DISCRIMINATION LAW ASSOCIATION

Briefings

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Religion or belief and the 'reason why' test

Omooba v Michael Garrett Associates Ltd and Leicester Theatre Trust Ltd [2026] EWCA Civ 253; 13 March 2026

Implications for practitioners

This decision is significant for two main reasons.

- There is a very high threshold for reopening a refusal of permission to appeal under rule 52.30 of the Civil Procedure Rules (CPR). A later appellate decision, even in a related area, will not usually be enough. The applicant must show exceptional circumstances. The integrity of the earlier proceedings must have been critically undermined.
- In religion or belief cases, a tribunal may need to decide whether the protected belief, or its manifestation, was the reason for the treatment. But the fact that a belief forms part of the background sequence of events leading to the treatment is not necessarily enough.

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The Court of Appeal also confirms the so-called *'separability approach'*[1] is not a rule of law. It is a tool which may assist a tribunal in identifying the real reason for the treatment, which remains a question of fact for the employment tribunal.

Facts

Miss Seyi Omooba (SO) is an actress represented by an agent, Michael Garrett (the agent). In December 2018, she was offered the leading role of Celie in a stage production of *The Color Purple* at the Curve Theatre in Leicester (the theatre).

SO accepted the role and entered into an employment contract with the theatre on 10 January 2019. On 14 March 2019, the theatre announced the cast. The following day, another actor tweeted a screenshot of a Facebook post from 2014 in which SO had expressed her religious belief about homosexuality being sinful and contrary to biblical teaching. The tweet then asked whether SO stood by the post, given that she had been cast in what was an LGBTQ role.

The employment tribunal later described what followed as a *'savage and speedy social media storm'* and on 21 March 2019, the theatre terminated its contract with SO. Three days later, so did the agent.

SO said that she had not realised that her character would be portrayed as lesbian because she had originally auditioned for a different part and had not read the full script before accepting the role of Celie. She later accepted in evidence that she could not have played the part because it crossed what the employment tribunal called her *'red line'*.

Employment Tribunal

SO brought a number of claims in the ET against the agent and the theatre, all of which were dismissed at the full hearing in 2021.

1 See, eg, *Higgs v Farmor's School* [2023] EAT 89. In determining the reason for treatment, the 'separability approach' allows an ET to distinguish between a protected religion/belief and the manner of its manifestation.

The tribunal found that the reason the theatre terminated SO's contract was not her religious belief, or its manifestation. Instead, it was due to the adverse publicity's effect on the cast's cohesion, the audience's reception, the producers' reputation, and the production's good standing and commercial success. The ET found that what operated on the agent's mind was not the fact of SO's belief, but the commercial risk to the business of losing clients and agents.

Judge Eady held that the employment tribunal had not confused reason and motive. They were entitled to find that SO's belief was part of the context, but not the reason for the termination of the contracts.

The ET also rejected the harassment claim. It did not accept that the respondents had caused or contributed to the social media storm in a way that amounted to harassment under s26 Equality Act 2010 (EqA).

Finally, the breach of contract claim against the theatre also failed. The tribunal found that SO would not, in fact, have performed the role once she understood what it required, and, in any event, there was an open offer to pay the full contract fee.

The ET made a costs order against SO along with an order requiring her and her representatives to remove trial documents from their websites, which had been made available during the remote hearing.

Employment Appeal Tribunal

In 2023, the EAT dismissed the appeal. Judge Eady held that the employment tribunal had not confused reason and motive. They were entitled to find that SO's belief was part of the context, but not the reason for the termination of the contracts.

The judge also upheld the dismissal of the harassment claim, holding that the ET were entitled to find that the respondents had not caused or contributed to the alleged prohibited environment.

Finally, the EAT held that the employment tribunal was entitled to reject the breach of contract claim and upheld the orders regarding costs and publication of documents.

Court of Appeal

On 10 July 2024, Lord Justice Bean refused permission to appeal to the Court of Appeal. SO then applied to reopen that refusal under CPR 52.30. Her application relied on the later decision of the Court of Appeal in *Higgs v Farmor's School* [2025] EWCA Civ 109.

SO argued that *Higgs* was inconsistent with the refusal of permission in her case. She claimed this showed that Bean LJ had failed to grapple with the issues. The Court of Appeal rejected that argument and refused the application.

In doing so, they confirmed that CPR 52.30 sets a very high threshold which requires truly exceptional circumstances. The integrity of the earlier proceedings must have been critically undermined. There must be a powerful probability that a significant injustice has occurred, sufficient to outweigh the strong public interest in finality.

The court held that this threshold was not met. They distinguished *Higgs* on the grounds that the *'reason why'* question was not the issue before the EAT. The key questions were whether the Facebook posts in that case were manifestations of Mrs Higgs' protected beliefs, and whether the employer's response to the manner of expression was proportionate.

In *Omooba*, by contrast, the central issue was the factual basis for the termination of the contracts. The ET had found that the reasons were the commercial, artistic and practical consequences of the social media storm, not SO's beliefs or their manifestation.

The court emphasised that the 'reason why' is a question of fact. A tribunal may distinguish between a protected characteristic or a manifestation of belief and other

genuinely separate features of the situation. These might include the manner in which something was said, the consequences of the conduct, or a dysfunctional situation which arises in the workplace or business context.

However, the court also confirmed that a respondent cannot simply rely on others' discriminatory reactions as a defence. A wish to avoid those reactions may be a motivating factor, but it will not, by itself, prevent a finding of discrimination.

The court accepted that direct discrimination cases can be factually difficult, but it rejected the submission that there was a rule of law which required the tribunal to find that either SO's belief, or its manifestation, was the reason for the treatment. The ET was entitled to find that the 'belief' was restricted to the wider context rather than the reason for terminating the contract.

The court also held that whilst Bean LJ's reasons were short, the cross-references showed that he had considered the ET decision, and the EAT judgment, along with SO's submissions.

They held the remaining grounds, including harassment, breach of contract, costs and publication of documents, came nowhere near the CPR 52.30 threshold. The court commented that it was difficult to argue that inaction constituted unwanted conduct or that any breach of Convention rights would necessarily amount to a violation of dignity under s26 EqA.

On breach of contract, the court considered that any issue was academic, given SO had been offered the full contract fee. The proposed appeal was also held not to meet the threshold under the CPR.

Comment

The decision is a useful reminder that religion or belief claims often turn on a careful factual analysis of causation. *Higgs* remains important. It confirms that where treatment is because of the *manifestation* of a protected belief, the tribunal must consider whether the employer's response is objectively justified. That principle is not replaced by the decision in *Omooba*, rather, it addresses a prior question: what was the reason for the treatment in the first place?

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For practitioners, the practical point is that the tribunal's findings on the '*reason why*' will often be decisive. A claimant will need to show that either the protected belief or its manifestation materially formed part of the reason for the treatment. It will not be enough to show only that the belief formed part of the background, or that the situation would not have arisen but for the belief.

For respondents, the decision does not provide a general defence based on reputational harm or third-party reaction. The Court of Appeal expressly cautioned that a respondent cannot simply shelter behind discriminatory reactions by others. Evidence will be needed as to the actual reason operating in the decision-maker's mind.

Finally, the case reminds us that CPR 52.30 is not a general route for revisiting an unsuccessful permission application after later case law has developed. The jurisdiction is reserved for exceptional cases in which the integrity of the earlier process has been severely undermined.

Oscar Davies
Barrister, Garden Court Chambers