

ARTICLE: Environmental belief could be capable of protection

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Introduction

The Employment Appeal Tribunal (EAT) has recently held that a belief in climate change and a duty to live your life to ensure that further environmental damage is minimised might be able to amount to a philosophical belief. If it did, such a belief could invoke the protection of the Employment Equality (Religion or Belief) Regulations 2003.

The facts

An appeal was made to the EAT by Grainger Plc following a preliminary ruling by the Employment Tribunal that Mr Nicholson's beliefs in climate change are or amount to a philosophical belief. In his witness statement before the Tribunal, Mr Nicholson had stated:

"[My belief in man-made climate change] is not merely an opinion but a philosophical belief which affects how I live my life including my choice of home, how I travel, what I buy, what I eat and drink, what I do with my waste and my hopes and fears. For example, I no longer travel by airplane, I have eco-renovated my home, I try to buy local produce, I have reduced my consumption of meat, I compost my food waste, I encourage others to reduce their carbon emissions and I fear very much for the future of the human race, given the failure to reduce carbon emissions on a global scale."

The EAT's decision

Mr Nicholson was required by the EAT to articulate exactly what his philosophical belief was, and his response was "that mankind is heading towards catastrophic climate change and therefore we are all under a moral duty to lead our lives in a manner which mitigates or avoids this catastrophe for the benefit of future generations, and to persuade others to do the same".

The EAT gave extensive consideration as to what can constitute a philosophical belief. It was noted that a religious belief could be easily enough established by the adherence to the requirements of a particular religion.

It was recognised that there is a difficulty in distinguishing between what can be classed as a belief and be protected, and what is merely a personal opinion. As such, it was necessary to set certain requirements or limits to help classification. After considering both UK and European jurisprudence, the EAT held that a philosophical belief must:

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

As to the second point, a contrast was drawn with the previous case of Mr McClintock, who was a justice of the peace on the family panel. He had declined to officiate in cases where he might have to decide whether same sex partners should adopt children. In its judgment,

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the Tribunal noted that "Mr McClintock had not as a matter of principle rejected the possibility that single sex parents could ever be in a child's best interests; he felt that the evidence to support this view was unconvincing, but did not discount the possibility that further research might reconcile the conflict which he perceived to exist". He was held not to have suffered discrimination. This result can be considered alongside the case of Ms Ladele, a Christian registrar, who refused to officiate at civil partnerships as such unions went against her Christian principles. Ms Ladele's employer was held to have dismissed her fairly.

Partly based on McClintock, Grainger plc argued that beliefs based on science could not be classed as philosophical beliefs. The EAT rejected this argument, drawing attention to empiricist philosophers such as Hume and Locke, and adding that "Darwinism must plainly be capable of being a philosophical belief, albeit that it may be based entirely on scientific conclusions".

The suggestion that a belief must form part of a system of beliefs and not be a "one-off" was rejected. The EAT cited pacifism and vegetarianism as such beliefs "namely a belief that does not govern the entirety of a person's life". It was concluded that, so long as the belief satisfied the other criteria, it was not a bar to protection that it did not "allude to a fully-fledged system of thought".

The EAT also considered political beliefs and held that, while support of a political party might not meet the requirements of a philosophical belief, it would not necessarily disbar a belief that was based on a political philosophy. The examples given of what might qualify were Socialism, Marxism, Communism or free-market Capitalism.

When considering political beliefs, the EAT recognised the concern that allowing protection of political philosophical beliefs might allow protection for racist or homophobic politics. However, the EAT concluded that such objectionable beliefs would be excluded because of requirement 5 that a belief is worthy of respect in a democratic society and not incompatible with human dignity.

As a result, the EAT upheld the Tribunal's decision, but amended the phrasing from "the claimant's beliefs are or amount to a philosophical belief within the 2003 Regulations" to "the asserted belief held by the Claimant on which he bases his claim of discrimination is capable of being a belief for the purposes of the 2003 Regulations".

Conclusions

One of the matters which the EAT also looked into was the issue of cross-examination. The employment judge had stated that it was doubtful Mr Nicholson could be cross-examined about his beliefs "since it is not the function of the Tribunal to examine the beliefs of Claimants appearing before it". However, the EAT stated such questioning would be necessary to establish belief. As such, despite the EAT's ruling here, when the case goes for a full hearing Mr Nicholson may not be able to prove that his particular philosophical belief is worthy of protection.

Even if Mr Nicholson does overcome the hurdle of proving his belief is capable of protection, he has then to prove that he suffered some detriment because of it which amounted to discrimination. The facts surrounding Mr Nicholson's dismissal have not yet been given in evidence, but it is interesting to note that in his own witness statement he says: "I encourage others to reduce their carbon emissions". A right to hold and act in accordance with your own beliefs is protected, but it is not permitted to attempt to foist these beliefs onto others. In a case at the beginning of 2009, a social worker was dismissed by his

employer because he had been promoting Christianity to some of the service users which his employer deemed as inappropriate. The Tribunal held that this was a fair dismissal and did not constitute discrimination. In Mr Nicholson's case, if it were shown that he was dismissed for trying to persuade others of the truth of man-made climate change, then such a dismissal could be deemed to be fair as well.

If you would like further information on this case or how it might affect your workplace, please contact David Hill at dhill@davidsonlarge.com or Lucy Bond at lbond@davidsonlarge.com.

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