

Briefing on the Employment Equality (Religion or Belief) Regulations 2003

The *Employment Equality (Religion or Belief) Regulations 2003* (“the Regulations”) have been in force since the 2nd December 2003. They represent a significant development in UK domestic law in that a Muslim employee who is treated less favourably because of his or her religion in the work place now has a remedy at law – although, that said, anyone who is the victim of indirect discrimination still has to prove that this was intentional before an order for compensation can be made. The Regulations also mean that a Muslim employer who treats a non-Muslim employee less favourably because of his or her religion or belief can now be taken to court. Up to now there have been no landmark cases involving the interpretation and application of the Regulations, but no doubt they will come.

A consortium of Muslim organisations, led by the Muslim Council of Britain (MCB), and including the Muslim Directory UK, the Muslim News and British Muslim Research Centre, with support from the DTI until the 31st March 2004, has been providing briefing sessions for the Muslim community on the new regulations at a number of venues throughout the UK. The aim of these sessions has been twofold, to inform members of the Muslim community of their new rights and duties – and to encourage the channelling of test cases so that good precedents can be established at the outset.

One of these briefing sessions took place at the East London Centre in Stratford, London, on the 8th January 2004, with a welcome by Jamil Sherif and an introduction by Khalid Sofi, both of the MCB, and the main presentation by Muhammed Abdul Aziz, CEO of the British Muslim Research Centre. The session was well attended, mainly by Muslim community leaders and imams, as well as by representatives from bodies such as ACAS and the Commission for Racial Equality (“the CRE”), all of whom are eager to have the Regulations implemented in a positive manner.

The presentation was clear and articulate and confirmed that in essence the Regulations will apply in the same way that existing race and sex discrimination legislation is applied: There are the familiar heads of direct and indirect discrimination, harassment and victimisation and also the exceptions to the general rule where discrimination is legally permitted by reason of genuine occupational requirement, positive action or national security, provided that it is ‘proportionate’.

It became clear at the question and answer stage of the briefing, however, that there are several issues which are unique to discrimination on grounds of religion or belief and which will remain a matter of speculation until they have been judicially considered in court – hence the importance of having truly representative test cases in order to establish reliable, intelligible and hopefully acceptable precedents. These issues include :

- To what extent does a lack of any belief constitute a belief which is capable of being protected by virtue of the Regulations? For example, are nihilists included?
- To what extent does an extreme belief constitute a belief which is capable of being protected by virtue of the Regulations? For example, are members of the Ku Klux Klan included?

- To what extent can an organisation maintain and protect its religious ethos? For example, can a firm of Christian solicitors whose client base is mainly Christian safely operate a policy of recruiting only Christians as staff?
- Where there is a conflict of rights, which right has precedence over the other? For example, sodomy is abhorred by Jews and Muslims and by some Christians as being a practice forbidden by God, and for which the people of Sodom and Gomorrah were destroyed, by “brimstone and fire from the Lord” (Genesis 19.24 and Qur’an 11.82-83). Can a Jewish employer therefore refuse to employ a gay homosexual or lesbian – who has a legal right under the *Employment Equality (Sexual Orientation) Regulations 2003* (also now in force) not to be discriminated against in the work place because of his or her sexual orientation?
- To what extent will judicial reasoning and judgement be coloured and defined by the personal beliefs or lack of belief and sexual orientation of the members of the tribunal or court concerned?
- At what point if at all will the CRE be able to take on cases which involve a combination of religious and race discrimination? At present the CRE is bound by its legally defined remit to deal only with race discrimination, which means that now – as was the case before the Regulations came into force – the CRE has to continue to turn away Muslim applicants who are the victims of religious discrimination.

Unresolved issues such as these mean that the law can still develop in a number of ways. Clearly, a Muslim who is dismissed for doing the prayer during a tea break should have no difficulty in obtaining appropriate legal redress since the American concept of ‘reasonable accommodation’ now applies – but, for example, will Muslim schools continue to be able to employ staff who satisfy Islamic criteria in order to maintain their religious ethos – and if a poor Muslim employee with no savings is the victim of religious discrimination in the work place, then in the absence of assistance from either the CRE, or the Legal Services Commission or the non-existent Single Equality Body which will allegedly purport to deal with different types of discrimination by means of a one-stop-shop approach, who will be prepared to act as his or her legal representative?

Ahmad Thomson