



## McCalla v Lichfield Diocesan Board of Finance

Employment Tribunals: EJ Algazy KC, 30 December 2022

[2022] UKET 1303655/2021

*Selection process for ordination training – offer of employment – discrimination*

Professor McCalla felt a call to ordination in the Church of England and went through its Discernment of Vocations Process between February 2016 and June 2021, but was rejected for training. She claimed discrimination in her treatment by the respondents and by others for whom she alleged the respondents were vicariously liable, both during the discernment process and in respect of its termination. She sued the Diocesan Board of Finance and the Bishop in his corporate capacity, initially claiming discrimination on grounds of sex, age and race; but by the time the claim came to trial it had been whittled down to a claim that either or both of the respondents had discriminated against her in the discernment process and its termination, in breach of section 55(2) of the Equality Act 2010.

That subsection states that an employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B) ... (b) by not providing the service to B; (c) by terminating the provision of the service to B; or (d) by subjecting B to any other detriment. The provision of an employment service is defined in section 56.

The respondents resisted her claims and challenged the jurisdiction of the Tribunal on the basis that she was not an applicant for employment or a personal office within the meaning of the Equality Act 2010 and neither respondent was an ‘employment service provider’ for the purposes of the Act. Critically, it was the sponsoring bishop’s decision to send a candidate to a Bishop’s Advisory Panel, in this case the Bishop of Shrewsbury; and she had not sponsored Professor McCalla for a Panel assessment ‘because she did not discern the required vocation in the claimant’.

The Tribunal dismissed the claim. The purpose of the Discernment Process was to discern a spiritual vocation or calling by God ‘and was not to be equated to a trade, occupation or a personal office within the meaning of the Equality Act’. The ‘services’ provided to Professor McCalla by the respondents up to the point of the termination of the Process were designed to assist with the process of discernment and selection for ordination training, and even if she had been sent to a Bishop’s Advisory Panel, that was not ‘even remotely, an offer of employment or office. Indeed, it is not even an offer of ordination’. Neither respondent was or had acted as an employment service-provider in any of its material dealings with Professor McCalla up to the termination of her Discernment Process. Accordingly, the Tribunal did not have jurisdiction and her claim was dismissed. [Frank Cranmer]