

Religion at Work - A match made in Heaven?

Earlier this year the European Court of Human Rights (ECHR) issued its decision in 4 important UK cases which were considered together and examined indirect discrimination in relation to dress codes and how the law should deal with the clash of religious beliefs. These thorny matters can often arise in practice and employers need to know how to deal with them given the issues involved.

While the cases were brought by Christians, the implications of the judgment apply to employees (and applicants) with any religion or belief, or none. The judgment affects employers who have policies and practices that seek to protect religious belief within the workplace and it potentially extends the rights of employees (including applicants) and even customers or service users.

The judgment provides important guidance when dealing with the clash of discrimination rights.

Uniform consistency?

In one of the cases heard by the ECHR the employee was disciplined by her employer, British Airways, for her insistence on wearing a cross outside her uniform, as a sign of her Christian beliefs. BA had a uniform policy that prohibited such jewellery as it wanted to project a particular corporate image. She claimed direct and indirect discrimination. The Employment Tribunal found that she had failed to show that there was any group of people who considered that wearing a cross was a mandatory requirement of the Christian religion. Her claim failed.

She raised a claim before the ECHR complaining of a breach of her rights. The Court held that it was not necessary to show that wearing a cross was a mandatory requirement of her religion. It was sufficient if people of that religion would feel disadvantaged. The court agreed that having a consistent uniform code and presenting a particular corporate image was a legitimate aim (and potentially therefore capable of justification), but in the circumstances, banning the wearing of the cross was not a proportionate means of achieving that end.

It was held that the UK had not struck the correct balance and had given too much weight to BA's policy that prohibited the employee from demonstrating her religious beliefs at work. She was awarded (relatively modest) compensation.

The opposite result was reached in a similar claim raised by another employee who wished to wear a cross on a necklace, outside her uniform while carrying out her duties as a geriatric nurse. She had been moved to a non-nursing post which had then ceased to exist. The ECHR considered that the ban had been imposed for health and safety reasons, that this was a legitimate aim and the ban was a proportionate means of achieving that aim. Her claim therefore failed.

These cases clearly show the importance of identifying a legitimate aim in refusing any request and in ensuring the aim is applied proportionately. Employers need to carefully consider what they are seeking to achieve through their policies.

Is the aim legitimate? Is there a means of achieving the aim without placing those of a particular religion at a disadvantage? Any alternative means should be explored. Employers will need to examine each issue on a case by case basis.

A clash of rights

Another of the Claimants was a registrar who refused to conduct civil partnerships (due to her religious beliefs). She claimed direct and indirect religious discrimination and harassment when she was disciplined for breaching her employer's Dignity for All policy. The local authority employer relied upon its equal opportunities policy which required the Council to eradicate all forms of discrimination. The European Court found that the employer's decision not to accommodate the employee's requirements as to her manifestation of her beliefs was justified since it was a proportionate means of achieving a legitimate aim (providing a service free from discrimination).

In this edition

Religion at Work - A match made in Heaven?

Consideration of 4 important UK cases involving indirect discrimination in relation to dress codes and how the law proposes to deal with the clash between different rights.

Changes Afoot

An overview of employment law and related changes which are to be implemented over the next 12 months.

Update

Employment Tribunals - New Rules

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New rules for the Employment Tribunal have been published and come into force on 1 July 2013.

These rules present a simplified framework in which Employment Tribunals can operate and they make some important changes, including in relation to types of hearing, expenses and case management powers of Employment Judges.

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The final case concerned an employee who was dismissed as a relationship counsellor because of his decision not to offer services to same sex couples (which was because of his Christian beliefs). He claimed direct and indirect discrimination, both of which were rejected by the Employment Tribunal and Employment Appeal Tribunal. It was felt that the employer's commitment to providing services on a non-discriminatory basis was a reasonable one, and accordingly the dismissal of an employee who refused to commit to meeting that objective, was justified.

The ECHR recognised that in both cases there had been interference with the employee's religious beliefs, but in each case this was justified given that the employer's aim was to provide services without discrimination. The court commented that "*where an individual's religious observance impinges on the rights of others, some restrictions can be made*". This is clearly important. Previous cases had emphasised that any difference in treatment based on sexual orientation required "serious reasons" to be justified. Hitherto, the fact the employee could have left the role (or not applied for it, where the relevant impact on the religion was known in advance) could have resulted in the

claims failing. Now, however, these factors were only considerations that required to be put into the balance along with all of the other facts.

The ECHR also commented that "*an employer's refusal to accommodate the manifestation of a discriminatory religious belief...will generally be justified*". In other words, there would be no protection within the Equality Act for those seeking to discriminate against others. It will not be possible to rely on a religious belief to justify discriminating against another person unlawfully.

The final word?

Recently a panel of 5 European Court of Human Rights Grand Chamber judges rejected requests for the decision to be referred to the Grand Chamber of the ECHR to reconsider the cases. Consequently, the above decisions are final. Useful guidance in implementing the decisions has been issued by the Equalities and Human Rights Commission. As ever, specialist employment law advice is essential.

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Changes Afoot

A raft of employment law and related changes are to be implemented over the course of the next 12 months. Some of the more significant changes affecting employers have been summarised below.

- Changes to whistleblowing come into force on 25 June 2013: Disclosures qualifying for protection must "in the reasonable belief of the worker" be made in the public interest. Compensation can be reduced where a disclosure is not made in good faith.
- From 25 June 2013, no qualifying period of employment will be necessary to bring a claim for unfair dismissal on grounds of political belief.
- Introduction of fees into the Employment Tribunal: It is anticipated that fees for employees to bring a claim in the Employment Tribunal will be introduced from 29 July 2013. Fees will have to be paid at 2 different

stages – at the issue of a claim and in advance of the hearing. Different fees apply depending on the type of claim that is being raised. A remission system will operate to affect the amount of fees payable depending on income and resources.

- A much anticipated provision due to come into force is the confidentiality of negotiations with a view to employment being terminated on terms agreed between the employer and the employee. The implementation date is awaited.
- By Autumn 2013, the provision for employee-shareholder contracts is expected to be in force.
- Autumn 2013 may also see reforms in TUPE with the "gold plating" of TUPE applying to service provision changes being removed.
- It is anticipated that by spring 2014, the provision will be in place for all claims to be referred to ACAS in the first instance before proceedings are instituted with the Tribunal.

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**CHANGE
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