

zd RESERVED JUDGMENT

THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Miss L Ladele

London Borough of Islington

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: London Central

ON: 20-23 May 2008

30 May 2008 (in chambers)

EMPLOYMENT JUDGE: Miss A M Lewzey

MEMBERS:

Mrs D May

Mr C J Storr

Appearances

For Claimant: Mr J Dingemans QC of Counsel

For Respondent: Mr A Lynch QC of Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that:

- (i) The complaint of direct discrimination on the grounds of religion and belief succeeds.
- (ii) The complaint of indirect discrimination on the grounds of religion or belief in relation to a provision, criterion or practice that from the commencement of the Civil Partnership Act 2004 all Registrars should carry out civil partnership ceremonies and registration duties succeeds.
- (iii) The complaint of harassment under the Employment Equality (Religion or Belief) Regulations 2003 succeeds.

- (iv) The issue of remedy will be determined at a remedy hearing listed for 10.00 am on Thursday 25 September 2008 at Victory House, 30-34 Kingsway, London WC2B 6EX.

S. M. Harvey

EMPLOYMENT JUDGE

RESERVED JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON

3rd July 2008

RESERVED JUDGMENT SENT TO THE PARTIES ON

8 June 2008

AND ENTERED IN THE REGISTER.

[Signature]

FOR SECRETARY OF THE TRIBUNALS

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For Respondent: Mr A Lynch QC of Counsel

REASONS

- 1 The Claimant, Miss O L Ladele, worked for the Respondent as a Registrar of Births, Deaths and Marriages from 1992. She continues to work for the Respondent. She presented her claim to the Employment Tribunal on 28 November 2007 complaining of discrimination on the grounds of religion or belief.

The Issues

- 2 The issues for determination by the Tribunal are as follows:

- 2.1 Direct Discrimination Claim

Has the Respondent or persons for whom the Respondent is liable, 'the Respondent', treated Ms Ladele less favourably than it has, or would, treat others on the grounds of Ms Ladele's religion or belief?

- 2.2 Indirect Discrimination Claim

- 2.2.1 Has the Respondent applied any provision, criterion or practice which it has applied equally to persons not of the same religion or

belief as Ms Ladele but which put or puts persons of the same religion or belief as Ms Ladele at a particular disadvantage when compared to other persons?

2.2.2 If so, did any provision, criterion or practice put Ms Ladele at that disadvantage?

2.2.3 If so, can the Respondent show the application of any relevant provision, criterion or practice to be a proportionate means of achieving a legitimate aim?

2.3 Harassment Claim

2.3.1 Did the Respondent engage in unwanted conduct which had the purpose or effect of either violating Ms Ladele's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Ms Ladele, within the meaning of regulation 5 of the Regulations?

2.3.2 If so, did the Respondent subject Ms Ladele to that conduct on the grounds of her religion or belief?

2.4 Remedies

2.4.1 If the Respondent is liable to the Claimant, what injury to feelings, if any, has been suffered by the Claimant?

2.4.2 What financial loss, if any, has been suffered by the Claimant?

2.4.3 Is it appropriate to make any recommendations?

2.5 By agreement the claim of victimisation has been excluded from this hearing.

Evidence

3 We heard evidence from the following witnesses called on behalf of the Claimant, each of whom gave evidence by means of a written witness statement:-

Ms Ladele the Claimant

Mrs E A Thatcher, Registrar Births, Deaths and Marriages employed by Kent County Council.

Miss A R Streete, Registrar of Births, Deaths and Marriages with the Respondent.

4 We heard evidence from the following witnesses called on behalf of the Respondent:-

Ms H Mendez-Child, Superintendent Registrar of the Islington Register Service (two witness statements).

Mr J Lynch, Head of Democratic Services in the Scrutiny and Democratic Services Division of the Respondent (two witness statements).

Mr D Daniels, Assistant Director of Law (commercial and environment) in the Legal Division of the Respondent.

Mr B Atsebaha, additional Superintendent Registrar with the Respondent.

Ms L Round, Director of Corporate Resources of the Respondent.

- 5 In addition we had an agreed bundle of documents and where we refer to documents in the bundle it is done by reference to the relevant page number.

The Material Facts

- 6 Ms Ladele was employed by the Respondent from 1992. She became a Registrar of Births, Deaths and Marriages on 14 November 2002. Registrars of births, deaths and marriages hold a statutory office appointed and paid by the relevant local authority, but hold office during the pleasure of the Registrar General under section 6 of the Registration Services Act 1953. As a Registrar Ms Ladele was an office holder and was not an employee of the Respondent. Ms Ladele was paid by the Respondent and had a duty to abide by the Respondent's policies. Her status changed from 1 December 2007 when, pursuant to the provisions of the Statistics and Registration Act 2007, she became an employee of the Respondent. Prior to 1 December 2007 the Respondent had no power to dismiss Ms Ladele.

- 7 Ms Ladele is a Christian. Her unchallenged evidence was that she holds the orthodox Christian view that marriage is the union of one man and one woman for life to the exclusion of all others and that marriage is the God ordained place for sexual relations. She could not reconcile her faith with taking an active part in enabling same sex unions to be formed. She told us that she believed this to be contrary to God's instructions that sexual relations belong exclusively between a man and a woman within marriage. Paragraph 7 of her witness statement stated:

"A civil partnership is a marriage in all but name. Whether or not there are sexual relations it gives the couple who have entered into it the same rights and responsibilities as a married couple. Regardless of my feelings for the participants (and as a Christian this should only be love), I feel unable to directly facilitate the formation of a union that I sincerely believe is contrary to God's law. As a matter of conscience I feel unable to draw an artificial distinction between civil partnerships that require a ceremony and those that do not."

- 8 The Civil Partnership Act 2004 came into effect in December 2005 when civil partnership arrangements were introduced. Civil partnerships were not part of

the role of Registrar of Births, Deaths and Marriages when Ms Ladele was appointed. There is a duty on the Respondent as the local authority to provide registration services for civil partnership arrangements. Section 29 of the Civil Partnership Act provides that a registrar is not a civil partnership registrar until he or she is so designated.

- 9 Islington designated all of its existing registrars as civil partnership arrangement registrars. Ms Ladele was not asked to consent to this. During the course of the hearing, following questions that had arisen during the evidence, a document was produced purporting to be a Civil Partnership Registrar List showing that Ms Ladele was appointed on 5 December 2005. Prior to this Ms Ladele had seen no documentary evidence of her appointment. The Tribunal heard evidence from Mrs Thatcher who is a Registrar of Births, Deaths and Marriages at Kent County Council, that she was asked to complete a form (page 90A) in which she stated that she did not wish to become an authorised person and Civil Partnership Registrar. This was dated 15 November 2005. Mrs Thatcher's evidence was that she had approached Kent County Council and asked that she should be permitted not to conduct civil partnership unions because of her religious beliefs as a Christian. Mrs Thatcher received a letter from Kent County Council dated 31 October 2005 (pages 85a to 85b). That letter states:

"To summarise your position – KCC is prepared to accept that on religious grounds you should not be required to be involved in civil partnership work and duties. You will remain in your post of Registrar of Births and Deaths dealing with the registration of births and deaths and other associated work. You will not be required to take notices or marriages or conduct or register marriages in Kent approved premises except in an emergency situation.

You may continue to register and conduct marriage ceremonies at approved premises"

Mrs Thatcher also referred us to a registrar in Cornwall who was not required to undertake civil partnership registration (pages 104a and 181a).

- 10 Ms Mendez-Child told the Tribunal that Mr Lynch had been in touch with the General Registration Office for advice and that she had spoken to HM Inspector of Registration who had drawn her attention to a case in the London Borough of Newham where the Council had come to a compromise arrangement with a Muslim member of staff who expressed reluctance to conduct civil partnership ceremonies. The arrangement was that the member of staff conducted all the usual duties of a registrar with the exception that she did not officiate at civil partnership ceremonies. She did carry out the other duties of a registrar in relation to civil partnerships and signings. (Page 98).
- 11 Ms Ladele first became of civil partnerships in summer 2004 when she received a circular from the General Registration Office indicating that the Civil Partnership Act was likely to come into force in 2005. She spoke to Ms Round in confidence at a mentoring session advising her of her religious beliefs and that she would have difficulties conducting civil partnerships.

Ms Mendez-Child recalls that she had an informal meeting with Ms Ladele in 2003 when Ms Ladele indicated that she did not want to perform civil partnership duties.

- 12 Ms Ladele was absent on long-term sick leave from May to November 2005. This was during the period that the Respondent was planning the introduction of civil partnership arrangements. Training was provided by the Registrar General's office but the Registrar General left it to each local superintendent registrar to organise how the new service would be accommodated in the office. Ms Mendez-Child took the decision that civil partnership duties should be accommodated by the existing staff and that the duties shared out amongst all staff members in roughly the same proportion as marriages. This took into account that there was no additional funding for the new service. The Respondent was involved in discussions with the Lesbian, Gay, Bisexual and Transgender (LGBT Forum) in the preparations for the implementation of the new legislation.
- 13 Ms Ladele returned to work in November 2005, initially on a phased return. The new legislation came into effect on 5 December 2005 and the first civil partnership in Islington was entered into on 21 December 2005.
- 14 The Respondent operates two separate rotas covering weddings and civil partnerships. One is for outside approved venues and the other is for internal venues within the Respondent's premises. Fees are payable for conducting weddings and civil partnerships. Initially Ms Ladele swapped with her colleagues when she was rostered to work when there was a civil partnership. This was an informal arrangement but neither Ms Mendez-Child nor any of Ms Ladele's colleagues indicated that there was any difficulty. At this time Ms Ladele's duties did not include civil partnerships, the last set of duties of a registrar having been sent in June 2005. (Page C33).
- 15 On 12 January 2006 Mr Lynch who had only taken up his post shortly before this date was spending time understanding the service. Ms Ladele says that she raised the question of people not undertaking civil partnerships with Mr Lynch at this time, but he does not recall any concessions being made. The Tribunal noted that in the Claimant's diary (page 430 in manuscript transcribed at page 450a) for 24 January 2006 there is a note "LL to take 330 notices if CP yell". Ms Mendez-Child said that the reason for this was that Ms Ladele had not been trained in civil partnerships. We did not find this evidence particularly convincing since the training was to be cascaded down and clear-cut recollections were not available.
- 16 In early 2006 two other members of staff, Fatima, and Theresa Davies raised difficulties with civil partnerships. Ms Davies shared the same religious belief as Ms Ladele. Fatima had religious difficulties, although her theological base was Muslim. Fatima was a sessional worker. She was offered the compromise of not performing ceremonies but having to register partnerships. She felt unable to accept this and as a result left the Respondent's service. Ms Davies is referred to in the notes of a one-to-one meeting between Ms Mendez-Child and Mr Lynch on 27 February 2006 (page 107a). Ms Davies was offered the compromise of a demotion, although at the same rate of pay, to the post of

receptionist so that she would not have to conduct civil partnerships. She agreed to this.

- 17 A team meeting took place on 20 March (page 450a). Those present were Ms Mendez-Child and other staff. Ms Ladele mentioned her opposition to conducting civil partnerships and notes in her diary "Al called me discriminatory". In Ms Mendez-Child's witness statement at paragraph 30 she states:

"This is probably true in that I certainly did and do have concerns that a refusal to participate in civil partnerships because of sexual orientation of the couples can be discrimination."

- 18 At a one-to-one meeting between Ms Mendez-Child and Mr Lynch on 28 March 2006 (page 112a to 112b) it is recorded:

"John advised that Dion and Viktoria had both been to see him about Lillian and Theresa still not doing any of these and they were feeling victimised because of this.

John asked Helen to urgently meet with both Lillian and Theresa to explain the situation and advise them that if they refused to do these duties we would take disciplinary action against them. John advised Helen to have Karen in the room as a witness to what was said and take notes of the meeting.

Helen advised that she was still to speak to Fatima on the issue and she had not resigned yet."

Dion and Viktoria were gay members of staff.

- 19 On 29 March 2006 Ms Mendez-Child met both Theresa and Ms Ladele separately. The notes are at page 112d. Ms K Kaines, additional Superintendent Registrar also attended the meeting. Ms Mendez-Child explained that by avoiding carrying out civil partnership duties Ms Ladele could be in breach of the Council's Dignity for All policy. Ms Mendez-Child gave Ms Ladele a copy of the policy and a copy of the Respondent's Code of Conduct for employees and the disciplinary and misconduct procedures (pages 465, 488, 451 to 464). The note of the meeting (page 112d to e) states:

"Lillian made what she claimed was a counter-complaint that she also was being discriminated, bullied and harassed at work. Her dignity was not being respected and her religious beliefs were a cause for discrimination against her. She accused me of treating her unfairly in comparison to the treatment of other staff.

She also pointed out that a year before CP became law she had told me that she was not going to do civil partnership and that therefore I had known that she was not going to do them. Then she ended the meeting by stating that she was not going to change her religious beliefs and was not going to do civil partnerships and that she would fight any disciplinary action."

- 20 By a letter dated 1 April 2006 from Ms Mendez-Child to Ms Ladele, Ms Mendez-Child wrote to confirm the details of the meeting of 29 March. The letter states from the third paragraph onwards:

"I explained that by refusing to do any work, which related to civil partnerships you were potentially in breach of the Code of Conduct.

I also explained that your actions if you were to refuse to undertake any work in respect of civil partnerships, 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' and this could be considered gross misconduct. In this case you might also be subject to formal disciplinary action.

I have agreed that as a temporary measure in view of your stated religious objections to civil partnerships the Council would not at this time ask you to participate directly or officiate at civil partnerships ceremonies.

However you are expected to perform all other duties which arise from and are related to civil partnerships. This work could include officiating at civil partnership signings where no ceremony was required.

You should be aware however that this arrangement can only continue as long as there are no service delivery implications and it will be subject to review. The Council reserves the right to request you to perform all the duties of your employment, including officiating at civil partnership ceremonies and signings should the need for you to do this work become apparent or necessary in the future.

Please confirm that you will be performing the full duties of your employment by signing and returning to me the attached copy of this letter."

Ms Ladele did not sign and return the copy of the letter.

- 21 Ms Ladele responded by letter of 18 April 2006 (pages 118-119) in which she states:

"Thank you for your letter of 1 April which was given to me on 3 April. I have been given no option other than set out in the letter but I am unable to sign the letter.

Although you are aware of my views concerning civil partnerships I think it is important to provide a formal record of my concerns.

I strongly believe that marriage is the unity of one man and one woman for life to the exclusion of all others. This is a position that is informed by my faith as Christian. The Civil Partnership Act gives any couple who have entered into a civil partnership the same rights and

responsibilities as a married couple. It has been described as a marriage in all but name and this is a view which that is difficult to argue against.

For someone who believes that a relationship (and by extension a marital relationship) between same sex couples is wrong in God's law, to have to act contrary to that law by facilitating it to happen creates a huge dilemma for me. I can honour my faith or the demands of the Council. I appreciate that the law condones such relationships by association with the Civil Partnership Act and that my position may set me aside from others

It is not my position to judge people and I hope my service will have demonstrated that in terms of customer care. I give every individual my full attention, compensation and professional service regardless of their situations, religious nationality, race, disability or sexual persuasion.

I hope that you feel able to consider the difficulties I face and carefully and fully consider what can be done to accommodate my concerns so that I can continue to both work and honour my Christian faith.

Islington prides itself on actively promoting diversity and I place my hope and my position as a minority therefore being viewed and addressed as sympathetically as difficulties faced by others

22 Ms Ladele received no reply to this letter. No comment was made. Ms Mendez-Child referred the letter to Mr Lynch who took no further action. Ms Mendez-Child told us in her evidence that she did not think it necessary to reply. In cross-examination Mr Lynch considered that, in retrospect, a reply should have been sent.

23 The informal arrangements concerning the rota continued with Ms Mendez-Child's knowledge. However there were tensions within the department, particularly with Dion and Viktoria. At an office staff meeting of 6 July (page 128) the issues of civil partnerships was raised. It is recorded:

"Has there been any update on the civil partnership? Theresa has taken herself off (sic) the rota, Lillian is different as she is senior officer, therefore has a different contract. It is all being considered by HR."

24 We have Ms Ladele's diary entries at page 450a over the course of the summer referring to poor treatment. This was denied by Ms Mendez-Child. However we accept that the diary entries were contemporaneous.

25 On 18 October 2006 Ms Ladele complained to Ms Mendez-Child that she had not been receiving support from the team and was unwilling to ask for help.

26 A team meeting took place on 2 November 2006. Item 4 on the Agenda (page 136) is:

"What is happening with people who do not wish to do civil partnerships?"

The minutes at pages 137-140 state:

"For Civil Partnerships

It was brought up again that there appears to be no further action being taken about the members of staff who refuse to do civil partnerships. Helen confirmed that the people in question had been taken off of the week day and weekend rotas for room 99 and therefore the Council changed. They are still however on the rota for outside venues. On this rota it will be that if they are next on the allocation list and it is for a CP then they will be missed out and not reallocated the next wedding. They are in effect to 'miss a turn'. With Theresa now on reception it may avoid the possibility of her being called as a week day RM.

John said that as long as we are under the control of GRO then things would remain the way they are. Once we become part of the local authority and we become local Government employees and conform to local Government guidelines then the way things are being handled will change.

Lillian announced to everyone that she was the other person that refused to do CPs and is most upset that no one has come to her and asked her her views. She said that she feels victimised and also claims that she is picked on a daily basis and that no one at all respects her religious beliefs.

Dion followed up Lillian's statement by saying that because of her and her views he feels like a second class citizen and that it is gay people in general that she is discriminating against. He asked why she hadn't had enough respect to talk to the gay people in the office and explain her views to them as Theresa had done. Lillian then said that it wasn't up to her to come to them but them to come to her. She said that this issue wasn't about anyone else but her and discrimination of her religious beliefs and that she was only responsible to her manager and nobody else. John and Helen were told of her views."

In evidence Ms Ladele told us that she had been very upset at the meeting and that she felt unsupported by management and isolated.

- 27 By a letter dated 14 November 2006 Dion Goncalves and Viktoria Kingsley wrote to Ms Mendez-Child complaining that certain members of staff were refusing to do civil partnerships and referring to the Dignity for All policy. The letter states:

"The Dignity for All states that Islington is committed to equality for everyone. Everyone expects to be treated with respect at all times regardless of age, colour, disability, gender, faith, religion, nationality, race, sexuality, marital status, HIV or other health status.

This is not the case in our Department and we believe that Lillian and Theresa are discriminating against the gay community with their refusal

to do civil partnerships. This is an act of homophobia and as members of the gay community we are not comfortable with this situation and feel strongly that we are being discriminated against. We ask that something constructive be done to rectify this and bring the services that we provide in line with the dignity for all policy.

We would like to know exactly what is happening and bring this to a mutual acceptable conclusion. We ask that by 30 November we have in writing how this matter is going to be resolved."

Ms Mendez-Child referred the letter to Mr Lynch.

- 28 Mr Lynch wrote back to Dion and Viktoria on a confidential basis (pages 145-146) on 15 November 2006, by return of post. The letter states:

"I trust that you will treat this in confidence as it contains personal information concerning staff I advise that I wish to take disciplinary action against any staff who refuses to undertake these duties for the reasons that you have already outlined. I was advised by GRO that I would be unsuccessful in action taken against Lillian as she was a statutory officer and as civil partnerships were never part of her original duties and not part of her contract of employment that she has signed. Until she transfers to local authority control from the Registrar General there is little I can do.

The situation was different in relation to Theresa as she did not have statutory protection and the GRO with support action being taken against her.

As part of the attendance monitoring procedures that I was following with respect to Theresa's sickness absence I made it perfectly clear that if she refused to carry out civil partnership duties I would take disciplinary action against her which could ultimately result in her dismissal Helen and I will also be speaking to Lillian direct concerning the effect her actions are having on both her colleagues and the running of the office."

- 29 Dion Goncalves and Viktoria Kingsley wrote back immediately to John by an undated letter (page 147) and state:

"Our queries whether the pay that Lillian receives is statutory pay or does it include any increment/payments that fall under the local authority pay scale and that is in the hands of the local authority. We asked this as we feel more work is now falling on colleagues and this should be reflected on her salary.

We were wondering if it would be possible for you to investigate the validity of re-aligning the salary received to reflect the purely statutory nature of the post she is now fulfilling"

In cross-examination Mr Lynch said that he did go to talk to Dion and Viktoria to say that he would not take any action regarding pay. He told the Tribunal that

he did not say that they were discriminating against Ms Ladele because of her religious beliefs.

- 30 At a one-to-one with Mr Lynch and Ms Mendez-Child on 21 December it is recorded:

"Lillian had been somewhat hostile and aggressive with Helen. She had tried to deal with the issue of the atmosphere in the office over Lillian's discrimination of other staffs but did not accept that there was a problem."

- 31 On 17 January 2007 Ms Ladele went to see Mr Lynch initially concerning health issues but the discussion included the issue of civil partnerships. At the meeting Ms Ladele raised allegations of being unfairly treated and Mr Lynch indicated that members of staff had spoken to him about her attitude. This was the first occasion when Ms Ladele was aware of this. The notes of the meeting (pages 153-154) record:

"I advised Lillian that a number of people have been to see me about issues in the office and that is why I wanted staff to raise these with Miffa so we could deal with them now and I needed their help as couldn't resolve the problems with their help.

I asked Lillian whether the job was still right for her given her health problem. She said that she had thought about looking for other work. She mentioned that she had complained about Helen and her attitude in 2002 and it was investigated and since then Helen had held this against her. She had told Helen she felt verbally abused by her and had put this on the staff survey. I advised Lillian that she needed to take these issues forward by way of complaints so that they could be investigated and dealt with.

I also advised her about the CP issues and that when she transferred to local authority control the Council would not accept her views that she did not agree with CPs as this direct discrimination and against the staff code and the Council's Dignity for All policy. The Council would take disciplinary action against her which could ultimately lead to her dismissal.

I advised that the gay and lesbian staff in the office had felt directly discriminated by her actions. Again, I wanted these issues dealt with at the away day."

- 32 A Registrar's Service Away Day was held on 22 February 2007. The issue of civil partnerships was raised, together with team building exercises. The minutes appear at pages 162-167. At page 166 in relation to civil partnerships it states that Mr Lynch stated:

"LB Islington is currently in discussion with GRO in relation to this issue since affording staff discretion is to not undertake civil partnerships would be contrary to Council's dignity for all policy and the staff code of conduct and is direct discrimination in the view of Islington.

The outcomes of these discussions will be communicated to LL as the member of the team most directly affected in the next two weeks and cascaded down to all staff thereafter."

We accept from Mr Lynch's evidence that the away day was one of his ways of resolving the difficulties concerning civil partnerships and general team building.

- 33 By May 2007 the atmosphere in the office had deteriorated. Mr Lynch told us that Dion and Viktoria had made further complaints saying that status quo in which Ms Ladele was refusing to involve herself in any way with civil partnerships was not sustainable and that all staff needed to be performing all the duties. Mr Lynch states at paragraph 30 of his witness statement:

"Quite apart from the issue of principle in terms of the Claimant performing her duties and refusing to provide services because the recipients were homosexual, her refusal did mean that others had to perform extra duties and cause rota difficulties."

- 34 Mr Lynch decided to instigate the disciplinary process against Ms Ladele. At the beginning of May he asked Mr Daniels to conduct a preliminary investigation into a complaint that Ms Ladele had refused to undertake the processing of civil partnerships. Mr Daniels wrote to Ms Ladele on 3 May 2007 advising her of the investigation and indicating that as a result he might cite to refer the matter to a disciplinary hearing (page 181).

- 35 The interview with Ms Ladele took place on 23 May 2007. Ms Ladele was accompanied by two friends Mr Hobbins and Ms Igoh. Ms Ladele had prepared a statement (page 261-262) which was read out.

- 36 Mr Daniels interviewed Mr Lynch on 20 June (pages 202-204) and Ms Mendez-Child on 27 June (pages 205-208). At the investigatory meeting with Mr Lynch, Mr Lynch said (page 200):

"John said that if this was the case they should go to work in another Borough. John commented that Lillian's people skills were not brilliant and if she wishes to leave he could come to an agreement with her. If not, claims could be brought in by her two colleagues who are gay."

This version was changed six weeks later by Mr Lynch and we have the changed version at page 203. In the changed version states:

"Further comment was made about how GRO would deal with this matter if other Boroughs were dealing with it differently. John said that it was up to each Superintendent Registrar to decide how to deal with the issue."

The explanation for the change, given in cross-examination by Mr Lynch, was that he was not sent the minutes and only became aware in August when Ms Ladele said to him she was surprised at his comments, as a result of which he asked for the minutes to be changed. The Tribunal found this disingenuous.

It is noted that Mr Lynch conceded that at that time civil partnership ceremonies were not part of Ms Ladele's job description.

- 37 At Mr Daniels' investigatory meeting with Ms Mendez-Child (page 206) reference is made to a maternity leave post as Deputy Superintendent Registrar. It is recorded:

"Helen stated that the post will be advised but will not accept Lillian's application should she wish to apply."

Later on it is stated:

"The training for civil partnership ceremonies was only given to certain staff and was then cascaded down to other staff. Extensive training was not required as the Registrars were familiar with marriage and citizenship ceremonies and their registration."

The Tribunal noted that this did not sit easily with Ms Mendez-Child's evidence in relation to 24 January 2006 when she said that the reason that Ms Ladele should "yell" was because she had not been trained in civil partnerships.

Later on in the investigatory note at page 207 it states:

"Helen contacted the Registrar General Inspector for advice to get around the problem and was told that Lillian could be allowed not to carry out certain civil partnership duties. Helen has a duty to her customers and does not want someone who does not wish to participate in civil partnership duties Other Boroughs have brought in different staff to carry out this type of work."

The investigatory interview concludes at page 208:

"The two gay members have gone to the Lesbian Gay Bisexual Transgender Forum to explain what is happening in the office and how will it be dealt with.

Everyone is in agreement to do partnerships except for Theresa and Lillian. Lillian carries out citizenship ceremonies, naming ceremony, renewal of vows and she has not complained that they are not in her original job description."

- 38 Mr Daniels produced his investigatory report at pages 210-223 dated 26 July 2007. He recommends that a formal complaint be brought against Ms Ladele under the Council's Discipline, Misconduct and Council Convictions procedure in respect of the complaint:

"That on or from 16 April 2006 you have failed to comply with paragraphs 4.6 and 4.7 of the Council's Code of Conduct for employees and Council's equality and diversity policy 'Dignity for All' by refusing to carry out work in relation to the civil partnership service solely on the grounds of sexual orientation of the customers of that service."

This is recorded in Mr Daniels' letter of 3 August 2007 to Ms Ladele. He states that the hearing will take place before Ms Round, Director of Corporate Resources.

- 39 The disciplinary hearing took place on 16 August 2007 before Ms Round. Ms Ladele was accompanied by Mr M Jones her representative. The minutes appear at pages 246-252r. Mr Daniels opened the hearing by putting his case to Ms Round and was cross-examined by Mr Jones. Evidence was heard from Ms Mendez-Child. Ms Round adjourned the hearing until 5 September in order to hear from Mr Lynch and the Claimant. At the end of the hearing both Mr Jones and Mr Daniels made closing submissions. In cross-examination Ms Mendez-Child (page 252m) stated:

"I don't believe that we should be accommodating people's religious beliefs in the Registry Service."

- 40 Ms Round wrote to Ms Ladele on 13 September by a letter at pages 329-331 of the bundle. She set out her findings, reiterated the offer that Ms Ladele should not be required to conduct ceremonies, but would be required to undertake straightforward signings of the Register and administrative work in relation to civil partnerships. She also states:

"Should you choose not to sign the new job description the Council would have to seriously consider its position and one possible outcome would be that your contract of employment would be terminated."

Her final sentence reads:

"However I'm quite clear that I will not tolerate behaviour within the team which isolates any particular individual for whatever reason and will be asking John Lynch to discuss the matter with Helen Mendez-Child and the rest of the team to ensure there is no behaviour of his sought in the forthcoming months."

Ms Round accepted in her letter that there was no evidence that the service could not be delivered in practical terms without Ms Ladele's assistance. Ms Ladele did not appeal against the outcome.

In cross-examination Ms Round agreed that a possible consequence of Ms Ladele losing these proceedings is that she will be sacked.

- 41 With effect from 1 December 2007 Ms Ladele became an employee of the Respondent.
- 42 The Respondent's Dignity for All policy is set out at pages 489-511. At page 496 the policy reads:

"It is the Council's policy that everyone should be treated fairly and without discrimination. Islington aims to ensure that

- Staff experience fairness and equity of treatment in the workplace.
- Customers receive fair and equal access to Council Services.
- Staff and customers are treated with dignity and respect.
- The Council will actively remove discriminatory barriers that can prevent people from obtaining the employment opportunities and services to which they are entitled. The Council will not tolerate processes, attitudes and behaviour that amount to discrimination including harassment, victimisation and bullying through prejudice, ignorance, thoughtlessness and stereo-typing All employees are expected to promote these values at all times and to work within the policy. Employees found to be in breach of this policy may face disciplinary action."

The policy goes on at page 497 to set out what managers will do to comply with the policy which includes:

- "make clear to staff that discrimination is unacceptable and that it will be treated as a serious matter and a disciplinary offence.
- Deal promptly and thoroughly with any complaint of discrimination including harassment, victimisation and bullying – all incidents must be recorded."

Faith and religion is covered at page 504 and reads:

"Some faith communities suffer discrimination and prejudice due to their beliefs and appearance. From 2 December 2003 new legislation has been enacted outlawing discrimination on grounds of religion and belief in the areas of employment and training."

Submissions

- 43 The Tribunal had comprehensive skeleton arguments from Mr A Lynch QC on behalf of the Respondent, and Mr Dingemans QC on behalf of the Claimant. Since the submissions are in writing it is unnecessary for us to repeat them and we deal with the submissions at the relevant point in our conclusions. To avoid confusion with Mr Lynch, the witness for the Respondent, we refer to Mr A Lynch QC, Counsel for the Respondent, as Mr A Lynch in our conclusions.

The Complaint of Direct Discrimination on Grounds of Religion or Belief

The Law

- 44 Regulation 3(1)(a) of the Employment Equality (Religion or Belief) Regulations 2003 provides:

“For the purposes of these regulations a person “A” discriminates against another person “B” if –

- (a) On the grounds of religion or belief A treats B less favourably than he treats or would treat other persons.”

Regulation 10(3) provides:

“It is unlawful for a relevant person in relation to a person who has been appointed in office or post to which this regulation applies to discriminate against him –

- (d) By subjecting him to any other detriment in relation to the appointment.”

Regulation 6(1)(c) provides the same situation in relation to employment.

Regulation 29(2) provides:

“Where on the hearing of the complaint the complainant proves facts from which the tribunal could apart from this regulations conclude in the absence of an adequate explanation that the Respondent:

- (a) has committed against the complaint an act to which Regulation 28 applies or

- (b) is by virtue of Regulation 22 (liability of employers or principles) or 23 aiding unlawful acts (to be treated as having committed against the complainant such an act.

The Tribunal shall uphold the complaint unless the Respondent proves that he did not commit or as the case may be is not to be treated as having committed that act.”

45 Mr Dingemans has referred us to R (Williamson) -v- Secretary of State for Education and Employment [2005] UK HL 15 in which Lord Nicholls, at paragraph 22, stated:

“It is necessary first to clarify the court’s roles in identifying a religious belief calling for protection under Article 9 The court is concerned to ensure an assertion of religious belief is made in good faith: ‘neither felicitous, nor capricious and that it is not an artifice’ to adopt the felicitous phrase of Iacobucci J in the decision of its Supreme Court of Canada in Syndicat Northcrest -v- Amselem [2004] 241 DLR (4th) 1, 27 para 52. But, emphatically, it is not for the court to embark on any enquiry into the asserted belief or judge its ‘validity’ by some objective standards such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant’s belief confirms to or differs from the views of others professing the same religion”.

It has not been suggested otherwise, and the Tribunal accepts that Ms Ladele held her religious belief in good faith.

The Conclusions on the Claim of Direct Discrimination

46 The detriments that the Claimant relies on are set out in a document entitled Claimant's list of issues at paragraphs 14-25. The parties agree that the issue at paragraph 25 is not being litigated in the present proceedings and the Tribunal has not determined it. The Tribunal must undertake an exercise of considering each of these detriments in turn and then considering them cumulatively in accordance with the guidance in Anya -v- University of Oxford [2001] ICR 847.

47 The Tribunal is also mindful of the guidance in relation to discrimination cases set out in the annex to Igen Ltd -v- Wong [2005] ICR 931 which, for the sake of good order is set out below:

"(1) Pursuant to section 63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s. 41 or s. 42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word "could" in s. 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with section 74(2)(b) of the SDA

from an evasive or equivocal reply to a questionnaire or any other questions that fall within section 74(2) of the SDA.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to section 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

48 Mr Dingemans has referred us to Kokkinakis -v- Greece [1993] 17 EHRR 397 as follows:

"Freedom of thought, conscience and religion is one of the foundations of a democratic society' within the meaning of the Convention. It is, in its religious dimension one of the most vital elements that go to make up the identity of believers and of their conception of life the pluralism indissociable from a democratic society which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of conscience it also implies, inter alia, freedom to manifest one's religion."

Mr A Lynch for the Respondent argued that Kokkinakis was distinguishable as it related to a Jehovah's Witness.

49 We have been referred to R (Amicus) -v- Secretary of State for Trade and Industry and Christian Action Research Education [2004] IRLR 430. Mr Dingemans accepts, on behalf of the Claimant, that there are important rights of members of the lesbian, gay and bisexual community which are engaged in the area of provision of goods and services addressed by the

Regulations. He notes that Richards J at paragraph 27 of the Amicus decision noted that:

"Sexual orientation is the most intimate aspect of private life and personal identity. It is protected under the Convention, in particular under Articles 8 and 14, the application of which is considered later in this judgment. The Convention case law also shows that weighty reasons are required to justify any interference with the individual's Convention rights not to be discriminated against on grounds of sexual orientation."

Mr A Lynch argued that this did not assist the present case. Mr A Lynch has argued that the Respondent required all its existing Registrars to be Civil Partnership Registrars and involved in the civil partnership service and that was not required of Ms Ladele because of her religious views. He argues that Islington cannot be held liable for direct discrimination because the requirement that Ms Ladele be involved in the provision of the civil partnership service was not imposed because of, on the basis of or on the grounds of her holding her religious based view. He argued that the rule applied equally to all registrars and Ms Ladele was not in any way at all singled out in that regard, nor were her religious views in any way connected to that decision by the Respondent.

50 This is a case where there is a direct conflict between the legislative protection afforded to religion or belief and the legislative protection afforded to sexual orientation. Ms Ladele accepts that there are important rights under the European Convention on Human Rights of members of the lesbian, gay and bisexual community which are engaged in the area of goods and services addressed by the Employment Equality (Sexual Orientation) Regulations 2003. Ms Ladele does not seek to undermine those rights. Equally, Ms Ladele has Convention rights on the grounds of her religion or belief as a Christian which are engaged by the Employment Equality (Religion or Belief) Regulations 2003. Both sets of rights are protected. One set of rights cannot override the other set of rights.

51 Article 17 of the European Convention on Human Rights provides:

"Nothing in the Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

In R (Amicus) -v- Secretary of State for Trade and Industry and Christian Action Research Education [2004] IRLR 430 Richards J considered the striking of a balance between competing rights. In that case the claimants sought, unsuccessfully, to challenge the exceptions to the Employment Equality (Sexual Orientation) Regulations 2003 which benefited religious organisations to appoint persons holding only the relevant religious belief and without which the right would have been excluded by the rights of the lesbian, gay, bisexual and transsexual community. Richards J accepted, at paragraph 123 of the judgment, that:

"The exception involves the legislative striking of the balance between competing rights. It was done deliberately in this way so as to reduce the issues that would have to be determined by courts or tribunals in such a sensitive field. As a matter of principle that was a course properly opened to the legislature I think it clear that a requirement meeting the conditions pursues a legitimate aim. In addition should it be necessary I would rely here on what I say later in this judgment about the protection of religious rights and freedoms as a justification for interference with rights under Article 8 of the Convention."

52 Mr A Lynch, for the Respondent, argued that the adverse treatment to Ms Ladele was not on the grounds of her religion or belief. He submitted that the Respondent required all its existing Registrars to be Civil Partnership Registrars and that the rule applied equally to all Registrars so that Ms Ladele was not singled out. Mr A Lynch argued that Ms Ladele's orthodox Christian views were unconnected to the Respondent's decision. We reject this submission. The argument goes to the burden of proof. Applying a rule to all Registrars does not mean that the Respondent has demonstrated that it did not commit an act of discrimination. We analyse the acts complained of below.

53 The Tribunal accepts the submission of Mr Dingemans that it would be wrong for one set of rights to "trump" another. The present dispute arises from a direct conflict between the rights of one protected group with the rights of another protected group. It is an important case which may have a wider impact than the dispute between the parties. The Tribunal has borne these matters in mind in reaching its conclusions on the individual detriments and their cumulative effect which were referred to in paragraph 46 above.

54 The first detriment relied upon is:

"(14) Sharing details of its actions and proposed actions with other staff in breach of the Claimant's right of confidentiality under the Respondent's Confidentiality Policy in November 2006 and failing to redress the further breach of confidentiality by members of staff who proceeded to share this same confidential information in the Respondent's LGBT Forum in November 2006."

55 Paragraph 17.1 of the Respondent's Code of Conduct for Employees (page 454) provides:

"Managers must make sure that they have secure systems in their workplace to safeguard confidential information and that their staff maintain confidentiality at all times. They must also comply with the Council's policies and practices under the Data Protection Act 1998."

The letter from Mr Lynch to Dion and Viktoria dated 15 November 2006 (pages 145-146) specifically states that it is private and confidential and must be treated in confidence as it contains personal information concerning staff. This amounts to a breach of the Respondent's confidentiality policy. Mr Lynch conceded in cross-examination that it was term and condition of employment of all staff that they should not disclose private information about one member of

staff to other members of staff. He conceded that he did this and this is why he asked Dion and Viktoria to treat the matter as confidential. Ms Ladele has therefore suffered a detriment. The allegation that this was disclosed to the LGBT Forum is confirmed in the Investigatory meeting between Mr Daniels and Ms Mendez-Child (page 208) where it is stated:

"The two gay members have gone to the LGBT (Lesbian Gay Bisexual and Transgender) Forum to explain what is happening in the office and how it will be dealt with."

The Tribunal is satisfied that a detriment has been suffered by Ms Ladele.

56 In relation to this detriment (14) Ms Ladele has demonstrated that she did suffer a detriment. Ms Ladele compares herself with another hypothetical office holder or employee who is protected by the Council's Dignity for All policy. In the alternative, she compares herself with a hypothetical Registrar of orthodox Jewish faith who felt unable to work on Saturdays, and, in the second alternative, Regulation 3 being to protect freedom of religion and freedom of expression, no comparator is necessary. It is said that a comparator, who was a hypothetical office holder protected by the Dignity for All policy, who relied on another ground of discrimination would not have been treated in the same way. The evidence the Tribunal has before it was that the Respondent acted swiftly in dealing with the complaints of discrimination on the grounds of sexual orientation by Dion and Viktoria. Their complaint was dated 14 November and the response dated 15 November. Against that background the Tribunal could infer that Ms Ladele had been treated less favourably on the grounds of her religion or belief and, therefore, it is for the Respondent to show they did not commit these acts. On the evidence before the Tribunal, Mr Lynch has conceded that he did breach Ms Ladele's right of confidentiality and the evidence before the Tribunal from the investigatory meeting is that the confidential information was passed to the LGBT Forum. In these circumstances the unanimous judgment of the Tribunal is that the claim of discrimination on the grounds of religion or belief succeeds in relation to point (14).

57 The second detriment is:

"(15) Subjecting the Claimant to a disciplinary process from May 2007 onwards."

58 The reason for the disciplinary process was the refusal by Ms Ladele to carry out work in relation to the Civil Partnership Service solely on the grounds of the sexual orientation of the customers of that service. The reason that Ms Ladele refused to carry out civil partnership work was because of her orthodox Christian religion or belief and not because of the sexual orientation of the customers. The disciplinary process is to Ms Ladele's detriment. The Respondent was aware of the reason for Ms Ladele's refusal, namely her orthodox Christian belief and had been aware of this since 2003 or 2004. Ms Ladele has demonstrated a detriment on the grounds of religion or belief and it is therefore for the Respondent to demonstrate under Regulation 29 that they did not commit the act.

59 We have heard evidence that the reason for the disciplinary process was because Ms Ladele was in breach of the Dignity for All policy. This is a situation where there is a conflict between two rights or freedoms. Mr Dingemans has argued that one right should not "trump" another right. The evidence before the Tribunal was that the Respondent, rightly, considered the importance of the right of the gay community not to be discriminated against, but did not consider the right of Ms Ladele as a member of a religious group into account. We have already referred to the decision in Amicus in relation to striking a balance between competing rights at paragraph 51 above.

The burden has shifted to the Respondent and they have not proved that they did not commit the act and it is therefore the unanimous judgment of the Tribunal that the claim under number (15) succeeds.

60 The claim under number (16) is:

"(16) Failing to consider the Claimant for the position of additional Superintendent Registrar when the incumbent, was on maternity leave in May 2007 because of her religious beliefs."

61 The evidence, as set out in the investigation meeting (page 205) is that Ms Mendez-Child stated that she would not accept Ms Ladele's application should she wish to apply for the post. Ms Ladele has demonstrated a detriment. She has also demonstrated from the evidence that a hypothetical comparator would not have been treated in the same way. In these circumstances the burden shifts and the Respondent cannot demonstrate that they did not commit the act in the light of Ms Mendez-Child's admission that she committed the act. This complaint must therefore succeed.

62 The detriment at number (17) is:

"(17) Failing to redress allegations that the Claimant was homophobic and labelling and treating the Claimant as homophobic."

63 Ms Ladele was described as homophobic by Dion and Viktoria. Mr Lynch, by his own admission, did not ask Dion and Viktoria to consider whether they were discriminating against Ms Ladele on the grounds of her religion or belief. The Respondent throughout the evidence, made clear that they considered Ms Ladele's refusal to celebrate civil partnerships as discrimination by her on the grounds of sexual orientation. Ms Ladele does not accept that she was homophobic. She had a good work record in dealing with all the people with whom she came into contact. She had regularly dealt with all members of the lesbian, gay, bisexual and transsexual community with whom she had come into contact except in connection with Civil Partnership arrangements. She has suffered a detriment.

64 The Tribunal could infer that the detriment was on the grounds of her religion or belief. Because of Mr Lynch's admission that he did not ask Dion and Viktoria to consider whether they were subjecting Ms Ladele to discriminatory

the Respondent cannot show that they did not commit the act. In these circumstances this complaint must succeed.

65 The next complaint at (18) is:

"(18) Labelling the Claimant's letter to her manager of 18 April 2006 a free-standing incident of gross misconduct in September 2007."

66 The letter of 18 April (page 118) is Ms Ladele's letter to Ms Mendez-Child to which the Respondent did not reply. Mr Daniels referred to the letter of 18 April 2006 in his summing up at page 254 of the bundle. The letter of 18 April set out Ms Ladele's position and the Respondent did not afford her the courtesy of a reply. Ms Ladele told us in her evidence that Mr Daniels said that the letter of 18 April was in itself an incident of gross misconduct. In cross-examination Ms Round accepted that Mr Daniels had alleged at the disciplinary that sending the letter of 18 April was, a free-standing act of gross misconduct. In these circumstances Ms Ladele has demonstrated a detriment. The Respondent is unable to demonstrate that this was not done on the grounds of religion or belief not done. The complaint must succeed.

67 The next matter is:

"(19) Concluding in September 2007 that the Claimant had committed gross misconduct."

68 The Respondent did conclude that Ms Ladele had committed gross misconduct. She has thus suffered a detriment. The reason for the Respondent's conclusion was that her religion or belief prevented her from undertaking Civil Partnership duties. The Tribunal could, in these circumstances, draw an inference of discrimination. The reason for the Respondent's conclusion of gross misconduct was because of Ms Ladele's religion or belief. The Respondent cannot show that it did not commit the act and, in these circumstances, the claim must succeed.

69 The next matter is:

"(20) Deciding in September 2007 that would unilaterally vary the Claimant's terms and conditions to require her to undertake civil partnership duties."

70 The Respondent did vary the Claimant's terms and conditions of employment. The provisions of the Civil Partnership Act require that a registrar must be designated. Ms Ladele did not agree to be designated as a Civil Partnership Registrar. The Respondent took the decision unilaterally. Ms Ladele has thus suffered a detriment. The Tribunal could infer that the detriment was on the grounds of her religion or belief. The Respondent cannot demonstrate that they did not commit the act. They took the decision to designate Ms Ladele, together with all their other Registrars. The claim must succeed.

71 The next detriment is:

"(21) Taking the Claimant off the rota for Saturday weddings, excluding her from naming ceremonies, renewals of vows and commitment ceremonies and not allocation off-side ceremonies because of her religious beliefs. Describing this (through Helen Mendez-Child) as punishment for not doing civil partnerships, refusing to send the Claimant on courses."

72 During the course of the hearing, statistics were produced showing the amount of overtime earned in the years 2004/5 to 2007/8. The figures for Ms Ladele are as follows:

2004/5	£2,814.00
2005/6	£1,599.00
2006/7	£2,634.00
2007/8	£3,284.56

From these figures the Tribunal cannot determine that Ms Ladele has suffered a detriment in relation to the rota. We have the evidence, at page 137, that demonstrated that if Ms Ladele was the next on the allocation list and there was a Civil Partnership she missed a turn. The evidence before the Tribunal was sufficient for us to conclude that Ms Ladele had suffered a detriment. The figures do not demonstrate a clear diminution in earnings. The claim under this head must fail.

73 The next detriment is:

"(22) Deciding not to investigate or address the Claimant's concerns about the way her treatment and request to accommodate her religious beliefs had been addressed."

74 Ms Ladele complained in her letter of 18 April 2006 (pages 118-119). The Respondent disregarded this and did not reply to her letter. She has demonstrated a detriment. Ms Ladele's letter states that her complaint arises because of her religion or belief. In these circumstances the Tribunal could infer that the Respondent had treated Ms Ladele less favourably on the grounds of her religion or belief. The Respondent has not demonstrated that they did not commit the act of discrimination. They concede they failed to investigate and in these circumstances the complaint succeeds.

75 The next detriment is:

"(23) Failing to apply the Code of Conduct and dignity for all policy to the behaviour of the Claimant's colleagues."

The Respondent accepts that Dion and Viktoria were not disciplined under the Dignity for All on the grounds of discrimination for religion or belief. Mr Lynch concedes that he did not ask them to consider whether their conduct could amount to discrimination. Ms Ladele has demonstrated a

detriment, a hypothetical comparator who had made similar complaint would have had their complaints investigated and for these reasons the burden shifts. The Respondent cannot demonstrate that they did not do this and the claim must succeed.

76 The final detriment is:

"(24) Threatening in September 2007 to terminate the Claimant's contract if she did not perform civil partnership duties."

On several occasions Ms Ladele was warned that her conduct could result in her dismissal. This amounts to less favourable treatment. The threat to terminate her contract arose directly from her refusal to perform Civil Partnerships which was because of her orthodox Christian beliefs. In these circumstances the Tribunal could draw an inference of discrimination. The Respondent accepts that the threat to terminate Ms Ladele's employment was because of her refusal to undertake Civil Partnership duties. This arose directly from Ms Ladele's orthodox Christian belief. The Respondent has failed to discharge the burden of proof and the claim under this head must succeed.

77 The Tribunal has also considered all of the detriments complained of cumulatively. We are satisfied that Ms Ladele has shown that she was less favourably treated on the grounds of her orthodox Christian religion. The Respondent has failed to discharge the burden that has passed to them under regulation 29(2) of the Regulations.

78 In these circumstances and taking all matters together, it is the unanimous judgment of the Tribunal that the Claimant direct discrimination on the grounds of religion and belief succeeds.

The Complaint of Indirect Discrimination on the Grounds of Religion and Belief

The Law

79 Regulation 3(1)(b) of the Employment Equality (Religion or Belief) Regulations 2003 provides:

"For the purposes of these Regulations a person 'A' discriminates against another person 'B' if

(b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same religion or belief as B but

(i) which puts or would put persons of the same religion or belief as B at a particular disadvantage when compared with other persons;

(ii) which puts B at that disadvantage; and

- (iii) which A cannot show to be a proportionate means of achieving a legitimate aim."

The Conclusion of the Tribunal on the Claim of Indirect Discrimination

- 80 Ms Ladele relies on two provisions, criteria or practices. The first is that the Respondent required that from the commencement of the Civil Partnership Act 2004 all Registrars should carry out civil partnership ceremonies and registration duties. The second is that no one who refused to carry out some sex unions could do Saturday wedding duties or officiate in external venues.
- 81 Mr Dingemans submits that although the promotion of the rights of the lesbian, gay, bisexual and transsexual community was a legitimate aim it was not proportionate because the acts were deliberately designed to appeal to one section of the community over the rights of another. Mr Dingemans argued that the rights of those holding an orthodox Christian belief were not afforded the same value as the rights of the lesbian, gay, bisexual and transsexual community.
- 82 Mr A Lynch for the Respondent argued that the Tribunal must consider whether the requirement that all marriage Registrars in the expressly and obligatory Registry service be involved in Civil Partnership arrangements does impact adversely and generally on a category of workers. His argument was that Christianity is committed to respecting the uniqueness of marriage and that marriage is confined to couples of different genders but that Civil Partnerships are not marriages.
- 83 We reject Mr A Lynch's submission. The Tribunal had evidence from Mrs Streete that there were other instances of individuals employed by the Respondent objecting to Civil Partnerships on religious grounds. Theresa Davies shared Ms Ladele's beliefs. She was accommodated by a compromise involving her demotion. Fatima, a Muslim, left the Respondent's service, because she felt unable to be involved in Civil Partnerships. Mrs Thatcher gave evidence that her employer, Kent Count Council afforded her an exemption from registration as a Civil Partnership Registrar on the grounds of her religious beliefs which are the same as Ms Ladele's. We also heard of a Registrar in Cornwall and a Muslim employee in the London Borough of Newham who were accommodated.
- 84 In relation to the provision, criterion or practice that from the commencement of the Civil Partnership Act 2004 all Registrars should carry out civil partnership ceremonies and registration duties, the evidence is that the Respondent did require all registrars to carry out civil partnership duties. This put individuals who held orthodox Christian beliefs that marriage was a union between one man and one woman for life to the exclusion of all others at a disadvantage when compared with other persons who did not hold that belief. The requirement was in direct opposition to Ms Ladele's orthodox Christian beliefs and she was therefore put at a disadvantage.
- 85 The central issue is whether the Respondent can show the provision, criterion or practice to be proportionate means of achieving a legitimate aim.

Mr Dingemans accepts that although pursuit of a legitimate aim is accepted namely the promotion of the rights of the LGBT community, it was not proportionate to require that Ms Ladele became a civil partnership registrar.

- 86 Mr A Lynch argues that the legitimate aim is for the Respondent to provide an effective Civil Partnership arrangement service as an employer and public authority which is wholly committed to the promotion of equal opportunities and to fighting discrimination. The parties are in direct opposition on the issue of whether the legitimate aim is proportionate. Mr A Lynch argues that an employer who did not accede to a request to be exempt from conducting mixed race marriages would be acting proportionately and that proportionality is not to be equated with the ability to provide the service without the employee's services. He argues that where the employer is obliged to provide the service, the employer is fully justified in taking the view that it cannot permit its employee not to do so for discriminatory reasons.
- 87 The Tribunal rejects this submission. The Respondent required Ms Ladele to become a Civil Partnership Registrar, without consulting her about the appointment. We heard evidence that there was no diminution in the service offered by reason of Ms Ladele not being undertaking civil partnership duties. Ms Mendez-Child and Ms Round confirmed in their evidence that they could provide the first class service without Ms Ladele undertaking civil partnership duties. The Respondent decided that the service it provided was secular and that the rights of the lesbian, gay, bisexual and transsexual community must be protected. In so acting, the Respondent took no notice of the rights of Ms Ladele by virtue of her orthodox Christian belief. The Tribunal was satisfied that the Respondent placed a value on the rights of the first group which it did not afford to the protected section of the community of which Ms Ladele was a part. The Respondent placed a greater value on the rights of the lesbian, gay, bisexual and transsexual community than it placed on the rights of Ms Ladele as one holding an orthodox Christian belief. The Respondent showed no respect for Ms Ladele's rights. Their action in applying the first provision, criterion or practice was not a proportionate means of achieving a legitimate aim.
- 88 The same situation applies to the second provision, criterion or practice relied upon, namely, that no one who refused to carry out same sex unions could do Saturday wedding duties or officiate in external venues. The Tribunal has insufficient evidence to demonstrate that there was a provision, criterion or practice that on one who refused to carry out same sex unions could do Saturday wedding duties or officiate in external venues. The statistics set out at paragraph 72 above do not demonstrate this. The complaint of indirect discrimination in relation to the second provision, criterion or practice must therefore fail.
- 89 It is therefore the unanimous judgment of the Tribunal that the claim of indirect discrimination succeeds in relation only to the provision, criterion or practice that all registrars should carry out civil partnership ceremonies and registration duties.

The Complaint of Harassment

The Law

90 Regulation 5 of the Employment Equality (Religion or Belief) Regulations 2003 provides:

"(1) For the purposes of these Regulations a person ('A') subjects another person ('B') to harassment where, on the grounds of religion or belief, A engages in unwanted conduct which has the purpose or effect of A violating B's dignity or B creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) Conduct shall be regarded as having the effect specified in paragraph 1(a) or (b) only if, having regard to all the circumstances including, in particular, the perception of B it should reasonably be considered as having that effect."

91 The acts of harassment that Ms Ladele complains of are set out at paragraphs 32-47 of the Claimant's list of issues. A number of these duplicate the detriments relied on in the complaint of direct discrimination. In relation to those which are duplicated, paragraphs 34-36 equate with paragraph 17, which we have already found to be to Ms Ladele's detriment. (See paragraphs 62-64 above). Paragraph 38 equates to paragraph 21, (see paragraphs 71-72 above) which is the one instance of detriment which we have not found. Paragraph 41 equates with paragraph 15 (see paragraphs 57-59 above), and paragraph 46 is not the subject of these proceedings. These detriments at paragraphs 33-36, and 41 amounted to unwanted conduct. We deal with the other matters individually.

92 Paragraph 32 of the list of issues is that:

"32 At all times since the Claimant indicated her concerns, Helen Mendez-Child has refused to take her view seriously or to listen to them respectfully."

All the evidence that the Tribunal has before it, is that Ms Mendez-Child did not take Ms Ladele's views seriously. From 2003 or 2004 when Ms Mendez-Child was told of Ms Ladele's concerns, she told us that she thought that Ms Ladele would change her mind before the Act came into force and therefore took no action. She also told us in cross-examination that had Ms Ladele raised a different problem relating to sexual orientation, Ms Mendez-Child would not have assumed that the person would change their mind. Ms Mendez-Child told us that because registration is a secular service no account should be taken of religious belief. When questioned about whether Ms Ladele should have the benefit of the Dignity at Work Policy Ms Mendez-Child told us that that should not be the case if the faith discriminates against other people. She said that she could not allow one person to use their belief as that was discriminating against other people. Later, in cross-examination Ms Mendez-Child told us:

"I equate the Claimant's belief as discrimination. I don't believe she was being discriminated against and she has not produced any evidence of it."

Ms Mendez-Child also agreed that there was no discussion about accommodating Ms Ladele's religious belief. This was repeated by Ms Mendez-Child in the disciplinary hearing at page 252m.

93 Paragraph 33 of the list of issues is that:

"33 Colleagues complained (see paragraph 6 of the grounds of resistance annexed to ET3) but the Claimant's position on several partnerships was an act of victimisation towards them because of their sexual orientation."

This relates to the complaints made by Dion and Viktoria which have already been set out. The Tribunal is satisfied that this conduct was unwanted.

94 Paragraph 37 states:

"37 Helen Mendez-Child indicated in May 2006 in subsequent appraisals that everyone in the Department hated the Claimant and that no one wanted to work with her because of her views."

There is no evidence that Ms Mendez-Child indicated that everyone in the Department hated the Claimant. This allegation cannot amount to harassment.

95 Paragraph 39 states:

"39 The Respondent failed to protect the Claimant from the ridicule and abuse of her colleagues on occasions such as the staff meeting of 3 November 2006, and indeed, encourage such ridicule by acting in the manner particularised below."

The staff meeting in fact took place on 2 November. We have already made our findings in relation to this that there is no evidence of ridicule or encouragement to ridicule and this matter cannot, as stated, amount to an act of harassment.

96 Paragraph 40 states:

"40 The Respondent shared details of its actions and proposed actions with other staff in breach of the Claimant's right of confidentiality under the Respondent's confidentiality policy."

This equates with paragraph 14 in the direct discrimination complaint and we have already found that this does amount to a detriment. The breach of confidentiality amounted to unwanted conduct.

97 Paragraph 42 equates to paragraph 16 of the list of issues (see paragraphs 60-61 above). Failing to consider Ms Ladele for a maternity leave position because of her religious beliefs amounted to unwanted conduct.

98 Paragraph 43 states:

"43 The Claimant was excluded from social and professional workplace conversations."

The Tribunal has heard much about the Claimant being sent to 'Coventry'. We have insufficient evidence to make a clear finding that this amounted to a detriment or harassment.

99 The same situation applies to paragraph 44 which reads:

"44 The Claimant's colleagues refused to work with the Claimant on wedding ceremonies."

100 Paragraph 45 states:

"45 Helen Mendez-Child asked in an interview in June 2007 how they would feel working with people who were homophobic being a reference to the Claimant."

This is a reference to an interview of Mr B Atsebaha who came to give evidence and denied that any such comment had been made. In these circumstances this cannot amount to harassment.

101 The final issue is paragraph 47 which states:

"47 The Respondent required the Claimant to produce her passport and address identification before processing her pay increase on 21 December 2007 notwithstanding that she had been paid by the Respondent for over 15 years."

The Tribunal understands that this is not presently before the Tribunal in these proceedings because it is the subject of the appeal. In these circumstances the Tribunal does not address this issue.

102 The issue is therefore whether those matters which have been proved and which amount to unwanted conduct, is that the issues at paragraphs 32-36, and 40-42, have the effect of violating Ms Ladele's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

103 Mr Dingemans submitted that there was harassment within the meaning of the Regulations and that the Respondent had led, encouraged and tolerated the worst sort of treatment of Ms Ladele because she held an orthodox Christian belief. Mr A Lynch argued that Ms Ladele had misunderstood and misperceived the situation as set out in his skeleton argument.

104 The Tribunal is in no doubt that Ms Ladele did not misunderstand the situation. The complaints at issue 32 of failure to take Ms Ladele's view seriously, the complaints at issues 33 to 36 in relation to allegations of discrimination on the grounds of sexual orientation towards the Claimant, issue 40 in relation to

breach of confidentiality, issue 41 in subjecting the Claimant to a disciplinary process for discrimination on the grounds of sexual orientation, and issue 42 in failing to consider the Claimant for the additional Superintendent Registrar are all unwanted conduct. These acts disregarded and displayed no respect for Ms Ladele's genuinely held religious beliefs. As such they amount to a violation of Ms Ladele's dignity and created an intimidating, hostile, degrading, humiliating or offensive environment for her on the grounds of her religion or belief. In relation to these matters it is the unanimous judgment of the Tribunal that the complaint of harassment succeeds.

RESERVED REASONS

3rd July 2008 London Central
Date and place of signing

S. M. Harvey
EMPLOYMENT JUDGE

REASONS SIGNED BY EMPLOYMENT JUDGE ON

08 June 2008
REASONS SENT TO THE PARTIES ON

8 June 2008
AND ENTERED IN THE REGISTER

[Signature]
FOR SECRETARY OF THE TRIBUNALS