

On January 15, 2013 the European Court of Human Rights (ECHR) gave its ruling in *Eweida & ors v the United Kingdom*. As was widely reported in the press, Ms Eweida successfully argued that the UK Courts had failed to protect her right under the European Convention on Human Rights to manifest her religious beliefs in the workplace, but the three other applicants were all unsuccessful.

So what does this decision mean for UK employers? On a practical level, probably very little. Despite Ms Eweida's victory, the ECHR broadly supported the approach of the UK Courts when dealing with claims of indirect discrimination on the grounds of religion or belief. The issue of justification will remain central – in order to be able to defend any claims of indirect discrimination employers will have to be able to point to a legitimate aim and demonstrate that any discriminatory provision, criteria or practice is proportionate to that aim.

Employers can, for example, still have a uniform policy/dress code, but they should continue to be careful about placing restrictions on an employee's ability to wear discreet religious symbols in the workplace. An argument that these are not permitted because of the need for the employer to protect its corporate image/brand is unlikely to get very far, but legitimate concerns about health and safety may be sufficient to justify the placing of restrictions on what employees can wear.

The ECHR's decision is also useful for employers that have to deal with "clashing rights" or employees who refuse to carry out their duties on the grounds they conflict with their religious beliefs. The ECHR confirmed that the aim of protecting the rights of others not to be discriminated against can be a valid justification for not fully accommodating an employee's religious beliefs.

This decision is not directly enforceable against private sector employers, but the UK Courts will be required to take it into account when interpreting the Equality Act 2010.

In terms of the facts of these cases, all four applicants are practising Christians. Ms Eweida, a BA employee, and Ms Chaplin, a geriatrics nurse, brought discrimination claims in the UK Courts after their employers placed restrictions on their visibly wearing Christian crosses around their necks whilst at work. Ms Ladele, a Registrar of Births, Deaths and Marriages, and Mr McFarlane, a Relate Counsellor, also brought discrimination proceedings after they were dismissed for refusing to carry out certain of their duties which they considered condoned homosexuality. All four applicants were unsuccessful in the UK courts and so brought proceedings before the ECHR, claiming that UK law had failed adequately to protect their right to manifest their religious beliefs.

The ECHR accepted there had been an interference with Ms Eweida's and Ms Chaplin's right to manifest their religion, in that they had been unable to wear their crosses visibly at work.

In Eweida's case, it said that a fair balance had not been struck between her desire to manifest her religious beliefs and BA's wish to project a certain corporate image, no matter how legitimate that aim might be. It noted that other BA employees had previously been authorised to wear items of religious clothing such as turbans and hijabs without any negative impact on BA's brand or image. Moreover, the fact the company had amended its uniform policy to allow for visible wearing of religious symbolic jewellery showed that the earlier ban had not been of crucial importance. It ruled that the UK Courts had failed sufficiently to protect her right to manifest her religion.

In Ms Chaplin's case, however, the reason for asking her to remove her cross was because of health and safety concerns on a hospital ward and the ECHR said therefore that the requirement had not been disproportionate and that the interference with her right to manifest her religion had been necessary.

For Ladele and McFarlane, the ECHR said that the UK Courts had struck a fair balance when they upheld the employers' decisions to bring disciplinary proceedings against the employees for refusing to carry out some of their duties which they considered would condone homosexuality. It said in each case the employer was pursuing a policy of non-discrimination against service-users and the right not to be discriminated against on grounds of sexual orientation was also protected under the Convention.

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