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Discrimination on the ground of political opinion

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Discrimination on grounds of political opinion has been with us for 40 years. It has been a factor in some court and tribunal decisions in the past few months, but what does the law actually mean by “political opinion”?

Some public comments have suggested that these recent decisions were developing or extending the reach of the law which covers this issue – the Fair Employment and Treatment Order 1998. In fact the decisions concerned affirmed earlier Court of Appeal decisions, some of which are over twenty years old.

The recent cases dealing with the issue include that of Lee –v- Ashers Baking Company Ltd., which has been ruled on by the County Court and then by the Northern Ireland Court of Appeal. There have also been rulings in two Fair Employment Tribunal cases - McCrossan –v- Department for Social Development, and McClean –v- Waterside Neighbourhood Partnership Ltd.

All these cases have considered the law, unique to Northern Ireland, which makes discrimination on grounds of political opinion unlawful – the Fair Employment and Treatment (NI) Order 1998. Most complaints brought under it over the years have consisted of allegations of religious **and** political discrimination, such as: “I was refused a job because I am a Catholic/Nationalist” or “I was dismissed because I am a Protestant/Unionist”.

This is not surprising. These religious and political discrimination cases reflect the traditional divisions and grievances associated with the two main communities here, which were the main reason for the initial law being introduced in 1976. Yet, the law does not ban discrimination only on the ground of Unionism/Nationalism. It also covers any other political opinion. The only exception is for an opinion which includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland.

The most recent decisions have referenced earlier cases which considered and ruled upon the meaning of the term “political opinion” in the legislation. These decisions, all by the Northern Ireland Court of Appeal, were those in McKay –v- NIPSA (1994); Gill -v- NICEM (2001); and Ryder V N I Policing Board (2007). They ruled that “political opinion” has the meaning “*relating to the conduct of the government of the state or matters of public policy*” and the courts and tribunals in the recent decisions have affirmed this.

Such a definition naturally covers major political philosophies like Socialism, Conservatism and Liberalism and all the various strands of these. It can also cover a wider range of opinions, for example, opinions supporting (or, opposing) government policy on issues such as Brexit or immigration or taxation or education.

In the case of Lee –v- Ashers Baking Company, Mr. Lee’s request to have the message, *Support Gay Marriage*, on the cake he ordered, was held to be protected because it expressed his opinion about a matter of public policy; namely, reform of the current marriage law.

In McCrossan –v- Department for Social Development, a Civil Servant was issued with a written warning after posting a message on her personal Facebook page critical of the policies of the Conservative government and the DUP. The Fair Employment Tribunal found she was disciplined because the political opinions expressed were contrary to the political opinions of the Minister of her department and that, if she had expressed political opinions shared by the Minister, she would not have been disciplined. That difference in treatment from the treatment of someone of a different political opinion led the Tribunal to a finding of unlawful discrimination on grounds of political opinion.

In McClean –v- Waterside Neighbourhood Partnership Ltd., a job-seeker was not appointed to a post of Community Development Officer, even though he had been the highest marked candidate in an interview process, had exceeded the threshold marking, and had been identified as the person to be appointed. The Tribunal found that he had been unlawfully discriminated against on grounds of his political opinion - he believed that the control and funding of community activities should be a matter for the communities themselves and not for the main political parties. The Tribunal held his belief to be a political opinion covered by the legislation.

These cases illustrate the breadth of the term *political opinion* which is protected under the legislation. They also illustrate something else. Employers and service providers need to ensure they comply with what is, after all, one of the most basic principles of equal opportunities - the need to treat people fairly and consistently regardless of personal characteristics which are protected in law – and that includes political opinion.