



Equalities briefing 4: Who wins when rights clash outside of the workplace?



Jason Galbraith-Marten and Chris Milsom, members of Cloisters' employment and discrimination team, look at the decision of Hall and Preddy v Bull and Bull; another case in which the right to hold and practice a religious belief came into conflict with the right not to be discriminated against on the ground of sexual orientation and is a good example of how such "clash of rights" situations arise outside the employment field. In finding that the right not to be discriminated against trumps the right to discriminate, we see the Court adopting a consistent approach with Employment Tribunals.



The Claimants, Messrs Hall and Preddy, are in a same-sex civil partnership. On 4 September 2008 they booked a double bedroom for a two night stay at the Defendants' B&B which they ran from their own home. The Defendants are Christians holding the belief that the only divinely ordained sexual relationship is that between a man and a woman within the bonds of matrimony and that sex outside of marriage is a sin. It was common ground that their view satisfied the definition of a "belief" for the purposes of the Employment Equality (Religion and Belief) Regulations 2003, as set out in R (Williamson) v Secretary of State for Education and Employment [2005] 2 AC 246.

In accordance with their belief the Defendants only allowed heterosexual, married couples to occupy double bedrooms but were happy to allow others to stay in twin or single-bedded rooms. On this basis the Claimants were not allowed to occupy a double room. They complained to the local police (who found them alternative accommodation but otherwise took no action). Their deposit was returned.

The claim was supported by the EHRC and pursued under the Equality Act (Sexual Orientation) Regulations 2007. The Defendants' central contention was that the refusal to allow the Claimants to occupy a double bedroom was not on the ground of "sexual orientation" but on the basis of "sex" – effectively a belief that sex outside marriage is a sin – and they led evidence to show that heterosexual, unmarried couples had in fact been treated in the same way.

Unsurprisingly both sides relied on Articles 8 and 14 of the European Convention on Human Rights.

HHJ Rutherford held that both Reg. 3(1) and 3(3) of the 2007 Regulations (direct and indirect discrimination respectively) are to be construed in the light of Reg. 3(4) as a result of which the fact that the putative victim of discrimination is a civil partner whilst the comparator is married "shall not be treated as a material difference in the relevant circumstances." It followed that discrimination on the basis of marital status triggered Reg. 3(4) affording the Defendants no permissible basis for differential treatment. The direct discrimination claim was therefore made out.

The court went on to consider the indirect discrimination claim and found that made out as well. The Defendants clearly applied a provision, criterion or practice which put the Claimants at a particular disadvantage by reason of their sexual orientation. Whilst this might have been done in pursuit of a legitimate aim, namely the promotion of the Defendants' genuinely-held religious belief, the means of their advancement were not proportionate. Were Reg. 3(3)(d) to be interpreted otherwise, it would create "a class of persons (namely those who hold the views of the Defendants) who are exempt from the discrimination legislation" since the means were themselves tainted by unlawful discrimination.

Accordingly the claim was upheld and damages of £1800 were awarded to each Claimant. Leave to appeal was granted on the Court's own initiative and press reports suggest that an appeal will be pursued.

Nevertheless, the legal position does now appear to be relatively settled in the light of this case and cases in the employment field such as McFarlane v Relate and Ladele v

Islington LBC. As HHJ Rutherford observed (echoing comments made by Lord Justice Laws in the McFarlane case) “In our Parliamentary democracy it is for Parliament to frame laws which reflect ...changes in attitude or which give a lead to such changes. Whatever may have been the position in past centuries it is no longer the case that our laws must, or should, automatically reflect the Judeo-Christian position ... So it is that laws have been passed ... which do not follow the traditional religious position and this case is about one such area, namely that of sexual orientation and equality.”

What is noteworthy here is that Courts and Tribunals have shown a marked unwillingness to embark upon an enquiry into whether, and if so how, long-standing religious beliefs could be accommodated in the workplace or in the field of goods and services. The issue is ‘one of principle where compromise is inappropriate’ to paraphrase Mr. Justice Underhill. As a consequence we should now say that acting on certain religious beliefs is unlawful and is to be viewed no differently from other forms of discrimination. The question is, will this result in a polarisation of society along religious / non-religious lines? Will cases like *Hall & Preddy v Bull* ultimately cause more problems than they solve?

Note Catherine Casserley from Cloisters acted for Hall and Preddy