



LADELE DECISION **CLARIFIES** EQUALITY RIGHTS COLLISION

On 15 December 2009 the Court of Appeal handed down its judgment in *Ladele - v - Islington London Borough Council* agreeing with the Employment Appeal Tribunal (“the EAT”) that the Council did not discriminate against Ms Ladele, a registrar, when it dismissed her for refusing to carry out civil partnership ceremonies.

The judgment dealt with the interaction of rights under the religion and belief regulations and those under the sexual orientation legislation. It makes clear that in the context of people providing public services or performing public functions, such as civil partnership ceremonies, their rights should not take precedence over those of service users. Employees should not be able to avoid carrying out their duties for a reason which is discriminatory, even when that reason derives from a religious belief.

Facts

Ms Ladele was found guilty of gross misconduct when she refused to participate in registering civil partnerships between same sex partners on the basis that to do so was inconsistent with her Christian beliefs. The Tribunal upheld Ms Ladele’s complaints of direct discrimination, indirect discrimination and harassment, but this decision was overturned by the EAT on

appeal. The EAT decided that the ground for the treatment was the rule and not the Claimant’s beliefs; even if her beliefs were the reason she had refused to comply with the rule.

Ms Ladele appealed to the Court of Appeal.

What did the Court of Appeal decide?

The Court of Appeal ruled that:

There is nothing in the Employment Equality (Religion or Belief) Regulations 2003 which entitled Ms Ladele to insist on a right not to undertake civil partnership duties due to her religious beliefs.

Ms Ladele was neither directly nor indirectly discriminated against, nor harassed by the Council contrary to the Regulations. The Court of Appeal agreed with the EAT’s decision that Ms Ladele had not been directly discriminated against because her complaint was “not that she was treated differently from others; rather it was that she was not treated differently when she ought to have been”.

In terms of Ms Ladele’s complaint of indirect discrimination, the Court of Appeal was satisfied that the Council’s policy decisions represented “a proportionate means of achieving a legitimate aim.” The Council aimed to provide a service which complied with its overarching policy of being “an



employer and a public authority wholly committed to the promotion of equal opportunities and to requiring all its employees to act in a way which does not discriminate against others".

- III The Court of Appeal also went on to consider the conflict of rights issue, namely whether the effect of the sexual orientation legislation overrides a person's right to freedom of religion. The Court of Appeal held that (except for in limited circumstances) legislation prohibiting discrimination on the grounds of sexual orientation in the

public sector) are entitled to require employees to comply with their equality policy, so long as it is a proportionate means of achieving a legitimate aim.

- III Employers cannot allow discrimination on the part of their employees, whilst also being under a legal obligation to promote equal treatment and comply with equality legislation.
- III Employers can take a degree of comfort from the distinction the Courts continue to make between the holding of a belief and the actions taken by an employee because of his beliefs. Where the

employee's belief is causing him to act contrary to the employer's legitimate instructions or policies, then the employer will not necessarily fall foul of the legislation if it disciplines or dismisses the employee because the reason for the action will be the employee's conduct, not the belief itself.

Martineau has an experienced team of lawyers who would be happy to discuss with you the potential implications for your organisation.

This bulletin summarises complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we will be happy to assist.

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provision of goods, facilities and services, takes precedence over any right which a person would otherwise have by virtue of their religious belief or faith to practice discrimination on the ground of sexual orientation. Therefore, although employees have a right to freedom of thought, conscience and religion, this is subject to the limitations of the law and the interests of protecting the rights and freedoms of others.

What does this mean for employers?

- III The judgment confirms that employees are free to hold religious beliefs but employers (particularly those in the

