



EMPLOYMENT TRIBUNALS

Claimant: Ms C Newman

Respondents: (1) The St Albans Diocesan Board of Finance
(2) The Parochial Church Council of the Ecclesiastical Parish of Christ Church and St John's Radlett
(3) Mr O Blease
(4) Mr J Newton
(5) Mr J Graham
(6) Ms L Hurn
(7) Ms F Turner

RECORD OF A PRELIMINARY HEARING

Heard at: London Central (via Cloud Video Platform)

On: 28 July 2023 and 25 September 2023

Before: Employment Judge Joffe

Appearances

For the claimant: In person

For the respondent: Mr L Murdin, counsel

JUDGMENT

1. The claimant was not an employee of any of the respondents within the meaning of the Equality Act 2010.
2. In her role as a churchwarden the claimant did not hold a personal office within the meaning of section 49 of the Equality Act 2010.
3. In her role as a churchwarden, the claimant did not hold a public office within the meaning of section 50 of the Equality Act 2010.
4. None of the respondents acted as a qualifications body in relation the claimant within the meaning of sections 53 and 54 Equality Act 2010.
5. The claimant was not a worker for any of the respondents within the meaning of the Employment Rights Act 1996.

6. The Tribunal has no jurisdiction to hear the claimant's claims and they are dismissed.

REASONS

Claims and issues

1. The claimant has brought claims of race, sex and disability discrimination and detriment for making public interest disclosures against these respondents. The claims relate to her appointment as a churchwarden.
2. At a case management preliminary hearing on 19 June 2023, Employment Judge Sutton KC directed that there should be a public preliminary hearing on the question of the claimant's status to bring her claims. The matter therefore came before me to consider the status issues on 28 July 2023.
3. The hearing went part heard after the first day as there had been late disclosure by the claimant of documents, her witness statement and submissions. On that date, I clarified the status issues with the parties as follows:
 - 1.1 *Was the claimant an employee of any respondent within the meaning of section 83 of the Equality Act 2010?*
 - 1.2 *Was the claimant a worker of any respondent within the meaning of section 230 and section 43 K of the Employment Rights Act 1996?*
 - 1.3 *Was the claimant an officer holder within the meaning of sections 49 or 50 of the Equality Act 2010?*
 - 1.4 *Is any individual respondent potentially liable to the claimant under any provision of the Equality Act 2010 or the Employment Rights Act 1996?*
4. I also deal briefly and for completeness in these Reasons with the claimant's submission that one or more of the respondents acted as a qualifications body within the meaning of the Equality Act 2010.

Findings of Fact

The hearing

1. I had a bundle of documents which was expanded for the second day of the hearing to include the claimant's additional documents and which ultimately ran to 358 pages. I had witness statements from the claimant, from Mr Blease

and from Mr J Baldwin, Deputy Registrar of the Diocese of St Albans. I heard oral evidence from all of these witnesses.

2. Parishes are geographical areas which traditionally represent the community served by a particular church building. The Church of England operates within parishes. The diocese is a larger geographical area run by a diocesan bishop.
3. Churchwardens are appointed to carry out roles within parishes. The rules governing the role are set out in the canons of the Church of England and the Churchwardens Measure 2001.
4. Relevant parts of the Measure provide:

Number and qualifications of churchwardens

1(1) Subject to the provisions of this Measure there shall be two churchwardens of every parish.

(2)(a) Where by virtue of a designation made by a pastoral scheme or otherwise a parish has more than one parish church, two churchwardens shall be appointed for each of the parish churches, and this Measure shall apply separately to each pair of churchwardens, but all the churchwardens shall be churchwardens of the whole parish except so far as they may arrange to perform separate duties in relation to the several parish churches.

...

Time and manner of choosing

4(1) The churchwardens of a parish shall be chosen annually not later than 31st May in each year.

(2) Subject to the provisions of this Measure the churchwardens of a parish shall be elected by a meeting of the parishioners.

(3) Candidates for election at the meeting must be nominated and seconded in writing by persons entitled to attend the meeting and each nomination paper must include a statement, signed by the person nominated, to the effect that that person is willing to serve as a churchwarden and is not disqualified under section 2(1), (1A), (2) or (3) above.

(4) A nomination shall not be valid unless –

(a) the nomination paper is received by the minister of the parish before the commencement of the meeting; and

(b) in the case of a person who is not qualified by virtue of section 1(3)(a), (b) or

(c) above, the bishop's permission was given under section 1(4) above before the nomination paper is received by the minister of the parish.

(5) If it appears to the minister of the parish that the election of any particular person nominated might give rise to serious difficulties between the minister and that person in the carrying out of their respective functions the minister may, before the election is conducted, make a statement to the effect that only one churchwarden is to be elected by the meeting. In that event one churchwarden shall be appointed by the minister from among the persons nominated, the name of the person so appointed being announced before the election is conducted, and the other shall then be elected by the meeting.

(6) During any period when there is no minister –

(a) subsection (4) above shall apply with the substitution for the words ‘minister of the parish’ of the words ‘churchwarden by whom the notice convening the meeting was signed’; and

(b) subsection (5) above shall not apply.

...

Admission

6(1) At a time and place to be appointed by the bishop annually, being on a date not later than 31st August in each year, each person chosen for the office of churchwarden shall appear before the bishop or his substitute duly appointed, and be admitted to the office of churchwarden after –

(a) making a declaration, in the presence of the bishop or his substitute, that he will faithfully and diligently perform the duties of his office; and

(b) subscribing a declaration to that effect and also that he is not disqualified under section 2(1), (1A), (2) or (3) above.

No person chosen for the office of churchwarden shall become churchwarden until such time as he shall have been admitted to office in accordance with the provisions of this section.

(2) Subject to the provisions of this Measure the term of office of the churchwardens so chosen and admitted as aforesaid shall continue until a date determined as follows, that is to say –

(a) in the case of a person who is chosen again as churchwarden at the next annual meeting of the parishioners –

(i) if so admitted for the next term of office by 31st August in the year in question, the date of the admission; or

(ii) if not so admitted for the next term of office by 31st August in the year in question, that date;

(b) in the case of a person who is not chosen again as churchwarden at the next annual meeting of the parishioners –

(i) if that person's successor in office is so admitted for the next term of office by

31st August in the year in question, the date of the admission; or

(ii) if that person's successor in office is not so admitted for the next term of office by 31st August in the year in question, that date.

In the application of paragraph (b) above to any person, where there is doubt as to which of the new churchwardens is that person's successor in office the bishop may designate one of the new churchwardens as that person's successor for the purposes of that paragraph.

...

Suspension

6A(1) This section applies where –

(a) a churchwarden is arrested on suspicion of committing an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933 or is charged with such an offence without being arrested, or

(b) the bishop is satisfied, on the basis of information provided by a local authority or the police, that a churchwarden presents a significant risk of harm.

(2) The bishop may suspend the person from the office of churchwarden by serving written notice on the person; and the notice must specify the bishop's reasons for imposing the suspension.

(3) The bishop may at any time revoke a suspension under this section by serving written notice on the person.

(4) For the purposes of subsection (1)(b), a person presents a significant risk of harm if there is a significant risk that the person may –

(a) harm a child or vulnerable adult,

(b) cause a child or vulnerable adult to be harmed,

(c) put a child or vulnerable adult at risk of harm,

(d) attempt to harm a child or vulnerable adult, or

(e) incite another person to harm a child or vulnerable adult.

(5) Before deciding whether to suspend a person in reliance on subsection (1)(b) or whether to revoke a suspension made in reliance on subsection (1)(b), the bishop must consult –

(a) the diocesan safeguarding advisor, and

(b) such other persons as the bishop considers appropriate.

(6) Where, in reliance on subsection (1)(a), a notice of suspension is served under subsection (2) and the suspension has not been revoked under subsection

(3), the suspension continues until the earlier of –

(a) the expiry of three months beginning with the day on which the notice is served, and

(b) the conclusion of the matter.

Resignation

7(1) A person may resign the office of churchwarden in accordance with the following provisions of this section, but not otherwise.

(2) Written notice of intention to resign shall be served on the bishop by post.

(3) The resignation shall have effect and the office shall be vacated –

(a) at the end of the period of two months following service of the notice on the bishop; or

(b) on such earlier date as may be determined by the bishop after consultation with the minister and any other churchwarden of the parish.

5. Mr Baldwin told me that after their election, churchwardens make a declaration to perform the duties of the office before being formally admitted to the office; this usually happens at annual services organised by archdeacons of the diocese.
6. I was referred to other ecclesiastical law provisions. Canon E1(4) describes the church wardens as 'officers of the bishop': "They shall discharge such duties as are by law and custom assigned to them; they shall be foremost in representing the laity and in cooperating with the incumbent; they shall use their best endeavours by example and precept to encourage the parishioners in the practice of true religion and to promote unity and peace among them. They shall maintain order and decency in the church and churchyard, especially during the time of divine service.'
7. Churchwardens also have duties to advise the bishop of developments in the parish, in part through completion of annual reports known as articles of enquiry. In that sense they act as the bishop's 'eyes and ears'.
8. Mr Baldwin said that churchwardens work with the incumbent as a 'trusted critical friend' and maintain order in the church through the allocation of seating as necessary. They are ex officio members of the parochial parish council and therefore charity trustees; they are responsible for the movable goods of the church, keeping an inventory of these and a terrier (system of recording) of real property. They are responsible for the annual inspection of the fabric of the church and its contents. Churchwardens are responsible for

determining their own day to day activities. Churchwardens receive no remuneration although they may claim for expenses. The bishop has no role in their selection and cannot dismiss a churchwarden, although the bishop may suspend the churchwarden for safeguarding reasons.

9. The claimant describes her occupation as being a consultant. I understand that she is qualified as a solicitor but not practicing as one. She had attended Christ Church since 2014 when she moved to the area and she served as a churchwarden for the parish between 14 April 2021 and 30 June 2022.
10. After being elected to the role on 7 April 2021, the claimant attended a ceremony where she says that she was appointed, conducted by Reverend R Fletcher on behalf of the Bishop of St Albans. Although the claimant used the word 'appointment', the Measure uses the word 'admission' which reflects the fact that the bishop does not select the churchwardens.
11. The claimant gave some evidence about the matters the subject of these claims in the course of her witness statement and Mr Blease gave some oral evidence about those matters. None of that evidence was relevant to the issues I had to decide.
12. The claimant did not stand for re election to the position of churchwarden on 8 May 2022 for reasons which are in dispute between the parties.
13. The various individual respondents are as follows:
 - Mr Blease is the incumbent vicar at the church;
 - Ms Hurn is employed as a caretaker / administrator at the church;
 - Ms Turner is a churchwarden;
 - Mr Newton is the lay chair of the Parochial Church Council ('PCC');
 - Mr Graham is treasurer and a trustee of the PCC.
14. The St Albans Diocesan Board of Finance (R1) is a Companies Act company which has various responsibilities in the diocese. It is responsible for the property of the diocese and for diocesan finance. It employs staff and has policies relevant to those staff.
15. The Parochial Church Council (R2) is a body corporate of trustees responsible for the management of the church including its property and for working with the vicar. Its members are trustees who are unpaid volunteers. Broadly speaking, the PCC manages the finances of the church, has oversight of safeguarding, approves policies and has oversight of maintenance of the building and churchyard.

16. As vicar, Mr Blease is responsible for leadership of services and oversight of the spiritual care and pastoral care of the parishioners. He chairs the PCC, helps to manage four employees (administrators and cleaners), supervises lay ministers and has a number of other roles.
17. Mr Blease gave evidence that churchwardens are not under any obligations to perform their functions and are not under the direction of any person, either the vicar or the PCC. Mr Blease said that churchwardens have no manager; they are not supervised or appraised in any way. They have no deadlines and cannot be disciplined for not carrying out their tasks.
18. I saw a spreadsheet produced by a previous churchwarden which is apparently passed from one churchwarden to another as a reference guide to doing the role, and heard evidence from the claimant about her duties as a churchwarden. She described them as extensive and requiring many hours of work. These duties included care of the church and churchyard and administrative roles in relation to services such as welcoming parishioners and handing out hymn books and orders of service, collecting donations, reporting to various church bodies and preparing for various inspections.
19. Mr Blease gave evidence that the claimant did not always attend meetings; she was not required to inform anyone of her non attendance in advance although she on occasion sent apologies. PCC meetings took place six times a year and management committee meetings six times a year.
20. Churchwardens might inform one another and the vicar of their holidays as a matter of courtesy but they were not obliged to do so
21. The complaints which are the subject of these proceedings have been presented by other routes, although I was not told about those processes in any detail. There has been an internal Church of England investigation and then an appeal. The claimant said that her complaints had not been upheld through that route.

Law

Office holders

22. Some holders of personal or public offices are protected from discrimination under the Equality Act 2010.
23. A personal office is defined in section 49 Equality Act 2010. It is an office or post:
 - to which a person is appointed to discharge a function personally under the direction of another person; and
 - in respect of which an appointed person is entitled to remuneration.

A person is not considered as being entitled to remuneration if the person is entitled to expenses or compensation for lost income or benefits.

24. A public office is defined in section 50. It is an office or post, to which appointment is made:
- by a member of the executive (ie a Minister of the Crown; a government department; the Welsh Minister, the First Minister for Wales or the Counsel General to the Welsh Government; or any part of the Scottish Administration);
 - on the recommendation of, or subject to the approval of, a member of the executive;
 - on the recommendation of, or subject to the approval of, the House of Commons, the House of Lords, the National Assembly for Wales (now the Welsh Parliament) or the Scottish Parliament; or
 - by the Lord Chief Justice or the Senior President of Tribunals.

Qualifications bodies under the Equality Act 2010

25. Claims can be made against qualifications bodies under section 53 of the Equality Act 2010. A qualifications body is defined in section 54:

(2) A qualifications body is an authority or body which can confer a relevant qualification.

(3) A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.

Employees under the Equality Act 2010

26. The scope of employment is defined in section 83 Equality Act 2010:

1) This section applies for the purposes of this Part.

(2) "Employment" means—

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

(b) Crown employment;

(c) employment as a relevant member of the House of Commons staff;

(d) employment as a relevant member of the House of Lords staff.

27. There is a number of authorities on the issue of whether volunteers can be employees within the meaning of the Equality Act 2010. In order for such a volunteer to be an employee within the meaning of the discrimination legislation, the EAT has held that: 'it is necessary to be able to identify an arrangement under which, in exchange of valuable consideration, the volunteer is contractually obliged to render services to or else to work personally for the employer': South East Sheffield Citizens Advice Bureau v Grayson [2004] ICR 1138, EAT.

28. The leading case on volunteers is X v Mid Sussex Citizens Advice Bureau and anor 2013 ICR 249, SC, in which X had signed a volunteer agreement which was stated to be 'binding in honour only... and not a contract of employment or legally binding'. It was argued that the claimant's engagement as a volunteer constitute an 'occupation' within the meaning of the EU Equal Treatment Framework Directive (No. 2000/78) and therefore the domestic legislation had to be construed so as to include X. That argument was ultimately rejected by the Supreme Court which held that the Framework Directive does not extend to volunteers.
29. Ministers of religion have been held in some cases to be employees within the meaning of the predecessor legislation to the Equality Act 2010: Percy v Board of National Mission of the Church of Scotland [2006] ICR 134, HL.

Workers under the Employment Rights Act 1996

30. Various rights are also enjoyed by workers under the Employment Rights Act 1996. 'Worker' is defined at section 230(3):

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

31. The meaning of the word worker is extended for the purposes of Part IVA (protected disclosures) by section 43K, relevantly in the following respects:

(1) For the purposes of this Part "worker" includes an individual who is not a worker as defined by section 230(3) but who—

(a) works or worked for a person in circumstances in which—

(i) he is or was introduced or supplied to do that work by a third person, and

(ii) the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them,

(b) contracts or contracted with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person and would fall within section 230(3)(b) if for "personally" in that provision there were substituted "(whether personally or otherwise)"

...

(d) is or was provided with work experience provided pursuant to a training course or programme or with training for employment (or with both) otherwise than—

(i) under a contract of employment, or

(ii) by an educational establishment on a course run by that establishment;

32. The protection afforded by section 43K extends to relationships where, although there is no contract between the two protagonists, contracts exist between each of them and other parties that impact (if not govern) the relationship between them: Keppel Seghers UK Ltd v Hinds [2014] ICR 1105, EAT.
33. Other individuals may qualify as workers even if they do not fall within the definitions in the Employment Rights Act 1996. In Gilham v Ministry of Justice [2019] ICR 1655, SC, the Supreme Court held that a district judge was able to bring a whistleblowing claim under section 47B, although she did not fall within the literal definition of 'worker' in section 230(3) Employment Rights Act 1996 because she did not work under a contract. The Court held that section 230(3) had to be interpreted purposively so as to avoid a breach of Article 14 of the European Convention on Human Rights, which prohibits discrimination on a number of grounds, including 'other status', provided that the facts fall within the ambit of one of the Convention rights, and subject to a reasonable justification defence. There was a clear breach of Article 14 and the facts fell within the ambit of the right to freedom of expression under Article 10. The claimant had been treated less favourably than others in an analogous situation and an occupation classification was capable of being a 'status' for the purposes of Article 14. No legitimate aim had been advanced for excluding judges from whistleblowing protection. The appropriate remedy was for section 230(3) to be interpreted purposively to include judicial office holders, relying on the Court's obligation under section 3 of the Human Rights Act 1998.
34. Where the European Convention does not require a purposive construction of section 230(3), an individual who does not work under any kind of contract will not be a worker for the purposes of a whistleblowing claim: Sharpe v Worcester Diocesan Board of Finance Ltd and anor [2015] ICR 1241, CA.

Liability of those who are not employers

35. Under the Equality Act 2010, employers of a claimant may be vicariously liable for the acts of their employees or agents and in turn those employees or agents may be individually liable: sections 109 and 100 Equality Act 2010.

36. Under the whistleblowing provisions of the Employment Rights Act 1996, employers of workers may be liable for the acts of their workers or agents in relation to a worker and the workers and agents themselves may incur liability: section 471A and 1B Employment Rights Act 1996.

Submissions

37. In her extensive written submissions, the claimant made a number of submissions which she did not pursue orally and which I concluded were misconceived. These included a submission that by sending the claim forms to the various respondents, the Tribunal accepted jurisdiction over the complaints and that the respondents conceded jurisdiction when they responded to the complaints. The Tribunal had to accept the claim forms and the respondents had to respond to them in order that the issue of jurisdiction could be determined.
38. The claimant also submitted that the Employment Tribunal was a court of equity and that this in some way expanded the Tribunal's jurisdiction beyond the areas where it has jurisdiction conferred by statute. The Employment Tribunal is of course a creature of statute and has no such extended jurisdiction to apply the maxims of equity to some inchoate extended class of complaints.
39. The claimant made a number of submissions about the way in which she said she was a worker or employee of one or more of the respondents. Some of these assertions emerged during cross examination.
40. The claimant said that she had implied contracts with the first and second respondents and that Mr Blease was her line manager. She said that she had an express contract with the first respondent, found or evidenced in the Churchwardens Measure, the provisions of the Trustee Act 2000 and the list of tasks and duties, amongst other documents.
41. She said that churchwardens were both elected and appointed and in her written submission had said that she brought a claim as a personal office holder but agreed, when taken through the relevant sections of the Equality Act 2010 in cross examination, that churchwardens were neither public nor private officeholders within the meaning of the Act.
42. The claimant also referred in written submissions to section 53(2)(c) of the Equality Act 2010 but did not explain in what sense any of the respondents could be regarded as a qualifications body or explain what qualification she said had not been conferred on her.
43. So far as her whistleblowing complaints were concerned, the claimant relied on Gilham, which she said opened the way to the status challenges she was seeking to make.

44. The claimant also said that she qualified under the extended definition of worker under section 43K(1)(a) and (d). She said that she was introduced to the first and second respondents by a third person, the parishioners / membership, and that the terms on which she worked were largely determined by the first and second respondent, the parishioners or both of them, as set out in the spreadsheet. Alternatively she said that she was provided with work experience pursuant to a training course or programme because she was required to do continuing professional development and that, by being a member of the PCC, she was developing her professional skills and interests.
45. The claimant said in submissions that churchwardens should be paid; they had significant statutory responsibilities. Part of their role was a whistleblowing role, as the bishop's 'eyes and ears'. She submitted that there were problems in the Church of England of abuse of children and older people and of discrimination towards black and minority ethnic populations which made it important that churchwardens be able to act as whistleblowers without suffering detriment.
46. The respondent submitted that it was clear that there was no contract of employment or worker contract between the claimant and any respondent. She did not satisfy the statutory definition of either a public or private office holder. The case law on volunteers applied to the claimant and her provision of voluntary services for no remuneration showed that she was not a worker for the purposes of the Employment Rights Act 1996 or an Equality Act 2010 employee.

Conclusions

Office holder

47. As the claimant herself accepted in cross examination, she did not hold either a personal or a public office. Even if she could be said to be appointed rather than elected¹ and even if she could be said to be under the direction of another person (as to both of which propositions I was not satisfied), she was not paid any remuneration. She could not therefore establish that she held a personal office.
48. The claimant did not suggest she had been appointed by any of the bodies which would have rendered her a public office holder.

Qualifications bodies

¹ It is clear that she was elected to the role; her selection was by the parishioners. The fact that there was a ceremony before she entered into her duties did not change that position. It was an 'admission' to the role and it was not in any event the responsibility of any of the respondents in this case.

49. The claimant did not expand in her oral submissions on the bare assertion in her written submissions that she was entitled to bring a claim under section 53(2)(c) of the Equality Act 2010. She did not in evidence identify a relevant qualification which any of the respondents could confer

Equality Act employee

50. The claimant said that she had an express or implied contract but it appeared to me that, like that of the district judge in Gilham, this was a relationship governed by non-contractual rights and obligations contained, in this case, in Church of England statutes, and not by contract.
51. I considered carefully whether, in addition to the incidents of her role as a churchwarden which were determined by ecclesiastical law, there were any indicia of a contract of employment or a contract of any sort. The claimant received no remuneration and she was under no obligation to carry out any work. I accepted Mr Blease's evidence that there was ultimately no obligation on the claimant to perform the duties of a churchwarden and no way of requiring her to perform those duties if she chose not to undertake them. She was not entitled to any remuneration. She did not have to notify anyone of her holidays or of her nonattendance at any meeting. She could not be disciplined by any of the respondents for not carrying out her duties as a churchwarden. She was not answerable to a manager; her duties were entirely voluntary, however onerous they might be or could become had she chosen to perform all of them. The power to suspend her, which was limited, did not lie in the hands of any of these respondents.
52. In those circumstances, the claimant was not an employee within the meaning of the Equality Act 2010 for any of the respondents.

Employment Rights Act 1996 worker

53. In order for the claimant to qualify as a worker under any of the relevant provisions of Employment Rights Act 1996, construed literally, she would have to establish that she had a contractual relationship with one or more of the respondents; she has not done so for reasons outlined above. That reasoning applies to relationships under section 43K (1)(a) and (b) as well as to those under section 230(3). So far as section 43K(1)(d) is concerned, the claimant has not adduced evidence that her duties as churchwarden were 'work experience' provided whilst she was on a training course or programme or were otherwise training for employment.
54. Can she nonetheless establish that she is a worker because the European Convention on Human Rights requires the Employment Rights Act 1996 to be construed so as to include churchwardens or at least churchwardens in the circumstances of the claimant?

55. I considered the Gilham tests, which are:

(i) do the facts fall within the ambit of one of the Convention rights;

(ii) has the applicant been treated less favourably than others in an analogous situation;

(iii) is the reason for that less favourable treatment one of the listed grounds or some "other status";

and (iv) is that difference without reasonable justification - put the other way round, is it a proportionate means of achieving a legitimate aim?

56. I concluded that the facts did fall within one of the Convention rights; very much as in Gilham, the right to freedom of expression under Article 10 is engaged by the claimant's allegations that she suffered a detriment due to making public interest disclosures.

57. As to the second test, the parties did not make any submissions which really addressed the question of whether the claimant had been treated less favourably than others in an analogous situation nor was any authority on that issue cited apart from Gilham itself. In Gilham, it was said:

The answer to question (ii) is also clearly "yes". The applicant, and others like her, have been denied the protection which is available to other employees and workers who make responsible public interest disclosures within the requirements of Part IVA of the 1996 Act. She is denied protection from "any detriment", which is much wider than protection from dismissal or other disciplinary sanctions. She is denied the possibility of bringing proceedings before the Employment Tribunal, with all the advantages those have for applicants. She is denied the right to seek compensation for injury to feelings as well as injury to her health. This is undoubtedly less favourable treatment than that afforded to others in the workplace - employees and "limb (b)" workers - who wish to make responsible public interest disclosures.

58. The judgment in Gilham does not address the issue of who is properly to be regarded as analogous but proceeds on the assumption that those who fall within the definition of employee or worker (interpreted without recourse to the European Convention) are analogous to judges.

59. However, it seems to me that it far from self-evident that volunteer churchwardens are similarly analogous to those who have employment or worker contracts. District judges perform their work for remuneration, subject to terms and conditions with many analogies to the terms and conditions of those employed under contracts of employment. Judging is their livelihood or part of their livelihood. District Judge Gilham was sent a letter of appointment which included stipulations as to the nature of appointment, her salary and her pension arrangements, She was subject to detailed conditions as to 'sitting days, sick pay, maternity, paternity and adoption leave, training, the prohibition of legal practice, relations with the

press and media, outside activities, and much more. The memorandum made it clear that the salary was taxed under Schedule E to the Income Tax Act and that the judge was an employed earner for the purpose of national insurance contributions.'

60. Being a churchwarden is not a person's livelihood nor is it their occupation. The activities of churchwardens are undertaken in another realm entirely – the realm of the spiritual and no doubt also the social. The appropriate analogy is not with workers or employees but with other persons who partake in unremunerated activities of one sort or another within a community – such people might include school governors, trustees of other charitable organisations and people involved in various kinds of club for sport or other activities. Many people who are engaged in these roles no doubt work very hard, are very committed and make valuable contributions to the communities which they serve. Many no doubt invest a great deal in the organisations for which they provide their unpaid labour. It was not, in my conclusion, the intention of Parliament that such people, absent an employment or workers contract, should have redress in the Employment Tribunal for any complaint they may have for whistleblowing detriment. In my judgment, the European Convention does not require that they be provided with a right to seek redress in the Employment Tribunal.
61. Even had I found the claimant was analogous to those who are workers and employees by virtue of their contracts, I was not satisfied that she has been treated less favourably than such persons. I was not provided with a full account of the avenues of complaint open to a churchwarden within or without the Church of England, although I was made aware that the claimant has pursued at least one such route through to an appeal. I was therefore not able to compare the rights and remedies open to the claimant with those available in the Employment Tribunal.

Conclusion

62. The claimant is not an office holder and cannot bring claims under sections 49, 50 or 51 of the Equality Act 2010. Section 53 does not apply on the facts of this case.
63. The remaining claims which the claimant seeks to bring, against organisations and individuals require her to have an 'employer' within the meaning of the relevant legislation. If she can locate such an employer, she may bring a claim under the Equality Act 2010 against individuals who are also employees or agents of that employer and under the Employment Rights Act 1996 against workers or agents of that same employer. For the reasons outlined above, she does not have an employment or worker relationship with any of the respondents.
64. It follows that the Tribunal has no jurisdiction to hear these claims and they must be dismissed.

Employment Judge Joffe
20/10/2023

Sent to the parties on:

20/10/2023

For the Tribunal Office: