

Articles of faith



Europe on the British Airways ‘cross’ and other cases. Lawyers give their views.

[Ruth Gledhill](#) January 15 2013 16:01PM

The complex issues surrounding the four cases that have just come down from Europe in a landmark decision will be debated by lawyers, employers, religious and human rights groups for many years.

The main judgement can be read [here](#).

My own view is that the new ruling from Europe is a victory for common sense. It balances the right of individuals to practice their religious belief against legitimate concerns, such as health and safety, and zero-tolerance policies by employers against discrimination.

But the best guidance on what this means for people of faith and their employers must for now come from the lawyers.

Louise Taft, senior solicitor at City law firm Prolegal, told The Times:

“The ECHR has allowed common sense to rule in its judgement and has brought clarity that employers and employees alike should welcome. The judgement supports UK law, which allows employers to justify policies that might be discriminatory – if the policies are designed to achieve a legitimate aim – such as safety in the workplace or social inclusivity. However, the judgement found this was not the case in Mrs Eweida’s, where the argument concerned BA’s uniform policy.

“Today’s decision weighed the discriminatory effect of four different policies against the value of what they were trying to achieve. A hospital’s safety concerns were found to be a ‘legitimate aim’ but the aims behind BA’s uniform policy were found not to be significant enough to justify a ban on wearing a cross.

“The most important legal point made by the Court is that it appears it is no longer necessary for employees to show anyone else could be disadvantaged by a policy, if their religious convictions mean they cannot comply. This is why former BA employee Nadia Eweida lost her case in the UK. This judgment could significantly widen the pool of potential claimants for discrimination and is a development of which employers must take careful note”.

Ronnie Fox, Principal of City employment law firm Fox, said:

“This is a finely balanced case with lots of room for differences of opinion. The European Court of Human Rights (ECHR) was divided and there were two minority dissenting judgements.

“The Court held that in each of the four cases, the employers’ aims when dealing with staff who held strong religious were legitimate aims (corporate dress code, health and safety, treating gays and straight couples in the same way).

“In one case only was the effect of the employer’s decision held disproportionate, namely, British Airways’ request that employees should not wear a religious symbol without permission. Even then British Airways acted reasonably, in my opinion, by offering Ms Eweida administrative work which would not have required her to comply with a dress code. In the event Ms Eweida stayed away from work and a couple of months later British Airways amended its dress code and allowed employees to wear a cross. Ms Eweida was awarded just €2,000 in respect of injury to feelings plus a contribution towards her costs.

“In theory there is a right to appeal to the full Chamber of the ECHR. I am hoping that the judgement of the ECHR will be generally accepted as striking a fair balance between individual religious commitment on the one hand and commercial (or in the case of Ms Chaplin, health and safety) needs on the other.”