

# Religion or Belief in the Workplace:

## An Explanation of Recent European Court of Human Rights Judgments



### **What is the purpose of this publication?**

In January 2013, the European Court of Human Rights (the Court) published its judgment in four combined cases about religious rights in the workplace. The judgment affects employer responsibilities for policies and practices affecting religion or belief rights in the workplace, the rights of employees (including job applicants) and the rights of customers or service users. This guide aims to help employers understand the legal implications of the Court's judgment.

### **Who is it for?**

This guide is useful for employers, employees, service providers, customers, public authorities and their service users.

### **What is inside?**

This guide covers:

- What laws protect rights to religion or belief
- What the cases were about
- What legal changes the judgment makes.

### **When was it published?**

This guide was first published in February 2013. It was updated in March 2014.

### **Why has the Commission produced it?**

The Equality and Human Rights Commission has responsibility for the promotion and enforcement of equality and human rights laws in England, Scotland and Wales.

### **What formats are available?**

This Guide is available as a PDF file and as a Microsoft Word file from [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

## Introduction

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In January 2013, the European Court of Human Rights (the Court) published its judgment in four combined cases about religious rights in the workplace. The cases are: *Eweida and Chaplin v. the United Kingdom* and *Ladele and McFarlane v. the United Kingdom*. The cases were brought by Christians, but the implications of the judgment apply to employees with any religion or belief, or none. The judgment affects employer responsibilities for policies and practices affecting religion or belief rights in the workplace, the rights of employees (including job applicants) and the rights of customers or service users.

This guide aims to help employers understand the legal implications of the Court's judgment. It specifically addresses the following questions:

- What laws protect rights to religion or belief?
- What were the cases about?
- What legal changes does this judgment make?
- Will the law change again?

The Equality and Human Rights Commission is also publishing a companion guide explaining how employers can take practical steps to comply with the judgment when recognising and managing the expression of religion or belief in the workplace.

The Commission seeks to promote a balanced approach to religion or belief issues at work and to help employers and employees find reasonable solutions, wherever possible, and avoid complex, costly and damaging litigation. It is in the interests of all parties to try to find reasonable solutions through discussion, mutual respect and, where practical, mutual accommodation.

## What laws protect rights to religion or belief?

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The Equality Act 2010 prohibits unlawful harassment, victimisation and direct and indirect discrimination at work based on religion or belief. The law concerning indirect discrimination was most relevant in these cases when they were considered by the domestic courts/tribunals. Moreover, since April 2011, section 149 of the Equality Act

2010 requires public authorities when exercising their functions to give due regard to eliminating prohibited conduct, advancing equality of opportunity and fostering good relations. These positive obligations, commonly known as the public sector equality duty, cover eight protected characteristics including religion or belief.

Article 9 of the European Convention on Human Rights (incorporated into UK law through the Human Rights Act 1998) provides unqualified protection for freedom of thought, conscience and religion. It also provides protection for the right to express or manifest religion or belief in worship, teaching, practice and observance, but, because manifestation by one person of his or her belief may have an impact on others, these rights are qualified and can be restricted in certain circumstances. Article 9 is complemented by Article 14 of the European Convention on Human Rights, which requires that people enjoy all the rights under the Convention without discrimination. Article 14 is not a free-standing right; it can only operate when another Convention right is engaged.

Religion or belief manifestation rights under Article 9 can be limited, but any limitation must be prescribed by law and necessary in a democratic society in the interests of public safety, the protection of public order, health or morals, or the protection of the rights and freedoms of others. Indirect discrimination based on religion or belief under the Equality Act 2010 or interferences with Article 14 anti-discrimination rights can be justified if this is a proportionate means of achieving a legitimate aim.

## What were the cases about?

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Eweida and Chaplin were both prevented by their employers' dress codes from wearing a visible cross/crucifix when in uniform at work. The majority of the European Court of Human Rights decided that their religious rights at work needed to be balanced against other considerations. In the case of Eweida, an airline check-in officer, they found that her Article 9 right to manifest her belief was unjustifiably breached. The domestic courts gave too much weight to the employer's legitimate need to project a corporate image and not enough weight to the employee's right to wear a visible cross, which did not adversely affect that corporate image. In the case of Chaplin, a nurse, the Court unanimously concluded that the health and safety of staff and patients outweighed the right of the employee to wear a visible crucifix on a

chain around her neck. The employer's decision interfered with her Article 9 rights, but it was justifiable on health and safety grounds.

Ladele and McFarlane both objected, due to their religious beliefs about marriage and sexual relationships, to carrying out certain work duties in respect of same-sex couples. The European Court of Human Rights found against both of them. In Ladele, a registrar who refused to perform civil partnerships and was ultimately dismissed, the majority of the Court found that the employer's application of the corporate 'equality and dignity' policy to refuse to exempt an employee from particular duties, was within the range of permissible choices available to the employer, and the domestic courts had not exceeded the wide discretion given to them when determining this case which involved striking a balance between competing Convention rights. In reaching that conclusion, the majority of the Court did not accept the employee's argument that the employer should have accommodated her conscientious objection.

In McFarlane, a counsellor who refused to offer psycho-sexual therapy to same-sex couples contrary to his employer's non-discrimination policy and was dismissed, the Court unanimously decided that a fair balance was struck between the competing interests at stake. The most important factor for the Court was that the employer's action was intended to secure the implementation of its policy of providing a service without discrimination. Accordingly, although the Court recognised that the loss of a job was a severe sanction with grave consequences, it concluded the State had not exceeded the wide discretion it enjoys to determine the right balance between manifesting religious belief and protecting the rights of others.

## What legal changes does this judgment make?

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Until recently, the European Court of Human Rights and our domestic courts tended to take the view that a practice was protected under Article 9 only if it was **required** by the particular religion or belief. The new judgment confirms that a practice or manifestation motivated, influenced or inspired by religion or belief, and which is sufficiently linked to the religion or belief will be protected, regardless of whether it is a mandatory requirement of the religion or belief. Both Eweida and Chaplin could show their wish to wear a cross/crucifix visibly at work was genuine and motivated by a desire to bear witness to their Christian faith although neither claimed that it was a

requirement of their religion. The Court considered that this behaviour was a manifestation of religious belief, attracting the protection of Article 9. It should now be easier for individuals to establish Article 9 rights to manifest religion or belief, placing greater focus on the next stage of the decision-making process, which is to assess whether any interference with such rights is justifiable.

In the past, employees in similar situations to Eweida, Chaplin, Ladele and McFarlane may have been expected to resign and look for other jobs if they wished to observe their religion or belief in the workplace. There have been legal cases in the past where an individual's right to manifest their religion or belief has been limited on this basis.

The European Court of Human Rights concluded that this approach could not be followed rigidly. The new judgment means that the courts cannot simply dismiss a case because of the possibility of changing jobs to other employment that allows the religious observance. Instead, this possibility should be a relevant factor, to be weighed amongst others, when considering whether or not the restriction is proportionate.

The judgment means that courts will now give more attention to deciding whether restrictions on religious rights in the workplace are appropriate and necessary. Some relevant considerations for employers include the need to:

- Take a balanced view of the religion or belief needs of the employee
- Review policies and practices causing problems for employees related to religion or belief, ensuring employees are not subjected to a detriment at work whilst this happens
- Consider the impact that meeting those needs has on other employees
- Consider the impact that meeting those needs has on customers, and
- Consider whether the aim they are pursuing is legitimate and, if so, whether it is being pursued by proportionate means.

The courts will assess the weight of each type of relevant consideration to determine where the right balance lies in the particular circumstances of each case. The Commission's companion guide helps to explain how employers can do this in practice, enabling them to comply with the judgment when recognising and managing the expression of religion or belief in the workplace.

## Further information

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See also Religion or Belief in the Workplace: A Guide for Employers Following Recent European Court of Human Rights Judgments and Equality and Human Rights Commission Statutory Equality Act 2010 Code of Practice for employers, available at [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

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