

CLAS CIRCULAR
2008/12 (15 July 2008)

EMPLOYMENT

Employment Equality (Religion or Belief) Regulations 2003

Miss Ladele worked as a registrar for the London Borough of Islington, originally as an office-holder under the Registrar General then, from 1 December 2007, as a direct employee of the Borough. A Christian, she believed that marriage was the union of one man and one woman for life to the exclusion of all others and that God had ordained that sexual relations should only take place within marriage.

When the Civil Partnership Act 2004 came into effect in December 2005 Islington decided that all its existing registrars would be designated to conduct civil partnerships. Ms Ladele was not asked for her consent but was nevertheless appointed to the civil partnership list in December 2005. She then refused to perform civil partnership ceremonies on grounds of conscience; and in April she was told that her refusal could be seen as a failure 'to treat all members of the community and other employees fairly and equally, regardless of their sex, race, colour, national or ethnic origin, sexuality, religion, age, disability or marital status'. In the end, there was a disciplinary hearing alleging failure to comply with the Council's equality and diversity policy and its Code of Conduct for employees.

In November 2007 she brought a complaint to an Employment Tribunal alleging discrimination on the grounds of religion or belief in terms of the Employment Equality (Religion or Belief) Regulations 2003: *Ladele v London Borough of Islington* [2008] Employment Tribunal 20–23 May 2008.¹ The Tribunal concluded:

- that she had suffered direct discrimination on the grounds of religion and belief;
- that she had suffered indirect discrimination in respect of the requirement that all registrars should carry out civil partnership ceremonies and registration duties; and
- that her treatment subsequent to her refusal to officiate – *inter alia*, the refusal to take her views seriously, the allegation that she was homophobic and the fact that she was subjected to disciplinary proceedings – constituted harassment.

The Borough is currently considering an appeal.

Commentary

As the Tribunal noted, the case involved 'a direct conflict between the legislative protection afforded to religion or belief and the legislative protection afforded to sexual orientation'. Islington had attempted to balance the rights of the lesbian, gay, bisexual and transsexual community with Miss Ladele's right to respect for her Christian beliefs

¹ Case no. 2203694/2007. The transcript is available at <http://www.christian.org.uk/ladelejudgment.pdf>.

– *and had got the balance wrong*. Its action was not a proportionate means of achieving a legitimate aim.

Equally, however, where there is a conflict between competing rights, religious organisations relying on the protection afforded to religion or belief need to be careful that they, too, do not get the balance wrong in claiming precedence for religion.

In another recent Employment Tribunal case, *Louise Hender and Mark Sheridan v Prospects for People with Learning Disabilities* [2008] Employment Tribunal (13 May 2008),² the claim of the respondent charitable company (which provides housing and day-care for people with learning disabilities) that, under the 2003 Regulations 2003, profession of the Christian faith was a genuine occupational requirement for all its posts was not upheld by the Tribunal. Prospects had not carried out a job evaluation for every vacant post; instead, it had simply made a decision in principle that all its posts should be filled by practising Christians and had assumed that that was sufficient to comply with the 2003 Regulations. Its approach proved fatally flawed: a genuine occupational requirement cannot simply be based on an *a priori* assumption – by definition, it has to be *genuine*.

² Cases nos. 2902090/2006 (Hender) & 2901366 (Sheridan).

TAXATION

Mileage allowances

Members will recall that there was a Government consultation on mileage a little over a year ago: the proposal was, in effect, to *reduce* mileage allowances in the interests of environmental policy. We sent in a very tough response on behalf of CLAS: in short, that very few clergy have company cars, that clergy are low-paid, and that they need transport to do their jobs, particularly (though by no means exclusively) in rural areas. There was nothing in the Budget, so we reckoned that we had at least held the line. But we never saw a formal response to the consultation and it has recently come to light that it had never been the intention to publish a response in the first place: the exercise was intended to help formulate advice to ministers. Since then, fuel costs have rocketed and we have received numerous complaints that 40p per mile is no longer a realistic assessment of motoring costs.

So where do we go from here? We suggest a two-pronged approach:

- if members could let us have concrete examples of annual mileage costs we will write to HMRC pointing out the difficulties.
- previous experience has taught us that nothing concentrates the average back-bencher's mind like a full postbag on an individual issue, ***so everyone affected should write personally to his or her own MP.***

We cannot urge you too strongly to take this matter up as individuals. Given that curbing carbon emissions is one of the most difficult issues facing the Government, we think it fairly unlikely that the Chancellor will be increasing the allowances in the near future – but at least we might persuade him not to tighten the screw any further.

WATER

Water charges: responses from Ofwat

Ofwat has sent us the two letters below, subsequent to our meeting with Andrew Dunn and Lynne Currie. We are still considering the next steps, but they are likely to involve raising the matter with the responsible Minister.

From Andrew Dunn, Director of Consumer Protection: 8 July 2008.

Following our meeting with you and your colleagues on 8 May 2008, and our subsequent communications, we are still receiving a large number of queries regarding charging for surface water drainage by site area.

These queries are mainly in relation to the impact of recent changes on churches and have come from individual churches, press and MPs.

We have noticed there are some common misconceptions among those raising the queries. As a result we have decided to publish information on our website setting out the facts behind the changes, the answers to some of the most common queries and some background reading. I am writing to notify you that this information is now available at the following link: www.ofwat.gsi.gov.uk.

We appreciate that finding the necessary funds to pay the increases in surface water drainage charges may be difficult for some churches. However, if any churches who are customers of United Utilities find themselves in this position we would urge them to contact Ian Booth, Income Controller at United Utilities, directly as it may be possible to arrange a payment plan. Ian's contact details are ian.booth@uuplc.co.uk: tel: 01925462 106.

We would encourage all churches to take this approach. Customers are legally obliged to pay for surface water drainage if it is a service they receive from their sewerage company.

Not paying this charge may lead to the company taking the customer to County Court to recover outstanding debts.

From Cheryl Wagstaff: 11 July 2008

Further to you and your colleagues' meeting with Andrew Dunn and Lynne Currie on 8 May I have been asked to respond to the queries raised regarding highway drainage.

Highway drainage is the charge companies collect for treating water that falls onto the public roads and footpaths and drains to the sewers.

The Committee raised concerns that using site area as a means of charging for highway drainage was not related to the costs imposed by the customer. The Committee asked Ofwat to explain why it has allowed companies to charge for highway drainage on the basis of site area and why different companies are allowed charge for highway drainage by different means.

The costs of highway drainage service imposed by customers on the companies are not related to the amount of water that customers use or to the value or size of your property, so there is no correct way of recovering these costs from customers. Highway drainage benefits everyone who uses the road network either directly or indirectly. As a result, there is a case for recovering the costs of this service from highway authorities or from road users. At present, however, the law prevents this.

In *Water Charging in England and Wales: Government decisions following consultation*, published in November 1998, the Government indicated that there are no plans to change the way in which highway drainage charges are collected. It suggested that there might be little benefit in any change and that the cost of the service would still have to be collected through other charges, such as council tax.

Given that customers pay for this service, it is the company's choice on how they wish to structure their tariffs. Highway drainage may be charged for as part of the volumetric rate, as a fee within the fixed charge, by reference to the RV of your property or through a charge related to the surface area drained to the public sewer. Ofwat has no powers to insist on a particular method of charging for highway drainage.