



Judgment Day for proselytising employee

By **Lisa Rix** and **Ben Smith** - 30 May 2019

The Court of Appeal has recently held that the dismissal of a nurse for improperly proselytising at work was fair (*Kuteh v Dartford and Gravesham NHS Trust*).

The Claimant was a committed Christian nurse working in a pre-operative assessment role. As part of her role, she had to ask patients what their religion was and note the response. However, the Claimant often entered into further religious discussion which patients, which was not permitted, including:

- telling patients that they would have a better chance of surviving the operation if they prayed;
- asking patients what they thought being a Christian was about / what Easter was about;
- giving a patient a bible and telling him she would pray for him;
- saying prayers for patients; and
- asking a patient to sing a psalm with her.

Many patients complained about this behaviour and the Claimant received a warning about the inappropriateness of her conduct. Despite assuring her employer she would cease initiating religious discussions, the Claimant continued to proselytise. Disciplinary proceedings were brought and the Claimant was ultimately dismissed.

The Claimant brought a claim for unfair dismissal. The employment tribunal however rejected this claim and found the dismissal was fair. The Claimant appealed this decision, but the EAT refused to give permission to appeal.

On appeal to the Court of Appeal against that refusal, the Claimant complained that the employment tribunal had failed to distinguish between true evangelism and 'improper' proselytising when considering the fairness of the dismissal, in light of her right to manifest religion under the European Convention of Human Rights (ECHR). The distinction between the two forms of proselytising is not immediately clear, but it seems that proselytising will become improper where there is an element of improper pressure involved or where employees have been specifically instructed not to do so.



The Court of Appeal dismissed the appeal. The Court considered that the Claimant had acted inappropriately both by:

1. improperly proselytising to patients (which is not a manifestation of religion protected by the ECHR); and
2. failing to follow a lawful management order.

They concluded that the employer had carried out a fair disciplinary process and reached a reasonable conclusion, so the dismissal was upheld as fair.

It is interesting that the Claimant did not also seek to bring a religious discrimination claim. However, it is unlikely that this claim would have been successful either: it is clear from other authorities that once employees are warned to stop improperly proselytising at work but they continue to do so, resulting in disciplinary action as a consequence, a discrimination claim will be unlikely to be successful.