



# Employers can insist upon a commitment to equal opportunities from employees

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A decision of the Employment Appeal Tribunal provides reassurance to employers that you can insist upon employees providing services to all, consistent with a commitment to equal opportunities, irrespective of the employee's religious beliefs. In the case of *McFarlane v Relate Avon Limited* the EAT have held that the dismissal of an employee who refused to confirm that he would abide by Relate's equal opportunities policy, was fair and not unlawful religious discrimination.

Mr McFarlane was a Christian who raised issues that he had in providing relationship counselling to same gender couples, in particular on intimate issues. After he voiced these concerns, he was asked by Relate to confirm his commitment to their equal opportunities policy and in particular to their commitment to provide their full services to same gender couples. He was dismissed when this confirmation was not provided. The EAT decision contains a number of interesting findings.

- The dismissal was not direct religious discrimination because Mr McFarlane was not dismissed because of his Christian faith but because of his stance on providing advice to same gender couples. He argued that someone's religion must include the way it is manifested, but the EAT rejected this. Importantly for many of you with specific policies on the issue, the EAT distinguished between protecting an individual's own beliefs and a prohibition on employees promoting their own beliefs to others.
- Whilst Relate's requirement to commit to equal opportunities was capable of amounting to indirect discrimination against people sharing Mr McFarlane's particular Christian beliefs, the organisation was justified in this requirement (meaning it was not unlawful). The EAT emphasised that an organisation can insist that all employees participate in the provision of services in a way that is consistent with their principles and aims. In particular, the EAT did not

require Relate to have explored ways of avoiding Mr McFarlane needing to provide the counselling to which he objected to same gender couples. As he refused to confirm he would abide by the employer's principles and commitment to equal opportunities for all service users, that alone justified the decision they reached.

- The dismissal was a fair conduct dismissal and refusal to agree to be bound by such a policy was akin to gross misconduct (meaning that he was not entitled to notice or pay in lieu of notice).
- The dismissal was also potentially fair for some other substantial reason (a catch-all reason for dismissal). This does highlight the importance of sometimes arguing this as an alternative reason for dismissal, in circumstances where the retention of an individual is felt to be impossible.

Religious beliefs, by their very nature, can impact upon what an employee will agree to do in work. There is an inevitable tension between some individuals' strongly held beliefs and what you may believe to be the right way to operate and provide services. This decision provides you with reassurance that a commitment to equal opportunities is likely to outweigh individual objections based upon an employee's own religious beliefs. However, we may see further

developments in this area of the law when the Court of Appeal hand down their decision in the case of *Ladele*, the Registrar who refused to undertake civil partnership ceremonies.

There is one slight sting in the tail of this decision. The President of the EAT observes an increase in employers relying upon the duty of trust and confidence in supporting the dismissal of employees. The President's view is that this is an inappropriate use of the terminology, which he thinks should be limited to constructive dismissal cases (and therefore is available only to employees). This is an unfortunate view with which we do not agree, as previous cases have emphasised that it is a mutual duty of trust and confidence owed not only by employers but also employees. However, this may lead to future legal developments and you should ensure that when considering the reason for dismissal in any case you carefully consider the fair reason(s) upon which you are relying and the terminology used.

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