



briefing

Employment, Pensions & Benefits - December 2009

Court of Appeal gives significant decision in religious belief case

The Court of Appeal has just given its decision in the case [Ladele v London Borough of Islington](#) and has upheld the EAT decision of December 2008 that a Registrar who refused to conduct civil partnership ceremonies was not discriminated against or harassed on the grounds of her religious belief.

Background

"Everyone has the right to freedom of thought, conscience and religion".

This is the well-established principle set out in Article 9 of the European Convention on Human Rights. Article 9 is a qualified right however and this means that it can be infringed if such action is justified, necessary and in the interests of legitimate objectives. The [Ladele](#) case relates to the sensitive issue of the conflict of rights between strongly held religious beliefs and sexual orientation.

Ms Ladele, a Christian, worked as a Registrar of Births, Deaths and Marriages. She held strong religious beliefs and disapproved of same sex partnerships and objected to participating in civil partnership ceremonies. As a temporary measure, Islington proposed that Ms Ladele would not be asked to officiate at civil partnership ceremonies but that she would be expected to perform all other duties relating to them. [Islington made it clear that refusal to carry out any civil partnership duties conflicted with its equality and diversity policy.](#) In reality, Ms Ladele avoided carrying out any civil partnership duties by swapping her duties with other members of staff. This caused concerns in the department and in particular, with gay members of staff.

Disciplinary proceedings were subsequently commenced against Ms Ladele and she was found guilty of gross misconduct. Ms Ladele commenced proceedings under the Employment Equality (Religion or Belief Regulations) 2003 claiming she had been directly and indirectly discriminated against on the grounds of her religion or belief.

[The Employment Tribunal upheld the claims.](#) In relation to direct discrimination, Ms Ladele had been treated less favourably when Islington designated Ms Ladele as a civil partnership Registrar even though this was in conflict with her religious convictions. Islington had also failed to deal with her complaints of discrimination as thoroughly as it had dealt with complaints of discrimination brought by its gay members of staff and it had subjected her to disciplinary proceedings.

As for indirect discrimination, the Employment Tribunal found that Islington's requirement that Ms Ladele should carry out civil partnership ceremonies and registration duties was an indirect discriminatory provision, criterion or practice (PCP) because it meant that individuals who held strong religious beliefs were at a disadvantage when compared with other persons who did not hold those beliefs. Islington was unsuccessful in its argument that it had a legitimate aim in imposing the PCP because it was committed to promoting equal opportunities and tackling discrimination. [Islington then appealed.](#)

Employment Appeal Tribunal decision

[The EAT allowed the appeal.](#) The reason for Islington's treatment of Ms Ladele was because of [her refusal to carry out a legitimate duty](#), namely, to carry out civil partnership ceremonies rather than because of her religious beliefs. By asking to be excused from those duties, Ms Ladele was effectively asking Islington to make an exception for her. Further, another Registrar who refused to carry out civil partnership duties because they opposed the concept of same sex relationships but for reasons unconnected to any religious belief would have been treated the same way. Consequently there was no direct discrimination.

In relation to the issue of indirect discrimination, the EAT had to consider whether the action taken by Islington against Ms Ladele was a proportionate means of achieving a legitimate aim. Islington argued it had a legitimate aim of providing non-discriminatory services to all the community. Also, as a public authority it was committed to promoting equal opportunities. Allowing a Registrar not to carry out certain duties for discriminatory reasons would undermine that objective. Islington argued it was justified therefore in forbidding any Registrar from choosing not to carry out duties for discriminatory reasons. The EAT agreed. [Providing a non-discriminatory service was a legitimate aim and Islington was entitled to require all Registrars to perform the full range of civil partnership services.](#) Ms Ladele could not pick and choose what duty she would perform depending on whether they were in accordance with her religious views. The reason for Ms Ladele's dismissal was her refusal to carry out a legitimate duty and not because of her religious beliefs.

Court of Appeal decision

[The Court of Appeal upheld that decision.](#) Ms Ladele was employed in a public job and was working for a public authority. She was being required to perform a purely secular task which was being treated as part of her job. Islington's requirement for her to do that part of her job did not prevent Ms Ladele from worshipping as she wished. Further, the Equality Act (Sexual Orientation) Regulations 2007 made it unlawful to discriminate on the grounds of sexual orientation in the provision of goods, facilities or services to members of the public and in the exercise of public functions.

Comment

[The Court of Appeal has refused Ms Ladele permission to appeal to the Supreme Court](#) (formerly the House of Lords) and its decision provides some clarity as to the issues employers need to bear in mind when there is a conflict in the workplace between someone's religion or belief and another person's sexual orientation. If someone participates in discriminatory behaviour because they hold strong religious beliefs it will be difficult for them to rely on the provisions of the Religion or Belief Regulations.

A similar issue arose in the recent high profile case of [McFarlane v Relate Avon Ltd](#). Mr McFarlane, a Christian, was a relationship counsellor and Relate's equal opportunities policy included a commitment to equal treatment of all staff and clients irrespective of, for example, their sexual orientation. In 2006, Mr McFarlane said he wanted to start a training course to provide psycho-sexual therapy (PST) to clients. However, he believed that same-sex sexual activity was sinful and raised with his manager the possibility of being excused from working with same sex couples where sexual issues were involved.

Relate told Mr McFarlane this was unacceptable and he was subsequently dismissed for gross misconduct. His claims of direct and indirect discrimination and harassment on the grounds of religion or belief were dismissed by the Employment Tribunal as was his unfair dismissal claim (his wrongful dismissal claim was successful). His appeal to the EAT was dismissed. The reason for dismissal was not Mr McFarlane's religion but his actions which were the manifestation of his belief. Although Relate, was not a public authority, it had fundamental principles which it was committed to maintain for members of the public. It was not expected to compromise those principles by making arrangements to accommodate Mr McFarlane's request.

More information

If you would like further information, or would like to discuss the potential impact of these decisions on your organisation, please call Debra Gers, or your regular Morgan Cole contact.



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