Eweida and Ors v The United Kingdom [2013] ECHR (European Court of Human Rights, Fourth Section, 15 January 2013)

This was an appeal to the European Court of Human Rights which combined four different applications into one hearing. All the applicants were Christians who alleged some form of discrimination against them because of their religion. The respondent was the United Kingdom (UK) as a member of the European Union (EU) and a signatory to its Conventions. There were two cases of particular interest amongst the four: those of the applicants Ladele and McFarlane.

Applicant Ladele

Ms Ladele, a practising Christian, had been employed by the London Borough of Islington (the Borough) as a registrar of births, deaths and marriages since 2002. The Borough had a ‘Dignity for All’ policy relating to equality and diversity which did not allow discrimination on the basis of age, gender, disability, faith, race, sexuality, nationality, income or health status.

As a registrar, Ms Ladele (the applicant), held her office under the aegis of the Registrar General, but was paid by the Borough. She was obliged to abide by the Borough’s policies. An issue arose with the passing of the Civil Partnership Act which came into force on 5 December 2005. This Act allowed for the registration of civil partnerships between two people of the same sex, and accorded such couples the same rights and obligations as a married couple. The Borough made all its registrars of births, deaths and marriages registrars of civil partnerships in December 2005. The Act did not require this, but rather provided that a sufficient number of such registrars be available. Moreover, other local authorities allowed those registrars with sincerely held religious beliefs to opt out of registration of civil partnerships.

At first, the applicant was able to make informal arrangements with colleagues to exchange work in such a way that she did not have to conduct civil partnership ceremonies. This led to a complaint by two colleagues in March 2006. The applicant was informed that she was in breach of the Borough’s Code of Conduct and equality policy. In 2007, homosexual colleagues added a complaint of victimisation because of the applicant’s refusal to carry out civil partnership ceremonies. A disciplinary hearing ensued after which the applicant was asked to sign a new job description requiring her to carry out civil partnership signings, but not ceremonies.

The applicant took the matter to the Employment Tribunal complaining of direct and indirect discrimination on the ground of religious belief and harassment. On 1 December 2007, a change in the law made the applicant an employee of the Borough, meaning the Borough would be in a position to dismiss her (if there were grounds for dismissal). She argued before the Employment Tribunal that dismissal would follow if she lost the case. On 3 July 2008, the Employment Tribunal upheld the applicant’s complaint of direct and indirect discrimination on the ground of religion and harassment. The Borough appealed to the Employment Appeal Tribunal, which reversed the decision of the Employment Tribunal. Ladele appealed to the Court of Appeal which, on 15 December 2009, upheld the decision of the Employment Appeal Tribunal. An application for leave to appeal to the Supreme Court of the UK was refused on 4 March 2010.

Applicant McFarlane

Mr McFarlane (the applicant) worked as a counsellor for Relate Avon Limited (Relate), part of the Relate Federation, a national private organisation which provides confidential sex therapy and relationship counselling. The applicant was a former elder of a large multicultural church in Bristol, and held deep and genuine beliefs, based on Biblical teaching, about the sinfulness of homosexual relationships.

As a counsellor, however, he had counselled lesbian couples with non-sexual problems without incident. In 2007, the applicant commenced Relate’s post-graduate diploma in psycho-sexual therapy.
An issue arose about working with homosexual couples on sexual problems. Colleagues complained to the General Manager about the applicant’s unwillingness, on religious grounds, to counsel gay, lesbian and bisexual clients with sexual problems. Correspondence arose between the General Manager and the applicant which confirmed that the applicant had no difficulty counselling same sex couples generally, but that his views on sexual counselling were still evolving. The General Manager interpreted this correspondence as a refusal to carry out psycho-sexual therapy with same sex couples and the applicant was suspended, pending a disciplinary hearing.

After further discussion and disciplinary proceedings, McFarlane was dismissed on 18 March 2008 on the ground that he could not comply with Relate’s policies. He lodged a claim with the Employment Tribunal claiming direct and indirect discrimination, unfair dismissal and wrongful dismissal. The Employment Tribunal dismissed the claims. He appealed to the Employment Appeal Tribunal which upheld the decision of the Employment Tribunal in dismissing the applicant’s claims. An application for leave to appeal to the Court of Appeal was refused (on 20 January 2010), in the light of its Ladele decision of 15 December 2009.

**The European Court of Human Rights (ECHR) decision**

The ECHR firstly reviewed the relevant domestic law, regulation 3 of the Employment Equality (Religion or Belief) Regulations 2003, and regulation 3 of the Equality Act (Sexual Orientation) Regulations 2007. They then considered the applicable EU law which was the EU Framework Directive for Equal Treatment in Employment and Occupation 2007/78/EC which underlay both sets of domestic regulations.

The UK argued that the applicants' adherence to Judaeo-Christian sexual morality was not a manifestation of their religious belief, and so was not protected under Article 9 (with or without Article 14) of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).

Article 9 of the Convention provides:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 14 provides:

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Ms Ladele argued that she had been discriminated against under both Articles. The ECHR said (at [104]–[107]):

The Court...agrees with the applicant’s contention that the local authority’s requirement that all registrars of births, marriages and deaths be designated also as civil partnership registrars
had a particularly detrimental impact on her because of her religious beliefs. In order to
determine whether the local authority's decision not to make an exception for the applicant
and others in her situation amounted to indirect discrimination in breach of Article 14, the
Court must consider whether the policy pursued a legitimate aim and was proportionate.... [It
is evident that the aim pursued by the local authority was legitimate.... It remains to be
determined whether the means used to pursue this aim were proportionate. The Court takes
into account that the consequences for the applicant were serious: given the strength of her
religious conviction, she considered that she had no choice but to face disciplinary action
rather than be designated a civil partnership registrar and, ultimately, she lost her job.
Furthermore, it cannot be said that, when she entered into her contract of employment, the
applicant specifically waived her right to manifest her religious belief by objecting to
participating in the creation of civil partnerships, since this requirement was introduced by her
employer at a later date. On the other hand, however, the local authority's policy aimed to
secure the rights of others which are also protected under the Convention. The Court
generally allows the national authorities a wide margin of appreciation when it comes to
striking a balance between competing Convention rights....

Under the circumstances, the ECHR did not think the employer or the UK tribunals and courts had
gone beyond what was reasonable in striking a balance between competing rights. Therefore there
was no violation of articles 9 or 14 in relation to Ms Ladele’s matter and she was unsuccessful.

In relation to Mr McFarlane, who also complained under both Article 9 and 14 of the Convention, the
ECHR said (at [108]–[110]):

The Court accepts that Mr McFarlane’s objection was directly motivated by his orthodox
Christian beliefs about marriage and sexual relationships, and holds that his refusal to
undertake to counsel homosexual couples constituted a manifestation of his religion and
belief. The State’s positive obligation under Article 9 required it to secure his rights under
Article 9. It remains to be determined whether the State complied with this positive obligation
and in particular whether a fair balance was struck between the competing interests at
stake.... In making this assessment, the Court takes into account that the loss of his job was a
severe sanction with grave consequences for the applicant. On the other hand, the applicant
voluntarily enrolled on Relate's post-graduate training programme in psycho-sexual
counselling, knowing that Relate operated an Equal Opportunities Policy and that filtering of
clients on the ground of sexual orientation would not be possible.... While the Court does not
consider that an individual's decision to enter into a contract of employment and to undertake
responsibilities which he knows will have an impact on his freedom to manifest his religious
belief is determinative of the question whether or not there been an interference with Article 9
rights, this is a matter to be weighed in the balance when assessing whether a fair balance
was struck.... However, for the Court the most important factor to be taken into account is that
the employer’s action was intended to secure the implementation of its policy of providing a
service without discrimination.

The Court considered that the ‘margin of appreciation’ had not been exceeded in Mr McFarlane’s
case – the balance between his rights and his employer’s interest in providing a service in accordance
with the rights of its clients was appropriate. Therefore, he was unsuccessful in the ECHR.

In both cases, the applicants’ rights were infringed to some extent, but they were unsuccessful
because a balance had to be struck between the competing rights involved, and the ECHR held that
the UK was within the ‘margin of appreciation’ allowed to member states of the EU in applying the law
as it had. In each case, the aim of the UK was legitimate, but the real issue was of proportionality:
were the actions taken against the applicants proportionate in the circumstances? While the
applicants were harmed, the ECHR said the actions were within a wide band of permissible actions to uphold the Convention.

The case may be viewed at:
http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"respondent":["GBR"],"itemid":["001-115881"]}

Implications of this case

This case was about balancing competing rights. In the UK, an employer must show that it has used a proportionate means to achieve a legitimate aim to avoid an accusation of discrimination against an employee. The ECHR agreed that the applicants had suffered a disadvantage, but the aims of each of the employers (the Borough, and the charity Relate) were to provide non-discriminatory services. This was a legitimate aim. Their response in refusing to accommodate the religious positions of the applicants (thus contradicting their principles) was a proportionate response. The lesson for charities and nonprofits is that policies about equality must be clear and legitimate, and communicated unambiguously to staff.