

Ladele v London Borough of Islington

Ms Ladele worked for Islington Council as a Registrar of Births, Deaths and Marriages. When civil partnerships were introduced, giving same-sex couples rights similar to those of married couples, she refused to carry them out on the ground that such unions were contrary to her Christian beliefs. The Council threatened her with dismissal and a tribunal found that Ms Ladele had suffered direct and indirect discrimination, and harassment, on grounds of her religious belief. The EAT allowed the Council's appeal on all grounds.

As far as direct discrimination was concerned, the EAT held the Council applied the same rule to all registrars, i.e. they should all carry out both civil partnerships and marriages. Ms Ladele was not treated differently to anyone else. As to indirect discrimination, the Council's practice of requiring all registrars to perform civil partnership functions did place those of Ms Ladele's religious belief at a particular disadvantage. But the Council has a justifiable, legitimate aim that all its registrars perform a service prescribed by law. Ms Ladele could not pick and choose what duties she wanted to perform depending on her religious views, particularly when her views involved discrimination on the ground of sexual orientation.

Furthermore, in ensuring services were provided in a non-discriminatory way, insisting that all registrars performed a ceremony prescribed by law was proportionate, given the circumstances at Islington Council; there was no alternative. As to harassment, none of the Council's actions had been motivated by Ms Ladele's religious belief.

Ms Ladele's appeal to the Court of Appeal was rejected. The Court endorsed the EAT's conclusions in full. The legislature has decided that the requirements of a modern liberal democracy include outlawing discrimination in the provision of goods, facilities and services on grounds of sexual orientation, subject only to very limited exceptions. The fact that some registration authorities have decided not to designate registrars who shared Ms Ladele's beliefs as civil partnership registrars, and the fact that such decisions may well be lawful, certainly did not undermine the conclusions reached by the EAT. Ms Ladele was neither directly nor indirectly discriminated against, nor harassed, on grounds of religion, whether by being designated a civil partnership registrar, by being required to officiate at civil partnerships, or by any other aspect of her treatment by Islington Council.

Keeping You One Step Ahead

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Cavendish Munro Professional Risks Management Ltd v Geduld

Under the whistleblowing provisions in the Employment Rights Act 1996, a public interest disclosure qualifying for protection is any disclosure of 'information' which, in the reasonable belief, of the worker making the disclosure, tends to show that one or more of six acts of serious malpractice listed in S.43B has been, is being, or is likely to be committed. One of these is failing to comply with any legal obligation, which includes breaching an employment contract.

Mr Geduld joined insurance brokers Cavendish Munro in March 2007 as an employee, director and shareholder. Things didn't work out with his two fellow shareholder directors and less than a year later, in February 2008, they dismissed him. During the build up to what in the end was his dismissal, Mr Geduld's solicitor had written a letter to his two fellow shareholder directors voicing concerns about a shareholder agreement and making allegations that his dealings with his co-shareholders had prejudiced him as a shareholder and the future of the company. A tribunal upheld his claim that he had been dismissed for making a protected disclosure.

An employment tribunal held that he could bring the claim because the solicitors' letter contained a protected disclosure, a breach of a legal obligation. The employer appealed. The EAT upheld the appeal ruling that there was no protected disclosure, based on two grounds.

First, there is a distinction between communicating "information" and making an "allegation". Making an allegation, is not conveying facts, e.g. communicating "information" would be "the wards have not been cleaned for the past two weeks"; however, a statement that "you are not complying with health and safety requirements" would be an allegation, not information, and therefore unprotected. Second, the letter was not a "disclosure", as it did not disclose any facts; it merely summarised the basis of a position adopted by Mr Geduld." If an employee is feeling badly treated, the solicitor may write to say that the employer is in breach of contract. The solicitor may say, 'if the situation does not improve, we have advised our client that he can resign and claim constructive dismissal'. But in such circumstances, no protected disclosure is made.

Beijing Ton Ren Tang (UK) Ltd v Wang

Ms Wang was recruited from China to work in a Herb & Health shop. A tribunal found she was dismissed unfairly in February 2008. In assessing her compensation the tribunal concluded that she would not have remained in employment beyond June 2008 because of the onset of tuberculosis. However, for the period between February and June, it rejected Beijing's claim that she had failed to mitigate her losses on the basis that Ms Wang: (i) was shocked by the manner of her dismissal; (ii) was very isolated in the London Chinese Community since arriving in 2001; (iii) did not speak English and did not know any parts of the country outside London where some similar jobs were advertised; and (iv) was so impoverished following dismissal that she had to borrow £30 from one of the directors to pay for food.

Beijing appealed on the mitigation point, but the appeal was rejected by the EAT. Mitigation is a question of fact. It is for the employer to show that the dismissed employee has acted unreasonably in relation to the duty to mitigate, and the tribunal must take into account the circumstances of the particular employee in question. Applying these principles to this case, the tribunal had rightly concluded that it would not be reasonable for a person like Ms Wang to get straight back into the job market. In her particular circumstances, she was left in an extraordinarily vulnerable position. Although Ms Wang had made no attempt to find a job for 17 weeks, this was one of those unusual cases where, in all the circumstances, that did not mean that she had acted unreasonably in failing to try and mitigate her loss.