



Sports in the news – what do the employment lawyers think this December?

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'Til I die

Fanatical loyalty and intense rivalry go hand in hand with sport. We only need to look back to last weekend (Hamilton vs Verstappen – I don't want to talk about it); or last week (England vs Australia in the Ashes – I really don't want to talk about it); or last summer (the Euros – why am I doing this to myself) to see this.

Nothing seems to elicit this sense of tribalism quite like supporting a football club. Numerous studies have shown the sheer time and money invested by football superfans and last month saw two Tottenham fans travel 31 hours from Dallas to Burnley to watch a match which was eventually postponed due to snow.



However, can allegiance to a football club amount to a protected belief under UK discrimination legislation? This question will soon be considered by an employment tribunal in a claim brought by Mr Eddie McClung against his former employer. Mr McClung alleges that losing his sub-contractor role (along with several instances where he claims he was targeted by colleagues and managers) amounted to direct discrimination and harassment because of religion or belief, being his support of Rangers Football Club.

Philosophical belief discrimination in the UK

The following criteria must be met for an employee to establish a philosophical belief under section 10 of the Equality Act 2010. The belief must:

- be genuinely held;
- not just be an opinion or viewpoint based on the present state of information available;
- relate to a weighty and substantial aspect of human life and behaviour;
- attain a certain level of cogency, seriousness, cohesion and importance; and
- be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the fundamental rights of others.

It is expected that Mr McClung will point to his Rangers memorabilia, regular attendance at games, memories of watching games with his late father and the time and money invested in being a fan to establish a protected belief. We will wait to see how the factors above are applied by the employment tribunal and whether Mr McClung's arguments succeed but suspect the key difficulty will be in establishing the level of seriousness and importance.

Recent case law has seen a range of beliefs gain protected status, including ethical veganism, anti-fox hunting, Brexit, Scottish independence, stoicism, and climate change. In one of the key cases of 2021, *Forstater v CGD Europe UKEAT/0105/20*, the Employment Appeal Tribunal held that excluded beliefs would be limited to "*beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms*". The threshold for protection is therefore relatively low, but notably must be considered in each case depending on the specific facts even if the belief has previously been protected.

Regardless of whether this case finds that Mr McClung's support of a football club is a protected belief, this is just one of the initial steps in these discrimination cases. An employee must show a causal link between the belief and their dismissal and historically this has been the more difficult hurdle to pass.

We will be keeping an eye on how this case fits into the law surrounding protection of philosophical beliefs. Until then, remember it's just a game...