

Employment  
Employment Law Update  
Rosling King LLP



### The Facts

An extra layer of complication is added when the employer's religious beliefs motivate the dismissal of an employee who does not share them. The recent decision of *Gan Menachem v de Groen* highlights some of the complexities in this area as well as showing just how hard it can be for business without legal advice to comprehend the intricacies of employment legislation.

In the recent case of *Gan Menachem v de Groen*, Ms De Groen was a Jewish teacher at an ultra-orthodox nursery. She attended a communal barbeque with her boyfriend, who revealed in the presence of parents that they lived together, in contravention of the beliefs of ultra-orthodox Jews. This cause complaints from parents, some of whom felt it was unacceptable that Ms De Groen should continue teaching.

At a meeting, Ms De Groen was told that what she did in her private life was of no concern to the nursery but was asked to confirm that she no longer lived with him so that the nursery could tell anyone concerned that this was what they had been informed. Ms De Groen refused to lie, and at a subsequent meeting she asked for an apology. Following the meeting she was dismissed.

She won her claims of discrimination on the grounds of religion or belief and sex before an employment tribunal. On appeal the sex discrimination claims were upheld. However, following the decision of *Lee v Ashers Baker*, the EAT held that the tribunal erred in finding that Ms De Groen had been less favourably treated by reason of the nursery's religious belief, rather than the her own. The Nursery acted because of its own beliefs, and Ms De Groen's failure to comply with those beliefs.

Quoting Baroness Hale the judgment stated:

"The purpose of discrimination law... was the protection of a person who had a protected characteristic from less favourable treatment because of that characteristic, not the protection of persons without that protected characteristic from less favourable treatment because of a protected characteristic of the discriminator. Any conclusion to the contrary would run against the principle that a discriminator's motive for the less favourable treatment is immaterial. More importantly any direct discrimination claim that rested on the discriminator's protected characteristic would be doomed to fail because any comparison between the person receiving the less favourable treatment and "other persons" would always produce the result that there had been no difference in treatment since it could safely be assumed that a discriminator acting on the grounds of his own political (or religious) belief would act in the same way regardless of who was affected."



Employment Law Update: Religious discrimination - nursery worker dismissed because her cohabitation was not consistent with the ultra - orthodox Jewish beliefs of the nursery

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**Comment**

Whilst the EAT's decision is clearly correct this remains a complex minefield of potential claims for employers who must think hard whether or not to dismiss employees who's beliefs run counter to their own.

For further information, please contact [Jacqueline Kendal](#) or the Partner with whom you usually deal.