

# 11KBW

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## **The right to faith-based discrimination in the UK in employment and the provision of services: striking the right balance?**

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# Introduction

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- Domestic legislation
- The European Convention on Human Rights and the Human Rights Act 1998
- Key case law

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# **DOMESTIC LEGISLATION**

# The Equality Act 2010 (Great Britain)

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- Anti-discrimination law: prohibits various conduct including:
  - (a) direct discrimination
  - (b) indirect discrimination
- Various “protected characteristics” including:
  - (a) religion or belief
  - (b) sexual orientation
  - (c) gender reassignment
  - (d) marriage and civil partnership

# Northern Ireland

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- More piecemeal:
- The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006
- The Fair Employment and Treatment (Northern Ireland) Order 1998 (“FETO”)

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# THE EUROPEAN CONVENTION ON HUMAN RIGHTS

# The European Convention on Human Rights

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- Article 9 ECHR

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

# ECHR cont:

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- Article 10 ECHR: right to freedom of expression
- Article 14 ECHR: prohibition on discrimination
- Article 2 of Protocol 1: right to education including the right of parents to educate their children in accordance with their religious views.



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# **KEY CASE LAW: EMPLOYMENT**

# *Eweida v United Kingdom*

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- 4 claims:
- 2 (Eweida and Chaplin) concerned dress codes and wearing a cross at work
- Ladele: registrar who refused to officiate at civil partnership registrations on the grounds that same sex relationships conflicted with her Christian beliefs
- McFarlane: counsellor who was unwilling to provide psycho-sexual therapy to same-sex couples for similar reasons

# *Eweida cont*

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- Ms Eweida: breach of Art 9 ECHR: interference not justified
- Ms Chaplin's application failed: dress code justified given requirements of hospital
- Ms Ladele and Mr McFarlane applications both failed: policies requiring them to officiate or counsel gay couples pursued a legitimate aim and was proportionate

# *Hall v Bull* [2013] 1 WLR 3741

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# *Hall v Bull* cont

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- Mr Preddy and Mr Hall in a civil partnership
- At the time, homosexual couples could only enter into civil partnerships, not marry whilst heterosexual couples could only marry not enter into civil partnerships
- Mr and Mrs Bull ran a hotel which only rented double rooms to married couples (motivated by their devout Christian beliefs)

# *Hall v Bull* cont

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- Supreme Court:
- Direct discrimination (majority)
- Indirect discrimination (unanimous)
- Rejected an argument advanced by Mr and Mrs Bull based on Article 9 ECHR
- Rules were a proportionate response to achieving a legitimate aim

# *Lee v Ashers Baking Co [2020] AC 413*

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# *Lee v Ashers Baking Co [2020] AC 413*

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- Mr Lee requested a cake from a bakery bearing the slogan “Support Gay marriage”
- The bakers, who opposed same sex marriage in Northern Ireland, refused
- Mr Lee brought a claim alleging discrimination on the grounds of sexual orientation and political opinion



## *Lee v Ashers cont*

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- The Supreme Court allowed the bakers' appeal
- No discrimination on the grounds of sexual orientation
- Refusal was not due to Mr Lee's actual or perceived sexual orientation but the message which was not indissociable from his sexual orientation

# *Lee v Ashers cont*

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- Political opinion the bakers' appeal succeeded
- Refusal was because of message on cake rather than Mr Lee's political opinion in favour of gay marriage
- Arguable message on cake indissociable from Mr Lee's political opinion
- FETO interpreted in light of bakers' Article 9 and 10 ECHR rights including the right not to manifest a belief that one does not hold: no forced speech

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# Striking The Right Balance?