

Equality conflicts: freedom of religion and belief, and its interaction with other freedoms

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Some underlying questions and problems

- This is Day Two of this seminar. So I assume that the key concepts discussed yesterday in other papers need not be repeated! But to recap some questions relevant to this talk:
- Are all equality grounds equal, or are some in an Orwellian sense 'more equal than others'?
- Is there in practice a 'hierarchy' of rights against discrimination?
- How far do legitimate aims, and proportionality, depend on value judgments as to the rights being protected- whether these are express, or tacit/unthinking assumptions?

Possible conflicts: who with whom?

- Conflicts with the employer: for example, the 'ethos' or identity of the body, or perceptions of these.
- Conflicts with other workers: for example, real or perceived favouritism.
- Conflicts with third parties: for example, customers/users, or with members of the public.
- Obviously these categories may overlap: it may be a matter of perception who is in conflict with whom, or how to categorise the nature of the conflict.

First case-study: apparently simple clashes between the perceived rights of two persons

- Example: a Muslim taxi-driver refuses to accept a blind passenger with a guide dog, on the basis that to carry a dog in his vehicle would be offensive to his religion.
- What if the refusal was by a taxi-driver allergic to dogs, or with an overwhelming fear of dogs? Are health-based objections fundamentally different to religion-based objections?
- Rather different sort of clash: the finance director of a Catholic church book publisher divorces her husband to live with another man. Can she be dismissed for doing so?

Second case-study: work and business organisation

- Example: a Jewish employee seeks to be allowed to leave work early on Friday afternoons in winter to allow himself time to return home before Shabbat.
- Again: a Muslim employee seeks time off for prayers, and somewhere in the workplace to pray in peace.
- Does it matter, in either case, whether equivalent time-off is offered to non-Jewish/Muslim workers?
- Is it appropriate to compare this with a single mother of small children who seeks to be allowed to leave work early to collect her children?

Third case-study: conscientious objection Slide 1: seeing the conflict as employee/employer

- Example: a Catholic pharmacy assistant refuses to dispense 'morning after' contraceptives; this requires another assistant to do so, or another nearby pharmacy to be available for this business.
- Or: a Jehovah's Witness who works in a children's centre refuses an instruction to organise and supervise a Christmas party.
- Or: a pacifist receptionist at a hotel refuses to direct its guests to a nearby arms fair, or to arrange taxis for them.
- Or: a studio is offered a contract from a gay group to film its conference. But the cameraman sent, a Pentecostalist, refuses to do this work, so the contract is lost to another studio.

More conscientious objections

Slide 2: seeing the conflicts as with service users

- Example: same as the last one, but it is the studio that refuses and it does so too late to allow another studio to do the work.
- Or: a Christian cake-maker refuses to make a wedding cake for a same-sex couple.
- Or: same order; she refuses to make the cake with an iced message "Support Gay Marriage", but she would provide it without any such message.
- Or a religious marriage registrar refuses to perform same-sex marriages in a jurisdiction which permits them.

Fourth case-study: freedom of expression

- Example: a Jewish employee wishes to wear a kippah/skullcap at work; the employer forbids this, saying it would offend the ethos/image of the workplace as religion-neutral, or as secular.
- Would it be different- and why- if a Christian employer wished to insist on all employees wearing a crucifix to support its Christian ethos/image, and some of them object?
- Or a marriage registrar is a Muslim woman who wears a hijab: she is content to perform a same-sex marriage, but members of the public complain about her style of dress on a perception of her religious views.
- In a discussion over lunch at work, a Catholic employee says she regards abortion as murder, and another employee discloses she has had one; in each case, giving offence to others present.

So, why aren't all these problems illustrated by case-law giving the right answer?

- This is not a flippant point: I have deliberately not given “right answers” or treated these problems as black-letter law, answered by settled authority .
- Directive 2000/78, and in particular articles 2 and 4, gives a structured approach to how to answer such problems; but that approach is one which tends to treat problems in this field as requiring a balancing of interests.
- The legal solution to the sort of disputes discussed here is likely to come down, ultimately, to proportionality; and that requires a case-by-case consideration.
- These problems will often have no “right answer”; they tend to be fact-specific and culture-specific, and to some extent a matter of opinion.
- And, critically, a proper resolution is likely to depend at least as much on skilled human resources management as on the law.

