

Employment law update

THURSDAY 23RD MARCH 2023, UNITE

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Welcome from the Chair

ADRIAN WEIR, CTUF

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Organising workers to resist authoritarian laws

SARAH WOOLLEY, BFAWU
THURSDAY 23RD MARCH 2023, UNITE

Planning and running large scale disputes

JANET FARRAR, UCU

THURSDAY 23RD MARCH 2023, UNITE

UCU RISING

Planning and running large- scale disputes

IER Thursday 23 March 2023

Janet Farrar

Campaign Plan

Organising Week

Anger Week

Confidence Week

Christmas

Get The Vote Out

Chase The Vote Out

Winning

- A strong central campaign led by HQ with social media, UCU Live etc
- Strong workplace organising campaign (rep buy-in throughout)
- Both are essential

GTVO

Head Office

- Self-reporting form
- ThruText
- Home mailings
- UCU Lives
- Social Media
- Member emails

Branches

- Meetings
- One-to-one conversations
- Local social media strategies
- Local voter mobilisation strategies

Chasing the Vote Out

- Need to pivot to those who have reservations about voting
- Not all members easily contactable
- Need to utilise the return to the workplace

Me Plus 10

- Each member pledges to speak to 10 members to persuade them to vote YES in the ballot
- Aims:
 - To focus on workplace organising
 - Maximise worker to worker conversations
 - Engage activists and recruit new members
 - Ensure every member (and potential member) is contacted face-to-face at workplace level and encouraged to vote

Organising Conversations (O4P)

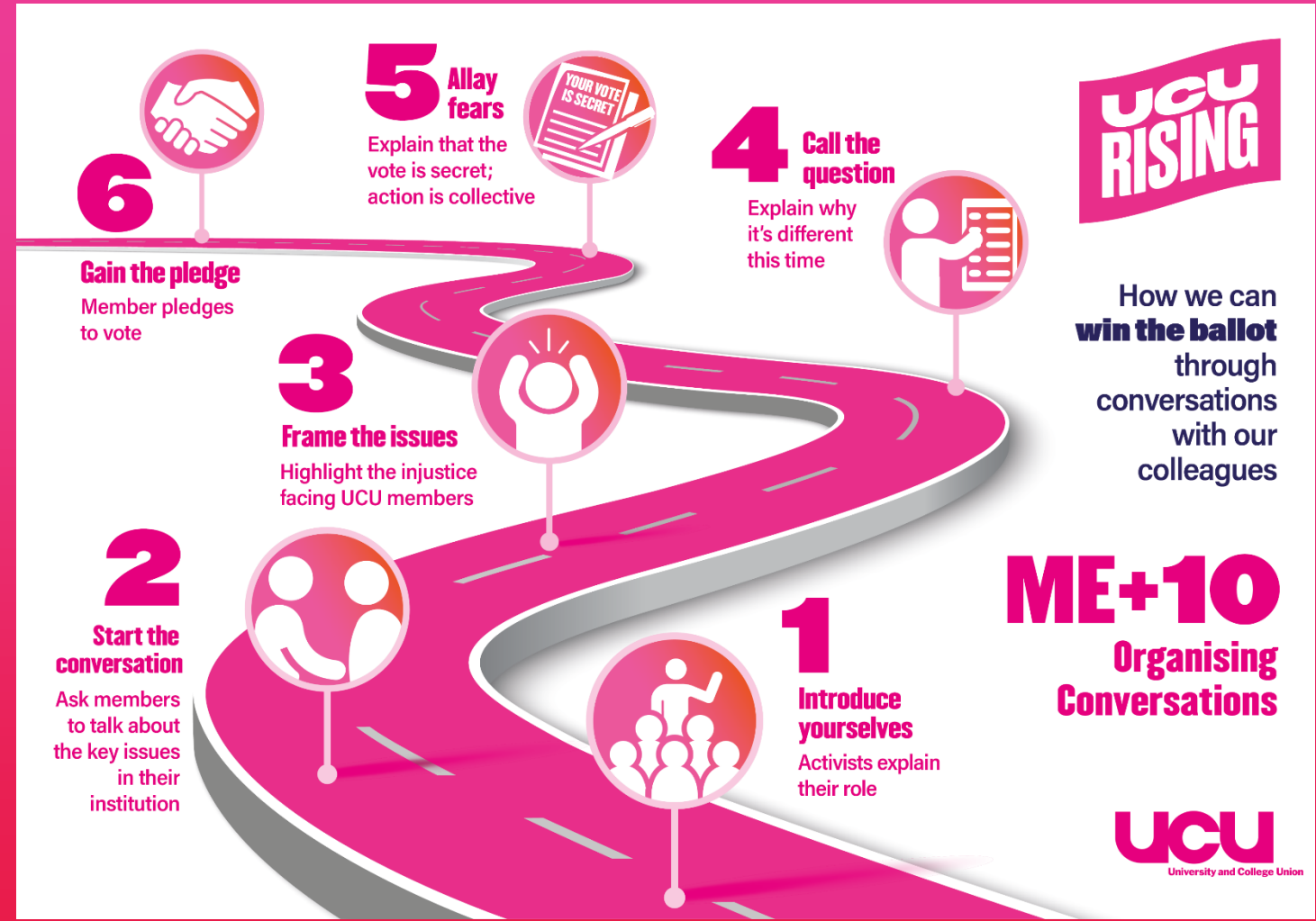
- Don't need to be confined by a script but a common approach can help.
- Use the Anger-Hope-Action frame
 - Frame the injustice (ANGER)
 - Frame the solution (HOPE)
 - Frame the next step (ACTION)

National GTVO Day

- Focus on workplace organising
- Bring in members and non-members outside of our activist base
- Talk to hesitant members about their concerns
- Get members who need replacement ballots to order them in the meeting
- Train members on how to have their own organising conversations

6-Step structured organising conversation

1. Introduction
2. Listen
3. Frame
4. Call the Question
5. Inoculate
6. Action



2. Listen

- Get their story
- 70/30 listening/talking
- Open questions
- Identify the issues they care about
- Allow them to recognise their agency
- Agitate – raise expectations, direct anger
- Don't be more agitated that they are!

3. Frame

- **Explain** how their righteous anger could result in action
- **Frame** the future
- **Show** how only by acting collectively can we win that future
- Give examples of **winning**

4. Call the Question

- **Describe** the plan
 - What does winning look like?
 - What is the strategy?
- **Frame** the question – what is we are asking people to do? Sign a petition, vote, strike etc
- **Ask** the question, “Will you...?”
- **Wait**...long, uncomfortable silence!
- If they say NO – ask, “What’s holding you back?”
- Don’t ignore but don’t let them off the hook
- Return to the issues they raised

Handling Objections



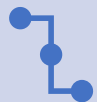
Acknowledge

I understand you feel that way ...



Answer

Things won't change overnight. But the only way to change things is through us all working together. That's the only way we'll have enough power



Redirect

If you had the power to change things, what's the first thing you'd do?

Answering the Tough Questions

- “We’ve been on strike before and not achieved anything”
 - This ballot is different – aggregated
 - It’s not just HE workers that are rising up, and workers in many sectors have won on a national level
- “I can’t afford to go on strike”
 - There is a strike fund (as well as any local hardship fund)
 - We can’t afford **not** to go on strike
 - We hope that the employer will come back to the negotiating table without the need to strike

Answering the Tough Questions

- “I don’t want a strike, I want a marking an assessment boycott”
 - A mandate in these disputes leaves all options on the table
- “I don’t want to go on strike”
 - This the only way for us to get the leverage to bring the employer back to the negotiating table
 - If we do not hit 50% then the employers have won, there will be no deal or negotiations and they will go even harder on us next time

5. Inoculation

- **Prepare** the worker for the bosses' response
- Get the worker to understand that the boss will fight back and the goal is for the worker to doubt the boss not the union
- Ask the worker what the boss might do – allow them to describe their fears etc
- Make sure the worker understands this is about **POWER**
- Don't freak them out!

6. Action

- Make sure the member has a ballot paper and knows how to vote as well as the deadline
- If they're not a member, join them up!

Q&A

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Break time

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Current industrial and collective legal issues

IAIN BIRRELL, THOMPSONS SOLICITORS

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CURRENT INDUSTRIAL AND COLLECTIVE LEGAL ISSUES

Iain Birrell

23 March 2023

Economic turmoil

- Economy damaged by effects of Brexit, covid, and low productivity
- Damage done by Trussonomics, workers leaving the labour market
- Inflation
- Low growth both historically and forecast
- Cost of living crisis
- Salting the earth for the new government?

A failed government

- A dearth of political and intellectual talent
- Incessant changes to departments and their leadership
- Riven by division
- Under the sway of reactionary and extreme right wing elements
- Held hostage by its own ideology
- Increasingly reliant on gesture politics, misinformation and disinformation
- Increasingly reliant on old instincts like authoritarianism and 'cracking down' on things

A changing public mood

- Widespread dissatisfaction with this government
- Changing attitudes to work and what it is for
- Economy edging towards full employment which gives labour more clout
- Widespread dissatisfaction with 'independent' pay bodies
- Public support for strikes is unexpectedly strong
- High profile successfully industrial action, e.g. criminal bar, firefighters, TSSA, and bus drivers from London to Birkenhead.
- Increasing public awareness of power of collectivism

Making it harder - *Trade Union Act 2016*

- Industrial action ballot thresholds
- Limited mandate length to 6 months so re-balloting cost
- New picketing restrictions
- Levy on trade unions for regulation
- Increased Certification Officer powers
- Political fund changes

Making it riskier

- Changed rules means increased chance of errors
- *The Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022* - quadrupled trade union exposure for unlawful industrial action. Now between £40,000 and £1,000,000

Making it less effective

- Agency staff as blackleg labour
- Minimum service levels in
 - Health
 - Fire & rescue
 - Education
 - Transport
 - Decommissioning of nuclear installations and management of radioactive waste and spent fuel
 - Border security

Going to law

- Legacy of cracking down on trade unions is renewed focus on legal fights
- Current collective legal issues
 - Defending collective bargaining – Kostal, INEOS, Jiwanji
 - Defending trade union activities - Mercer
 - Defending terms and conditions – USDAW v Tesco
 - Defending industrial action – GE Steam Power, judicial review

Defending collective bargaining –

s.145B TULRA92

- Kostal [2019], Supreme Court
 - Protecting the union's 'seat at the table'
 - Unlawful to go direct to employee until collective bargaining is concluded, but ...
 - Need to be a real possibility that continued collective bargaining would have produced a deal (but this is an 'ordinary presumption' per Legatt LJ)

- INEOS [2022], Employment Appeal Tribunal
 - 'offer' includes a unilaterally imposed pay award
 - Calling an offer 'final' doesn't make it final
 - If no formal collective bargaining procedure need to objectively ascertain if collective bargaining is concluded

Defending collective bargaining –

s.145B TULRA92

- Jiwanji v ECML [2022], Leeds Employment Tribunal
 - Not open to employer to just decide collective bargaining was concluded
 - Reasonableness or rationality of a party's position is irrelevant to the issue of subjective purpose
 - Unless collective bargaining machinery allows otherwise, single-table bargaining requires agreement by everyone there

Defending trade union activities –

Mercer [2021], Court of Appeal

- Protection for undertaking ‘trade union activities’
- Definition excludes industrial action
- Whether unlawful or not.
- EAT said it was breach of Article 11 right of freedom of association – *‘It would be artificial to suggest that a strike that is organised and called by a trade union is not one of its own activities’*
- Court of Appeal said ‘nothing to see here’
- Supreme Court likely to settle it in 2023/2024

Defending terms and conditions –

USDAW v Tesco [2022], Court of Appeal

- When does ‘permanent’ mean ‘permanent’?
- Earlier negotiations on basis that terms were “*guaranteed forever*”, “*guaranteed for life*”, and could “*only be changed by mutual consent*”.
- Employees told term “*remains for as long as you are employed by Tesco in your current role*”
- Tesco sought to remove these via fire and rehire
- High Court granted injunction to stop this
- Court of Appeal upheld the appeal
- Supreme Court likely to hear it in late 2023

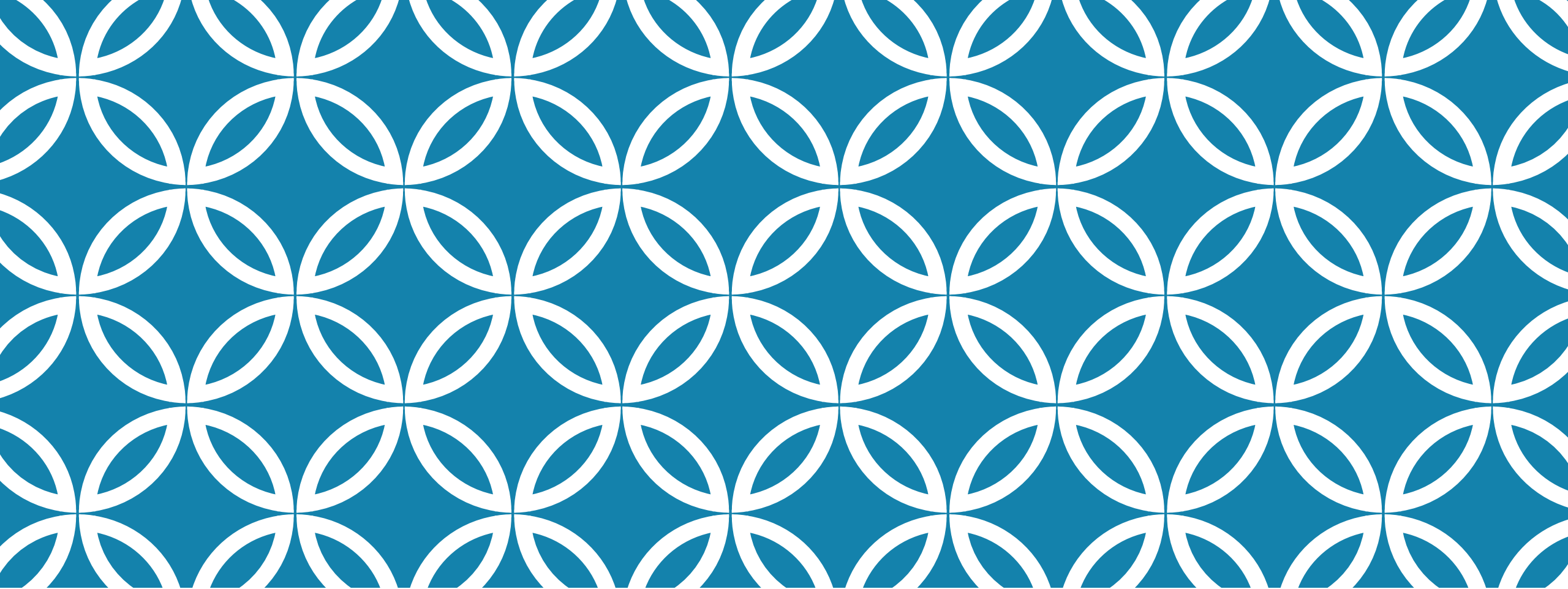
Defending industrial action

- Judicial review of *Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022* by TUC, UNISON & NASUWT
 - Lack of fair consultation
 - Unlawful interference with Article 11 rights
- GE Steam Power v Unite [2022], High Court
 - 3 clear days' service required for injunction application
 - Employer messed up
 - Successful defence of trade dispute description:
 - 'Employer's failure to adhere to collective bargaining arrangements';
 - 'Employer's failure to award payment for training and mentoring other Employees'.

Preparing for and appearing in employment tribunals

ROHAN PIRANI, REGIONAL EMPLOYMENT JUDGE SOUTH WEST

THURSDAY 23RD MARCH 2023, UNITE



PREPARING AND PRESENTING ET CASES

Rohan Pirani

Dismissed NHS whistleblower who exposed safety concerns handed £1.22m

An employment tribunal has found cardiologist Raj Mattu was unfairly dismissed in 2010 after raising concerns about patient safety

Press Association

Thu 4 Feb 2016 23.23 GMT



Dr Raj Mattu and his wife Sangeeta at home in Warwick, surrounded by the files connected to his case. Photograph: The Observer

An NHS whistleblower who was unfairly sacked after exposing concerns about patient safety has been awarded £1.22m in damages by a hospital trust.

Cardiologist [Raj Mattu](#) claimed he had been vilified and bullied and subjected to a 12-year “witch-hunt” after making the claims at [Walsgrave hospital in Coventry in 2001](#).

He was sacked in 2010, but [Birmingham](#) employment tribunal ruled that he



PODCAST

The Trojan Horse Affair

Serial Productions & The New York Times

FOLLOW



All Episodes



Trailer

A mysterious letter detailing a supposed Islamist plot to take over schools shocked Britain in 2014. But who wrote it? From Serial Productions and The New York Times, "The Trojan Horse Affair," an investigation that became bigger...



Jan 2022 · 3 min 7 sec



Part 1: The Letter in the Brown Paper Envelope

A strange letter appears outlining a plot by Islamic extremists to infiltrate Birmingham schools. Hamza and Brian visit the supposed mastermind of the plot, and he tells them he did take over a bunch of schools – just not for the...



Feb 2022 · 59 min 3 sec

About

A strange letter appears on a city councillor's desk in Birmingham, England, laying out an elaborate plot by Islamic extremists to infiltrate the city's schools. The plot has a code name: Operation Trojan Horse. The story soon explodes in the news and kicks off a national panic. By the time it all dies down, the government has launched multiple investigati

... see more

Society

Culture

Personal stories



Trailer

TRAILER Jan 2022 · 3 min 7 sec



[Home](#) > [Crime, justice and law](#) > [Courts, sentencing and tribunals](#)

Guidance

MyHMCTS: online case management for legal professionals

How to create a MyHMCTS organisation account to create, manage, submit and pay for online cases.

From: [HM Courts & Tribunals Service](#)

Published 22 October 2020

Last updated 1 September 2021 — [See all updates](#)

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[Form D11: apply for an interim order as part of divorce, dissolution or separation court](#)

TRACKS

- short
- standard
- open

THREE ISSUES

- no application forms
- email triage
- time limits

PROLIFERATION

Court of Appeal in Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA:

Attempts must be made by all concerned to keep the discrimination/detriment proceedings within reasonable bounds by concentrating on the most serious and the more recent allegations

REMOTE HEARINGS

- Practice Direction / Guidance
- roadmap: 2022-2023
- virtual region
- CVP/VHS



BETA This is a new service – your [feedback](#) will help us to improve it.

Your video hearing is about to begin

Choose camera and microphone

A Smith v HMRC (Tax) case number: DEMO VH-07062021

07 June 2021 13:15 to 13:45

Please stay near your screen
Make sure you're ready when the judge starts the hearing.

The time now is:
13:24

Start a private meeting

Join a private meeting

[▶ What are private meetings?](#)

Judge
J Graham



Participants (3)

Ms Alice Smith
Litigant in person

Appellant

Available

Ms Helen Brown
Representative for
A Smith

Appellant

Available

Mr Donald White
Representative for
HMRC

Respondent

Video hearings team: 0300 303 0655

Message video hearings officer



VH Participant JUN2021



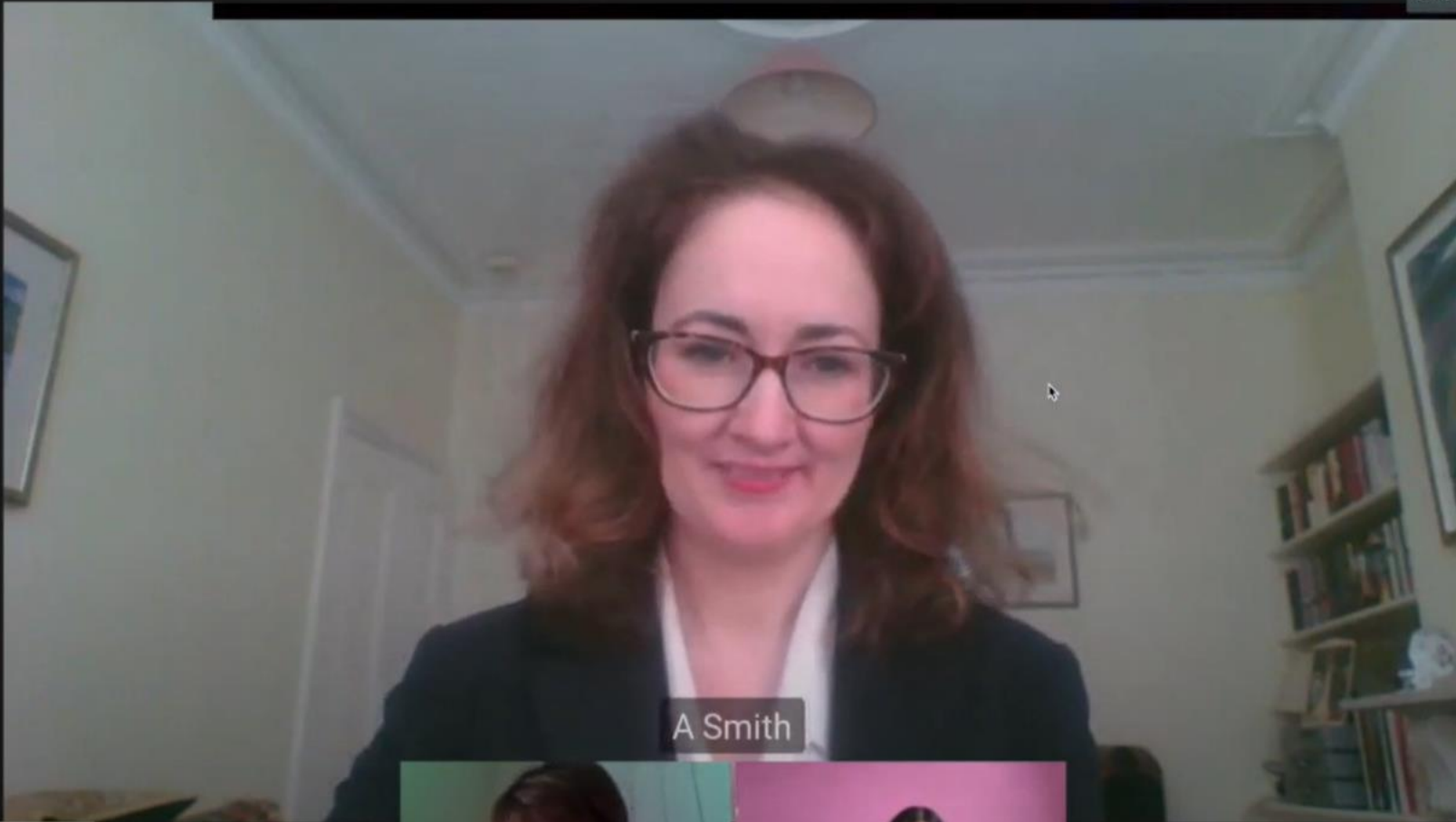
Copy link

Video Hearings - Waiting room [X] +

https://vh-video-web-preprod.hearings.reform.hmcts.net/participant/waiting-room/a27d8808-3337-40c1-b... Search

A Smith v HMRC: DEMO VH-07062021

Unmute microphone



A Smith



J Graham



H Brown

2:44 / 4:01



JUDICIAL PERSPECTIVE

- duty / OJB
- pre-reading / members
- timetabling
- rule 62(5)

TIP 1 CLAIM FORM

- persuasive
- issues
- concise

TIP 2 : TCMPH

- issues in dispute
- timetable
- advocate

TIP 3: JM/ADR

- lump sums
- first offer
- danger zone
- w/p subject to costs

TIP 4: WITNESS STATEMENTS

- Presidential Guidance (2018)
- issues
- documents / story

Q&A

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Lunch time

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Religion and belief discrimination

PAUL SCHOLEY, MORRISH SOLICITORS
THURSDAY 23RD MARCH 2023, UNITE



RELIGION AND BELIEF DISCRIMINATION

FORSTATER AND BEYOND

Paul Scholey

Consultant | Employment Department

Morrish Solicitors LLP

A talk for IER – London 23.3.23



Always there for you.

Agenda

- The Law
- The *Grainger* Principles
- Examples
- *Forstater*
- *Mackereth*
- *Bailey*
- Recent cases



Always there for you.

The Equality Act 2010

S.10

1. Religion means any religion and a reference to religion includes a reference to a lack of religion
2. Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief



Always there for you.

Religion

- Christianity
- Islam
- Catholicism / Protestantism
- Etc.



Always there for you.

Types of discrimination

- Direct
- Indirect
- Harassment
- Victimisation



Always there for you.

The *Grainger* Principles

Grainger plc and others v Nicholson

- The facts: climate change
- *"not merely an opinion but a philosophical belief which affects how I live my life including my choice of home, how I travel, what I buy, what I eat and drink, what I do with my waste and my hopes and fears"*



Always there for you.

Grainger v Nicholson

- The belief had to be:
 - Genuinely held and a *belief*, not an opinion or viewpoint
 - A belief as to a weighty and substantial aspect of human life and behaviour
 - It had to attain a certain level of cogency, seriousness, cohesion and importance
 - Worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others
 - Of a “similar status or cogency to a religious belief”



Always there for you.

Examples

The older cases

- Fox hunting: *Hashman v Milton Park (Dorset) Ltd t/a Orchard Park*
- Public Service Broadcasting: *Maistry v BBC*
- The BNP: *Baggs v Fudge* (cf. *Finnon v Asda*)
- Patriotism and loyalty to flag: *Williams v South Central Limited*



Always there for you.

Religion v LGBTQ+

- Same-sex partnerships: *Ladele v London Borough of Islington*
 - Plus *McFarlane v Relate Avon Limited*
- Biblical extracts: *Apelogun-Gabriels v London Borough of Lambeth*



Always there for you.

Forstater

- The facts
- The EAT decision
- The “threshold for protection of belief” is low
- Return to the ET
- Remedy awaited



Always there for you.

Mackereth

- The facts
- ET decision
- EAT appeal
- Further appeals?



Always there for you.

Bailey v Stonewall

- The facts: self-ID
- ET decision



Always there for you.

More recently...

- Apparent bias: *Higgs*
- Football: *McClung*
- Pride: *Walters*
- School sermon: *Randall* (6.3.23)



Always there for you.

ANY QUESTIONS?

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Trade Union rights under attack— where are we heading?

PROF KEITH EWING, KINGS COLLEGE LONDON & IER
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