



Discrimination to dismiss for not following Orthodox beliefs

By **Caroline Baker** - 21 December 2017

A 24 year old nursery school teacher has been found to have been discriminated against when she was fired by her ultra-orthodox Jewish nursery employer. The nursery took issue with various lifestyle choices of the claimant, Ms Zelda de Groen, which included the fact that she was living with her partner, unmarried, whilst teaching children at the nursery. The Tribunal found that the treatment Ms Zelda de Groen suffered was directly discriminatory on the grounds of both sex and religious belief, as well as indirectly discriminatory on the grounds of religious belief.

The case of Ms de Groen was widely reported in the media when it first came into the public domain, stirring up the emotive issues of religious freedom and the appropriateness of employers judging the private lives of their workers. This is a particularly pertinent issue for religious institutions in an ever-changing society, where employees may be unwilling to 'toe the line' outside of their working hours. However, the issue also arises for private sector employers who worry about the risks to their reputation caused by employees' after work activities (for example, several US employers dismissed employees identified as taking part in the far-right Charlottesville protests).

In this case, the respondent nursery argued that it had dismissed Ms de Groen because of an economic threat to the nursery of Ms de Groen's continued employment in light of parental complaints made about her lifestyle choices, which were argued to be contrary to ultra-orthodox Jewish teachings. However, whilst it is in theory possible to dismiss in cases of reputational damage where there is religious element, this case shows that it is a fine tight rope to walk.

The nursery attempted to defend the dismissal on various grounds, including that it was a genuine occupational requirement to follow the religious ethos of the nursery. Yet, for obvious policy reasons, the genuine occupational requirement defence is very limited in scope. To successfully use this defence, the nursery needed to show that:

(a) following this religious ethos was an occupational requirement,

(b) that having this requirement was a proportionate means of achieving a legitimate aim, and

(c) that Ms de Groen did not meet this requirement.

The defence failed. It is very hard to see how a person's lifestyle choices outside of work, including not living with a partner outside of marriage, could be a genuine occupational requirement in almost any circumstance. As noted by the Human Rights Joint Committee (and as set out in the Judgment):

"It is very difficult to see how in practice beliefs in lifestyles or personal relationships could constitute a religious belief which is a requirement for a job other than for ministers or religion."

This case has again shown that it will be a rare case when the occupational requirement defence will save an employer from a discrimination claim.