

Jewish nursery which sacked cohabiting woman partially wins appeal

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The National Secular Society has said a ruling that a woman who was sacked for living with her boyfriend did not suffer religious discrimination "undermines freedom from religion".

The NSS has also warned that the ruling could have implications for teachers who do not subscribe to strict religious doctrines in faith schools.

Last week an employment appeal tribunal [upheld](#) an appeal from Gan Menachem Nursery, an Orthodox Jewish nursery in London, against a ruling that it discriminated against Zelda De Groen on religious grounds.

The tribunal, presided over by Mr Justice Swift, rejected the nursery's appeal against a ruling that it discriminated against her on the grounds of her sex.

The nursery dismissed her in 2016 because she lived with her boyfriend and refused to lie to parents about it. She initially claimed religious and sexual discrimination and [won](#) a tribunal case against her dismissal in 2017.

Last week's tribunal ruled the original judgement was wrong to say the 2010 Equality Act "prohibits less favourable treatment by an employer on the basis of its own religion or belief".

The tribunal drew on the Supreme Court's judgement in the Ashers bakery case [last year](#). In that case the court ruled that the owners of a bakery that refused to make a cake with the slogan "support gay marriage" were not discriminatory.

The tribunal said that case had shown that the purpose of the Equality Act was to protect "a person who had a protected characteristic from less favourable treatment because of that characteristic". It said the act did not protect "persons without that protected characteristic from less favourable treatment because of a protected characteristic of the discriminator".

The tribunal accepted that "non-religious belief and lack of belief" are protected characteristics under the act, meaning a claim that someone was discriminated against for that reason could be upheld. But it said that point "misses the mark" in a case concerning "differing religious belief within a religion".

"Ms De Groen is Jewish; she considers herself a practising Jew. It is not her case that her belief is either novel or outside the scope of Judaism.

"The root cause of the events that resulted in her dismissal was the disagreement about whether adherence to Judaism excluded cohabitation outside marriage."

The original tribunal ruling had said De Groen's "lack of belief in the Jewish law forbidding cohabitation" was "a significant influence" on the nursery's decision to instigate disciplinary proceedings against her.

The appeal tribunal said the nursery had not demonstrated that De Groen had failed to fulfil a genuine occupational requirement. The Equality Act allows discrimination in employment if an employer can demonstrate a reason why they need someone with a particular characteristic for a job.

The original tribunal said "lifestyles and personal beliefs are almost always excluded from the scope of an occupational requirement".

NSS chief executive Stephen Evans described the outcome of last week's case as "deeply troubling".

"Zelda De Groen's personal life was none of her employer's business and its religious ethos does not change that. She was exercising her freedom from other people's interpretations of religion and this ruling has undermined that vital principle.

"The tribunal has accepted that Zelda De Groen did not fail to meet a reasonable occupational requirement. But it has still said she did not suffer religious discrimination when the school sacked her for refusing to adhere to its managers' interpretation of religious doctrine.

"The court has endorsed the idea that protected characteristics fit neatly into boxes. This ruling implies it is fine for institutions to discriminate against employees if those employees take a more liberal view of their shared religious tradition. That is a gift to religious hardliners.

"People who dissent from religious orthodoxy should not lack a protected characteristic which those who subscribe to it enjoy. Religious freedom must include the freedom to dissent or reject religious interpretations for everyone."

Mr Evans also called on the government to remove exemptions from the Equality Act which allow faith schools to discriminate on religious grounds.

"This case could now set an alarming precedent unless the government acts. Faith schools' exemptions from equality law must be removed so schools cannot choose to hire or sack staff on the basis of their conformity to religious doctrine."

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