Bringing your religious beliefs to work – what are the limits?

The recent judgment by the European Court of Human Rights in Strasbourg, in which a British Airways employee overturned a ruling of the English Court of Appeal, brings sharply into focus the issue of whether or not you have the right to manifest your religious beliefs at work. Importantly, however, this was the only one of four cases where the European Court disagreed with the stance adopted by the UK Courts. In the other three cases, the European Court's rejection of the employees' appeals provides an illustration of how the courts seek to strike a balance between the competing rights of individual workers, their colleagues, employers, clients and service users.

Contrary to some suggestions, the European Court's judgment does not provide workers with an absolute right to wear religious dress or symbols in the workplace. Employers are still entitled to impose uniform codes and restrictions, provided that their approach is 'proportionate' – in other words, strikes a fair balance between the rights of workers to manifest their religious beliefs at work, with the competing rights of others. Two of the appeals before the European Court (Eweida and Chaplin) concerned challenges to an employer's decision that they were not permitted to wear necklaces bearing a cross – a symbol of the Christian faith – in the particular manner they desired.

Ms Eweida succeeded in her appeal to the European Court, but Nurse Chaplin failed. Why was this? In the Eweida case, the countervailing interest was not a human right at all but the right of her employer "to project a certain corporate image". The European Court decided this was not a good enough reason to restrict Ms Eweida's right to wear her cross, as a symbol of her religious beliefs, especially as the cross was discreet and did not detract from her professional appearance. Furthermore, there was no evidence that the wearing of other religious clothing (e.g. turbans and hijabs) had any negative impact on BA's brand or image. The Court also considered it important that BA had in fact already amended its uniform code shortly after Ms Eweida had raised a formal grievance about the issue. (indeed, Ms Eweida has been permitted by BA to wear the necklace, as desired, since February 2007). Thus, the European Court concluded that in Ms Eweida's case, there had been "no evidence of any real encroachment on the interests of others" by wearing the necklace.

By contrast, in the case of Nurse Chaplin, the restriction on the wearing of jewellery was in order to protect the health and safety of both nurses and patients. There were legitimate concerns that a disturbed patient may seize or pull the chain, causing injury, or that the jewellery could come into contact with an open wound. The Court noted that "hospital managers were better placed to make a decision about clinical safety than a court". Whilst the European Court acknowledged that the personal importance to Ms Chaplin of wearing the necklace "must weigh heavily in the balance", it found that the scales were tipped in favour of the employer's legitimate desire to protect the health and safety of its staff and patients.

These judgments clearly illustrate that it *is* permissible for employers in the UK to restrict a worker's right to manifest their religion in the workplace, but only if they can demonstrate a persuasive justification for doing so. Having regard to the diverse and multi-cultural make-up of the UK workforce, employers must continue to pay careful attention to the possible discriminatory impact of their policies and procedures on certain groups of employees. This applies not just to dress codes, but to other policies such as working time. For example, in another recent case the UK's Employment Appeal Tribunal was required to determine whether an employer was entitled to insist

that a Christian employee work on Sundays; whilst being careful to point out that the decision was fact-sensitive and did not lay down a general rule, the Court decided on the facts that the employer had acted lawfully.

The European Court's decision in Eweida makes it clear that employers should be particularly cautious about denying workers the right to wear clothing or accessories which are intimately linked to their religion or belief, in circumstances where those items are relatively inconspicuous, unlikely to damage their corporate brand or image, unlikely to offend others, and which pose no material risk to health and safety. To this extent, the judgment may be viewed as a 'victory' for religious freedom in the workplace.

The other two appeals before the European Court (Ladele and McFarlane) concerned challenges to an employer's policy that the employees were required, contrary to their Christian religious convictions, to provide registrar services to same-sex couples seeking a civil partnership (Ladele); and psycho-sexual therapy to homosexual members of the public (McFarlane).

This pair of cases raised a direct conflict between the rights of the complainants to practise their religious beliefs in the workplace; and the rights of homosexual couples to enjoy a private and family life without discrimination. Ms Ladele was a registrar employed by Islington Council. When she had taken the job there were no civil partnerships under UK law; however, the position changed in 2005 and she was required by her employer to officiate at same sex civil partnership ceremonies. Ms Ladele refused to do so. Both the UK Courts and the Court in Strasbourg agreed that Islington Council were entitled to insist that Ms Ladele provide an effective service to all members of the public seeking to utilise its services, equally and without discrimination.

This reasoning applied even more in the case of McFarlane. Here, unlike Ms Ladele, from the very first day of his employment Mr McFarlane was aware that his employer (Relate) provided its relationship counselling and sex therapy services to all couples without discrimination. The European Court observed that Mr McFarlane had voluntarily assumed responsibility for psycho-sexual counselling, in the full knowledge that his employer's published policies precluded the 'filtering' of clients according to their sexual orientation. This was a relevant factor to be taken into account when evaluating the competing interests and rights at stake. However, in its judgment the European Court emphasised that it will not be a sufficient answer to a complaint of discrimination simply to say, in essence: 'If you don't like it, change jobs'. The employer remains under an obligation to demonstrate that an infringement of a worker's right to practise their religion or belief is proportionate and justified, by reference to other legitimate considerations.

The judgments of the European Court in Ladele and McFarlane demonstrate the high level of respect which the UK and European Courts attach to employers' equal opportunities policies, which seek to promote a culture of non-discrimination and equality of opportunity. The right to manifest one's freedom of thought, conscience and religion, whilst being recognised by the European Court as "one of the foundations of a 'democratic society'", was not of sufficient standing to 'trump' the employers' legitimate and laudable objectives in this regard. It follows that UK workers do not have an automatic 'right' to pick and choose which aspects of their job they are or are not prepared to carry out, even if that stance is intimately linked with their religion or belief, in circumstances where such a refusal will (or may) involve trespassing on the rights and freedoms of others.