



Bulletin 133

October 2008

PRIVATE LIFE OR PUBLIC PROBLEM?

The European Court of Human Rights has held that the rights to a private life and freedom of expression under Articles 8 and 10 of the European Convention on Human Rights were not infringed in the case of an employee dismissed for sadomasochistic (S & M) activities.

Pay -v- United Kingdom considered the case of a probation officer who had been the subject of photographic images and material suggesting that a company he was involved in was the maker and supplier of S & M products and the organiser of associated events and performances. Mr Pay was dismissed on the basis that these activities were incompatible with his position as a probation officer. Mr Pay's claims for unfair dismissal were dismissed at the Tribunal (with the Tribunal's decision upheld by the EAT and Court of Appeal).

The European Court accepted that although the decision to dismiss Mr Pay did infringe his right to a private life (Article 8) and right to freedom of expression (Article 10), the dismissal was justified and not disproportionate. Mr Pay's work with sex offenders was of particular relevance, as was the need to maintain the confidence of the general public and victims of sex crime in the probation service.

The decision is most relevant for public authority employers for whom it is unlawful to act in a way that is incompatible with a Convention right.

Practical Tip

Although the case is a useful reminder that an employer can legitimately take action in respect of an employee regarding events in their life away from work, any decision should always take into account the precise nature of the employee's role and make an objective assessment of the damage the employee's activities might potentially cause to the organisation. Disciplinary action should not be seen as a knee jerk response to an alternative lifestyle.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact a member of the Employment Team on 0151 600 3000. If you no longer wish to receive the bulletin please let us know by return email.

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