

# AHEAD NEWSLETTER

Volume 1, Issue 3

September 2005

www.annehayfield.com

## PENSIONS GAINS FOR SAME SEX COUPLES By Harry Cohen MP

The Government has recently introduced legal changes, which mean that same sex couples will gain pension benefits in contracted-out schemes. Civil partners will have the right to pass on survivor pensions in the same ways as married people do.

The Civil Partnership Act, recently passed by Parliament, was amended so that contracted-out pension schemes are now required to provide survivor pensions for civil partners from rights built up all the way back to 1988, replicating the current position for widowers.

The Civil Partnership Act is all about equality so this change enhances this. The fact that civil partners will be able to pass on survivor pen-

sions as married people do has important practical implications: often a pension will be the most valuable asset an individual has, so their ability to pass it to their long-standing partner is crucial.

It is excellent that this right has been introduced for same sex couples. However, in my opinion, there really should be similar provision for opposite sex unmarried couples. The Government points out that for them most private pension schemes grant them the survivor pension right either within the provisions of the scheme itself or at the trustee's discretion. Also they always have the option to get married. That is not an option for same sex couples.

Nevertheless, there remains a good case for the pension inheritance right to apply to opposite sex unmarriages as well. I have argued for an-

other law change which would require all private pension schemes to apply the survivor pension right to them.

Notwithstanding this aspect, the pension gain for same sex couples is only fair and reasonable and a welcome step forward.

### Sexual Orientation cases

The Sexual Orientation Regulations (SOR) came in on 1<sup>st</sup> December 2003. From that date until the end of February 2004, there have been 377 cases lodged at the tribunal. To my knowledge, 18 cases have been completed and out of these cases, only one has successfully used the SOR. (These are not the official figures).

(Continued on page 2)

### Inside this issue:

Harry Cohen MP	1
Round-up of SO cases	1
Where is LAGER?	4
Religion cases	6
New Equality Org	8
BNP case	9
FAQ on Civil Partners	10

# Work Out

training pack

£99 individuals

£150 organisations

## Sexual Orientation cases round up

(Continued from page 1)

A further two cases have been won in April, May or June but I haven't seen the tribunal's decision of those cases. The first case that was won under these regulations was the case of

**Whitfield Vs Cleanaway Limited** (3201666/04). The case was heard at the Stratford employment tribunal on 24<sup>th</sup> to 28<sup>th</sup> January 2005. Unfortunately, the decision produced by the tribunal chair is only one page long. This means that it is impossible to determine why this case won at the tribunal while so many others have lost. The judgement does tell us that Whitfield suffered unlawful harassment and direct discrimination on the grounds of sexual orientation. Mr Whitfield was also constructively dismissed. The total compensation awarded was £35,245.76. This extract is from gay.com report.

**Rob Whitfield was harassed and humiliated by co-workers at his former managerial job at Essex-based Cleanaway UK, and was eventually forced to leave because the bullying became too intense.**

On one occasion, after Whitfield began organising a Secret Santa event in the office, a colleague emailed him asking if he "liked black and dirty tunnels". Additionally, he was forced to

**No cases using SOR or RoB have lodged an appeal at the EAT - (correct up until 11th Aug 05)**

wear a pink t-shirt at a business conference and was labelled a "queen" by co-workers at a medieval style dinner.

He was also given the nickname of "Sebastian", in reference to the camp character on the TV comedy show Little Britain.

"The abuse I suffered was, in the grand scale of things, fairly subtle," ...

"There were no bricks sent crashing through my window or insults spray-painted on my walls, but I was subjected to five months of sustained abuse and homophobic taunts, and it is amazing how a small number of words repeated often enough can leave the victim absolutely desperate."

**Payne Vs ING Barings Ser-**

*There have been 377 cases filed using the SO R. 18 have completed & only one has won (up until the end of February 05)*

**vices Ltd (22021188/04)** is a case where Oliver Payne argued that he had been bullied, was unfairly and automatically dismissed due to whistle blowing and discriminated against on the grounds of sexual orientation.

The tribunal was presented with over 2,600 pages of written evidence. Payne's case in summary is that he was bullied by his boss, Peter Krens and forced to conduct transactions that Payne thought constituted fraud. Krens is alleged to have told Payne to "Shut the F\*\*\* up!

Do as you're told" and "...Do you realise that you could have given the whole F-ing game away?"

Payne made a complaint using the company's procedures. ING gave their HR department the responsibility of investigating the bullying procedures and that Corporate Audit Services, the Compliance Department and the Head of Legal Services the responsibility for dealing with the allegations of financial irregularities.

Payne's allegation of discrimination based on sexual orientation was mentioned in the originating application but this incident happened before the Regulations became law so the tribunal did not consider them. Payne described himself as gay and the incident concerns a term that we can assume was homophobic. However it is not

specified in the tribunal's decision. ING issued Peter Krens with a final written warning and demoted him. Krens also had

his approved status person with the Financial Services Authority removed. ING did not however sack him and this appears to have led Payne to say that he had lost trust and confidence in his employer. The tribunal says that the behaviour of ING is reasonable.

In relation to the fraud allegation, the tribunal says that Payne saw the situation in "black and white", when in reality "colours" exist. Payne won his claim for constructive dismissal but not for making a protected disclosure, (i.e. for whis-

## Sexual Orientation cases round up

Anne Hayfield

Provides

Training &

Consultancy

Services

- ♦ LGB Employment Issues
- ♦ Civil Partnership
- ♦ Harassment & Bullying
- ♦ Stress Management
- ♦ Introduction to Equal Opportunities
- ♦ Managing Diversity
- ♦ Conflict Resolution
- ♦ Confidence Building
- ♦ Coaching
- ♦ Incorporating LGB issues into generalist programmes
- ♦ Policy Development
- ♦ 020 8555 3709

[www.annahayfield.com](http://www.annahayfield.com)

[Anne.hayfield@lineone.net](mailto:Anne.hayfield@lineone.net)

the blowing) nor for discrimination on the grounds of sexual orientation.

### Dish the dirt case fails

#### Phillips Vs Candy Atherton

**MP (2304311/2004)** received a lot of publicity as the “dish the dirt” case. Phillips is an out gay man who had several years experience as an advisor including working for Lesbian and Gay Employment Rights. Phillips started work as a researcher for the Labour MP, Candy Atherton in April 2004. Candy Atherton had found an article about the parliamentary candidate (TPC) who would be running on behalf of the Conservatives in Atherton’s constituency. The article reported an incident where the TPC had met a man in Soho and that man later attacked the TPC with a knife. The article implied that the TPC was gay.

Candy Atherton asked Phillips “if he could find out anything about the TPC.” Both Phillips and the TPC live in the same area of London. Atherton denies that she used the phrase “dish the dirt”. She also denied that she made any reference to the TPC’s sexual orientation. Phillips resigned from his job on July 2004.

On the 8<sup>th</sup> September 2004, the Guardian published a report that the TPC was facing de-selection by his local constituency party. The article referred to the TPC being gay. The tribunal received the originating application on 16<sup>th</sup> September. With the facts being disputed in this case, the tribunal have de-

cided to believe Candy Atherton over Phillips. The tribunal decided that the case was out of time because the originating application was received on 18<sup>th</sup> September when the act complained about occurred on 21<sup>st</sup> April. Phillips explained that he realised the significance of Atherton’s request only after the Guardian article, hence the late application.

This case highlights the difficulty there can be regarding time limits. I am sure that Phillips and his counsel would have thought an extension to the three months time limit was just and equitable. Obviously the tribunal had a different view and the case failed on this point.

The SOR cover the perception of sexual orientation. It follows that if a heterosexual person is subjected to homophobic harassment, then he or she should still be protected. In **Smith Vs Biffa Waste Services**

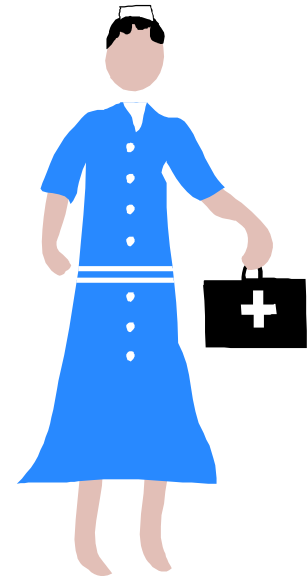
**(1200400/2004)**, the facts of the case can be summarised as follows: Smith is a professional driver. His employers sacked him because they believed he had cut the brake pipe on a vehicle allocated to him. Smith says that the real reason for his dismissal was whistle blowing and his trade unions membership. He also mentions an incident that could be discrimination on the grounds of sexual

orientation. The work force was issued with new uniforms, which Smith was the first person at the depot to receive. A picture was taken of Smith in a new uniform with the typed text added "... [looking for] semi-handsome chaps with gay tendencies". This notice stayed up in the depot for 4 weeks. This incident is of interest to us because the tribunal asked Smith whether he was gay and he replied that he is a married man.

*In my opinion, this is not how the SOR are supposed to be interpreted.* Smith was a member of the Union of Shop, Distributive and Allied Workers, (USDAW) and was represented by them. The claim of discrimination on the grounds of sexual orientation was also discounted because the incident happened before 1<sup>st</sup> December 2003.

In **Garner Vs Howson Care Centre Ltd** (2601859/04), we are told of a lesbian nurse who was sacked for restraining residents by locking them in their rooms. Garner is a nurse that has 23 years experience. She started working for the Care Centre in October 2002. The home has about 65 residents and 50 staff. On the night shift, one registered nurse and four care assistants looked after the residents. Garner's discrimination case is based on the fact that other staff locked residents in their rooms as a method of restraint. She states the real reason for her dismissal was discrimination on the grounds of sexual orientation.

The point of concern is that the decision does not give much in the way of reason or logical argument as to why this is not discrimination or indeed the reasons why Garner felt she had been discriminated against. Garner won her case for unfair dismissal because the employer had not followed a correct procedure. Garner was awarded £202.50 compensation.



### Would you Prefer this newsletter in word ?

If yes is the answer either email or ring

Articles for those interested in equality & diversity issues

- SOR cases
- RoB cases
- Personal interest

Anne Hayfield's Equality & Diversity Newsletter  
An irregular but not irrelevant publication  
anne.hayfield@lineone.net

020  
8555  
3709



A picture was taken of the Smith in a new uniform with the typed text added "...[looking for] semi-handsome chaps with gay tendencies".

### What has happened to LAGER?

Many people have asked me what has happened to Lesbian and Gay Employment Rights. Here is a message I received from LAGER's chair, Dave Raval . "...the LAGER MC met recently to discuss the fate of the organisation. As you may know, after our funding was cut and LAGER had to make all its staff redundant, the MC conducted a consultation process to ask for suggestions as to the future role of LAGER, should new funding be obtained. Unfortunately, the MC concluded that no suggestions had been forthcoming which were either fundable, or realistic to implement.

The MC therefore reluctantly decided that LAGER should cease as a legal entity, and the company will be closed at the end of this financial year [March 2005]. If there are any surplus funds, then these will be given to charities that most closely match LAGER's purposes. "

*To my knowledge no other organisation has taken over its role.*



In **Matera Vs Simon Burton and Sastel International Ltd** trading as Air Vacations (2301948/2004), the main complaint was that Matera had been slapped in the face by his boss.

Matera started working for Air Vacations in October 2003. He is an out gay man. In summary and from Matera's point of view he was subjected to "regular taunts and jibes". (These are not detailed in the tribunal's decision). He was then slapped by Hepnar in an incident on 1<sup>st</sup> April. He complained to the Managing Director of Air Vacations, Simon Burton in a written grievance. Unusually Burton is cited as a co-respondent although it is not suggested that he was the perpetrator of the harassment; Matera said that it was a further act of discrimination on Burton's part for handling the grievance so poorly. Matera put in his originating application on 28<sup>th</sup> April 04. *There was a further incident on 7<sup>th</sup> July 2004 where Hepnar, who had been drinking came up Matera's desk "rifling through the papers on his desk and throwing them from one side to another and pretending to hit him".*

It is clear from the tribunal's decision that they decided to believe the employer rather than Matera. The tribunal have accused Matera of exaggeration; he could not produce witnesses for either incident. Matera did complain about Hepnar's behaviour as, being generally abusive and unpleasant to members of staff but his grievance didn't specify that this behaviour was related to his sexual orientation. The tribunal also did not think that Hepnar calling Matera "Michelle" was discriminatory because Hepnar also called Simon Burton "Simone".

The tribunal did tell the Respondents "It was particularly alarming that the Second Respondent had not even as a result of being a party to these proceedings taken steps to understand the legal obligations on them as employers generally and specifically in relation to their duty to protect employees from discrimination".

*In a way this reminds me of the "bastards" defence to charges of discrimination, that it is its not discrimination because the guy is being horrible to everyone.*



#### **In Towns Vs Gloucester Citizens Advice Bureaux (1400572/04 & 1400957/04),**

Mrs Town brings two claims. The first is that she was discriminated against on the basis of sexual orientation and the second is that she was sacked for making a protected disclosure or whistle blowing.

Gloucester CAB employed Towns for about 7 months. Her discrimination claim relates to a harassment complaint. "A female employee... had been the subject of "unusual behaviour" in the hands of the claimant on a number of occasions and specifically at a training session..." This is described in the decision as *"inappropriate or unprofessional behaviour, rather than conduct which amounted to sexual harassment..."* The tribunal accepts insofar as the harassment complaint is concerned that it was dealt with on the basis that none of the conduct carried with it an import of sexuality or sexual orientation".

Towns' whistle-blowing claim relates to two of the managers of the CAB service also being partners of a private company called Health Advocacy Partnership. Towns thought this represented a conflict of interest. The tribunal accepted that the Respondents had complaints about the way Towns performed her role, for not attending meetings or for being late. The tribunal concluded that the employer had dismissed Towns for other reasons other than whistle blowing.

*In summary, the first batch of cases that have been heard at the employment tribunal using the sexual orientation regulations have been very disappointing. The Government expected about 1000 cases a year to be lodged at the tribunal using this law. About 200 – 300 cases get to the tribunal and many of these do not get to a hearing. The other concern is that from the tone of the tribunal's decision, it would appear that lesbians, gay men and bisexual people are not being believed. I do hope that my gut feeling is wrong and this is not evidence of homophobia.*

The info in this newsletter is for guidance only and cannot be taken as a full statement of the law.

The last sexual orientation case that I shall report in this edition of the newsletter concerns the sticky situation that arises when couples and ex's attempt to work together. In **Carey & Smith Vs Booker Cash & Carry Limited (2101097/2004 & 2101125/2004)**, a gay couple claimed that they had been subjected to harassment and then dismissed because of their sexual orientation.

Smith worked for Booker Cash and Carry for 5 months as a warehouse operative. His employers said he was an exceptional worker. Around the same time as Smith started working for Booker so did Mr Rabbit. Rabbit's current partner was Mr Jackson (Jackson is Smith's ex-boyfriend). Carey started working for Booker Cash and Carry as well, so all four worked on the night shift, under a supervisor called Mr Bacon, for about a month.

Carey and Smith allege that they were treated unfairly because Rabbit and the supervisor, Bacon, didn't like them working together. This included not being spoken too, being given harder work to do and being forced to smoke in the smoking room. The employer on the other hand said that Carey "messed around" at work; he would wear a walkman at work and dance in the aisles, ride on trolleys and was seen standing on ladder miming into a bottle of soy sauce. Booker Cash and Carry gave Carey warnings about his conduct and recorded these warnings. Carey was eventually dismissed in February and when this happened Smith, his boyfriend, resigned in protest.

Smith and Carey decided to apply to the tribunal after they met another employee in a nightclub and she told them that they had been sacked because they were a gay couple. The tribunal did not accept that this was the reasons for the dismissal as Booker Cash and Carry had both gay couples and heterosexual couples working for them.

Carey was awarded one week's notice pay because the tribunal found that he was sacked for poor conduct and not gross misconduct.

"...was seen standing on ladder miming into a bottle of soy sauce..."

## Religion or Belief Discrimination cases summaries

**Khan Vs G & J Spencer Group plc T/A NIC Hygiene Ltd (1803250/04)** was heard by the Leeds tribunal that was held on 12<sup>th</sup> January 2005. The tribunal decided that Khan was unlawfully discriminated against on the grounds of his religion. Unfortunately this decision is only one page long and so no details are unavailable from the tribunal except that Khan was also unfairly dismissed and had his wages unlawfully deducted. He was awarded £10,982, of which £8224 was the compensation awarded for the discrimination.

The case was widely reported in the press. Khan, 43, from Bradford earned £8,000 per year as a cleaner. He was sacked for gross misconduct after he used his 25-day holiday entitlement and another week's unpaid leave, to visit Mecca.

Mr Khan, who cleaned buses in Bradford, asked whether he could use his 25 day holiday entitlement as well as a week's unpaid leave to visit Mecca but did not

receive a response. His union then advised him to put his request in writing. The company failed to respond and his manager said if he heard nothing he could assume it was all right. Leeds-based NIC Hygiene claimed his Hajj pilgrimage was unauthorised. Muslims have to make a Hajj pilgrimage at least once in their lives – this is one of the five pillars of Islam

### In Hall Vs HM Prison Service

**(2402560/2004)**, we meet a prison service chaplain who is claiming unfair dismissal and discrimination on the grounds of religion or belief as well as sex discrimination. All of her claims fail because she is neither an employee nor a worker for the prison service. The decision does not detail why she felt she had been discriminated against.

## Christian forced to work Sundays wins case

This case deals with the issue of whether a Christian can be forced to work on Sundays. **Williams-Drabble Vs Pathway Care Solutions Ltd and Miss Nabila Rehman** (2601718/04) was heard at the Nottingham tribunal. Pathway Care Solutions employed Mrs Williams-Drabble for about 7 months. Pathway Care Solutions runs various residential care homes and is co-owned by four people. Nabila Rehman is the sister of one of the owners. Williams-Drabble originally worked at Rose Villa, one of the places run by Pathway for about a month but she found the conditions at this residential care home for the elderly to be poor. She then went to work at a children's home called Elm House.

Williams-Drabble stated on her application form that she was a Christian and active in her local church. She agreed to work a sleepover that finished on Sunday at 10.00 am on a Sunday morning. This allowed her to rest and then attend her church's only service that was held at 5.00pm on a Sunday afternoon. At Elm House, Williams-Drabble worked with two Muslim women, one of whom was the second respondent. Her discrimination claim is partly based on the attitude that her Muslim co-workers had in that the pride they had in their own religion demeaned Wil-

liams-Drabbles' own Christian beliefs. This part of the discrimination claim was not proved, as Williams-Drabble could not recall any specific remarks or events.

The successful part of the discrimination on the grounds of religion and belief was in Pathway's insistence that Williams-Drabble work a shift which meant that she had to work all of Sunday and therefore miss her church service. She did complain to her employers who had said that if she could find someone to swap shifts with, then they would allow her to do this. Williams-Drabble was awarded a total of £5001.00 of which £4000.00 was injury to feelings due to the indirect discrimination claim. It is worth noting that Pathway Care Solutions did not attend the tribunal.

*It is important to note that this case does not mean that every Christian who is forced to work on Sundays would win a case of discrimination on the grounds of religion or belief. Cases of this type are likely to vary according to whether the employer has others who can do the same duty and the needs of the individual business.*

In **Ditto Vs O2 (UK) Limited (1802585/2004)**, Mr Ditto is Asian Muslim. His claim for discrimination on the basis of religion was dismissed because it relates to an event (the death of his

grandfather and travelling "home") that took place before the Regulations became law. The tribunal did say that Ditta's manager insensitively handled this event and that if the Regulations had been law, there may well have been a case to answer.

In his application, Ditta also said that O2 had dismissed him unfairly and subjected him to racial discrimination. Ditta worked in customer services and was disciplined for having a phone conversation with his girl friend that was unauthorised and for using "obscene" language to her;- the obscene language is not specified by the tribunals' decision. He is also disciplined for using the f-word to a customer although in his defence, he said he did this to build rapport as the customer was also using that type of language. The other main complaint that O2 had against him was that he wrote an email to one of the customers that made reference to him being overworked and consequently that O2 was short staffed.

The management took the view that this was against an agreed company policy of divulging internal information. Ditta was able to produce comparators; that is white people who had sworn at work and had not been disciplined and even an employee who had accidentally forwarded an internal email to a customer. However but the tribunal did not accept that this demonstrated a racial bias. Ditta represented himself at tribunal although his originating application was filled in with the help of his union. An in-house employment lawyer represented the respondent, O2.

If you know of someone who might want this n/l tell them to send me a blank email & their phone number (just in case the email bounces)

## **The Commission for Equality and Human Rights (CEHR) – what does it mean for Lesbian, Gay and Bisexual communities?**

### **What is the CEHR?**

This is the single equality body. Those of us with an interest in equalities will know that the Government are planning to abolish the existing 3 commissions: the Commission for Racial Equality (CRE), the Equal Opportunities Commission (EOC) and the Disability Rights Commission (DRC) and form a new organisation. The new organisation also has responsibility for looking after the new equality strands: religion or belief, sexual orientation and age and provide a statutory body to look after human rights issues.

### **Is this good news for lesbians, gay men and bisexual people?**

Yes, this is the first time the LGB community will have a statutory organisation looking after their interests.

### **Can we really expect one organisation to look after all these different groups?**

This has been the main concern of many people. Each of the equality strands thinks that it will be disadvantaged by this arrangement e.g. the EOC is worried that feminism is not the flavour of the month or even of the decade, The CRE are worried that race is going to be marginalised, The DRC have disabled people on their board and so will lose some autonomy. The religious lobby feel they are disadvantaged because there are some many different religious groups that are “religious” rather than political so reaching a consensus or even the authority to speak on a particular issue can be difficult. The Age lobby has a similar problem in that there are numerous age groups. Sometimes groups representing older people tend to dominate and of course there is no law outlawing ageism, as yet. As far as the sexual orientation is concerned, many small lesbian, gay and bisexual groups lack the resources to engage with Government consultation. Also many people do not perceive homophobia or the oppression of LGB as a real issue. There’s the attitude – “If only they’d keep quiet about it, then no-body know and they wouldn’t have a problem”.

### **What is the Equality Bill and what does it contain?**

The Equality Bill sets out the duties of the CEHR, part 2 outlaws discrimination on the grounds of religion in the provision of goods, services, facilities, education and the exercise of public functions. Part 3 creates a positive duty of public authorities to promote equality of opportunity to women and men.

### **When will the Bill become law?**

At the time of writing, September 2005, the Bill is making its passage through the Houses of Parliament; it is expected to be back in the House of Lords at end of October/beginning of November. The Bill is expected to receive Royal Assent around Easter of next year, with the CEHR due to be formed in October 2007.

### **Why haven't they included service delivery issues for LGB people?**

Good question – The Government’s position on this issue is that once the CEHR will start its work, it will carry out a feasibility study to look at outlawing discrimination on the basis of sexual orientation in service delivery. I personally think that the Government are not convinced of the need for LGB to have equal treatment. The business case for diversity has given people the impression that we are rich, white gay men and that service delivery issues for us mean not being able to stay at a luxury resort in the Caribbean. The latter is of course an example of discrimination but not being able to take your partner to a luxury hotel or a B&B in Scotland



is hardly the human rights abuse of the century!

Contrast this with the position of Muslims in this country. (The religious duty largely came about by lobbying from the Muslim Council of Great Britain). Many Pakistani and Bangladeshi Muslims in the country suffer from high rates of unemployment, poor health, lack of educational achievement – all the problems associated with poverty.

There is a practical concern about the discrepancies of rights that different minorities have. The faith communities and the LGB community have traditionally “been at each other’s throats”. Imagine the manager of a residential care establishment for the elderly where the manager may feel that he has to prioritise the needs of an elderly homophobic religious person over the needs of an older lesbian because of the change in the law.

### Is there anything that can be done about this?

Stonewall have tabled an Amendment to the Bill which was proposed by Lord Ali and Lord Lester. This amendment was then “bopped out” by the Government. Lord Ali is expected to re-word the amendment then re-introduce it at a later date. It is not expected to succeed. Stonewall are in the process of collecting case studies as part of their “Give us the Goods” campaign. If you have evidence of discrimination in the provision of goods, facilities, and services (think health service, including mental health, education, housing, local authority services including care establishments) contact Stonewall via their website.

## Discrimination on the grounds of political belief?

Religion or belief regulations do not apply to political beliefs with some commentators thinking that Marxism may make an interesting test case. A case has recently been decided by the employment appeal tribunal that allows BNP members to use the Race Relations Act.

Mr Redfearn was a postal delivery driver for the West Yorkshire Transport Service. He was found to have been a “perfectly satisfactory employee”. However he was dismissed following union representations when the union and his employer discovered that he stood for, and was elected as, a local authority councillor representing the BNP.

The employment tribunal found he had not been dismissed “on racial grounds”, because the reason for dismissal was a fear of violence in the workforce flowing from

his political beliefs, and therefore his claim for direct discrimination under the Race Relations Act 1976 failed.

The EAT (Burton P. presiding) quashed that decision. It held that the phrase ‘on racial grounds’ must be interpreted widely. It included a dismissal where the decision to dismiss was significantly influenced by questions of race – whether it be the complainant’s or somebody else’s – and noted that the employer’s motive, no matter how benign, was not a defence to the employer.

This decision is undoubtedly correct [thinks Daniel Barnett] – the EAT was bound by a long-standing authority to rule as it did. However, much as the upper qualifying age unfair dismissal cases allowed age discrimination in

through the back door of sex discrimination, this decision allowed discrimination on grounds of political belief in through the back door of race discrimination.

*This last example I obtained from Daniel Barnett’s Employment Law Bulletin available from his website*

[www.danielbarnett.co.uk](http://www.danielbarnett.co.uk)

*Presumably Daniel Barnett thinks this decision is correct from a legal point of view not a moral one.*



## Frequently Asked Questions about the Civil Partnership?

### Is the Government planning to extend the scheme to heterosexuals?

No, The Government's thinking on this issue is that the civil partnership scheme provides parallel provisions to marriage. The Law Commission are looking into the legal rights of both heterosexual co-habitees and same-gender people who are in a relationship but do not want to register their relationship.

### Is there any difference between marriage and civil partnership?

There are very few. As a lesbian, I can't see the difference between a heterosexual woman marrying her man as opposed to registering their relationship. When I've spoken to heterosexual women friends of mine, they seem to think that registration is more "equal" than marriage.

### We are a gay couple and we are "married" already, do we have to do anything?

Umm, no you're not! There have been various schemes where same-sex couples have been added to a voluntary register but these DO NOT COUNT. Any lesbian or gay couple will have to register their relationship after December 5<sup>th</sup> 2005 - that's when this law comes into force.

### What about if we got "married" abroad?

Some same-sex registration schemes will be accepted automatically and some will not. For guidance you will have to check the Women and Equality Unit website [www.womenandequality.gov.uk](http://www.womenandequality.gov.uk) - there is list of accepted schemes in Schedule 20 of the Civil Partnership Act 2004. This list will be updated with time as more and more countries start to change their laws so that same sex couples can register their relationship.

### If we register our relationship, does that mean that we have to be monogamous?

No, one of the differences between civil partnership and marriage is that there is no such concept as "adultery" or "non-consummation" so once you've registered your relationship nobody will check up whether you've had sex or not or who with. Civil partnerships can be dissolved by desertion and unreasonable behaviour.

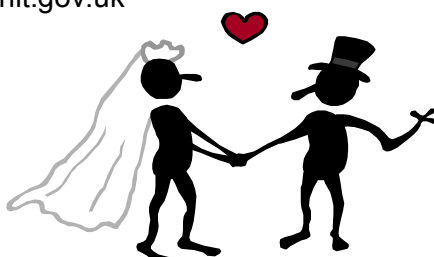
### What about if you change gender?

Technically it could be possible be married, then change your gender, and have that recognised and then register your relationship to your partner (who is now the same-sex as you) all on the same day.

### What about benefits, could we be worst off?

Yes, two lesbians living together as a couple with one of them bringing-up her daughter will be classed as a couple for tax and benefit purposes in a similar way to co-habiting heterosexual couples, so what we have gained on one hand we have lost on another. The "mum" will no longer be classed as a lone parent and could have her benefits reduced.

For more information about Civil Partnership visit the Women and Equality Unit website at [www.womenandequalityunit.gov.uk](http://www.womenandequalityunit.gov.uk)



## Religion or Belief Discrimination cases summaries

### Kamara Vs Southwark Council 2301524/2004

Mr Kamara is a Muslim from Sierra Leone who began working for Southwark Council in April 2003. He was taken on as part of a TUPE transfer. He was a team leader of about 20 cleaners on the Branden Estate. Kamara's argument is that his managers, Cole and Hilton both white and , Christian subjected him to discrimination on the basis of race and religion in the way that they dealt with an unfortunate incident.

In November, Kamara got into a fight with another cleaner, Powell, a Jamaican Rastafarian. Powell swore at Kamara, insulted his mother and punched him three times. Both parties wanted the incident dealt with informally. Southwark decided to transfer Kamara to another estate, the Aylesbury.

"There is no evidence that Mr Powell was even considered for movement. In the view of this Tribunal, the Respondent's witnesses have been somewhat wary of informing the Tribunal of the true reason for this decision." The Tribunal goes on to say ... "His objections are that he, as team leader, should have been supported and that if anyone was moved it should have been Mr Powell; that his movement should be regarded as something of a punishment and therefore he should have been subjected to a fair disciplinary procedure; and that the decision to move him was motivated by discrimination. "

Both Kamara and Powell live on the Aylesbury estate. Kamara was threatened with a knife. Southwark then decided to move him to another location on the Aylesbury, half a mile away

and then to a third estate, The Rockingham, after a further threat, to third estate the Rockingham it is these transfers that Kamara said that he had to do more cleaning and had less opportunities of doing overtime due to these transfers. Southwark disputes these issues; the Respondents case is that Kamara would have always have had to do some cleaning regardless of whether he had supervisory responsibilities or not and that the way that they operated their overtime system did not unfairly penalise him. (There is a long description of how overtime is allocated to cleaners in the tribunal's decision) Southwark promoted him to refuse collection which meant better wages but after two weeks, Kamara had to give this up due to a knee injury.

The last incident that Kamara complains of is Southwark's HR department checking whether he had the right to work in this country when in actual fact this was unnecessary as Kamara was taken over as part of a TUPE transfer this was unnecessary.

Richard Leong (presumably of the London Race Discrimination Unit) unsuccessfully argued that these

incidents were linked in a continuing act of discrimination. The Tribunal unanimously accepted that the evidence makes it quite clear that the transfers from estates ... were not ongoing discriminatory situations but were single acts, which might have later adverse consequences. Kamara therefore lost his case.

"... insulted his mother and punched him three times."

Making Equality Simple is a plain English guide to the Sexual Orientation Regulations and the Religion or Belief Regulations.

- ◆ Voluntary sector ◆ very accessible format
- ◆ excellent resource for trainers and facilitators.
- ◆ Mohammed Abdul Aziz and Anne Hayfield
- ◆ available free <http://www.ncvo-vol.org.uk/> as a PDF file.
- ◆ If you would like the guide in different formats, contact

NCVO Regent's Wharf, 8 All Saints Street, London N1 9RL

☎ 020 7713 6161 Helpdesk 0800 2 798 798

Text phone 0800 01 88 111

The info in this newsletter is for guidance only and cannot be taken as a full statement of the law.

### **Monaghan Vs Leicester Young Men's Christian Association**

Monaghan is a Christian who worked for Leicester YMCA from 4 March 2003. He became a senior manager about 6 months later. His complaint against his ex-employer is of unfair dismissal (constructive dismissal), religious discrimination and that his employer broke the Working Time Directive. The tribunal dismissed all of his complaints. The tribunal did not accept that his employer was in fundamental breach of contract. This is the test for constructive dismissal and it tends to be

quite difficult to win a case on these terms. Nor did the tribunal accept that Monaghan had been working for 70 to 80 hours a week. The part of his claim that related to religious discrimination concerns two issues the first is that one of the senior managers described Monaghan's Christianity as "mumbo jumbo" – the evidence of witnesses was contradictory on this point or in other words the Tribunal were not convinced that this had been said. The other issue was that Monaghan was told not to encourage evangelical work. "[YMCA] ... is a multicultural and multi-religious organisation in relation to the people it serves, although it has a Christian ethos. It is financed by lo-

cal authorities, provides accommodation for asylum seekers and ... believed that it was wrong to attempt to subject those people to a conversion to Christianity. What we have to decide is whether that treatment that he gave to the claimant was on the grounds of the claimant's religion or belief and we need to consider a comparator. It seems to us that it was not on the grounds of the claimant's religion that Mr Brown [a senior manager] took this action, but on the grounds that the claimant wanted to convert people to that religion. That is a very different situation..."

Both Monaghan and YMCA were represented by lawyers.

## **Work Out Training Pack**

This consists of a video plus a CD with written materials. The video was first shown at a conference that celebrated LAGER's 20<sup>th</sup> anniversary in October 2003. The response to the video was very encouraging and so a training pack was written around it.

The video shows five ex-LAGER clients talking about their cases. It makes powerful and compelling viewing. These cases were picked because they demonstrate typical problems that lesbians, gay men and bisexual people have in the workplace. The materials include three distinct sets of training notes geared towards participants who are (i) advisors (ii) trade union reps and (iii) HR managers. The training pack will enable

organisations to develop policies and working practices to deal effectively with this form of discrimination.

The pack includes:  
PowerPoint presentation slides  
Participants' Handouts  
Full & comprehensive trainers notes  
Guide to Sexual Orientation Regulations, LGB & pensions, Gay men and Sexual Offences, LGB & Family Friendly Policies, Judicial review on the religious exemption.

The full cost of this unique resource is £99 to individuals and £150 to organisations. The price includes one update. If you want to buy a copy please contact me directly.

**Anne  
Hayfield**

**020  
8555  
3709**

[www.annehayfield.com](http://www.annehayfield.com)

**anne.  
hayfield  
@  
lineone.  
net**