Why context matters in harassment claims

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The EAT has made clear that context is key to the determination of whether conduct amounts to harassment.

Not only does conduct have to be unwanted and humiliating in order to qualify as harassment, but it also has to be related to a protected characteristic. Determining whether that is so cannot be done in the abstract. The EAT in this case held that the Employment Tribunal had been entitled to consider conversations had before the allegedly harassing remark and to

reach the conclusion that it had not been related to religion.

The facts of the case illustrate the importance of context. Mr Bakkali was a Muslim and had discussed with a colleague, Mr Cotter, a journalist's report portraying IS fighters in a positive light. Later that month, Mr Cotter asked Mr Bakkali if he was "still supporting" IS. The Tribunal was satisfied on the facts that the reason Mr Cotter made this remark was the discussion they had previously, not because Mr Bakkali was a Muslim.

The EAT stated that the test for harassment (that the conduct be 'related to' the protected characteristic) is broader than the 'because of' test in direct discrimination, which warrants a close look at context in order to understand the motivation behind it.

Bakkali v Greater Manchester Buses (South) Ltd (t/a Stage Coach Manchester) *UKEAT/1076/17*

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