



DISCRIMINATION LAW ASSOCIATION

Briefings

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The importance of distinguishing between protected beliefs and the way in which they are manifested

Ngole v Touchstone Leeds [2026] EAT 29; 16 February 2026

Implications for practitioners

The Employment Appeal Tribunal (EAT) considered whether an employer's decision to withdraw, and subsequently refuse to reinstate, a job offer to a Christian applicant was taken because of his protected religious beliefs or because of the manner in which those beliefs were expressed.

The distinction between a religious belief and its manifestation is central to the analysis of a discrimination claim. If the decision was motivated by the claimant's Christian beliefs themselves, it would amount to direct discrimination and be unlawful. However, if the decision was instead based on the manifestation of those beliefs, different considerations arise. In such circumstances, where the manifestation is considered sufficiently objectionable or inappropriate, the employer's actions may be capable of justification as a 'proportionate means of achieving a legitimate aim'.

Facts

Mr Ngole (N), a Christian social worker, applied for the role of discharge mental health support worker with Touchstone Leeds (Touchstone), a charity providing mental health and wellbeing services. Touchstone places particular emphasis on supporting Lesbian, Gay, Bisexual, Trans, Queer and Intersex (LGBTQI+) service users; approximately one-third of its workforce and 12% of its service users identify as LGBTQI+. Around 30% of Touchstone's workforce identify as Christian.

N's application was successful, and he was offered the position, subject to satisfactory references. Following the offer, Touchstone became aware of historic Facebook posts in which N had expressed the view that homosexuality and same-sex marriage were sinful. These posts had previously led to his removal from a university social work course.

Touchstone considered that N's publicly expressed views could pose a significant risk to its service users and reputation, particularly given the nature of its services and client base. It was concerned that LGBTQI+ service users might find the comments offensive or upsetting. As a result, Touchstone withdrew the job offer.

After N challenged that decision, Touchstone invited him to attend a further interview to provide assurances that his religious beliefs would not affect his ability to perform the role. During that meeting, N confirmed that he would treat all service users with dignity and respect, that his beliefs would not impact his professional practice, and that he would participate in LGBTQI+ and transgender awareness training, including respecting individuals' preferred pronouns.

Despite these assurances, Touchstone declined to reinstate the offer, maintaining its concerns about the potential impact of N's beliefs on service users and the organisation's reputation.

N subsequently brought claims in the employment tribunal (ET) alleging discrimination on grounds of religion or belief under the Equality Act 2010 (EqA).

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Employment Tribunal

The ET accepted that N's Christian beliefs constituted protected religious beliefs for the purposes of the EqA and held that Touchstone's initial decision to withdraw the job offer amounted to direct discrimination. In reaching that conclusion, the tribunal found that the prospective employer had acted on the basis of N's social media posts expressing his protected beliefs, without first seeking assurances that those beliefs would not affect his ability to perform the role or interact appropriately with service users.

However, the ET reached a different conclusion about Touchstone's subsequent actions. It found that requiring N to attend a further interview and provide assurances regarding his ability to work with LGBTQ+ service users was not discriminatory. Nor was the decision not to reinstate the job offer following that interview.

The ET considered that, at this stage, Touchstone's actions were motivated not by N's religious beliefs themselves, but by concerns regarding the potential impact of those beliefs on vulnerable service users and on the organisation's ability to deliver its services. The judge concluded that the refusal to reinstate the offer was objectively justified as a proportionate means of achieving the legitimate aim of protecting the welfare and wellbeing of Touchstone's service users. N appealed to the EAT.

Employment Appeal Tribunal

The EAT agreed that Touchstone was entitled, in principle, to invite N to a further interview in order to seek assurances about his ability to work appropriately with LGBTQ+ service users and to confirm his willingness to undertake any required equality, diversity and inclusion training.

However, the judge held that the ET had erred in its analysis of both the decision to require the second interview and the subsequent decision not to reinstate the job offer. In particular, the ET had failed to identify the operative reasons for those decisions and, as a result, had not properly determined whether they amounted to unlawful discrimination.

The EAT emphasised the importance of distinguishing between adverse treatment because of his protected religious belief and adverse treatment because of the manner in which that belief is manifested. The ET had not adequately determined whether Touchstone's actions were motivated by N's protected beliefs themselves, or by concerns about how those beliefs were expressed through his social media activity.

The distinction was critical. If Touchstone's decisions were based solely on the possibility that service users might become aware of N's views that homosexuality and same-sex marriage are sinful, then the treatment would have been because of his protected religious beliefs. In those circumstances, it would constitute direct discrimination and not be capable of objective justification.

By contrast, if Touchstone's decisions were based on an objectionable or inappropriate manifestation of those beliefs, rather than the beliefs themselves, a different analysis would apply. In such circumstances, the employer's actions may be capable of justification if they constitute a proportionate means of achieving a legitimate aim.

The EAT concluded that the ET had failed to undertake the necessary analysis to determine whether N's Facebook posts constituted a manifestation of his beliefs that could properly be distinguished from the beliefs themselves. They had not examined what aspect of the posts Touchstone considered objectionable, nor whether any such objectionable feature was sufficiently separable from the protected beliefs being expressed.

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...the ET had also failed to analyse ... whether Touchstone's decision not to reinstate the job offer was in fact objectively justifiable...

Secondly, following the test established in *Bank Mellat v HM Treasury (No 2)* [2012] UKSC 39, the judge held the ET had also failed to analyse, in light of what N had said at his second interview, whether Touchstone's decision not to reinstate the job offer was in fact objectively justifiable as a proportionate means of achieving a legitimate aim.

The case has been remitted back to the ET to reconsider and determine whether Touchstone's decision to require a second interview, and refusal to reinstate the job offer, did, in fact, amount to direct discrimination.

Comment

The EAT's judgment reinforces the need for tribunals to undertake a careful analysis of each alleged discriminatory act and to distinguish between objections based on a protected belief and those based on the manner in which that belief is expressed

The case also underlines that even where an employer's objectives, such as protecting service users from distress, are legitimate, withdrawing a job offer without appropriate engagement with the candidate may go beyond what is necessary and lawful under the EqA.

Tariro Carmel Nyoka

Senior associate solicitor, Spector Constant & Williams