

## UK Update

# Religious discrimination ruling by the European Court of Human Rights

The European Court of Human Rights has just released its **decision** in respect of the applications of four practising Christians from the UK, *Eweida, Chaplain, Ladele* and *McFarlane*, addressing the issue of protection of the rights of individuals to manifest their religion at work, and the way in which that right should be balanced against the rights of others.

In the case of *Eweida*, the Court held that her right to manifest her religious belief had not been sufficiently protected by the UK. However, in the cases of *Chaplain, Ladele* and *McFarlane* there had been no violation of the individuals' rights.

The decision highlights the need for employers to carefully examine the aim of any particular policy or working practice and weigh up any conflicting religious interests in order to justify the policy or practice. Such policies or practices may be more difficult to justify where the reason behind the aim involves corporate interests (such as corporate image) as opposed to health and safety reasons or the protection of other individuals' rights (such as their right not to be discriminated against by reason of their sexual orientation).

### **The freedom to wear a visible cross whilst in work – *Eweida* and *Chaplain***

Ms Eweida, a BA employee, and Ms Chaplain, a nurse working for the NHS,

complained in relation to restrictions enforced by their employers, preventing them from wearing visible crosses around their necks while in work. In the case of Ms Eweida, the restrictions applied when carrying out a customer facing role, and in the case of Ms Chaplain, when working with patients.

### ***Eweida***

In Ms Eweida's case the balancing act was between Ms Eweida's desire to manifest her religious belief, by wearing her cross visibly around her neck, and BA's desire to project a certain corporate image, as set out in their dress code. Whilst the Court found that this was a legitimate aim, it found that the domestic courts had placed too much weight on this objective. In particular, the Court took into consideration the fact that BA had since amended its policy to allow visible wearing of religious symbols, showing that the earlier prohibition had not been of crucial importance.

The Court concluded that, as there was no evidence of any real encroachment on the interests of

others, a fair balance had not been struck, and the domestic authorities (the UK) had failed to sufficiently protect Ms Eweida's rights to manifest her religion.

#### **Chaplain**

By contrast, in the case of Ms Chaplain, whilst taking into the balance Ms Chaplain's desire to manifest her religious belief, the Court found that the Health and Safety concerns which were the reason for the NHS asking Ms Chaplain to remove her cross were inherently of greater magnitude than the concerns held by BA in the case of Ms Eweida. The Court was mindful that hospital managers were better placed to make decisions about clinical safety than a court, particularly an international court who had heard no direct evidence.

Accordingly, the Court concluded that requiring Ms Chaplain to remove her cross had not been disproportionate, and that such interference with Ms Chaplain's freedom to manifest her religion had been necessary in a democratic society.

#### **Sanctions taken against employees a result of concerns about duties which condoned homosexual union – *Ladele and McFarlane***

Ms Ladele, a Registrar, and Mr McFarlane, a Relate Counsellor, both complained about their dismissal for refusing to carry out duties which they considered condoned homosexuality, and which were incompatible with their beliefs that homosexual relationships are contrary to God's Law. Ms Ladele was subject to disciplinary proceedings, following a refusal to agree to be designated as a Registrar of Civil Partnerships, which culminated in her losing her job. Following a disciplinary investigation, Mr McFarlane was dismissed for gross misconduct on the ground that he had stated that he would comply with his employer's Equal Opportunities Policy with no intention of doing so.

When reaching a decision on both cases the Court considered the balance between the employee's right to manifest their religion, and the policies

of the employer, which promoted equal opportunities and required employees to act in a way which did not discriminate against others. The policies had the legitimate aim of securing the rights of others, such as same sex couples, which were also protected rights. The Court considered that differences in treatment based on sexual orientation required particularly serious justification.

In both cases, the Court decided that the right balance had been struck and the margin of appreciation open to national authorities when balancing competing rights had not been exceeded.

#### **What does this decision mean for employers?**

Where there are concerns about whether a particular workplace policy or practice places restrictions upon an employee's right to manifest their religion, an employer should consider carefully the reasons behind the conflict to ensure the policy or practice can be objectively justified; which requires it to be in pursuit of a legitimate aim and to be proportionate.

The reason behind the aim is of key importance: where an employer is relying upon health and safety objectives, or where they are seeking to protect the rights of others not to be discriminated against, they will be in a far stronger position, than where the reason behind the restriction is compliance with the corporate aims of the company or in protection of its brand.

An employer who has a uniform policy which contains provisions that may restrict an employee's right to manifest their religion, should carefully consider the rationale behind the policy. It is clear that UK law requires employers to make accommodation for religious beliefs but that may not prevent an employer implementing a particular policy provided they can show they have a legitimate reason for doing so and they have turned their mind to the competing rights.

#### **Further information**

If you would like further information on any issue raised in this update please contact:

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