

Political beliefs in a polarised workplace

David Sheppard, employment lawyer and associate at Cardiff and London based firm, Capital Law.

THE past few years in British politics have been eventful, to say the least.

Two referendums of massive constitutional importance, both offering a binary choice, namely the Scottish independence referendum in 2014 and of course the divisive 2016 EU referendum, have been held. The resulting Brexit headlines have been a constant ever since.

Both referendums naturally polarised public opinion across the UK. Families, friends and colleagues were divided on their thoughts on both.

Brexit in particular is quite literally dividing the nation.

What does this mean in the workplace?

Employers need to be aware of the current political divide, given its potential to undermine work-

place harmony and morale, particularly as Brexit becomes even more contentious, and the possibilities of no Brexit, or no deal, and anything in between, cause uncertainty and frustration.

While traditionally most employees leave their political views at home when going to work, the passions unleashed by these issues mean that this is less likely, and a breakdown in working relationships is always simmering under the surface.

Under the Equality Act 2010, employers and employees cannot harass or treat their colleagues less favourably because of a person's protected characteristics, which primarily relate to the core features of that person's being and identity, namely age, sex, sexual orientation, disability, race, gender reassignment, marriage/civil

partnership and pregnancy/maternity.

The 2010 Act also provides that a person's "religion or belief" is a characteristic worthy of protection.

"Any religion" or lack of such religion are protected, and "any religious or philosophical belief", or lack of such beliefs, are protected.

Unfortunately, no further definition is provided as to what amounts to a religion or a religious or philosophical belief within the 2010 Act, and a series of cases have attempted to set the parameters of what is worthy of protection under the law.

Political opinion or philosophical belief?

To be protected, a person's political position must also

amount to that person's "philosophical belief".

Case law has found that, for a belief to amount to a protected philosophical belief, it must (among numerous factors) be genuinely held; must attain a certain level of cogency, seriousness, cohesion and importance; and must be worthy of respect in a democratic society, and not be incompatible with human dignity or conflict with the fundamental rights of others.

In addition, the membership or support of a political party does not alone qualify as a protected philosophical belief: the belief must amount to a form of political philosophy or doctrine.

The above factors have meant that tribunals over the years have grappled with difficult philosophical and political concepts and made subjective judgments whether such beliefs are worthy of respect, with surprising and varying results.

For example, it has been found that a belief in democratic socialism, as enshrined in the stated core values of the Labour Party, was protected, yet membership per se of the Labour Party was not protected.

In contrast, a tribunal declined to provide protection to Marxist/Trotskyist beliefs on the basis it was not worthy of respect in a democratic society.

Vote v Jobs

In the noise of the ongoing Brexit debate, certain commentators have suggested that if an employer must make redundancies as a direct consequence of the UK leaving the EU, and the employer had previously warned its employees of the risks of Brexit, then those leave-voting employees ignoring the risks of Brexit should be first for selection for redundancy.

While there is a moral debate in this scenario, and it will be hypothetical as employers cannot discover, without asking, how individuals voted, the law will be relatively clear.

If an individual is marked down in a selection process, because of their support for, or opposition, to Brexit, this will likely be unlawful

discrimination on the grounds of philosophical belief, provided the employee can show his or her support of, or opposition, to Brexit is not just simply a current view based on the present evidence available, but a deeply-held belief.

BNP case

In addition, a further partial layer of protection of political opinion in the workplace has arisen following claims of unfair dismissal by BNP-supporting employees.

The European Court of Human Rights ruled in 2012 that the dismissal of a bus driver for being a member of the BNP was in breach of his human rights.

The Human Rights Court also criticised the fact the bus driver could not bring a case of unfair dismissal against his employer in 2004 because UK law said he had not worked long enough for the firm. The driver was forced to claim race discrimination because no unfair dismissal claim was allowed within the first year of employment.

Following this case the UK amended its legislation in 2013, removing the current two-year qualifying period to bring an unfair dismissal claim if the principal reason for dismissal related to an employee's political opinions or affiliation, no matter how unpleasant.

However, whether such a dismissal is unfair or not will still be determined using the normal principle of reasonableness, taking into account the impact any political membership or views would have in working relationships and the employer's wider reputation.

Overall, employers need to be far more aware of the heightened risks of potential claims for political beliefs in our polarised times.

And no matter what employers' personal opinions may be, a tolerance of diversity of political opin-

ion, including those (within reason) falling outside the mainstream, is as important as allowing diversity of age, sex, sexual orientation, religion and disability.

■ **David Sheppard is an employment lawyer and associate at Cardiff and London based law firm, Capital Law www.capital-law.co.uk**