



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

Application nos. 51671/10 and 36516/10  
by Lillian LADELE and Gary MCFARLANE  
against the United Kingdom  
lodged on 27 August 2010 and 24 June 2010

**STATEMENT OF FACTS**

THE FACTS

The first applicant, Ms Lillian Ladele, is a British national who was born in 1960 and lives in London. She is represented before the Court by Mr M. Jones of Ormerods, a firm of solicitors practising in Croydon, Surrey. The second applicant, Mr Gary McFarlane, is a British national who was born in 1961 and lives in Bristol. He is represented before the Court by Mr P. Diamond, a barrister practising in Cambridge.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised as follows.

*1. The first applicant*

**a. The first applicant's refusal to conduct civil partnership ceremonies**

The first applicant is a Christian. She holds the view that marriage is the union of one man and one woman for life, and sincerely believes that same sex civil partnerships, which she describes as “marriage in all but name”, are contrary to God's law.

The first applicant was employed by the London Borough of Islington (“Islington”) (a local public authority) from 1992 until 2009. In 2002, she became a Registrar of Births, Deaths and Marriages. Her job involved

registering births and deaths, and conducting civil marriage ceremonies and registering such marriages.

Islington had a “Dignity for All” equality and diversity policy, which stated *inter alia*:

“Islington is proud of its diversity and the council will challenge discrimination in all its forms. 'Dignity for all' should be the experience of Islington staff, residents and service users, regardless of the age, gender, disability, faith, race, sexuality, nationality, income or health status. ...

The council will promote community cohesion and equality for all groups but will especially target discrimination based on age, disability, gender, race, religion and sexuality. ...

In general, Islington will:

(a) Promote community cohesion by promoting shared community values and understanding, underpinned by equality, respect and dignity for all. ...

It is the council's policy that everyone should be treated fairly and without discrimination. Islington aims to ensure that:

- Staff experience fairness and equity of treatment in the workplace
- Customers receive fair and equal access to council services
- Staff and customers are treated with dignity and respect

The council will actively remove discriminatory barriers that can prevent people from obtaining the employment opportunities and services to which they are entitled. The council will not tolerate processes, attitudes and behaviour that amount to discrimination, including harassment, victimisation and bullying through prejudice, ignorance, thoughtlessness and stereotyping. ...

All employees are expected to promote these values at all times and to work within the policy. Employees found to be in breach of this policy may face disciplinary action.”

The Civil Partnership Act 2004 came into force in the United Kingdom on 5 December 2005. The Act provides for the legal registration of civil partnerships between two people of the same sex, and accords to them rights and obligations equivalent to those of a married couple. A civil partnership is formed by the signing of a registration document in the presence of a Registrar and witnesses.

The first applicant has a sincerely held religious objection to conducting civil partnerships. She is unable to reconcile her Christian beliefs with taking a direct and active part in enabling same sex unions to be given formal legal recognition equivalent to marriage. In her evidence to the Employment Tribunal, she stated: “I feel unable to directly facilitate the formation of a union that I sincerely believe is contrary to God's law”.

In December 2005 Islington decided to designate all its existing Registrars of Births, Deaths and Marriages as Civil Partnership Registrars. It was not required to do so; the legislation simply required it to ensure that there was a sufficient number of Civil Partnership Registrars for the area to carry out that function. Some other United Kingdom local authorities took a different approach, and allowed Registrars with a sincerely held religious objection to the formation of civil partnerships to opt out of designation as Civil Partnership Registrars.

Initially, the first applicant was permitted to make informal arrangements with Registrar colleagues to swap work so that she was not required to

conduct civil partnership ceremonies. In March 2006, however, two homosexual Registrars complained about the first applicant's refusal to carry out such duties. Islington immediately requested that the first applicant agree to a variation of her contractual terms to include all civil partnership duties, in return for which it would offer her a temporary exemption from conducting civil partnership ceremonies. The first applicant refused to agree, and requested that Islington make arrangements to accommodate her beliefs. Islington failed to respond to that request and in May 2007 it commenced disciplinary proceedings against the first applicant on the ground that she “had refus[ed] to carry out work in relation to the civil partnership service solely on the grounds of [the] sexual orientation of the customers of that service”. The outcome of those proceedings was that the first applicant was deemed to be in breach of Islington's “Dignity for All” policy and was required to include civil partnerships ceremonies as part of her duties, failing which her employment might be terminated. The first applicant then brought a claim against Islington in the Employment Tribunal.

**b. The domestic proceedings**

The first applicant lodged a claim with the Employment Tribunal in London. On 3 July 2008, the Tribunal upheld the complaints of direct and indirect religious discrimination, and harassment, holding that Islington had “placed a greater value on the rights of the lesbian, gay, bisexual and transsexual community than it placed on the rights of [the first applicant] as one holding an orthodox Christian belief”.

Islington appealed to the Employment Appeal Tribunal, which on 19 December 2008 reversed the decision of the Employment Tribunal. It held that Islington's treatment of the first applicant was a proportionate means of achieving a legitimate aim. At paragraph 111-112 of that judgment, the President of the Employment Appeal Tribunal stated:

“Once it is accepted that the aim of providing the service on a non-discriminatory basis was legitimate – and in truth it was bound to be – then in our view it must follow that the council were entitled to require all registrars to perform the full range of services. They were entitled in these circumstances to say that the claimant could not pick and choose what duties she would perform depending upon whether they were in accordance with her religious views, at least in circumstances where her personal stance involved discrimination on grounds of sexual orientation. That stance was inconsistent with the non-discriminatory objectives which the council thought it important to espouse both to their staff and the wider community. It would necessarily undermine the council's clear commitment to that objective if it were to connive in allowing the claimant to manifest her belief by refusing to do civil partnership duties.

... the issue is not, as the Tribunal found, a matter of giving equal respect to the religious rights of the claimant and the rights of the gay community. It is whether, given the legitimate aim, the means adopted by the council to achieve that aim were proportional.”

The Employment Appeal Tribunal noted, as an aside, that Islington might lawfully have chosen not to designate as Civil Partnership Registrars those Registrars who had strong religious objections to carrying out such duties. It could then have required all of its Civil Partnership Registrars to carry out civil partnership duties, and avoid acting in a discriminatory

manner in the provision of the civil partnership service. However, Islington was entitled to choose not to act in this way.

The decision of the Employment Appeal Tribunal was appealed to the Court of Appeal, which on 15 December 2009 upheld the Employment Appeal Tribunal's conclusions. It stated, at paragraph 52:

“...the fact that Ms Ladele's refusal to perform civil partnerships was based on her religious view of marriage could not justify the conclusion that Islington should not be allowed to implement its aim to the full, namely that all registrars should perform civil partnerships as part of its Dignity for All policy. Ms Ladele was employed in a public job and was working for a public authority; she was being required to perform a purely secular task, which was being treated as part of her job; Ms Ladele's refusal to perform that task involved discriminating against gay people in the course of that job; she was being asked to perform the task because of Islington's Dignity for All policy, whose laudable aim was to avoid, or at least minimise, discrimination both among Islington's employees, and as between Islington (and its employees) and those in the community they served; Ms Ladele's refusal was causing offence to at least two of her gay colleagues; Ms Ladele's objection was based on her view of marriage, which was not a core part of her religion; and Islington's requirement in no way prevented her from worshipping as she wished.”

It concluded (at paragraph 55) that Article 9 of the Convention and the relevant Strasbourg jurisprudence supported the view that the first applicant's desire to have her religious views respected should not be allowed “...to override Islington's concern to ensure that all its registrars manifest equal respect for the homosexual community as for the heterosexual community.”

It further noted that from the time when the Equality Act (Sexual Orientation) Regulations 2007 (“the 2007 Regulations”: see below) came into force, once the first applicant was designated a Civil Partnership Registrar, Islington was not merely entitled, but obliged, to require her to perform civil partnerships.

The first applicant's application for leave to appeal to the Supreme Court was refused on 4 March 2010.

## *2. The second applicant*

### **a. The applicant's refusal to give an unequivocal commitment to counsel same-sex couples**

The second applicant is a practising Christian, and was formerly an elder of a large multicultural church in Bristol. He holds a deep and genuine belief that the Bible states that homosexual activity is sinful and that he should do nothing which directly endorses such activity.

Relate Avon Limited (“Relate”) is part of the Relate Federation, a national organisation which provides a confidential sex therapy and relationship counselling service. Relate and its counsellors are members of the British Association for Sexual and Relationship Therapy (BASRT). That Association has a Code of Ethics and Principles of Good Practice which Relate and its counsellors abide by. Paragraphs 18 and 19 of the Code provide as follows:

**“Recognising the right to self-determination, for example:**

18. Respecting the autonomy and ultimate right to self-determination of clients and of others with whom clients may be involved. It is not appropriate for the therapist to impose a particular set of standards, values or ideals upon clients. The therapist must recognise and work in ways that respect the value and dignity of clients (and colleagues) with due regard to issues such as religion, race, gender, age, beliefs, sexual orientation and disability.

**Awareness of one's own prejudices, for example:**

19. The therapist must be aware of his or her own prejudices and avoid discrimination, for example on grounds of religion, race, gender, age, beliefs, sexual orientation, disability. The therapist has a responsibility to be aware of his or her own issues of prejudice and stereotyping and particularly to consider ways in which this may be affecting the therapeutic relationship.”

Relate also has an Equal Opportunities Policy which emphasises a positive duty to achieve equality. Part of it reads:

“Relate Avon is committed to ensuring that no person – trustees, staff, volunteers, counsellors and clients, receives less favourable treatment on the basis of personal or group characteristics, such as race, colour, age, culture, medical condition, sexual orientation, marital status, disability [or] socio-economic grouping. Relate Avon is not only committed to the letter of the law, but also to a positive policy that will achieve the objective of insuring equality of opportunity for all those who work at the Centre (whatever their capacity), and all our clients.”

The second applicant worked for Relate as a Counsellor from May 2003 until March 2008. He signed up to the organisation's Equal Opportunities Policy. He obtained a Certificate in Marital and Couple Counselling in August 2005, and completed Relate's Post Graduate Diploma in Couple Therapy in March 2008. The main object of such counselling is to improve relationships between a client couple, which might have deteriorated for a variety of reasons, sexual or otherwise.

The second applicant initially had some concerns about providing counselling services to same-sex couples, but following discussions with his supervisor, he accepted that simply counselling a homosexual couple did not involve endorsement of such a relationship and he was therefore prepared to continue. He subsequently provided counselling services to two lesbian couples without any problems, although in neither case did any purely sexual issues arise.

In 2007 the second applicant commenced Relate's Post Graduate Diploma in Psycho Sexual Therapy (“PST”). PST is intended to deal particularly with problems such as sexual dysfunction and aims to improve a couple's sexual activity in an attempt to improve the relationship overall. By late autumn of 2007 there was a perception within Relate that the second applicant was unwilling to work on sexual issues with homosexual couples.

In response to concerns raised by the second applicant's superiors, Relate's General Manager, a Mr Bennett, met with the second applicant on 22 October 2007. The second applicant confirmed he had difficulty in dealing with same-sex sexual practices and fulfilling his duty to follow the teaching of the Bible. Mr Bennett expressed concern that it would not be possible to filter potential PST clients so that the second applicant would not have to deal with lesbian, gay or bisexual couples.

On 5 December 2007 Mr Bennett received a letter from other therapists expressing concerns that an un-named counsellor was unwilling, on

religious grounds, to work with gay, lesbian and bi-sexual clients. The authors were concerned that such a view would discriminate against some members of the community, contrary to Relate's expressed values, and they suggested that the matter be dealt with through training and supervision.

On 12 December 2007 Mr Bennett wrote to the second applicant stating that he understood that the second applicant had refused to work with same sex couples on certain issues, and that he feared that this was discriminatory and contrary to Relate's Equal Opportunities Policies. He asked for written confirmation by 19 December 2007 that the second applicant would continue to counsel same sex couples in relationship counselling and PST; failing which he threatened disciplinary action and removal from the PST course. On 2 January 2008 the second applicant responded by confirming that he had no reservations about counselling same sex couples and had not asked not to work with them. With regard to PST work, he said that his views were still evolving and were not yet clarified as the situation had not arisen.

Mr Bennett took that as a refusal by the second applicant to confirm that he would carry out PST work with same-sex couples and he therefore suspended him pending a disciplinary investigation. At an investigatory meeting on 7 January 2008 the second applicant acknowledged that there was conflict between his religious beliefs and PST work with same-sex couples, but said that if he was asked to do such work, then he would do so and if any problems arose then he would speak to his supervisor. Mr Bennett took that as an undertaking to comply with Relate's policies, and therefore halted the disciplinary investigation.

Following a subsequent telephone conversation between the second applicant and his supervisor, his supervisor contacted Mr Bennett to express deep concerns about the second applicant as a counsellor – she felt that he was either confused over the issue of same-sex PST or was being dishonest about the issue. When these concerns were put to him, the second applicant stated that his views had not changed since their earlier discussion and that any issue would be addressed as it arose. The second applicant was called to a further disciplinary meeting on 17 March 2008, at which he was asked whether he had changed his mind, but he simply replied that he had nothing further to add to what he had said on 7 January 2008.

On 18 March 2008 Mr Bennett dismissed the second applicant summarily for gross misconduct, on the basis of his finding that the second applicant had said on 7 January 2008 that he would comply with Relate's policies and provide sexual counselling to same-sex couples without any intention of doing so. He could therefore not be trusted to perform his role in compliance with the Equal Opportunities Policies. An appeal meeting took place on 28 April. The appeal was rejected on the basis that Mr Bennett's lack of trust in the second applicant to comply with the relevant policies was justified in light of the evidence presented.

#### **b. The domestic proceedings**

The second applicant lodged a claim with the Employment Tribunal in Bristol, claiming, *inter alia*, direct and indirect discrimination, unfair

dismissal, and wrongful dismissal. The Tribunal pronounced its judgment on 5 January 2009.

In the course of final submissions, Counsel for the respondent conceded that there had been a wrongful dismissal and a subsequent application to withdraw that concession was refused.

With regard to the claim of direct discrimination under Regulation 3(1)(a) of the 2003 Regulations (see below), the Tribunal concluded that the second applicant was not treated as he was because of his faith, but because it was believed that he would not comply with the policies which reflected the organisation's ethos.

With regard to the claim of indirect discrimination under Regulation 3(1)(b), the Tribunal accepted that the provision, criterion or practice which Relate applied equally to persons not of the same religion or belief was the requirement that counsellors comply with the organisation's Equal Opportunities Policies as they applied in particular to both homosexual and heterosexual clients. Such a requirement would indeed put persons of the same religion as the second applicant at a disadvantage when compared with other persons who did not hold such beliefs as a part of their religious faith. The Tribunal accepted that the aim of the requirement was the provision of a full range of counselling services to all sections of the community regardless of sexual orientation, which it concluded was a legitimate aim.

It then considered whether dismissing the second applicant was a proportionate means of achieving that aim. It found that Relate's commitment to providing non-discriminatory services was fundamental to its work. Relate was entitled to require from the second applicant an unequivocal assurance that he would provide the full range of counselling services to the full range of clients without reservation, and he failed to give such an assurance. Filtration of clients, although it might work to a limited extent, would not protect clients from potential rejection by the second applicant, however tactfully he might deal with the issue. The second applicant's dismissal was therefore a proportionate means of achieving a legitimate aim and the discrimination claim failed.

With regard to the unfair dismissal claim, the Tribunal concluded that Relate had genuinely and reasonably lost confidence in the second applicant to the extent that it could not be sure that, if presented with same-sex sexual issues in the course of counselling a same-sex couple, the second applicant would provide without restraint or reservation the counselling which the couple required because of the constraints imposed on him by his genuinely held religious beliefs. Since that was something which the organisation legitimately concluded could not be tolerated, it constituted a "substantial reason of a kind such as to justify dismissal" (in accordance with section 98(1)(b) of the Employment Rights Act 1996: see below). It followed that dismissal for that reason was fair and the claim failed.

The second applicant appealed to the Employment Appeal Tribunal against the Tribunal's findings in relation to direct and indirect discrimination and unfair dismissal. On 30 November 2009 the Employment Appeal Tribunal held that the Tribunal had been correct to dismiss those claims. It rejected the second applicant's argument that it was not legitimate to distinguish between objecting to a religious belief and objecting to a

particular act manifesting that belief, and held that such an approach was compatible with Article 9 of the Convention. It noted Relate's arguments that the compromise proposed by the second applicant would be unacceptable as a matter of principle because it ran "entirely contrary to the ethos of the organisation to accept a situation in which a counsellor could decline to deal with particular clients because he disapproved of their conduct", and that it was not practicable to operate a system under which a counsellor could withdraw from counselling same-sex couples if circumstances arose where he believed that he would be endorsing sexual activity on their part.

Reference was made to the Employment Appeal Tribunal judgment in the first applicant's case. The Employment Appeal Tribunal noted that the facts in that case were very similar to those of the present case, and considered that the reasoning at paragraph 111 of that judgment (see above) applied directly to the present case; there was no material distinction between the position of a local authority and a private organisation such as Relate. Following that reasoning, it concluded that Relate was entitled to refuse to accommodate views which contradicted its fundamental declared principles. In such circumstances, arguments concerning the practicability of accommodating the applicant's views were "out of place". The Employment Appeal Tribunal concluded, at paragraph 30, that:

"...it must be justifiable for a body in the position of Relate to require its employees to adhere to the same principles which it regards as fundamental to its own ethos and pledges to maintain towards the public, all the more so where observation of those principles is required of it by law. If it judges that to compromise those principles in its own internal arrangement would be inconsistent with its external stance, that judgment must be respected."

On the claim of unfair dismissal, the Employment Appeal Tribunal considered that the reason for the second applicant's dismissal should properly have been characterised as being his "conduct" rather than "some other substantial reason" (in terms of section 98 Employment Rights Act), but upheld the Tribunal's dismissal of the claim.

The second applicant applied to the Court of Appeal for permission to appeal the decision of the Employment Appeal Tribunal. On 20 January 2010, the Court of Appeal refused the application on the basis that there was no realistic prospect of the appeal succeeding in the light of the Court of Appeal judgment of December 2009 in *Ladele*. Following the refusal by the Supreme Court to allow leave to appeal in *Ladele*, the second applicant renewed his application for permission to appeal the decision of the Employment Appeal Tribunal. After a hearing, that application was again refused on 29 April 2010, on the basis that, as the present case could not sensibly be distinguished from *Ladele*, the second applicant's argument could not succeed. At paragraph 25 of his decision, Lord Justice Laws concluded:

"There is no more room here than there was there for any marginal balancing exercise in the name of proportionality. To give effect to the applicant's position would necessarily undermine Relate's proper and legitimate policy."



## **B. Relevant domestic law and practice**

### *1. The Employment Equality (Religion or Belief) Regulations 2003*

Regulation 3(1) of the 2003 Regulations defines direct and indirect discrimination on grounds of religion or belief:

“3. (1) For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if –

(a) on grounds of religion or belief, A treats B less favourably than he treats or would treat other persons; or

(b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same religion or belief as B, but –

(i) which puts or would put persons of the same religion or belief as B at a particular disadvantage when compared with other persons,

(ii) which puts B at that disadvantage,

(iii) which A cannot show to be a proportionate means of achieving a legitimate aim.”

Under section 2(1), “religion or belief” means any religion, religious belief, or similar philosophical belief.

Regulation 6(2) makes it unlawful for an employer to discriminate against a person on grounds of religion or belief:

“(a) in the terms of employment which he affords him;

...(d) by dismissing him, or subjecting him to any other detriment.”

### *2. Employment Rights Act 1996*

The 1996 Act provides, as relevant:

“98. (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it –

...(b) relates to the conduct of the employee”

### *3. The Equality Act (Sexual Orientation) Regulations 2007*

Regulation 3 of the 2007 Regulations defines discrimination on the grounds of sexual orientation as follows:

“3(1) For the purposes of these Regulations, a person ('A') discriminates against another person ('B') if, on grounds of the sexual orientation of B..., A treats B less favourably than he treats or would treat others (in cases where there are no material differences in the circumstances)...

(3) For the purposes of these Regulations, a person ('A') discriminates against another ('B') if A applies to B a provision, criterion or practice-

(a) which he applies or would apply equally to persons not of B's sexual orientation,

(b) which puts persons of B's sexual orientation at a disadvantage when compared to some or all others (where there are no material differences in the relevant circumstances),

(c) which puts B at a disadvantage compared to some or all persons who are not of his sexual orientation (where there are no material differences in the relevant circumstances), and

(d) which A cannot reasonably justify by reference to matters other than B's sexual orientation.”

Regulation 8(1) states that it is “unlawful for a public authority exercising a function to do any act which constitutes discrimination”. “Public authority” is defined in Regulation 8(2) as including “any person who has functions of a public nature...”.

Regulation 14 contains limited exceptions for organisations the purpose of which is the practice or advancement of a religion or belief.

## COMPLAINTS

The first and second applicants complain that domestic law failed adequately to protect their right to manifest their religion, contrary to Article 9 of the Convention, taken alone and in conjunction with Article 14.

The first applicant complains that domestic law failed to afford her an effective remedy for a violation of the Convention, contrary to Article 13.

The second applicant complains that domestic law failed adequately to protect his right to a fair trial, contrary to Article 6 of the Convention. He also complains that domestic law failed adequately to protect his right to respect for private life, contrary to Article 8 of the Convention.

## **QUESTION TO THE PARTIES**

In respect of either applicant, has there been a breach of Article 9, taken alone or in conjunction with Article 14?