

a right to the interment of their parents' ashes in the area set aside in the churchyard for the interment of cremated remains pursuant to that section. [RA]

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Moore v President of the Methodist Conference

Employment Appeal Tribunal: Underhill J, March 2011

Methodist minister – employment status

The claimant, a Methodist minister, resigned from her appointment as minister to a group of congregations for a fixed period following what she felt was unfair pressure to do so. Her claim for unfair dismissal was dismissed on the basis that she was not an employee of the Church within the meaning of section 230 of the Employment Rights Act 1996 and that the tribunal was bound by the decision of the Court of Appeal in *President of the Methodist Conference v Parfitt* [1984] ICR 176 in that respect. The claimant appealed. The Employment Appeal Tribunal (EAT) held that the reasoning in *Parfitt* could no longer be sustained in light of the decision of the House of Lords in *Percy v Board of National Mission of the Church of Scotland* [2006] ICR 134. In *Percy*, the court had held that the spiritual role of a minister did not give rise to a presumption against an intention to create legal relations. In light of this, that spiritual role could not (as it had in *Parfitt*) support a specific finding that there was no intention to create legal relations. The EAT distinguished ordination from the claimant's specific appointment and held that the relationship between the claimant and the Church was contractual in nature, at least from the moment of her appointment, given the existence of terms in relation to remuneration, accommodation, holiday, sick pay, disciplinary procedures and expenses. The contract was one of service. The appeal was allowed and the matter was remitted to the Employment Tribunal for determination on its merits. [RA]

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Kirk Session of Sandown Free Presbyterian Church's Application

High Court of Northern Ireland: Treacy J, March 2011

Offensive advertisement – freedom of religion and expression – proportionality

The applicant sought judicial review of an adjudication by the Advertising Standards Agency (ASA) that an advertisement placed in the *Belfast Newsletter* headlined 'The Word of God against sodomy' would be likely to cause, and

had caused, serious offence and should not appear again in its current form. The advertisement had been placed to demonstrate the applicant's opposition to the Belfast Gay Pride March and to invite readers to a gospel witness. The review was sought on the grounds that:

- i. The ASA's decision was procedurally unfair, as the applicant was not shown the Independent Reviewer's recommendation nor permitted to make representations directly to the ASA Council;
- ii. The decision constituted a disproportionate interference with the applicant's rights under Articles 9 and 10 of the ECHR to freedom of religion and expression; and
- iii. The decision breached the applicant's legitimate expectation that the ASA would not adjudicate in cases such as this, given the provision in its Code that it 'does not arbitrate between conflicting ideologies'.

The court rejected the complaint of procedural unfairness on the grounds that the applicant had been given full information about the Independent Reviewer's recommendation and been given an opportunity to make comments thereupon. All of the applicant's comments and correspondence had been before the ASA Council prior to the decision being made. Further, the court held that the ASA had not arbitrated between conflicting ideologies.

The court considered complaint ii in the context of Article 10 rather than Article 9, it being accepted by the parties that any issues arising under the qualifications of the rights under Articles 9(2) and 10(2) were identical. The court held that there had clearly been an interference with the applicant's right to freedom of expression. The court further held that that interference was for a legitimate aim, namely the application of the Committee of Advertising Practice Code which sought to control the publication of material including that which would cause widespread or serious offence to those of a particular sexual orientation and thereby interfere with their right to respect for their dignity and private life. The issue remained whether the interference was proportionate. The court held that Article 10 protects expressive rights that offend, shock or disturb and that the necessity for any interference with Article 10 rights must be convincingly established. In this case, the advertisement did not condone and was unlikely to provoke violence, contained no exhortation to other improper or illegal activity and constituted a genuine attempt to stand up for the applicant's religious beliefs. The court held that the decision of the ASA constituted a disproportionate interference with the Article 10 rights of the applicant. The decision was quashed. [RA]