

argument. Elias J referred to *R v Secretary of State, ex parte Williamson* [2005] AC 246, noting that courts should not adopt an objective standard to determine whether or not something is a religious belief and that it is not necessary for a religious belief to be shared by others or to be ‘a mandatory requirement of an established religion’. For the purposes of indirect discrimination, the policy itself need not be incompatible with a specific religious belief, and disadvantage may only arise out of the way that the religion or belief is practised. However, simply showing that others would have a strong view that jewellery, or even crosses, should be worn would not suffice, since the claimant needed to show that those who shared the same religion or belief had suffered the same disproportionate impact. For Elias J, ‘the whole purpose of indirect discrimination is to deal with the problem of group discrimination’ and in this case the tribunal was plainly entitled to reach its conclusion that there was no evidence of group disadvantage. The appeal was dismissed.

Summary supplied by Russell Sandberg. A fuller version appeared in Law and Justice, and it is reproduced here with permission. For a critique of the Employment Appeal Tribunal decision, see L Vickers, ‘Indirect discrimination and individual belief: Eweida v British Airways plc’ on pp 000–000 of this issue.

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A v Okechi

Disciplinary Tribunal, Diocese of Lichfield, December 2008
Adultery – penalty – suspension

Mrs A brought a complaint against the respondent, the Revd Dr Patrick Okechi, incumbent of the parish of the Good Shepherd with St John, West Bromwich. She alleged that she had had a sexual relationship with the respondent from Spring 2004 until February 2006. The respondent denied this relationship, suggesting instead that the complainant had become obsessed with him. The respondent disputed much of the complainant’s evidence. The tribunal considered the evidence of telephone records, including intimate text messages and large numbers of calls from the vicarage to the complainant, as evidence in favour of the complainant’s version of events. The tribunal unanimously concluded that the respondent had formed an inappropriate adulterous relationship with the complainant and that this was conduct unbecoming within section 8(1)(d) of the Clergy Discipline Measure 2003. In considering penalty, the tribunal took into account the 28-month period of the respondent’s suspension from office pending the hearing. He was removed from office and prohibited from exercising any functions of his orders for ten years. The chairman also made

an order preventing identification of the complainant or her family, with a penal notice attached. [WA]

A transcript of the tribunal's determination may be found at <http://www.ecclaw.co.uk/clergydiscipline/okechi1.pdf> and of the imposition of penalty at <http://www.ecclaw.co.uk/clergydiscipline/okechi2.pdf>

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London Borough of Islington v Ladele

Employment Appeal Tribunal: Elias J, December 2008

Registrar – civil partnerships – conscientious objection – dismissal

The Employment Appeal Tribunal allowed the council's appeal against the Employment Tribunal's finding that Ms Ladele, a registrar, had suffered direct and indirect discrimination and harassment on the grounds of religion or belief after having been disciplined by the council for refusing to perform civil partnership ceremonies.⁷ In relation to the claim of direct discrimination, the EAT noted that the crucial question for the tribunal to determine had been *why* the claimant had been treated as she was. The lower tribunal's analysis betrayed a number of errors of law: it had not been proved that the claimant had been treated in this way because of her religion or belief. The council had not treated the claimant differently from others but had refused to make an exception for her because of her religious convictions. The complaint was of a failure to accommodate difference rather than a complaint that she had been discriminated against *because* of that difference. Treating all employees in precisely the same way could not constitute direct discrimination. The EAT found that the tribunal had confused the claimant's reasons for acting as she did (which were on grounds of religion) with the respondent's reasons for treating the claimant as it had (which were on grounds of her conduct, not of her belief).

This same reasoning applied in relation to the claim of harassment. It had not been proven that the harassment was on grounds of religion or belief. It was not sustainable reasoning to hold that because the claimant was asserting a religious view and suffered unwanted conduct as a consequence then that conduct must be deemed to be by reason of the religious view. The EAT noted that to hold that because the claimant's conduct was on grounds of her religion or belief that necessarily meant that she was being discriminated against on religious grounds would mean that 'the religious belief would be a solvent dissolving all inconsistent legal obligations owed to the employer'.

⁷ The decision of the Employment Tribunal is noted at (2009) 11 Ecc LJ 122.