

Newsletter

January/February 2010

LUCKY TO HAVE A JOB?

Stress at work update.

The difficult economic climate and increasing levels of unemployment during the recession seems to be coinciding with a marked escalation in work-related stress. Employers need to be alert to the risk to their employees' mental health, particularly during redundancy procedures and at times of uncertainty and insecurity: which are known to be more dangerous to workers' mental health than actual job losses.

Aside from the "uncertainty" triggers, cases where employees have been over-promoted without adequate support or where the employee's work load is too high continue to cause employees to take time off work and sustain psychiatric injuries.

This article looks at the development of case law in this area and in particular the relaxing of the *Hatton* hurdles (*Sutherland & Ors v Hatton & Ors* [2002] EWCA Civ 76). It suggests some tips for employers to reduce the risk of litigation, either in Employment Tribunals or "straight" personal injury

claims in the County Court.

What is stress?

Stress has been described by the Court of Appeal (*Hatton*) as "an excess of demands upon an individual in excess of their ability to cope". Stress is not a psychiatric injury: however it can lead to feelings of anxiety and depression or exacerbate other conditions such as dyslexia or epilepsy. Employers should be aware that employees may become disabled for the purposes of Section 1 Disability Discrimination Act 1995.

The Court of Appeal felt that there are no occupations which should be regarded as intrinsically dangerous to mental health. Further, an employer is entitled to assume that an employee is able to withstand the ordinary pressures of the job and is generally entitled to take what s/he is told by his/her employee at face value, unless there is a good reason to think to the contrary.

Case Law

The starting point is LJ Hale's now well known guidelines in *Hatton* (approved by the House of Lords in *Barber v*



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Somerset County Council [2004] UKHL 13) which state:

- (1) There are no special control mechanisms applying to claims for psychiatric (or physical) illness or injury arising from the stress of doing the work the employee is required to do. The ordinary principles of employer's liability apply.
- (2) The threshold question is whether this kind of harm to this particular employee was reasonably foreseeable: this has two components (a) an injury to health (as distinct from occupational stress) which (b) is attributable to stress at work (as distinct from other factors).
- (3) Foreseeability depends upon what the employer knows (or ought reasonably to know) about the individual employee. Because of the nature of mental disorder, it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the population at large. An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he knows of some particular problem or vulnerability.
- (4) The test is the same whatever the employment: there are no occupations which should be regarded as intrinsically dangerous to mental health.
- (5) Factors likely to be relevant in answering the threshold question include: (a) the nature and extent of the work done by the employee. Is the workload much more than is normal for the particular job? Is the work particularly intellectually or emotionally demanding for this employee? Are demands being made of this employee unreasonable when compared with the demands made of others in the same or comparable jobs? Or are there signs that others doing this job are suffering harmful levels of stress? Is there an abnormal level of sickness or absenteeism in the same job or the same department? (b) Signs from the employee of impending harm to health. Has he a particular problem or vulnerability? Has he already suffered from illness attributable to stress at work? Have there recently



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- been frequent or prolonged absences which are uncharacteristic of him? Is there reason to think that these are attributable to stress at work, for example because of complaints or warnings from him or others?
- (6) The employer is generally entitled to take what he is told by his employee at face value, unless he has good reason to think to the contrary. He does not generally have to make searching inquiries of the employee or seek permission to make further inquiries of his medical advisers.
- (7) To trigger a duty to take steps, the indications of impending harm to health arising from stress at work must be plain enough for any reasonable employer to realise that he should do something about it.
- (8) The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the costs and practicability of preventing it, and the justifications for running the risk.
- (9) The size and scope of the employer's operation, its resources and the demands it faces are relevant in deciding what is reasonable; these include the interests of other employees and the need to treat them fairly, for example, in any redistribution of duties.
- (10) An employer can only reasonably be expected to take steps which are likely to do some good: the court is likely to need expert evidence on this.
- (11) An employer who offers a confidential advice service, with referral to appropriate counselling or treatment services, is unlikely to be found in breach of duty.
- (12) If the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not be in breach of duty in allowing a willing employee to continue in the job.
- (13) In all cases, therefore, it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care.
- (14) The claimant must show that that breach of duty has caused or materially contributed to the harm suffered. It is not enough to show that occupational stress has caused the harm.
- (15) Where the harm suffered has more than one cause, the employer should only pay for that proportion of the harm suffered which is attributable to his wrongdoing, unless the harm is truly indivisible. It is for the defendant to raise the question of apportionment.
- (16) The assessment of damages will take account of any pre-existing disorder or vulnerability and of the chance that the claimant would have succumbed to a stress related disorder in any event.

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Counselling Services

Hatton seemed to offer a “get out of jail free” card to employers who offer counselling services. However, more recent case law suggests a loosening of these tight constraints, which are acknowledged as the *Hatton hurdles* and which claimants often find difficult to overcome.

For example, in *Intel Corporation (UK) Ltd v Daw* (2007) IRLR 355 which has relaxed the requirement at paragraph 11 above regarding counselling. In that case, Mrs Daw had been employed from 1988 and was promoted in 2000. Within 4 months of the promotion she was making representations to her managers about her workload being too much. In March 2001 her manager found her in tears at her desk; he asked her to write down what was bothering her. She did so by writing him an email which detailed the problems caused by her being overworked. Intel promised a reorganisation and an additional employee to assist her.

However, the employee did not materialise and in June that year, she had a breakdown followed by a lengthy period of depression. Intel relied upon the fact that they had a counselling service which Mrs Daw had not used (as per para 11 of *Hatton*).

The Court of Appeal rejected that argument and found that once Mrs Daw had spoken to her manager, her employer was on notice that there was a risk of harm to Mrs Daw and urgent action should have followed. A short term counselling service would not have helped as it could not have reduced her workload.

At para 45 of Pill LJ’s judgment: “the reference to counselling services in *Hatton* does not make such services a panacea by which employers can discharge their duty of care in all cases”.

This particular *Hatton* hurdle received a further blow in *Dickins v O2* [2008] EWCA Civ 1144. In this case the claimant was an “unusually conscientious” employee and had notified her employer that she felt stressed out and was “cracking up”: she requested a 6 month sabbatical on 23 April 2002 and was advised to take advantage of O2’s confidential counselling helpline. On 30 May 2002 she repeated her concerns during an appraisal and was referred to the occupational health department. There was a delay and before the appointment was fixed, Ms Dickins suffered a breakdown and did not return to work.

The Court of Appeal found that the claimant’s psychiatric injury was foreseeable from 23 April 2002 onwards. The trial judge found that the employer had breached its duty of care by not sending the claimant home and in not making an immediate referral to occupational health: the CA agreed.

Identify the employees most at risk

Perhaps unsurprisingly, case law has shown that the profile of an affected employee is likely to be a perfectionist, which is backed up by medical research. The research suggests that certain personality characteristics such as perfectionism may lead individuals to be more vulnerable to illness as a result of occupational stress. For example:

- a ‘meticulous worker’ (Hale LJ on one of the claimants in *Hatton*)
- ‘methodical, meticulous, to the point of being perfectionist’ (Potter LJ described the claimant in *Croft v Broadstairs and St. Peter’s Town Council* [2003] EWCA Civ 676)
- The claimant in *Pratley v Surrey County Council* [2002] EWHC 1608 (QB) likewise set ‘very high standards’ for herself,
- The claimant in *Bonser v UK Coal Mining Ltd* [2003] EWCA Civ 1296, a ‘very hard working lady ... [who] thought about her job in such idle moments as she had at home [and] ... was conscientious to a fault’.

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- ‘a very diligent person ... who was anxious to meet all her responsibilities’ (one of the claimants in *Hartman v South Essex Mental Health & Community Care NHS Trust* [2005] EWCA Civ 6)
- another claimant in *Hartman* was ‘a perfectionist ... [whose] work was always of the highest quality’.
- In *Sayers v Cambridgeshire County Council* [2006] EWHC 2029 (QB), Ramsey J concluded: *Mrs Sayers was evidently a conscientious worker who was committed to her work. She had a very close and supportive working relationship with those for whom she was responsible and adopted a ‘hands on’ approach to solving problems. She also set herself high standards.*

Pill LJ similarly characterised the claimant in *Intel Incorporation (UK) Ltd v Daw* as ‘an able, committed and very conscientious employee’.

Regular Appraisals

Communication is key: regular 6 monthly appraisals can be an effective means of opening lines of communication between employers and employees. If they are conducted in a sensitive manner employees may be more likely to disclose issues regarding workload and stress.

Occupational Health Assessments

Occupational Health Assessments are clearly crucial to these claims and should be used proactively to manage the risks of psychiatric injury. They are invaluable sources of information for courts and tribunals in determining whether the employer has breached a duty of care. It may seem obvious, but referrals need to be made without significant delays and any recommendations made in terms of reduction of workloads should be implemented effectively and efficiently.

Once an Injury has been sustained: The Rehabilitation Code

Practitioners will know all too well that the litigation process is not conducive to recovery, particularly in relation to psychiatric injuries as it prolongs the feelings of anxiety and is a confrontational battlefield. Once a claimant has sustained an injury and issued proceedings, Employers are reminded to utilise the Rehabilitation Code which often has the effect of reducing any loss of earnings awards as it seeks to rehabilitate claimants and get them back to work effectively

(Code of Best Practice on Rehabilitation, Early Intervention and Medical Treatment in Personal Injury Claims)

1.3 *It is further recognised that, where these medical or other issues have been dealt with, there may be employment issues that can be addressed for the benefit of the claimant, to enable the claimant to keep his/her existing job, to obtain alternative suitable employment with the same employer or to retrain for new employment. Again, if these needs are addressed at the proper time, the claimant's quality of life and long-term prospects may be greatly improved.*

Conclusion

Many steps which employers can take are relatively inexpensive: the most effective tool an employer can use in these times of uncertainty is straightforward communication, which is commended by the revised ACAS Code.

HEATHER PLATT

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FAITH, HOPE AND CLARITY.

Professor Mark Hill QC & Spencer Keen

investigate a legal minefield in this Article published in The New Law Journal

Last year was highly significant for the Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660) (the Regulations). The Employment Appeal Tribunal and the higher courts began to explore some very difficult issues that, until now, have merely basked in the detail of the Regulations or in arid discussion in academic legal journals.

The EAT has grappled with the breadth of the Regulations in determining which beliefs are worthy of protection: *Nicholson v Grainger* UKEAT/219/09 and *Power v Greater Manchester Police* UKEAT/0434/09: the Court of Appeal has considered whether a religious belief may constitute a conscientious objection to requirements of the workplace: *Ladele v London Borough of Islington* [2009] EWCA Civ 1357: and nine Supreme Court Justices have provided mutually contradictory analyses of race and religion in a school's admissions policy: *R (on the application of E) v Governing Body of JFS* [2009] UKSC 15, [2009] All ER (D) 163 (Dec).

Nicholson v Grainger

Courts have been placed in the unenviable position of having to devise a practical test that can be used to answer an age old question: what is a "philosophical" belief? In *Nicholson v Grainger* the employment tribunal at first instance found that a belief in climate change was a philosophical belief under the Regulations. An appeal in this case was heard by Mr Justice Burton in the EAT and a judgment was handed down on 3 November 2009. In that case the belief in question was described by the claimant in his witness statement as follows: "I have a strongly held philosophical belief about climate change and the environment. I believe that we must urgently cut carbon

emissions to avoid catastrophic climate change...It 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."

Burton J was quick to distinguish the test for whether a belief was a religious belief from that for a philosophical belief, recognising that while tribunals should be reticent to embark upon an assessment of the validity of a professed religious belief the same could not be said of a claimed philosophical belief. How does a tribunal judge decide whether or not a belief is "philosophical"? Burton J set out what he considered to be the correct test:

- The belief must be genuinely held.
- The belief must be a belief and not an opinion or viewpoint based on the present state of information available.
- It must be a belief as to a weighty and substantial aspect of human life and behaviour;
- It must attain a certain level of cogency, seriousness, cohesion and importance.
- It must be worthy of respect in a democratic society.

This test was derived from Strasbourg jurisprudence dealing with Art 9 and with Art 2 of the First Protocol of the European Convention on Human Rights and in particular the case of *Campbell and Cosans v United Kingdom* [1982] 4 EHRR 293.

The problem with this test is its lack of objective certainty. At every stage of

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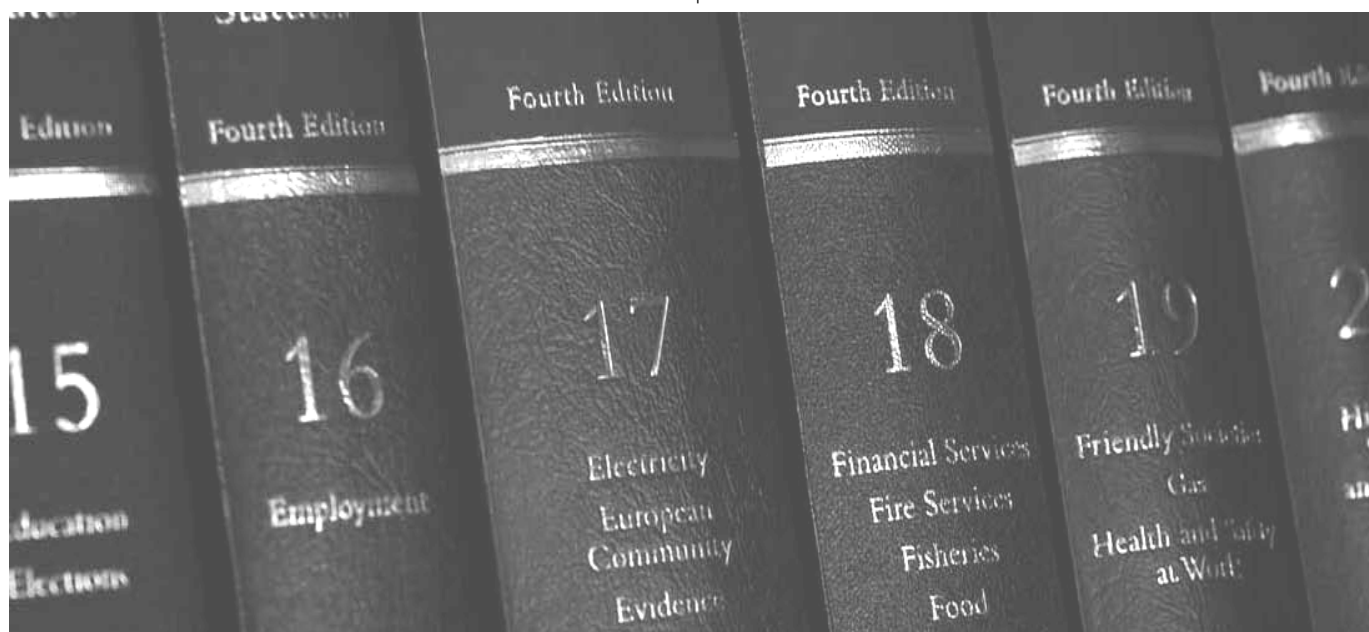
Burton J's proposed test there is a vast ambit for different opinions to be articulated with sincerity. Naturally, Burton J's judgment discusses what might qualify as a philosophical belief rather than what might not. In doing so it helps to dispose of a number of misconceptions about the scope of the protection, for instance that a political philosophy, doctrine or scientific belief cannot qualify as a philosophical belief.

However in amongst isolated passages from the works of random philosophers, Burton J cites Bertrand Russell and refers to a play he happened to see at London's Old Vic entitled "Inherit the Wind". The judge draws upon his experience of West End theatre to support his assertion that some beliefs, based on science, might qualify as philosophical beliefs. But his example of a belief in Darwinism is surprising given that the second element of his test requires that the belief must not be an opinion or viewpoint based on the present state of information available. Surely many "believers" of Darwinism base their views solely on the information available and would undoubtedly, if new information showed that the theory was no longer valid, change their beliefs accordingly. However, it is understandable that

Burton J admits scientific beliefs since any other conclusion would admit absurd results. Why should those who believe in Darwinism irrespective of the scientific facts be afforded protection while those who base their belief on the evidence not be?

This little philosophical digression is included for a purpose. It is a good example of how the test for whether something qualifies as a philosophical belief, while stringent on its face, is so liberally applied in practice that almost any belief will qualify for protection under the Regulations. It admits beliefs rather like the Turner Prize admits art. The next time a client asks whether a belief in the Jedi Knights is covered by the Regulations you may wish to pause before sending him packing. In the case of *Power v Greater Manchester Police*, which came before the EAT a few weeks later, Burton J's test was applied to a spiritualist's belief in psychics.

The real battleground will not be whether a philosophical belief is covered by the Regulations but whether the manifestation of that belief merits protection by intervention of the courts.



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Ladele v London Borough of Islington

Ms Ladele was a registrar of births, marriages and deaths whose job was extended to include registering civil partnerships for the London Borough of Islington. She objected to providing this facility for gay couples because, she said, her Christian belief was that marriage was the union of one man and one woman and she could not reconcile this belief with taking an active part in enabling same-sex unions to be formed.

There were discussions at work between Ms Ladele and the council aimed at resolving the problem. Two gay registrars also complained about Ms Ladele's conduct. Eventually the council warned Ms Ladele that she would be dismissed if she did not perform civil partnership ceremonies for gay couples. The employment tribunal at first instance found that the council had discriminated against Ms Ladele on the grounds of her religious

The council appealed. The EAT allowed the appeal and Ms Ladele appealed to the Court of Appeal which handed down its judgment on 15 December 2009. The Court of Appeal

agreed with Elias J in the EAT that it was "not possible to infer from the fact that the real reason they acted as they did was [Ms Ladele's] belief rather than her conduct."

Any less favourable treatment that was afforded to Ms Ladele arose not on the grounds of her belief, but because of the way that she had acted.

This distinction between belief and conduct reflects the different nature of protection provided under Art 9 and Art 2 of the First Protocol of the European Convention on Human Rights to beliefs themselves as opposed to the manifestation of beliefs. The right to hold a belief is absolute whereas the right to manifest that belief is qualified.

In Ladele the Court of Appeal also considered whether the council's requirement for its registrars to register civil partnerships was indirectly discriminatory. The Court of Appeal accepted that it would be discriminatory if it was not a "proportionate means of achieving a legitimate aim" within Reg 3(1). The Court of Appeal also agreed with the EAT that the council had a legitimate aim of "requiring all its employees to act in a way which does not discriminate against others".

Once this was accepted it followed inevitably that it was also proportionate, in order to achieve that aim, "to require all registrars to perform the full range of services."

Ladele should be of particular interest to those litigating discrimination claims under the Regulations. The distinction between the manifestation of a belief and the belief itself is frequently difficult to draw. There will be cases where the distinction, if wrongly made, will significantly erode the protection afforded by the Regulations and practitioners will need to ensure that their cases are presented clearly from the outset.



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R (on the application of E) v Governing Body of JFS

This case, one of the first to be decided by the new Supreme Court concerns the admissions policy of the Jewish Free School. Jewish children were given priority when applying for entry to the school. The definition of Jewishness was prescribed by the Chief Rabbi: at the time of the child's birth, the mother must be Jewish, either by descent or recognised conversion. The issue in this case was whether a child, who was refused entry to the school because he did not so qualify although he was considered by less orthodox criteria to be Jewish, could claim discrimination under the Race Relations Act 1976, s 1.

Lord Phillips, leading the majority, held that it was not helpful to apply a "but for" test when considering whether or not there had been discrimination. He considered that it was better simply to ask what were the facts considered to be determinative when making the relevant decision. Whether there was discrimination depended on whether race was the criterion that was determinative of the treatment and not on the underlying motive.

Lord Phillips held that in the present case it was impossible to say that the decision turned only on religious and not ethnic status. Since motive was irrelevant he held that there had been direct racial discrimination, irrespective

of whether there was an overlying religious motive for the treatment.

Discussion

What is clear from these decisions is that great latitude will be afforded to those who assert a particular religious or philosophical belief. The level of scrutiny will be mild if Burton J's minimum threshold gains currency. However the protection to be afforded to such religious or philosophical beliefs is likely to be similarly mild. In *Power*, the employee lost on the merits because the police authority demonstrated a legitimate reason for his dismissal wholly unrelated to his asserted belief in spiritualism. In *Ladele*, the religious belief was effectively trumped by the rights afforded to same-gender couples and the secular and neutral nature of the workplace. And in *JFS*, the legitimate action of a faith school in selecting pupils on grounds of religious belief, was rendered unlawful because it had the coincidental effect (not withstanding the religious motivation) of racial discrimination.

In addition to their legal knowledge, practitioners will need to demonstrate a nuanced approach to faith and doctrine, together with a working knowledge of the London theatre.

PROFESSOR MARK HILL QC & SPENCER KEEN



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National Society for the Prevention of Cruelty to Children v Dear (EAT - 07/01/2010)

The Claimant was employed by the Respondent in a position which involved manning a help-line for callers. Accurate record keeping and note taking was an important part of that help line work. In particular, where the caller gives information that a particular child is at risk, the Respondent has procedures to ensure that these calls are fully recorded.

Although the Claimant was an experienced and skilled worker (he had worked in child protection for many years), there had been some concerns in the past about his record keeping and the legibility of his notes. In August 2007, the Claimant again failed to comply with procedures laid down by the Respondent and was given a disciplinary sanction of a recorded oral warning. Two specific requirements were also imposed on him, in that (i) all general calls received were to be noted on a special form and were to be signed off by a Duty Manager, and (ii) at the end of each day the Duty Manager would sign the claimant's notebook to confirm legibility, that it was clear and accurate, and recorded necessary information such as the date and times of the calls.

The Claimant was incensed by these two specific requirements and regarded them as being 'unreasonable and absolutely intolerable'. In light of his experience, he also viewed the two practice requirements as 'an act of humiliation' and 'infantising'. After some discussion with the Respondent, he submitted a formal grievance and resigned. He claimed that the imposition of the additional practice requirements, and the Respondent's insistence that those requirements should continue pending the formal grievance procedure, amounted to constructive unfair dismissal.

Having directed itself as to the law of constructive dismissal, including *Malik v BCCI* [1997] IRLR 462, in relation to breach of the implied duty of trust and confidence, and the decision of *Abbey National v Fairbrother* [2000] IRLR 320, in relation to undermining the employee's trust and confidence, the two lay members of the tribunal (but not the employment judge) found in favour of the Claimant.

The NSPCC appealed to the Employment Appeal Tribunal, and won. The EAT was of the view that where an employee has failed to follow proper procedures, it would be normal for an employer to require monitoring to secure compliance with those procedures. That monitoring is not a punishment or sanction but a legitimate management instruction.

The EAT stated that it had immense difficulty in understanding how the Respondent's actions could be characterised as being in any sense a breach of contract, amounting to punishment rather than a legitimate management instruction. It had been wrong for the Employment Tribunal to conclude that the Respondent's conduct in imposing those requirements, viewed objectively, was calculated to destroy or seriously damage the employer employee relationship of trust and confidence. The EAT further stated that it would be very difficult to see how, if an employer acts reasonably, his behaviour could be said to give rise to a repudiatory breach of contract entitling the employee to resign and claim constructive dismissal.

The EAT also allowed the Respondent's appeal against the finding by the majority of the Employment Tribunal that it was in repudiatory breach of contract by not complying strictly with a grievance procedure. The EAT referred to the fact that the Claimant had not sought to complain

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about the non-compliance in his grievance or in his resignation letter, or in his claim to the Employment Tribunal. It was therefore difficult to see how the Respondent's non-compliance with a formal grievance procedure, of which no complaint was made, could reasonably be regarded as having destroyed trust and confidence.

R(on the application of E) (Respondent) v The Governing Body of JFS and the Admissions Appeal Panel of JFS and others (Appellants) [2009] UKSC 15

This case involved an appeal by the father of a child (M) who was refused admission to JFS (formerly the Jews' Free School) because he did not satisfy the school's admission criteria (see the December 2009 edition of this newsletter). The criteria provided that, unless undersubscribed, the school would give preference to those who were confirmed by the Office of the Chief Rabbi (OCR) as Jewish.

The OCR only recognises a person as Jewish if (i) that person is descended in the matrilineal line from a woman whom the OCR would recognise as Jewish, or (ii) he or she has undertaken a qualifying course of Orthodox conversion. M's mother, who is of Italian and Catholic origin, converted to Judaism under the auspices of a reform synagogue. Her conversion is not recognised by the OCR, and M's application for admission to the JFS was rejected as he did not satisfy the requirement of matrilineal descent.

M's father appealed to the Schools Adjudicator on the grounds that the admission criteria were either directly or indirectly discriminatory; he complained that membership of a religious group based on descent amounted to membership of the group by reason of ethnic origins within the meaning of the Race Relations Act 1976.

The High Court (Munby J) rejected this claim in July 2008. That decision was unanimously

overturned by the Court of Appeal (Sedley, Smith and Rimer LJJ) in June 2009, which held that the policy directly discriminated against M on the ground of his ethnic origins. JFS appealed to the Supreme Court, which heard the case on 27th - 29th November 2009. The Supreme Court handed down its judgment on 16th December 2009 and, by the narrowest of margins (5 to 4), dismissed the JFS' appeal.

The majority of five (Lord Phillips, Lady Hale, Lord Mance, Lord Kerr and Lord Clarke) held that JFS had directly discriminated against M on grounds of his ethnic origins. The majority referred to the fact that direct discrimination on grounds of ethnic origins under the 1976 Act encompasses not only adverse treatment based upon membership of an ethnic group, but also discrimination by reference to ethnic origins in a narrower sense, for example, where reference is made to a person's lineage or descent. The reason for the refusal to admit M was his lack of the requisite ethnic origins - the absence of a matrilineal connection to Orthodox Judaism. In denying M admission on the basis that he lacks a matrilineal Orthodox Jewish antecedent, JFS discriminated against him on grounds of his ethnic origins.

Lord Clarke made it clear that the fact that the criteria adopted was of a religious character cannot obscure, or alter, the fact that the content of the criteria itself applies a test of ethnicity. The fact that the decision to discriminate was based upon a devout and sincerely held religious belief or conviction cannot excuse such conduct from liability under the 1976 Act.

Lords Hope and Walker (in the minority), rejected the view of the majority on the issue of direct discrimination, but stated that they would have dismissed the appeal on the basis that JFS had indirectly discriminated against M. According to their Lordships, although JFS's policy pursued the legitimate aim of educating those regarded as Jewish by the OCR within an educational environment which promotes the tenets of Orthodox Judaism, JFS had failed to demonstrate that the policy was a proportionate means of

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achieving that aim.

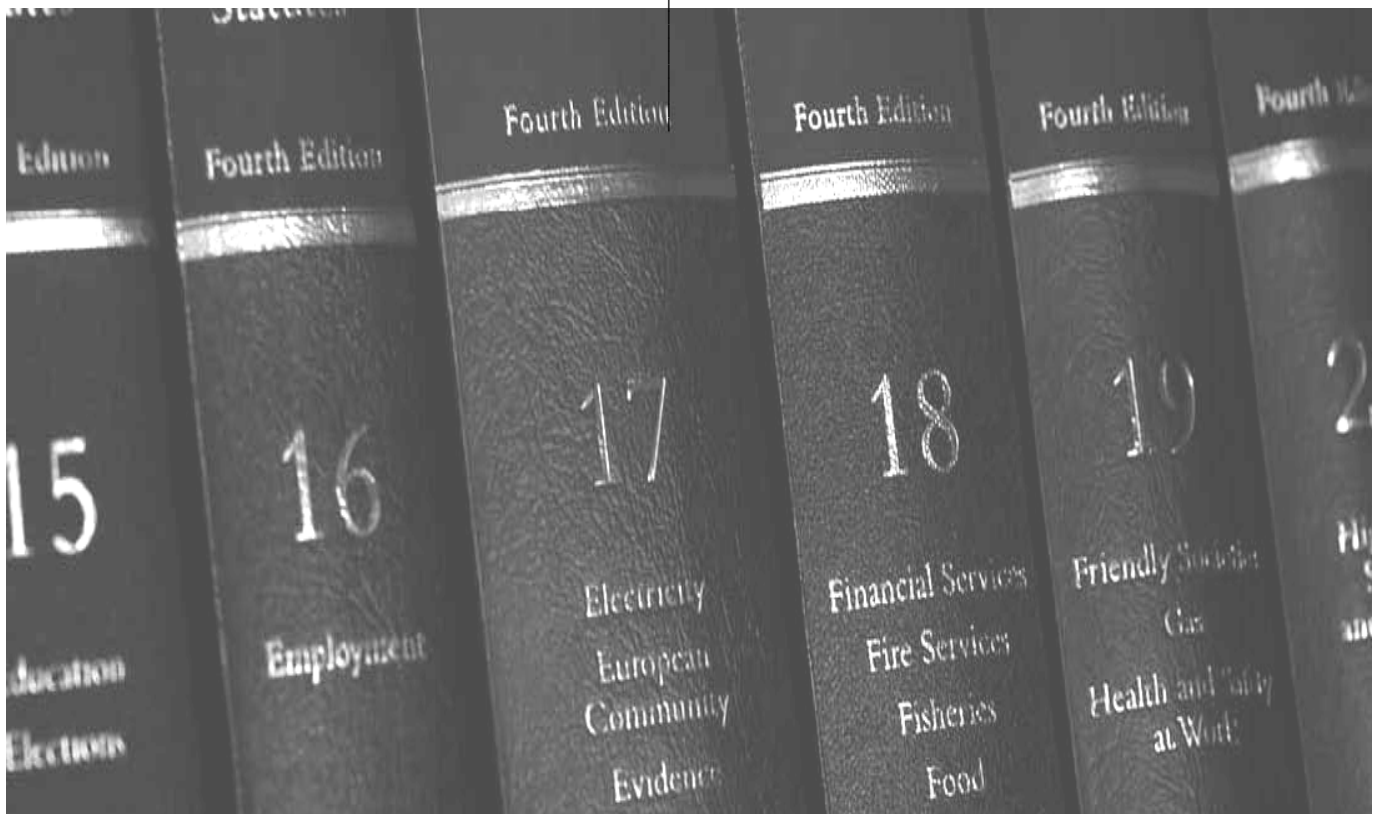
To the contrary, Lords Rodger and Brown (also in the minority), would have allowed JFS's appeal in its entirety. On the indirect discrimination point, their Lordships were of the view that the policy complained of was a rational way of giving effect to the legitimate aim pursued, and could not be said to be disproportionate. According to Lord Rodger, from the standpoint of an Orthodox school, instilling Jewish values into children whom Orthodoxy does not regard as Jewish, at the expense of children whom Orthodoxy does regard as Jewish, would simply make no sense.

In dismissing the appeal, it was stressed by the Supreme Court that neither JFS, nor the Chief Rabbi, had acted in any morally wrong way, or in any racist way in the commonly held sense. Lady Hale further stated that it might be arguable that an explicit exemption should be provided from

the provisions of the 1976 Act, in order to allow Jewish faith schools to give precedence in admissions to certain pupils on the basis of matrilineal descent. That exemption will, of course, have to be a matter for Parliament.

It appears that following the Court of Appeal's judgment in June 2009, Jewish faith schools have been prohibited from applying admissions criteria based on the religious test of who is a Jew, and instead have had to apply a religious practice test, based in part on synagogue attendance and Jewish education and/or family communal activity. That religious practice test will have to continue in light of the Supreme Court decision, although it is not clear, according to Lord Phillips, whether that will result in JFS (or any other Jewish faith school) being required to admit children who are not regarded as Jewish by the established Jewish movements.

JENNIFER LEE



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Employment Team Programme

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Pump Court Employment Programme to October 2010

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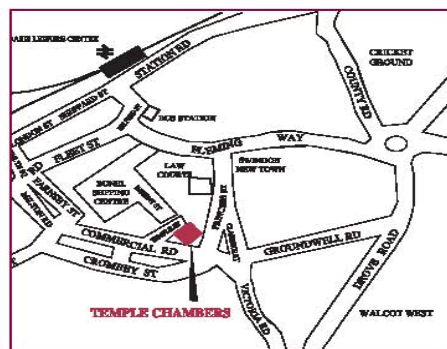
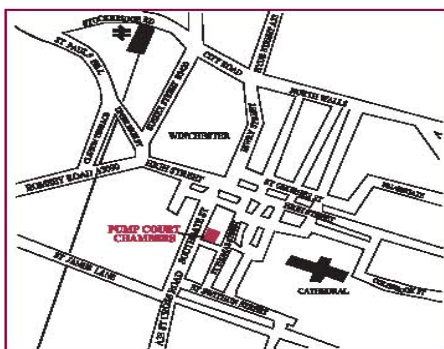
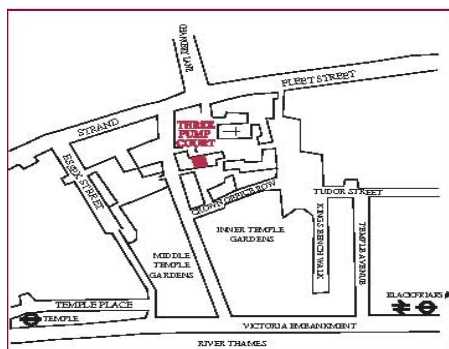
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MAY 2010	Employment CPD Newsletter Seminar - The Equality Bill – London venue TBC
11 JUNE 2010	Employment Update & Lunch at Hotel Du Vin, Winchester
JULY 2010	Employment CPD Newsletter Summer Event – Inner Temple Garden Party
SEPTEMBER 2010	Employment CPD Newsletter Seminar - Forthcoming legislation
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Charles Parry	1973
Hugh Travers	1988
Leslie Samuels	1989
David Wicks	1989
Alison Russell (Head of Group)	1993
Peter Asteris	1996
Maria Gallagher	1997
Spencer Keen	1998
Naznin Islam	2000
Alison Burge	2002
Heather Platt	2002
Charlotte Street	2003
Amy Berry	2003
Adam Gadd	2004
Stuart Leach	2004
Helen Trotter	2004
Rachel Troup	2005
Tara Lyons	2005
Corinne Iten	2006
Jennifer Lee	2007
Eleanor Bruce	2008

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