliefs, would be sinful/contrary to her beliefs.

98. I confirm that the claimant's belief that the Christian faith requires her to speak out about her beliefs and not seek to hide her beliefs is biblically based. This is clearly set out in the teaching of Jesus. For example, in Matthew 12:14-16:

99. "You are the light of the world. A town built on a hill cannot be hidden. ¹⁵ Neither do people light a lamp and put it under a bowl. Instead they put it on its stand, and it gives light to everyone in the house. ¹⁶ In the same way, let your light shine before others, that they may see your good deeds and glorify your Father in heaven.

100. Similarly, Luke 12:8-11 records the words of Jesus that:

"I tell you, whoever publicly acknowledges me before others, the Son of Man will also acknowledge before the angels of God. ⁹ But whoever disowns me before others

²⁵ < <https://www.keble.ox.ac.uk/about/chapel/light-of-the-world/> > [accessed 14 March 2020].

²⁶ A. Skevington Wood *The Burning Heart: John Wesley: Evangelist* (Minneapolis: Bethany, 1967/Exeter: Paternoster, 1978): 171-73 describes a number of incidents where Anglican clergy either incited mob violence against them or where the clergyman was also a magistrate denied his followers justice.

will be disowned before the angels of God...¹¹ ‘When you are brought before synagogues, rulers and authorities, do not worry about how you will defend yourselves or what you will say,’

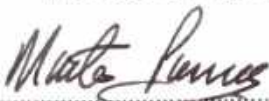
Conclusions

101. Both the original Facebook Post made by the claimant some years prior to her employment and her subsequent affirmation of it are consistent with and expressions of a biblical understanding of marriage, sexuality and sexual ethics as these have historically been understood throughout the majority of Christian history.
102. I would also draw the Tribunal’s attention to the fact, that as outlined in s.46-50 above, whilst it is incumbent on Christians to themselves follow biblical teaching on sexual ethics in their own lives and in the church, the New Testament does not instruct Christians to act in a prejudicial manner towards members of the LGBT community in the workplace or wider society.

EXPERT DECLARATION

I, Dr Martin Parsons, declare the following:

1. That I understand that my duty in providing written reports and giving evidence is to help the tribunal, and that this duty overrides any obligations to the party by whom I am engaged or the person who has paid or I liable to pay me. I confirm that I have complied and will continue to comply with my duty.
2. I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case.
3. I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
4. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
5. I will advise the party by whom I am instructed if, between the date of my report and the hearing, there is any change in circumstances which affect my answers to points 3 and 4 above.
6. I have shown the sources of all information I have used.
7. I have exercised reasonable care and skill in order to be accurate and complete in preparing this report.
8. I have endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.
9. I have not, without forming an independent view, included or excluded anything which has been suggested to me by others, including my instructing lawyers.
10. I will notify those instructing me immediately and confirm in writing if, for any reason, my existing report requires any correction or qualification.
11. I understand that
 - 11.1 My report will form evidence to be given under oath or affirmation.
 - 11.2 Questions may be put to me in writing for the purposes of clarifying my report and that my answers shall be treated as part of my report and covered by my statement of truth;
 - 11.3 The tribunal may at any stage direct a discussion to take place between experts for the purpose of identifying and discussing the expert issues in the proceedings, where possible reaching an agreed opinion on those issues an identifying what action, if any, may be taken to resolve any of the outstanding issues between the parties.
 - 11.4 The tribunal may direct that following a discussion between the experts that a statement should be prepared showing those issues which are agreed, and those issues which are not agreed, together with a summary of the reasons for disagreeing.
 - 11.5 I may be required to attend tribunal to be cross examined on my report by a cross-examiner assisted by an expert;
 - 11.6 I am likely to be the subject of public adverse criticism by the judge if the tribunal concludes that I have not taken reasonable care in trying to meet the standards set out above.
12. I have read Part 35 of the Civil Procedure Rules, the accompanying practice direction and the Guidance for the instruction of experts in civil claims and I have complied with their requirements.
13. I am aware of the practice direction on pre-action conduct. I have acted in accordance with the Code of Practice for Experts.



Dr Martin Parsons

11th May 2020