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Refusing to perform civil partnership ceremonies was "simply unlawful"

22 December 2009

The Court of Appeal has unanimously ruled that it was "simply unlawful" for a Christian registrar to refuse to perform civil partnership ceremonies.

Lillian Ladele had successfully argued at an employment tribunal that she was a victim of direct and indirect religious discrimination.

Mr Justice Elias overturned the tribunal's findings in what the Court of Appeal described as an "impressive and cogent" ruling at the EAT earlier this year (see [solicitorsjournal.com](#), 20 January 2008).

Giving judgment on behalf of the court in *Ladele v London Borough of Islington* [2009] EWCA Civ 1357, Lord Neuberger, Master of the Rolls, said that under the Equality Act (Sexual Orientation) Regulations 2007 it was "simply unlawful" for her to refuse to perform civil partnerships.

Agreeing with the arguments of Liberty, which intervened in the case, Lord Neuberger said it was hard to resist the conclusion that "Islington had no alternative but to insist" on her performing the duties.

He said that however much sympathy one might have with her, "the legislature has decided that the requirements of a modern liberal democracy, such as the United Kingdom, include outlawing discrimination in the provision of goods, facilities and services on grounds of sexual orientation, subject only to very limited exceptions".

However, Lord Neuberger said that if the council had not designated Ladele, along with all other registrars, as a civil partnership registrar, she would have had cause to refuse to perform the ceremonies and the problem of discrimination would not have arisen.

"Accordingly, I doubt whether a decision by Islington that she would not be designated a civil partnership registrar, at her request because of her religious problems with officiating at civil partnerships, would fall foul of the 2007 regulations.

"However, the fact that some registration authorities have (as I understand to be the case) decided not to designate registrars who shared Ms Ladele's beliefs as civil partnership registrars, and the fact that such decisions may well be lawful, certainly do not undermine the conclusions reached by the EAT (with which I agree) that Ms Ladele was neither directly nor indirectly discriminated against, nor harassed."

Lord Neuberger dismissed Ladele's appeal. Lord Justice Dyson and Lady Justice Smith agreed.

The Court of Appeal judgment follows the ruling last month by Mr Justice Underhill at the EAT in *McFarlane v Relate Avon* (UKEAT/0106/09/DA) that a Christian relationship counsellor was not discriminated against or unfairly dismissed for failing to unequivocally agree to counselling same sex couples.

Clare Murray, managing partner of London firm C M Murray, said: "This is the latest decision in a long line which confirms that right to hold and express religious beliefs in the workplace can usually be overridden by the rights of other protected minorities.

"It does, however, give the unfortunate impression that of all the minorities with protection against discrimination, those of employees with religious beliefs are regarded as being the most dispensable."

However, James Davies, joint head of employment at Lewis Silkin, said he was not at all surprised by the Court of Appeal's ruling.

"It seems relatively straightforward to me," he said. "I always thought her claim was bound to fail. Had something different happened, it would have created some very difficult public policy issues."

Davies added that more interesting questions were raised by employees who did not want to discriminate against people who merely wear a Sikh turban or a cross, as in the case of Nadia Eweida, the British Airways check-in worker banned from wearing a tiny crucifix (see *Solicitors Journal* 153/40, 27 October 2009). Eweida is supported by Liberty.

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