

Collection articles



TUPE: Splitting employees' contracts after a service provision change

By Zoë Wigan, Hilary Larter, Ceri Fuller



Whistleblowing: The public interest test is widely defined

By Zoë Wigan, Hilary Larter, Ceri Fuller



Working time: Standby periods are working time when constraints "objectively and very significantly" affect the worker's freedom while standing by



April Changes

By Zoë Wigan, Hilary Larter, Ceri Fuller



Employment Matters - April 2021

By Zoë Wigan, Hilary Larter, Ceri Fuller



Asda v Brierley - Supreme Court judgment

By Guy Bredenkamp, Joanne Bell



Fairness in the Points Based System

By Shahjahan Ali



Supreme Court rules that Sleep-in workers not entitled to national minimum wage for entirety of shift

By James Rhodes, Joanne Bell



Discrimination: "Stale" diversity training

By Hilary Larter, Zoë Wigan, Ceri Fuller



Indirect Discrimination: "Particular disadvantage" involves looking at those impacted by the policy

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Discrimination: Not religious discrimination to remove a Christian from office for publicly voicing views about same sex adoption and homosexuality

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A Christian, who was a magistrate and a non-executive director of an NHS Trust, did not suffer discrimination or victimisation when he was removed from these offices after speaking out publicly against homosexuality and same sex adoption.

THE FACTS

The Court of Appeal has heard appeals from two cases bought by Mr Page, both of which arose from the same circumstances. One case related to his removal from office as a magistrate in the family courts, and the other to his removal from office as a non-executive director (or "NED") of an NHS Trust.

Mr Page's role was as a lay magistrate, he was part of a panel of magistrates hearing a same sex adoption application. He expressed views to other magistrates, based on his Christian beliefs, about the appropriateness of the adoption, saying that it was "not normal" for a child to be adopted by single parents or same sex parents and it was best for children to be raised by a mother and father. As a result of this, he was reprimanded and required to attend training.

Some months later, Mr Page gave an interview to the *Mail on Sunday*, and took part in a radio phone in, repeating these views. He was quoted as saying that "they were saying I was a Christian and therefore I was prejudiced" and "We all have our views and that's what you have to bring to decision making, and mine are Christian views".

Mr Page was removed as a magistrate. This was because his comments had brought the magistracy into disrepute because he had expressed a personal view on same-sex adoption which did not reflect the law; his conduct had not been in accordance with his judicial oath; his views would be taken by a reasonable person to show that he would be biased and prejudiced against same sex adopters; and he showed no insight into the effect of his comments and also maintained that his views had not changed.

The NHS Trust of which Mr Page was a NED had warned him that the public expression of his views could undermine confidence that he would exercise his judgement impartially and had instructed him to inform it of any further media interest. He did not do so, and continued to give interviews. Following investigation, the Trust decided not to renew his term of office because of his public response to the decision to remove him from the magistracy and because of his continued engagement with the media and the concern that his public position was likely to have a negative impact on the confidence of staff, patients and the public had in him as an NHS leader.

Mr Page brought separate tribunal claims relating to his magistracy and to his non-executive directorship. The claims involved allegations of discrimination and harassment on the grounds of religious belief, victimisation, and breach of his right to freedom of conscience, thought and religion and freedom of expression under Articles 9 and 10 of the European Convention of Human Rights.

Both claims were unsuccessful in the employment tribunal and the EAT, and aspects of each ended up in the Court of Appeal. His appeals to the Court of Appeal were also unsuccessful.

The Court of Appeal agreed with the tribunal and the EAT that there was no breach of Mr Page's right to



Confidential Information: The dangers of using information provided by new members of staff



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By Hilary Larter, Zoë Wigan, Ceri Fuller



Employment Matters - March 2021

By Hilary Larter, Zoë Wigan, Ceri Fuller



Budget 2021: New visas to attract highly skilled migrants and entrepreneurs

By Shahjahan Ali



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By Udara Ranasinghe



NHS Pension Scheme - No further changes will be made for annual allowance tax concerns but proposed changes relating to sexual orientation discrimination and final pay controls provisions

By Neil Bhan, Joanna Taylor



Supreme Court finds that Uber drivers are workers

By Philip Harman



Tribunal Time Limits: No extension of tribunal time limits for an ex-employee who claimed that he had misunderstood the ACAS early conciliation rules

By Hilary Larter, Ceri Fuller, Zoë Wigan



Victimisation: An employee who referred to "discrimination" without specifically referring to sex discrimination was not protected from victimisation

freedom of religion was justified as being necessary and proportionate in the circumstances. Importantly, Mr Page had not been removed from office because of the views he held but because he had expressed those views in the media. The Trust had a reasonable and genuine concern that his having done so risked impairing the willingness of homosexual people with mental health difficulties to engage with its health services. Their decision was not based on a vague concern about reputational damage. Mr Page's conduct had also made it impossible to have found a way forward that might have respected both parties' interests: his conduct had made it clear that he would not co-operate in engaging with the Trust about the sensitivities and damage that his views might cause and how best to address his views.

The Court of Appeal also agreed with the lower courts that the Trust had not directly discriminated against Mr Page in removing him from office. The actions taken against him had not been because of any protected characteristics, but because he had expressed his views in the national media.

Mr Page's appeals in relation to victimisation were also dismissed by the Court of Appeal. Mr Page had not been removed from office, either as a magistrate or a NED, because he had performed a protected act. He had been removed from office as a magistrate because he had declared publicly that in dealing with cases involving adoption by same-sex couple he would proceed not on the basis of the law or the evidence but on the basis of his own preconceived beliefs about such adoptions. The actions against him as a NED were taken because he had, without prior notice to the Trust, given media interviews in which he expressed views about same sex adoption and homosexuality more generally which were liable to impact on the Trust's ability to engage with homosexual service users. The action was not therefore because of the protected acts themselves, but the manner in which Mr Page had expressed himself.

WHAT DOES THIS MEAN FOR EMPLOYERS?

These issues require a tricky balancing act. As the judge commented, there are circumstances in which it will be right to expect Christians (and those from other faiths) to accept some limitations on how they express their views in public. Whether such limitations are justified in a particular case can only be judged by a careful assessment of all the relevant circumstances so that a fair balance can be struck between the rights of the individual and the needs of institution for which they work.

Of particular importance, in relation to Mr Page's NED role, was the fact that the Trust's concerns were not based on generalised perceived reputational risk, but on the specific risk that the views held by Mr Page, as a member of the Board, might deter mentally ill gay people from engaging with the services of the Trust. It was also critical that Mr Page had not thought through the impact of his public expression of his opinions and that he would not commit to not doing the same again, meaning that the Trust could not work with him on an option that would balance his rights against those of the Trust.

Employers who are faced with similar situations must make sure that they go through a careful balancing exercise between the different rights. They should not adopt knee jerk reactions and should consider carefully where compromises can be struck.

[Page v NHS Development Authority](#) and **[Page v Lord Chancellor and another](#)**

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Next Article



TUPE: Splitting employees' contracts after a service provision change



By Zoë Wigan

In a case which leaves practical difficulties, the EAT has confirmed that employees' contracts can be split between multiple transferees on a service provision change.

By Hilary Larter, Ceri Fuller, Zoë Wigan



Interim Relief

By Hilary Larter, Zoë Wigan, Ceri Fuller



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