

Client Alert.

24 January 2013

Religious Discrimination in the Workplace

By **Caroline Stakim**

The European Court of Human Rights (the “ECHR”) has issued its long awaited judgment in the case of *Eweida and Others v the United Kingdom*, the joint complaint of four employees that the UK had failed to protect their right to manifest their religion and be protected against discrimination under, respectively, Articles 9 and 14 of the European Convention of Human Rights (the “Convention”). This judgment is welcome guidance for employers faced with the often difficult task of balancing the competing rights of employees and service users.

The joint complaint comprised two categories of cases: one relating to the display of religious symbols at work and the other relating to conflicts between employees’ duties and their religious beliefs.

RELIGIOUS SYMBOLS AT WORK

In the first case, Ms Eweida, an employee of British Airways (“BA”), was suspended without pay after refusing to remove a cross, visible above her uniform. BA’s uniform policy at the time required all jewellery to be removed other than that required for mandatory religious reasons which had been approved by local management. Ms Eweida’s claim for indirect discrimination was rejected by the Court of Appeal after she failed to provide evidence of other Christians being disadvantaged by BA’s policy - the decision to wear the cross was Ms Eweida’s and not a requirement of Christianity.

In the second case, Ms Chaplin, a geriatric nurse, was dismissed by her NHS employer for, similarly, refusing to remove a cross around her neck. Her employer’s uniform policy required that, for health and safety and hygiene reasons, no necklaces were to be worn when handling patients. Similar to Ms Eweida, her claim for indirect discrimination was dismissed on the basis that there was no evidence that any other person had been put at a particular disadvantage.

Both applicants argued that they had a right to manifest their faith by wearing a cross and that their right to protection should not be subject to them showing that it was a scriptural or religious requirement or one widely practised by others.

ECHR decision

The ECHR upheld Ms Eweida’s complaint. Although BA had a legitimate aim in wishing to project a certain corporate image, Ms Eweida’s cross was discreet and would not have undermined her professional appearance. In addition, the Court considered it significant that BA subsequently amended the uniform policy to allow visible wearing of religious jewellery, suggesting that the earlier prohibition was not crucially important.

Ms Chaplin’s case however, was rejected. Although the Court recognised Ms Chaplin’s right to manifest her religion by wearing the cross, this was outweighed by the protection of health and safety within a hospital ward setting.

Lesson for employers

These decisions give some comfort to employers who wish to impose restrictions on what employees can and cannot wear as manifestations of their religious belief where such restrictions are based on legitimate reasons, such as the protection of health and safety. However, employers should be very wary of imposing such restrictions in other situations.

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CONFLICTING DUTIES AND RELIGIOUS BELIEFS

Ms Ladele and Mr McFarlane, both Christians, refused to carry out certain duties on the basis that they conflicted with their religious beliefs.

Ms Ladele, a registrar employed by London Borough of Islington Council (the "Council"), was required to conduct both heterosexual marriages and same sex civil partnerships after the Civil Partnership Act 2004 came into force in the UK in 2005. The Council considered Ms Ladele's refusal to do so, on the grounds that same sex relationships conflicted with her Christian faith, to be in breach of its Code of Conduct and equality policy and commenced disciplinary proceedings against her. Her claims of direct and indirect discrimination were rejected by the Court of Appeal, it being held that Ms Ladele's wish to have her religious views respected did not override the Council's policy of promoting equality in the community.

Mr McFarlane, a counsellor for Relate Avon Limited ("Relate"), was dismissed after he suggested that he may not be able to provide psycho-sexual counselling services to homosexual couples. Under its equal opportunities policy, Relate was committed to ensuring no client received less favourable treatment on the grounds of sexual orientation. Mr McFarlane's claims of direct and indirect discrimination and unfair dismissal were dismissed by the Employment Appeal Tribunal. Relate's commitment to providing non-discriminatory services was fundamental to its work. It was neither practicable for it to screen clients prior to allocating a counsellor nor acceptable that a counsellor may withdraw from counselling same sex couples at any stage of their therapy.

ECHR decision

Both Ladele's and McFarlane's claims were rejected by the ECHR. Their employers' respective aims of promoting equal opportunities and securing the implementation of their policies of providing a service without discrimination based on sexual orientation were justified. Importantly, both of these policies secured the rights of others which were also protected under the Convention. Whilst it was recognised that the consequences for both employees had been serious, the ECHR held that the domestic courts have a wide margin of appreciation when balancing competing Convention rights and in neither case had this margin been exceeded.

Lessons for employers

Employers can be faced with a tricky task when balancing the rights of one employee or one group of employees with another or with users of its services. The decision of the ECHR is useful guidance on the ability of employers to take action against employees for their refusal to carry out certain aspects of their jobs. However, employers should proceed with caution. The courts will, in each case, weigh the aims of the employer against the impact on the employee. Employers would be wise to consider any compromise solutions before taking disciplinary action against or, ultimately, dismissing an employee for failure to carry out an aspect of their role which conflicts with that employee's religious beliefs.

Case referred to:

Eweida and Others v The United Kingdom Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10.

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