

**Insights**

## **BALANCING PROTECTED CHARACTERISTICS – RELIGIOUS BELIEF V SEXUAL ORIENTATION**

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### **SUMMARY**

This week we focus on a new case looking at the difficulties between balancing protections of religious belief with the rights and protections of LGBTQI+ individuals.

The claimant was an evangelical Christian who applied for a job as a mental health support worker. The respondent was/is well known for its work with the LGBTQI+ community, particularly with individuals suffering from mental illness and distress, some even suicidal. Part of the claimant's role would be to act as a counsellor and to provide support to individuals in such situations, the majority of whom would be from the LGBTQI+ community.

The claimant had strong views on homosexuality and transgender issues through his religious beliefs. It came to the respondent's attention that the claimant had expressed these views on social media, including statements such as:

- *"Homosexuality is a sin, no matter how you want to dress it up"*
- *"Homosexuality is a wicked act and God hates the act"*
- *"God will judge ....all those...who indulge[d] in all forms of wicked acts such as homosexuality"*

The respondent believed that, because of the claimant's views and beliefs, he might have difficulty fulfilling a role where he would have to both counsel and work closely with members of the LGBTQI+ community and promote LGBTQI+ values.

Ultimately, the claimant was turned down for the role because of the impact his views might have on vulnerable individuals he might have to deal with, and he in turn sued the respondent for

discrimination because of religious belief. The claimant was unsuccessful, but the judgment focused on some interesting issues which might come up in future cases in this area.

The case raised the issue of Article 9 of the European Convention on Human Rights (ECHR), which protects freedom of religion.

## MANIFESTATION OF BELIEF V POLITICAL COMMENT

In *Higgs -v- Farmor's School*, another case about negative LGBTQI+ comments by a Christian (due to be heard at the Court of Appeal in October), it was argued that Higgs' expression of negative LGBTQI+ views on social media was so closely related to her religious belief that it was a manifestation of it. Higgs argued that Article 9 protects freedom of religion, and this includes not just the holding of a belief, but expressing that belief. Higgs argued that her comments on social media were so closely related to her religious belief as to be part of it. So when Farmor's School dismissed Ms Higgs for her social media posts, the reason was her religious belief - the posts were a manifestation of her beliefs, not just expressions of opinion about LGBTQI+ people.

However, in this case the tribunal took a different view, When the claimant made the comments he did, he was taking part in an online debate about a US Judge who had refused permission for a same-sex couple to adopt a child. The tribunal, following previous cases on Article 9, said there was a difference between:

- views which are a direct expression of religious belief; and
- views which *derive* from a religious belief, but are made in a political context, supporting one view or another.

The tribunal held that the claimant's comments, unlike those of *Higgs*, were not a manifestation of his beliefs – they derived from them, he would not have made them but for his beliefs, but the posts were not an expression of his beliefs as an evangelical Christian. There was nothing in his posts to indicate he was an evangelical Christian, and he could have held views opposing same-sex marriage for a variety of reasons. It is not only evangelical Christians who are opposed to same sex marriage, or to same-sex couples adopting/having children. To quote directly from the judgment:

*The postings [of the claimant] were found to have been a religiously motivated contribution to a political debate...not a protected manifestation of [his] religion*

This is a subtle distinction, but an important one. As the tribunal held the claimant's comments were not manifestations of his religious belief but part of a political debate, Article 9 of the ECHR was not engaged. We shall see in October whether this line of argument has any impact on *Higgs v Farmor's School*.

## RELIGIOUS BELIEF DISCRIMINATION V LEGITIMATE CONCERNS BASED ON RELIGIOUS BELIEF

This is perhaps an even subtler distinction but it is at the forefront of the case. The respondent had deeply felt concerns about the impact of the claimant's beliefs and his public statements on vulnerable service users. What if one of those users googled him?

The respondent did not seem to have any bias against Christians per se – 30% of the respondent's workforce was Christian, and when the claimant was first interviewed for the role he declared himself to be Christian and in fact called himself the Reverend Ngole. With just the information that he was Christian, the claimant was offered the role. It was only when the respondent had difficulties with references and looked up the claimant online, that they discovered his negative LGBTQI+ comments.

The tribunal looked at Article 9(1) of the ECHR and made a distinction between the holding of a religious belief, which is unqualified, and the expression of a belief under Article 9(2) which is qualified. In one of the leading cases on this it is stated that:

*The manifestation of belief and free expression will be protected but.....the law permits the limitation or restriction of such manifestation or expression to the extent necessary for the protection of the right and freedoms of others.*

This goes right to the heart of balancing the protection of different protected characteristics. The claimant had the right to express his religious belief, but not where this might affect the rights and freedoms of others, in this case the LGBTQI+ community.

After a great deal of agonising, the tribunal sided with the respondent. They held the respondent was concerned about the impact of the client's religious beliefs on service users. They did not object to the claimant's religious belief in itself, and took into account the fact that the respondent employed a substantial number of Christians. They also made the important point that the claimant's Article 9(2) ECHR rights were not engaged because the comments had had made were political in nature, rather than an expression of his religious beliefs. The link between the comments he made and his religious beliefs was not close enough for the comments to be categorised as a manifestation of his beliefs.

### WHY THIS MATTERS

This case illustrates the difficulties of balancing genuinely held religious and philosophical beliefs, with the impact those beliefs may have on the rights and protections of others, particularly when those "others" are vulnerable. This case has parallels to *Higgs*, involving LGBTQI+ rights and religious belief, but in this case it was held that the respondent had legitimate concerns based not so much on the claimant's beliefs per se, but how he had expressed them, and how that expression might be perceived.

It also introduced the idea that expressions of religious belief may be categorised as expression of political views, and that social media posts that qualify as manifestations of beliefs may be subject to strict tests.

We await the Court of Appeal's decision in *Higgs* in October.

## RELATED PRACTICE AREAS

- Employment & Labor

## MEET THE TEAM



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