

Kuteh v Dartford and Gravesham NHS Trust

Ashford Employment Tribunal: Employment Judge Kurrein, 5 April 2017
Nurse – evangelism – Article 9 ECHR

Mrs Kuteh, a nursing sister employed by the Trust, was a committed Christian. In March and April 2016, her superiors were told about complaints from patients that Mrs Kuteh had raised matters of religion and faith with them. One complained that she had been asked what she thought Easter was about, another that she had asked him what he thought being a Christian meant and a third, about to undergo major surgery, that she had told him that if he prayed to God he would have a better chance of survival. In a conversation with her superior, confirmed in writing, she was told that her behaviour had been inappropriate and she undertook not to repeat it. Subsequently, however, a patient complained that Mrs Kuteh had given her a bible and said that she would pray for her, and another that Mrs Kuteh had been preaching at her and making her feel uncomfortable. Mrs Kuteh was ultimately suspended and then dismissed for repeated misconduct, inappropriate behaviour involving unwanted discussions on religion that had caused complaints from patients and breach of paragraph 20(7) of the nursing and midwifery code about not expressing political, religious or moral beliefs to people in an inappropriate way. Her appeal against dismissal was unsuccessful.

The Employment Tribunal concluded that the internal appeal process had been thorough, fair and reasonable, and that the outcome – that the original decision should stand – was unimpeachable. As to the relevance of Article 9 ECHR, Mrs Kuteh's only claim was for unfair dismissal. At the time she presented her claim she could have, but did not, make a claim alleging discrimination because of religion or belief. Disciplining for inappropriate actions or behaviour was not discriminatory, even if the underlying reason for the actions or behaviour was given as being based in religion. Citing *Chondol v Liverpool City Council* [2009] UKEAT 0298/08/1102 (which is incorrectly cited in the transcript posted on BAILII), Employment Judge Kurrein concluded that Mrs Kuteh was prevented from inappropriately proselytising her beliefs, as opposed to being prevented from manifesting them – which was why she had been dismissed. Nor had the Trust breached her Article 9 rights. The claim was dismissed. [Frank Cranmer]

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