UNITED KINGDOM CASE LAW DATABASE

Religion and Diversity Project

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R. v Paul Simon Taylor

Neutral Citation Number: [2001] EWCA Crim 2263(23 October 2001)

SUMMARY

- **BACKGROUND:**

In this case, the court was required to decide whether or not they should allow people to carry around a certain amount of cannabis for religious reasons. Paul Simon Taylor was found in possession of X with "just over 90 grams of cannabis, a knife and £295 in cash", in front of a Rastafarian temple (paragraph 1). He claimed that he was in possession of the illicit material because as a Rastafarian, it was part of his religion. When he was stopped by the police, he argued that he was just "getting ready for a regular act of worship in the temple for which cannabis had been provided and was to be used" (paragraph 6). In trial, Mr. Taylor was found guilty "of possessing a controlled drug of Class B with intent to supply" under the *Misuse of Drugs Act 1971* and was sentenced to 12 months of jail, even though the trial judge concluded that these drugs were, indeed, "destined for use in connection with Rastafarian religious purposes". The question to be answered was whether or not the limitation of cannabis prescribed by law (*Misuse of Drugs Act*) should apply in the terms of Article 9(2) of the European Convention of Human Rights which protects the right to manifest one's religion or beliefs (paragraph 14). The trial judge in the sentencing hearing prior to this case concluded that the *Misuse of Drugs Act* did not comply with the Rastafarian religious defense, because "such an interpretation would be wholly at odds with the scheme of the Act" (paragraph 15).

In this appeal, the court is seeking to identify whether there is rightful justification for prosecuting Rastafarians for supplying others of their religion with cannabis.

- **DECISION:**

Other than the issue of whether a Rastafarian could be in possession of cannabis for religious reasons, the court had to consider the issue of Mr. Taylor's argument of supplying cannabis to other members of the Rastafari. Lord Justice Rose stated that "whether he was carrying out this activity for religious purposes or financial gain, will be highly relevant to the sentence" (paragraph 18). Lord Justice Rose decided that there was no proof that the applicant was engaged in supply for commercial benefit, and concluded that the sentence of 12 months imposed was "manifestly excessive having regard to all the circumstances of this case" (paragraph 33). According to the judge, "the appellant is, apparently, a naïve young man who has no significant criminal record. There is an additional feature of personal mitigation, namely that, sadly, he has a child who suffers from cerebral palsy who is being affected by the continuing incarceration of the appellant" (paragraph 35). With that being said, the concern of whether Article 9 was being infringed upon was rejected because the limitations were justifiable as stated in Article 9(2) which allows for the "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law…in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others".

Lord Justice Rose decided to reduce the trial judge's sentencing of 12 months to 5 months, which enabled Mr. Taylor to be released immediately.

Williamson & Ors v Secretary of State for Education and Employment

Neutral Citation Number: [2002] EWCA Civ 1926 (12 December 2002)

SUMMARY

- **BACKGROUND:**

The appellants in this case were teachers and parents who sent their children to several independent private schools in England and Wales which provide Christian education based on biblical observance. The appellants' principal claim was that the ban against corporal punishment against children, as outlined by Section 548 of the Education Act 1996 effectively prohibited corporal punishment in schools in England and Wales, was in breach of their Article 9 rights to freedom of religion and freedom to manifest their religion in practice as stipulated by the European Convention on Human Rights (ECHR). In line with the school's interpretations, corporal punishment was administered by the teachers in cases of discipline, which was an aspect of discipline that the parents had agreed upon subjecting their children to at these schools (paragraph 3). In a written submission to the court, the schools wrote: "It is a central tenet of the Christian religion that mankind is born with a heart inclined to evil; disciplining in the educational context is therefore vital. It is not an 'optional extra', but corporal punishment is expressly sanctioned, approved and may be necessary" (paragraph 4). Mr. Williamson was the headmaster of the Christian Fellowship School in Liverpool, one of the schools in question, and he led the appellants. He presented the evidence to the court which relied solely upon citations from texts found in the Book of Proverbs to justify "loving corporal correction to train a child" (paragraph 6). The physical infliction that was administered in cases of severe moral offence is performed after full discussion with the child who "volitionally accepts the need for this correction," and it took the form of a thin, broad flat paddle smacking "both buttocks simultaneously in a firm controlled manner" (paragraph 10). The appellants emphasised that these actions did not fall under degrading treatment or punishment which are prohibited in Article 3 of the ECHR. The legal provision in question was the compatibility of section 548(1) of the Education Act 1996 with various provisions of the ECHR, principally with Article 9(1) of the Convention and Article 2 of the First Protocol. Section 548(1) provided that:

> Corporal punishment given by, or on the authority of a member of staff to a child for whom education is provided at any school….cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by a member of staff by virtue of his position as such.

This section had been amended to extend this prohibition to include staff of private schools. The appellants asserted that as corporal punishment was part of their faith, the effect of the 1996 Act was to breach their right to freedom or religion under Article 9 and their freedom to have their children

educated in accordance with their religious and philosophical convictions in accordance with Article 2 of the First Protocol.

- **DECISION:**

In deciding upon this case, Lord Justice Buxton, Lord Justice Rix, and Lady Justice Arden came to the judgment of dismissing the appeal for the following reasons. Firstly, the evidence provided as to the fundamentalist Christian beliefs was presented with "a significant degree of unclarity as to the basis upon which corporal punishment is inflicted, and disagreement as to the implementation in practice of the beliefs asserted" (paragraph 10.i). The concept of manifestation of belief as stated in Article 9(1) includes "worship, proselytism, and possibly, in the terms recognised…to mandated religious 'practice'…But an extension of article 9 beyond those core religious values and practices unjustifiably widens the restrictions placed on the state; and inappropriately requires the state to justify legislation that does not trench upon the important freedoms that article 9(1) does protect" (paragraph 39). Therefore, Lord Justice Buxton concluded that Article 9 had not been engaged.

On the matter of whether Article 2 of the ECHR had been involved, it was found that it deals with the rights of parents, and so the interests of the teachers who inflict the punishment are not engaged by it. Furthermore Lord Justice Buxton wrote, "The core belief, as explained to us, is the need to confront the evil heart of man. It is that objective that is said to justify and require the use of corporal punishment. That is far too generalised an objective to qualify" (paragraph 68). So, although the parents and teachers did hold a religious or philosophical conviction for the purposes of Article 2, section 548 of the 1996 Act was not in violation of their rights.

Lord Justice Rix agreed to dismiss the appeal as well because "the appellants failed to show any violation by way of interference with any of their Convention rights" (paragraph 210). Lady Justice Arden agreed to dismiss the appeal because as section 548 of the 1996 Act prohibits the imposition of corporal punishment by teachers, it does not interfere with the freedom of parents to exercise their manifestations of religious belief at home. Therefore, there exists no violation of the appellants' rights as stated by Article 9(1). No violation was found of Article 2 either (paragraph 212).

The appeal was unanimously dismissed.

R (on the application of Begum (by her litigation friend, Rahman)) v. Headteacher and Governors of Denbigh High School

Neutral Citation Number: [2004] EWHC 1389 (Admin) (15 June 2004)

SUMMARY:

- **BACKGROUND:**

Shabina Begum was a 15-year-old Muslim of Bengali origin, born in the UK, who attended a school that was open to a multiplicity of faiths and beliefs. She became a student at Denbigh High School located in Luton, Bedfordshire in September 2000 at the age of 12; her older sister also attended the school. 79% of the school's population at the time identified as Muslim and about 71% identified as Pakistani or Bangladeshi. The Headteacher Yasmin Bevan is also Muslim and of Bengali origin. Uniform is required at this school and it is this that Ms. Begum was trying to change so that she would be permitted to wear a jilbab. For two years, Ms. Begum attended the school without complaint, wearing the shalwar kameez, but in September 2002, Ms. Begum, accompanied by her brother and another young male, went to the school and asked that she be allowed to wear the long coat-like garment known as the jilbab. The Headteacher was not present so they spoke with a math teacher named Mr. Moore. Ms. Begum and her companions felt that the shalwar kameez permitted by the school was not long enough and was relatively close-fitting, and therefore not compliant with the requirements of Islamic dress as deemed by them to be stated in Sharia law. Ms. Begum refused to return to school until she could wear the jilbab, subsequently missing two years of schooling. She believed that this was required by her Muslim faith, and that the school uniform was in contravention of her faith.

The school's governing body met before the case went to trial and unanimous support for the uniform was expressed. The community body included the Chair of the Luton Council of Mosques as one of the governors, as well as four out of the six parent governors being Muslim. The school uniform had been decided upon in consultation with local mosques, religious organisations and parents. The School considered the shalwar kameez appropriate and saw no need to include a jilbab as that would impose the marking of differences among students. Also, the school argued that "any garment which is of ankle-length would present a health and safety risk to Shabina and other pupils in a school where there are many staircases that are very busy with pupil traffic at various times in the day" (paragraph 25.4).The school's supporters argued that if Ms. Begum was allowed to attend classes wearing jilbab, other pupils would feel under pressure to adopt stricter forms of Islamic dress.

- **DECISION:**

Ms. Begum's claim was for judicial review of the school's decision to not to allow her to wear the jilbab at school. On the matter of whether the school had interfered with her Human Rights to manifest her religion (Article 9 of the European Convention on Human Rights) and her right to education (Article 2(1) of the first protocol), Justice Bennett ruled that the school's policy was legitimate. Ms. Begum was excluded from attending the school by her choice not to adhere to the uniform policy that had been validated by the majority of the Islamic community. It was argued that she chose to attend the school knowing what would be asked of her to follow the dress-code and she had the opportunity to attend many other willing schools during the two year gap of her non-attendance. Justice Bennett stated that she was not being discriminated against on the grounds of religion; "she was excluded for her refusal to abide by the school uniform policy rather than her religious beliefs as such. Accordingly, no breach of Article 9(1) has been shown and thus her claim

under Article 9 fails. I give my views on Article 9(2) below, although they are not strictly necessary given my previous findings" (paragraph 74).

Copsey v WWB Devon Clays

Neutral Citation Number: [2004] UKEAT 0438_03_1302 (13 February 2004)

SUMMARY

- **BACKGROUND:**

This case is an appeal against a decision made by an employment tribunal held in Norwich in 2003 in which Stephen Copsey's claims for unfair dismissal by WWB Devon Clays Limited were rejected. His claims that his rights under Articles 8 and 9 of the "European Convention for the Protection of Human Rights and Fundamental Freedoms" (ECHR) were breached and that Devon Clays failed to make "reasonable accommodation" for his religious beliefs were also rejected.

Devon Clays is an operator of clay and sand quarries and one of their locations is in King's Lynn which functions as a sand quarry. At King's Lynn, Mr. Copsey was one of 12 workers in the sand processing plant and the regular schedule of work was Monday to Friday, with overtime spilling over onto Saturday shifts and very occasionally Sunday. In 2000, Devon Clays obtained an order for sand that increased their usual demand by 34% which meant that plant output needed to be increased by increasing operation times. After consulting the workers' unions, the respondent agreed on a contract that meant each worker would work 84 hours/week as well as have 124 'banked' hours that were to be used for absences and holidays over the year. Workers were to take rotating shifts which meant that workers would need to occasionally work on Sunday. 8 out of the 12 workers agreed to the terms but 4 did not because of the Sunday shift work, Copsey being one of them. Upon further review, Devon Clays adjusted the schedule for these 4 workers to work a 6-day per week schedule, Sundays being included only when needed. All but Copsey agreed to the new terms and as a result, he received lower pay. Another sand order in 2002 meant that a further 8% production increase would be required so Devon Clays met with the 4 dissenting workers of the 7-day plan and gave them the option of agreeing to the longer week pattern or accepting a redundancy package (payout). 2 workers agreed; 2 did not. After meeting with a Devon Clays rep, Copsey declined the options made for him that involved working on Sundays because of religious reasons. Numerous differing on-site jobs were offered to Copsey, but after rejecting the different positions and offers, he was dismissed on July 31, 2002 because "he refused to accept a change to a seven-day shift pattern and that his dismissal was not in any way connected with his religious beliefs…Devon Clays employed other employees who held religious beliefs, and had where possible attempted to accommodate them" (paragraph 12). The employment tribunal concluded that Devon Clays did not fail to make a reasonable accommodation for Copsey's religious beliefs.

- **DECISION:**

The decision made by the appeal tribunal was to dismiss Copsey's appeal as they agreed with the decision made by the Employment Tribunal. They decided that: "The reason he was dismissed was not because he held, or wished to manifest, particular religious beliefs. It was because he declined to work seven-day shifts which the tribunal found Devon Clays reasonably required of all those 12 operators whose labour was required to generate the increased sand production necessary to meet the increased orders. The [employment] tribunal's finding did not impliedly include a finding that in fact he was being dismissed because of his religious beliefs" (paragraph 24).

Hammond v Department of Public Prosecutions

Neutral Citation Number: [2004] EWHC 69 (Admin) (13 January 2004)

SUMMARY

- **BACKGROUND:**

In 2001, Mr. Hammond was arrested for displaying a sign that was "threatening, abusive or insulting within the hearing or sight of a person likely to be caused harassment, alarm or distress"(paragraph 4). The claimant, an Evangelical Christian, had "a large double sided sign" that said, "Stop Immorality", "Stop Homosexuality" in protest against homosexuality. The response from the public was extremely hostile and aggressive towards Mr. Hammond; one person even tried to set the sign on fire. He was asked by a police officer to take his sign down and leave the area, but Mr. Hammond refused to leave and even if he acknowledged his sign was offensive, he said he was used to that kind of reaction and intended to return the following Sunday with the same sign. The police officer, who thought "Mr. Hammond was provoking violence and that it was not safe to leave the scene without intervening" decided to arrest the applicant for breach of peace (paragraph 5[m]).
This case gave rise to a difficult question: How far should freedom of speech or behavior be limited in the general public's interest? In a House of Lords decision made in the case of Brutus v. Cozens, it was stated that a "distasteful or unmannerly speech" would be tolerated if it did not cross these three limits: "It must not be threatening; It must not be abusive; It must not be insulting," in reference to a section of the Public Order Act of 1936.
In the case of Mr. Hammond, the defence argued that, to protect freedom of speech, legislation for the preservation of public order should be aimed toward those who react, rather than towards those who speak their mind and that he had the right to manifest his religion and freedom of speech. Also, the appellant was aware this was insulting to others; he admitted so to the police officer and covered the sign with a black plastic sack when travelling. The protest was intended to provoke and disturb public order, because it was displayed in the town centre on a Saturday afternoon. Under these circumstances, Mr. Hammond's manifestation of his religion/beliefs was found to be not reasonable, and he was found guilty.

- **DECISION:**

Lord Justice May presided over this case along with Mr. Justice Harrison. Mr. Hammond was found guilty for these four reasons: "Firstly, the words on the sign were directed specifically towards the homosexual and lesbian communities, implying that they were immoral; secondly, there was a need

to show tolerance towards all sections of society; thirdly, the sign was displayed in the town centre on a Saturday afternoon provoking hostility from members of the public; and fourthly, Mr Hammond's behaviour went beyond legitimate protest and was provoking violence and disorder and it interfered with the rights of others" (paragraph 28). In this appeal, the judge stated that, after much consideration, the court could have found Mr. Hammond's conduct reasonable, because "according to [Mr. Hammond's] understanding exercising his right of freedom of expression of views which may or may not have been acceptable to those who were passing but, nevertheless, one has to bear in mind the cardinal importance of freedom of expression in a democratic society" (paragraph 33). Even though the appeal judge may not agree completely with the decision that was made, and he would have argued the case differently, he stated that he understood the logic behind the first decision. Also, he acknowledged that this decision was open to them to reach, and that is why he dismissed the appeal.

R (on the application of Begum (by her litigation friend, Rahman)) v. Headteacher and Governors of Denbigh High School

Neutral Citation Number: [2005] EWCA Civ 199 (02 March 2005)

SUMMARY:

- **BACKGROUND:**

After having her case dismissed by Justice Bennett in the Administrative court in 2004, (refer to page 6) Shabina Begum, now 16-years-old is appealing the dismissal of her application for judicial review of the decision made by the Headteacher and Governors of Denbigh High School to require her to adhere to the uniform policy set out by the school whereby she would have to wear a shalwar khameeze. The right to wear a jilbab, a long and loose fitting garment, in school was refused by the school because it was not part of their policy and fear that it would be not only a safety risk to the student, but also that it would cause other Muslim students to feel that they must comply with the stricter Islamic interpretation of what is appropriate garb. Subsequent to Justice Bennett's decision, Ms. Begum enrolled in a different local high school that would allow the wearing of the jilbab in September 2004 after she lost two years of schooling.

- **DECISION:**

The judges unanimously decided to allow the appeal. Lord Justice Brooke disagreed with Justice Bennett's ruling that Ms. Begum was not excluded; she was and should have been placed in another school much quicker than it took (paragraph 24). He also argued that she was of a minority within Islam that believed in the jilbab, so even with the council's consultation of mosques, they were catering to the majority of Islamic opinion. As a minority that believed in the jilbab, Ms. Begum had the right to manifest this belief (paragraph 49). As Ms. Begum had that right, the school should have made an argument of why they were allowed to infringe upon that right. Instead, the school was

adamant that the uniform was to be obeyed and failed to explain their justification to limit her right (paragraph 76). Both Lord Justice Mummery and Lord Justice Scott Baker agreed with Justice Brooke and the appeal was allowed, granting Ms. Begum's claims.

Copsey v WWB Devon Clays

Neutral Citation Number: [2005] EWCA Civ 932 (25 July 2005)

SUMMARY:

- **BACKGROUND:**

Stephen Copsey was working in a sand quarry near King's Lynn in 2000. After a new order meant that production had to be increased, the work schedule was changed to include additional work days, including Sunday. However, although most of the 12 workers in the plant agreed to the new changes, Mr. Copsey and four others raised objection, not wanting to work Sundays. Mr. Copsey was offered another job where he would not have to work Sundays, but he refused it. He was also offered a generous redundancy package which he still refused. He said that the change, to make him work Sundays breached his fundamental human right to freedom of religion, as a Christian. This was protected under Art.9 of the ECHR. He argued that the reason he did not want to work on Sunday was because of his Christian faith and he felt that Devon Clays was not sufficiently accommodating his religious beliefs and needs. Mr. Copsey's appeal made in the 2004 case was against the order of the Employment Appeal Tribunal dated 13 February 2004 (refer to page 8). The Appeal Tribunal dismissed his appeal from the employment tribunal's decision and rejected his claim for unfair dismissal against Devon Clays.

- **DECISION:**

Lord Justice Mummery of the Court of Appeal held that interference with Mr. Copsey's right was justified in the pursuit of a legitimate aim (to run an effective business). The employer had done everything to accommodate his needs, and so when he refused alternative offers and still refused to work, his dismissal was fair. "Mr. Copsey was dismissed for a potentially fair reason and it was fair and reasonable to dismiss him for that reason. The dismissal did not involve a material interference with his Article 9 rights; alternatively, any material interference with the rights was justified. As there was no error of law in the decision of the tribunal I would dismiss the appeal" (paragraph 42). He was not dismissed because he was a Christian believer, but simply because his religious requirements were not compatible with the job. Both Lord Justice Rix and Lord Justice Neuberger agreed to have the appeal rejected.

Percy v. Church of Scotland Board of National Mission (Scotland)

Neutral Citation Number: [2005] UKHL 73(15 December 2005)

SUMMARY

- **BACKGROUND:**

The Claimant in this case, Ms. Percy, was ordained a minister on December 12, 1991 and in June 1994 she was appointed to become an associate minister in the Church of Scotland parish in Angus. In June 1997, Ms. Percy was investigated after an allegation of misconduct was raised against her. It was alleged that she had had an affair with an elderly married man and an investigation was launched by a committee put together by the presbytery of Angus. Subsequently, a trial was held to hold a disciplinary charge against Ms. Percy on the grounds of libel. Later on, she was counseled to resign during a mediation meeting organized by the church. In December 1997, her status as minister was demitted and Ms. Percy resigned as an ordained minister (paragraph 2). Ms. Percy brought her case to an Employment Tribunal (ET) in February 1998 where she alleged unfair dismissal and unlawful sex discrimination, contrary to the Sex Discrimination Act 1975, since the church had not taken similar actions against male ministers who were known to have had extra-marital sexual relationships had not had to resign due to their actions (paragraph 3). However, her complaints were dismissed because the court recognized them to be 'matters spiritual' which falls under the exclusive jurisdiction of the Church of Scotland's courts, as outlined by the Church of Scotland Act 1921 (paragraph 4). Ms. Percy appealed against this decision but her appeal was dismissed because she was not recognizably employed under a contract for work and labour as outlined in Article 82(1) of the 1975 Act (paragraph 5).

- **DECISION:**

The House of Lords had to decide whether or not the Church of Scotland was Ms. Percy's employer. Ms. Percy was not pursuing her previous claims of wrongful dismissal because she accepted that she had not entered into a contract of service (paragraph 13). However, the court had to decide upon whether Ms. Percy as a minister was an employee of the Church of Scotland. It was found that despite the 1921 Act, a ministerial appointment did actually create a contract which was subject to the jurisdiction of the civil courts and employment tribunals. Lord Nicholls of Birkenhead wrote, "It is time to recognize that employment arrangements between a church and its ministers should not lightly be taken as intended to have no legal effect and, in consequence, its ministers denied this protection" (paragraph 26). Lord Hoffman disagreed with this and wrote that he did not find Ms. Percy to be within the definition of employment as found in the 1975 Act and so he ruled to dismiss the appeal (paragraph 66, 78). Lord Hope of Craighead found that the ET had jurisdiction to determine whether Ms. Percy had been unlawfully discriminated against since her work with the church was classifiable as employment (paragraph 136). Lord Scott of Foscote ruled in agreement with Lord Nicholls and Lord Hope to allow the appeal. He found that the agreement Ms. Percy made that "in return for salary, accommodation and other benefits the appellant undertook to perform the duties of an associate minister, was an agreement which created legal obligations between the parties" (paragraph 137). Baroness Hale of Richmond agreed with the majority to allow the appeal and have Ms. Percy's claims remitted to an ET under the new judgment which found her to have been an employee by the Church of Scotland (paragraph 153). Further consideration of her claims of sex discrimination would be handled by the future court.

Williamson & Ors, R (on the application of) v. Secretary of State for Education and Employment & Ors

Neutral Citation Number: [2005] UKHL 15(24 February 2005)

SUMMARY

- **BACKGROUND:**

This case was an appeal made against the decision given by Lord Justice Buxton, Lord Justice Rix, and Lady Justice Arden on December 12, 2002 (refer to page 5). A number of Christian private school head teachers and parents from England and Wales claimed that the prohibition to use physical punishment, as ordered by Section 548 of the Education Act 1996, was a breach of their freedom of religion as guaranteed under Article 9 of the European Convention on Human Rights (ECHR). Mr. Williamson was the headmaster of the Christian Fellowship School in Liverpool, one of the schools in question, and he led the appellants. The schools believed that it was part of their duty, as teachers, to take the place of the parents and be able to administer corporal punishment to children who were 'guilty of indiscipline'. Their justification for using loving corporal correction' was given by citations of Biblical passages such as "He who spares the rod hates his son, but he who loves him is diligent to discipline him: Proverbs 13:24" (paragraph 10). "The claimants' principal claim is that the extended statutory ban is incompatible with their Convention right to freedom of religion and freedom to manifest their religion in practice, a right guaranteed under article 9 of the Convention on Human Rights" (paragraph 8). The appellants also claimed that their right to education in conformity with their religious convictions was being violated, contrary to Article 2 of the First Protocol to the Convention, as well as with their right to respect for their family life, contrary to Article 8 of the Convention.

- **DECISION:**

The House of Lords decided unanimously that the prohibition to use corporal punishment was necessary in a democratic society and that there was a notable difference between freedom of religion and the freedom to manifest beliefs. As Lord Nicholls of Birkenhead decided, Article 9 was being engaged since a manifestation of religious belief was shown by parents enlisting their children in schools where corporal punishment was practiced (paragraph 35). Article 2 of the First Protocol was also being engaged (paragraph 36). He also found that section 548 of the 1996 Education Act did interfere with the Article 9 and Article 2 rights (paragraph 41). However, it was decided that section 548's interference with the manifestations of beliefs was justifiable by law since the ban was pursuing "a legitimate aim: children are vulnerable, and the aim of the legislation is to protect them and promote their wellbeing. Corporal punishment involves deliberately inflicting physical violence" (paragraph 49). It was for this reason that Lord Nicholls dismissed the appeal. Lord Bingham of Cornhill, Lord Walker of Gestingthorpe, Baroness Hale of Richmond, and Lord Brown of Eaton-Under-Heywood all agreed with Lord Nicholls and the appeal was dismissed.

R (on the application of Begum (by her litigation friend, Rahman)) v. Headteacher and Governors of Denbigh High School

Neutral Citation Number: [2006] UKHL 15 (22 March 2006)

SUMMARY

- **BACKGROUND:**

Shabina Begum is a young Muslim who enrolled in a private school open to children of all faith and beliefs. She was ″excluded/suspended″ from school ″because she refused to remove her Muslim dress comprising of a headscarf and long over garment″. The head teacher wouldn't let her wear the religious symbol, so Ms. Begum removed herself from the institute. She decided to sue the appellants (the school) because they limited her right under article 9 of the European Convention on Human Rights to ″manifest her religion or beliefs″ and also her right to have access to an education under article 2 of the First Protocole to the Convention. A case was opened in 2004 in which Justice Bennett had ruled that the school's uniform policy was legitimate and that Ms. Begum had excluded herself from attending school by choosing not to follow the policy. An appeal in 2005 (refer to page 10) against this decision was allowed by Lord Justice Brooke who argued that Ms. Begum should have been placed in schooling much faster than she had been and that she was herself a minority within Islam who's rights were to be protected as any other minority's would. He also felt that the school failed to explain why they had the justification to infringe upon Ms. Begum's right to manifest her belief.

- **DECISION:**

The judges unanimously agreed to allow the appeal made by the school and to restore the order of the trial judge from the 2004 case made by Justice Bennett. Lord Bingham said that the school was entitled to impose its rules upon the student. He believed that the Court of Appeal's ruling would "introduce 'a new formalism' and be a 'recipe for judicialisation on an unprecedented scale'" meaning it would become expected of head-teachers in the future to follow a complex decision-making process that should be left to lawyers, not teachers. Lord Bingham went on to evaluate the proportionality level of the school's interference with Ms. Begum's right to manifest her religious belief by wearing the jilbab to school and decided that it was a justified limitation of her right. "It would in my opinion be irresponsible of any court, lacking the experience, background and detailed knowledge of the head teacher, staff and governors, to overrule their judgment on a matter as sensitive as this"(paragraph 34).

As for the issue of whether the school excluded Ms. Begum from attaining an education, Lord Bingham argued that because the school was entitled to enforce the uniform rule, it was her unwillingness to comply which prevented her from attending the school. She had other school offers during the two year time span that would allow her to wear the jilbab, but by her choice she chose

not to accept them. In disagreement with Lord Justice Mummery of the 2005 appeal, Lord Hoffman writes, "It was a choice which she could have made. It is true that there is a statutory duty to provide education, but not at any particular school: see the decision of your Lordships' House delivered today in *Abdul Hakim Ali v Head Teacher and Governors of Lord Grey School*: [2006] UKHL 14" (paragraph 57). According to Lord Hoffman, her right to manifest her religion was not infringed because "there was nothing to stop her from going to a school where her religion did not require a jilbab or where she was allowed to wear one" (paragraph 50). Lord Scott also agreed with the other lordships and therefore the order of Judge Bennett from the trial of 2004 was reinstated.

Azmi v Kirklees Metropolitan Borough Council

Neutral Citation Number: [2007] UKEAT 0009_07_3003 (30 March 2007)

SUMMARY

- **BACKGROUND:**

This case was an appeal that was being made against a decision reached by an Employment Tribunal in October 2006 in which the appellant's (Ayesha Azmi) claim of direct discrimination by Kirklees Metropolitan Borough Council was dismissed. Her claims of harassment on the grounds of religious belief were also dismissed; however, her claim of victimisation was successful and she was awarded £1,100 for injury to feelings.

Ayesha Azmi was a 22-year-old woman who was studying English and Arabic at the University of Leeds at the time of her employment at Headfield Church of England Junior School in Thornhill Lees, Dewsbury (a controlled school under Kirklees Metropolitan Borough Council). Ms. Azmi was a bilingual support worker and as such she supported the learning of students who were of ethnic minority backgrounds that were at risk of under-achieving. 92% of the school's population were Muslim and were mainly of Indian and Pakistani origin. Of the 70 staff members, 25 were Muslim as well. As a devout Muslim, Ms. Azmi wears the niqab in front of men. It was important to note that at the time of her interview for the position with the head teacher, Mr. Smith, and a colleague, Mrs. Maher, Ms. Azmi was not wearing the face veil and made no mention that her religious beliefs required her to wear it or that it would place any limitation on her work (paragraph 8). Ms. Azmi had "glowing references" and it was of no question that she was an extremely strong support worker and very good at her job. At the start of term in 2005, Ms. Azmi telephoned Mrs. Maher and asked her if she could wear the niqab when she was working in classrooms with male teachers present or whether arrangements could be made so that she would not have to work with male teachers and therefore not wear the face veil at all in front of students. Mrs. Maher referred the subject to the head teacher, and in consultation with Mr. Smith, Ms. Azmi was told that arrangements could not be made since all classes had male teachers and that additionally it would require substantial changes to the timetable. In seeking advice from the education department of Kirklees, Mr. Smith was told in a report that, "It follows that for teachers or support workers wearing a veil in the workplace will

prevent full and effective communication being maintained. In our view the desire to express religious identity does not overcome the primary requirement for optimal communication between adults and children" (paragraph 11). Mr. Smith decided that Ms. Azmi could wear the veil when dealing with children for the time-being while he made observations of how she interacted with the students. His observation of her in the classroom when she was wearing her veil led to the conclusion that the veil was preventing the children from seeking "visual cues" from her and "her diction was not as clear as it would have been if she were not wearing the veil" (paragraph 12). Mr. Smith told Ms. Azmi that she would not be able to wear the veil when working directly with children in the classroom but that she could wear it when walking around the school. Accordingly they concluded that Ms. Azmi could not continue working if she kept wearing the niqab. Between November and February Ms. Azmi took time off and it was agreed to send the issue to the Tribunal for resolution.

- **DECISION:**

Justice Wilkie of the Employment Appeal Tribunal (EAT) was to evaluate whether the Employment Tribunal (ET) had erred in its decision to deny any claims of direct and indirect discrimination to Ms. Azmi. On the account of direct discrimination, Justice Wilkie agreed with the ET because Ms. Azmi failed to show that someone else who was wearing a facial covering would have been treated any differently than she was. This would have been needed for her claim to succeed (paragraph 51). Also, her claim of direct discrimination failed because the court regarded the niqab as a manifestation of religion and not the religion itself which must be breached for a claim of direct discrimination to be made effectively. The court had to decide if Ms. Azmi was a victim of indirect discrimination by having to follow the specified rules set out by the school which were: "1. The requirement not to wear clothing which covers, or covers a considerable part of, the face and/or mouth and/or 2. The requirement not to wear clothing which interferes unduly with the employee's ability to communicate appropriately with pupils" (paragraph 59). Even though the provisions that require the face to be shown would affect Muslims more than non-Muslims, the interference with the right was justifiable. Justice Wilkie decided that these provisions were applied generally and identified general principles—they were not targeting a specific group. Therefore, appeal on indirect discrimination failed.

Connolly v Director of Public Prosecutions

Neutral Citation Number: [2007] EWHC 237 (Admin) (15 February 2007)

SUMMARY

- **BACKGROUND:**
  The Appellant in this case was Ms. Veronica Connolly, a practising Christian in the Catholic denomination. Ms. Connolly believed that an unborn baby is a child of God and that abortion is a form of murder. Beginning in 2004, Ms. Connolly began writing to pharmacists with letters that enclosed photos of aborted foetuses. Prior to sending the photos, she would call the pharmacies

to ensure that they stocked 'The Morning After Pill'. The letters were opened mainly by managers, supervisors, and head pharmacists, but on one occasion a junior member of staff whose relative had recently given birth to a still-born child opened the letter. On February 10, 2005, a complaint was received from Olton Pharmacy and the police attended the situation. On February 13, Ms. Connolly was arrested and was taken to the Solihull Police Station to be questioned. On July 13, 2005, Ms. Connolly pled 'not guilty' to offences that violated the *Malicious Communications Act 1988* and on October 6 of that year she was found guilty. The letters which were sent were found to be indecent and grossly offensive and it was also found that Ms. Connolly sent these letters in order to cause distress or anxiety to the recipients. Ms. Connolly's position was that current standards of propriety in society that dictate what is considered to be indecent would set the photos of the aborted foetuses to be well below the threshold of what was considered indecent and grossly offensive. The Appellant's defense was that a communication that was political or educational in nature cannot be "grossly offensive or indecent" as in line with the 1988 Act of the Law Commission Report on Poison Pen Letters Law Com No 147 (1985). Ms. Connolly's submission was that by sending the photos, her Article 9 and/or Article 10 rights as found in the European Convention on Human Rights (ECHR) which provides a right to freedom of thought, conscience and religion and freedom of expression were engaged. The Defendant in this case is the Department of Public Prosecutions (DPP) and they accept that Article 10 is engaged: sending the photos was an exercise of the right to freedom of expression because the article contained a message and was not merely offensive. The DPP, however, submits that the interference is justified as being "for the protection of health" and/or "for the protection of the rights of others" in line with article 10(2).

- **DECISION:**

Along with reviewing Ms. Connolly's appeal for her charges, the court in this case was asked to answer the following three questions:

> "a. Does the Malicious Prosecutions Act 1988 apply to the facts of this case;
>
> b. If the answer to question (a) is affirmative i) is the sending of pictures of aborted foetuses objectively 'indecent' or 'grossly offensive' and ii) does the Appellant satisfy the subjective elements of intending to cause distress or anxiety?
>
> c. Are the answers to the above questions affected by Articles 9 and 10 of the European Convention on Human Rights?" (paragraph 6).

Lord Justice Dyson who presided on this case found that something that is political or educational in nature can in fact be at the same time "indecent or grossly offensive." The photos that were sent were close-up colour photos of dead 21-week old foetuses and were clearly sent for the purpose of causing distress or anxiety and are classifiable as "grossly offensive and

indecent" (paragraph 11). On the matter of whether prohibiting Ms. Connolly from sending the photographs would be an interference of her article 9/10 ECHR rights, Lord Justice Dyson rejected that the protection of health was an aim of limiting her Article 10 rights, but the protection of the rights of others was a valid concern. He found that the people who worked at the pharmacies "had the right not to have sent to them material of the kind that she sent when it was her purpose, or one of her purposes, to cause distress or anxiety to the recipient" (paragraph 28). Had the photos been sent to a politician or a doctor who has more of a say in the matter of abortions, then it may have been allowable. These people however were in no position to affect change and sending them these letters was "hardly an effective way of promoting the anti-abortion cause" (paragraph 31). It was found that Ms. Connolly's right to freely expressing her opinion did not justify causing distress and anxiety to those who received the photographs, as she intended. Her appeal on Article 10 was therefore dismissed. On the matter of Article 9, the appeal failed as well for the same reasons as Article 10 did: the freedom of religious expression was not of higher order nor was it worthy of more protection than the freedom of secular expression (paragraph 36).

Lord Justice Dyson dismissed all appeals and concluded with saying that the questions presented to the court were not focused on the real issues of the matter. He stated that it made little sense to decide on whether the 1988 Act applied to the facts of the case; the real issue being whether she was guilty of an offence contrary to section 1 of the Act. Justice Stanley Burnton who also presided on this case agreed with this decision.

Harris v. NKL Automotive Ltd & Anor

Neutral Citation Number: [2007] UKEAT 0134_07_0310 (3 October 2007)

SUMMARY

- **BACKGROUND:**

  This appeal set forth by the appellant is to decide whether an Employment Tribunal erred in its analysis of an indirect discrimination claim. The Employment Appeal Tribunal (EAT) was headed by Lord Justice Elias, Mrs. Baelz, and Mr. Jenkins Obe.

  Rastafarianism is a recognized philosophical belief in the UK and is a practice that requires, among other things, its followers to wear their hair in dreadlocks. The appellant in this case is J. Harris who as a Rastafarian wore his hair in dreadlocks and claims that because of this he was discriminated against according to *Employment Equality (Religion and Belief) Regulations 2003* as well as being unfairly dismissed. He also claimed victimisation discrimination. Mr. Harris worked from April 2004 to February 22, 2006 as an executive driver at NKL Auto—a job he was assigned to through the employment agency Matrix Consultancy UK Ltd. NKL Auto ("the company") expressed concerns to Mr. Jones, a representative from the employment agency, about Mr. Harris's hair being untidy and not representing the company well since he as a driver

interacted with their customers first-hand. On February 17, 2006 Mr. Harris complained to Jones that he was not getting supplied work by the company nor was he being taken on to full-time schedules like other workers were. He believed this was because of his hair. The company argued that he was not getting work because "he was sometimes abrasive, flouted dress rules (quite apart from hair), and he had made himself unavailable for work for a period" (paragraph 7). The company did not know that Mr. Harris was a Rastafarian until they received a letter following his dismissal, and they claim that they did not employ him and could therefore not have unfairly dismissed if he was never actually hired. On February 22, Mr. Harris said he was taking one month off for stress and subsequently was sent his P45—a form outlining details of dismissal.

The tribunal that had evaluated this case prior to the decision being appealed concluded that indirect discrimination had not been applied because Mr. Harris was "was taken on with long hair; came back to NKL in April 2005 after a break with long hair and was not denied the opportunity of continuing as an agency driver in February 2006 with long hair – the provision was that it was tidied up" (paragraph 15 (13.2)). This showed, according to the first tribunal, that the company did not find dreadlocks to be unacceptable but the fact that they were untidy was the problem. They also dismissed his claims of direct discrimination and victimisation.

- **DECISION:**

The decision on whether the Employment Tribunal had made an error in its analysis of the indirect discrimination claim was in agreement with the first tribunal. One of the arguments presented by Mr. Harris's counsel was that the conclusion that the initial tribunal had reached was wrong to see a difference between Mr. Harris's hair being matted and untidy versus his hair being dreadlocked. There is no way that Mr. Harris's hair could be in dreadlocks while at the same time not be matted because dreadlocks are matted hair. This would show that because of his hair being dreadlocked (and matted) he was fired, instead of simply his hair being untidy. This argument was rejected by the EAT because "It may be that all dreadlocked hair is matted, but it does not follow that all matted hair is dreadlocked" (paragraph 19). The EAT did not feel that any minor errors in the case were strong enough to affect the finding that there was no indirect discrimination against Mr. Harris. The appeal failed.

McClintock v Department of Constitutional Affairs

Neutral Citation Number: [2007] UKEAT 0223_07_3110 (31 October 2007)

SUMMARY

- **BACKGROUND:**

Mr. A McClintock (Appellant) was a Justice of the Peace who sat on the Family Panel which places children for adoption. He had been serving as a Justice of the Peace since April 20, 1988 and served

on the Family Panel in Sheffield since 1991. He objected to the possibility of children being adopted by same-sex couples because he was not sure it was in the children's best interest to grow up in such a family when there had not been "sufficient evidence" to prove that it was good for the children. These concerns were raised in March 2004 and Mr. McClintock continued to sit on the panel after raising dissent. In a meeting held in February 2006, Mr. McClintock met with the Department of Constitutional Affairs (DCA) but made no suggestion that his views on this subject were based on religious grounds or held by any particular belief. He did not want any child to be a "guinea pig" in the name of political correctness and so he asked to not preside over such hearings (paragraph 4). He stated that if exceptions were not made to grant his accommodation, then he would resign as a member of the Family Panel. The DCA had not pressured Mr. McClintock into resigning and they did not encourage him doing so; it was of his own volition (paragraph 4.12.11). Representatives from the DCA that see over the Family Panel refused his request to be dismissed from such trials and the DCA reminded Mr. McClintock that he was bound by the judicial oath "that he had taken to adjudicate on any case which came before him and to decide it in accordance with his Oath and on its merits" (paragraph 4.12.12). Mr. McClintock resigned from his position on the Family Panel. He remained working on the Adult Panel, however, dealing with criminal and motor matters. Mr. McClintock claimed that this was both direct and indirect discrimination and harassment against him, contrary to *Employment Equality (Religion or Belief) Regulations 2003*.

- **DECISION:**

The Employment Tribunal (ET) that decided on this matter prior to it being brought to the Employment Appeal Tribunal (EAT) found that Mr. McClintock's direct discrimination claims were unfounded because he had not indicated that his beliefs were rooted in a religious or philosophical nature. "It was based on his assertion that the whole thing was experimental and under researched" and not on a religious belief (paragraph 24.45). His claims of harassment were dismissed because no evidence of antagonism had been shown. "No-one had sought the appellant's resignation. There was sadness when he resigned. He had been treated courteously, and with consideration, as he himself accepted in evidence" (paragraph 26). The claims of indirect discrimination were also rejected because any other judge in his place that had taken the judicial oath would have been treated the same way regardless of their religion (paragraph 28). No breach of Article 9 of the European Convention on Human Rights (ECHR) was found and so his claims were dismissed.

The EAT was responsible in deciding whether the ET had erred in its decisions on the claims Mr. McClintock had made, except for the claim of direct discrimination which had been withdrawn. It was found that on the claim of harassment, because the argument being made by Mr. McClintock's counsel that the unwillingness of the DCA to allow him to sit out of such adoption hearings "violated his dignity", it would follow that any claim of discrimination would be followed by a claim of harassment. This was a "hopeless argument" and along with the fact that there was no evidence of harassment, it was dismissed (paragraph 32). The claim of indirect discrimination was the focus of the appeal. "McClintock cannot show that he has been disadvantaged as a consequence of holding a relevant belief falling within the scope of the legislation" (paragraph 37). The true bases of his

objections were not grounded in religious beliefs, nor were they grounded in cohesive philosophical beliefs, and even if they had been, the limitation upon them would be justified. Furthermore, "Mr McClintock had not as a matter of principle rejected the possibility that single sex parents could ever be in a child's best interests; he felt that the evidence to support this view was unconvincing but did not discount the possibility that further research might reconcile the conflict which he perceived to exist" (paragraph 45). The DCA's requirement to follow the judicial oath was justified and aimed to a legitimate objective (paragraph 44). There was no finding of a breach of Article 9 once again, and this was decided that in some circumstances when a party enters a job that they know might require them to go against some aspect of their religious or philosophical belief by fulfilling their duty, it is not an infringement. This reasoning was supported by R (SB) v Governors of Denbigh High School [2006] 2 WLR 719, para.23. Lord Hoffmann (paras 50ff) and Lord Scott (para 87).

The EAT found that the DCA was justified in its requiring Mr. McClintock to follow the effects he swore to in his judicial oath and so the ET's findings were upheld. His appeal ultimately failed.

Playfoot (a minor), R (on the application of) v Millais School

Neutral Citation Number: [2007] EWHC 1698 (Admin) (16 July 2007)

SUMMARY:

- **BACKGROUND:**

The Claimant in this case is Lydia Playfoot, a 16 year old minor who was a student at a non-denominational girls' school, Millias School in Horsham,West Sussex ("the School"). She is seeking a judicial review of the decision made by the Defendant (the Governing Body of Millias School) to not allow her to wear a "purity ring" as a symbol of her commitment to celibacy before marriage. She claims that this is contrary to her right to freedom of thought, conscience and religion as per Article 9 of the European Convention on Human Rights (ECHR) as well as discrimination in violation of Article 14 of the ECHR.
The School has a dress code that does not permit jewellery outside of plain ear studs. Ms. Playfoot began wearing the Silver Ring Thing purity ring ("SRTpr") in June 2004 and she wore it without complaint until the summer of 2005 when she was told that it broke the School's uniform code and policy (paragraph 6). Mr. Nettley, the Head Teacher at the School was surprised if this had been the case since all teachers regularly challenge students on jewellery outside of the policy. Ms. Playfoot claimed that the purity ring was worn as a symbol of her promise to abstinence which she claims was part of her religious beliefs.
Ms. Playfoot's father did not agree with the school's stance so he wrote letters to Mr. Nettley beginning in June 2005. In his letters, he raised concerns about the sex education curriculum and about Ms. Playfoot not being permitted to wear her ring. In July 2005 he wrote that not letting Ms. Playfoot wear the SRTpr would amount to discrimination as Muslim girls are allowed to wear head coverings. In October 2005, in correspondence with the Governors of the School Ms. Playfoot's father argued that the School had allowed and made special exceptions to the uniform policy for things such as key chains, wrist bands, and badges to be worn by students on backpacks. These attempts did not result in any changes on the stance of the School on the wearing of the SRTpr.

In May of 2006, Ms. Playfoot began to wear the SRTpr to school but this time did not comply with requests to remove the ring. She was disciplined for her defiance of school rules by having to be taught in a room apart from her classmates as a form of detention. Following this, Ms. Playfoot herself wrote to the Assistant Head Teacher Mrs. Mitchell to explain that "she is a committed Christian with a genuine belief that she should remain sexually abstinent before marriage, and that the ring is a sign of this belief" (paragraph 12). She filed her claim for judicial review on October 3, 2006.

- **DECISION:**

The issues that were considered by the Deputy Judge, Michael Supperstone Q.C., were: whether the wearing of the SRTpr was a manifestation of Ms. Playfoot's religious beliefs, whether refusing to allow Ms. Playfoot to wear it would be an interference of her beliefs, and if yes, then whether this interference was justified under Article 9(2).

On the matter of whether the wearing of the ring was a manifestation of belief, the Deputy Judge referred to *R (Begum) v Governors of Denbigh High School (2006)* in stating that "Article 9 does not require that one should be allowed to manifest one's religion at any time and place of one's own choosing [*Begum* at para 50, (Lord Hoffmann)] (paragraph 21.1). In reference to *Williamson & Ors, R (on the application of) v. Secretary of State for Education and Employment & Ors*, he stated that Article 9 does not "protect every act motivated or inspired by a religion or belief" (paragraph 21.2). These statements brought the Deputy Judge to decide that wearing a purity ring is not "intimately linked" with the belief of chastity before marriage and that Ms. Playfoot was not obliged to wear the ring.

On the matter of interference, Ms. Playfoot had voluntarily accepted to attend the school knowing that it was non-denominational and knowing that the uniform policy prohibited the wearing of jewellery. The Deputy Judge noted that just like with *Begum (2006)*, there was an alternative school available that allowed for the wearing of rings. Ms. Playfoot's defense was that the SRTpr is not jewellery since it is not designed to be decorative. This was rejected, as it is a piece of jewellery (paragraph 29). The School argued that she could attach the ring to her bag, or she could use things that are acceptable with the School's policy and that are still expressions of her belief such as key chains, badges, and stickers that announce the same belief (paragraph 30.2). It was decided by the court that Ms. Playfoot'sArticle 9 rights were "not interfered with because she voluntarily accepted the uniform policy of the School which does not accommodate the wearing of the ring, and there are other means open to her to practice her belief without undue hardship or inconvenience" (paragraph 32). Any interference would have been justified because it allows students at the School to avoid pressures by markings of difference (paragraph 38).

The Claimant also tried arguing that by not letting her wear the SRTpr, she was being discriminated against because "Muslim girls wear Islamic headscarves and Sikh girls can wear the Kara bangle" (paragraph 41). The Deputy Judge did not find evidence of unlawful discrimination against Ms. Playfoot that breached Article 14.

The judicial review sided with the Defendant because Ms. Playfoot's promise ring was not a requirement of her faith and as such, not a manifestation of her belief in abstinence. The School's decision was not unlawful and both Article 9 and Article 14 were not breached by this decision.

Suryananda, R (on the application of) v The Welsh Ministers

Neutral Citation Number: [2007] EWHC 1736 (Admin) (16 July 2007)

SUMMARY

- **BACKGROUND:**

This case concerns the decisions of the Welsh Assembly Government ("The Government") to have a bullock named Shambo, slaughtered because he had contracted *mycobacterium bovis* (M Bovis) which causes bovine tuberculosis (bTB). Shambo is a temple bullock at the Hindu Monastery and Temple in Skanda Vale, Llanpumsaint in Carmarthenshire. The temple has extensive agricultural activities but these are used towards the temple's religious aims of worship and are not commercial in nature. The application for judicial review was brought forward by Swami Suryananda, a representative for the Community of the Many Names of God ("the Community").

The animals at the monastery are tested biannually for tuberculin and in December 2004, Shambo had an inconclusive reaction to the test meaning he would have to be tested 60 days later for an accurate result. The other animals all tested negative. Defra, the department then responsible for animal health issues in Wales, told the Community that the animals were not to be moved until the test could be conducted for their own safety. In response to this notice, Guru Sri Subramanium of the Community wrote to Defra explaining that "It is the Community's religious duty to care for and support all animals for their natural lifespan, and it could not allow an animal to be killed" (paragraph 52). Mr. Wyn Buick from Defra replied saying that "it remains a legal requirement that declared reactors to the Tuberculin Test are slaughtered" (paragraph 54). This was in line with section 32 of the Animal Health Act 1981 ("the 1981 Act") as applied by Article 4 of the Tuberculosis (Wales) Order 2006. Shambo epitomises the Hindu belief that there is a spark of divinity in all animals which makes all animal life sacrosanct. Killing an animal, especially the bullock or cow is seen to be sacrilegious because of the special place they hold in the Hindu dharma tradition.

In the Community's opinion, Shambo's slaughter would infringe their freedom of worship and would be a desecration of the temple. The Community assured Defra that Shambo would remain isolated and if he tested positive that in using their discretion in this "very exceptional circumstance" they would consider alternatives to slaughter (paragraph 54). The Government did not feel that the killing of Shambo would be a violation of the Community's Article 9 rights of the European Convention for the Protection of Human Rights and Fundamental Freedoms. "We are of the view that the slaughter of the bullock in the present circumstances would be a proportionate response in pursuance of a legitimate aim. Accordingly, any interference you're your client's Article 9 right would be lawful" (paragraph 62.11). Shambo tested negative to the follow-up test on April 26, 2005. On February 22, 2007, during another of the biannual tests, Shambo's results were once again inconclusive and he was put into isolation once again. On April 24, Shambo tested positive and was found to be a reactor to the tuberculin bacteria and so on May 3 a slaughter notice was issued. In

accordance with government policy, to minimize the risk to humans and other animals, Shambo must be killed; isolation is not enough.

- **DECISION:**

Judge Hickinbottom's decision was to allow the claim of Surayananda and to quash the Government's decision to have Shambo slaughtered. In opposition to the Government, he saw that "beyond any doubt" Article 9 was engaged. The reasons for this included that the beliefs are sincerely and deeply held and are coherent religious beliefs held by many people around the world. The belief of the sanctity of life is manifested in Shambo and "the Community sincerely and firmly consider themselves under an obligation to preserve the life of this bullock: and under a duty to take all reasonable action- including expending all reasonable cost – on preserving that life" (paragraph 85.ii). Because of this, killing Shambo would be sacrilegious and clearly a "gross interference with the manifestation of their beliefs by the Community" (paragraph 85.i.ii.iii). Judge Hickinbottom focused his rationale on the failure of the Government to properly identify what the public interest was and so they could not balance it against the individual rights of the community. The Government's reasons for the slaughter were to eradicate bTB in the monastery, not in South West Wales, and the court found that this made the balance tip in favour of the Community (paragraph 103.vi). Judge Hickinbottom explained that even upon carrying *M Bovis* it is not guaranteed that he is shedding the bacteria and tests can be done to determine if he is shedding it. Evidence that apes and bovine can be cured using antibiotics also informed his decision that there were alternatives to slaughter. Since the Government did not consider minimising the risk but were very focused on eliminating it completely, without respect to the Community's religious beliefs, the court found that they took the wrong approach to the case (paragraph 105.ii.iii.iv). "I can and do say that the Government have adopted the wrong approach in this case (and consequently I can and will quash the relevant decisions), the positive exercise of balancing the rights of the Community to manifest their religious beliefs against legitimate public health objectives is precisely the exercise that the statutory scheme has properly reserved to the Government with the expert advice that it has available to it" (paragraph 106). The slaughter notice was thereby defeated.

Surayanda v The Welsh Ministers

Neutral Citation Number: [2007] EWCA Civ 893 (23 July 2007)

SUMMARY

- **BACKGROUND:**

This case is an appeal against the decision made by Judge Hickinbottom in *Suryananda, R (on the application of) v The Welsh Ministers* on July 16, 2007 (refer to page 23), in which he quashed a slaughter order made by the Welsh Assembly Government ("the Government") to have a temple bullock killed. The Hindu Monastery and Temple in Skanda Vale, Llanpumsaint in Carmarthenshire was represented by Swami Suryananda, a trustee for the Community of the Many Names of God

("the Community"). The temple has many acres of farmland and although it carries out many agricultural activities, none are commercial and are solely in line with the temple's religious aims. The Hindu dharma regards all life, including those of animals, to be sacrosanct and would regard the killing of a temple animal, especially of a bull, to be a desecration and sacrilegious.

Shambo, the bull, had tested as a reactor for *mycobacterium bovis* (M Bovis) which causes bovine tuberculosis (bTB) and in line with section 32 of the Animal Health Act 1981 ("the 1981 Act") as applied by Article 4 of the Tuberculosis (Wales) Order 2006, all positive reactors are to be isolated and then slaughtered. A post-mortem test is necessary to determine whether the animal had developed bTB so that further provisions for other possibly infected animals could be done. The Community argued that the killing of Shambo would be in violation of their Article 9 Rights as stated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

In the previous case, the Government did not see the killing of Shambo as a violation of the Community's rights to manifest their religious beliefs, but in the present appeal case, they did accept it to be an infringement of their Article 9 (1) rights. The Community emphasizes that the power of the appellants under section 32 of the 1981 Act is discretionary and that there is no duty to cause the slaughter; they should seek alternatives to Shambo's killing. They are mindful of the need to protect public health, but feel that an exception should be made on grounds of Article 9.

- **DECISION:**

The decision handed down by Lord Justice Pill was to allow the appeal and set aside the quashing of the Government's orders. He concluded that decision "Having regard to the very considerable problems presented by bTB, the decision to eliminate the risk presented by the bullock by slaughter, and not to permit an exemption to the slaughter policy, was in my judgment justified" (paragraph 54). He stated that the Community did not assess the extent of the risks that remained by isolating him and following numerous provisions—risks not only to other animals on the temple's farm land but also to the four surrounding herds in the area. Due to this great risk to public and animal health, and to bTB being a serious problem in south West Wales, the Government's infringement upon the Community's rights to manifest their beliefs was justifiable. "It was necessary for the protection of public health, which includes animal health, to interfere with the manifestation of the Community's beliefs in a way which, the Minister accepted in her decision letter, was of a particularly grave and serious kind. I would allow the appeal on that basis" (paragraph 55).

Lord Justice Thomas also agreed to allow the appeal. He refers to *R (SB) v Governors of Denbigh High School [2006] UKHL 15* to point out that "the task of the court is not to determine the lawfulness of the Minister's approach, but to make its own determination whether the rights of the Community at Skanda Vale would be violated by the decision to slaughter the bullock Shambo or whether that could be justified under Article 9(2)" (paragraph 66). Lord Justice Thomas disagreed with Judge Hickinbottom's reasoning that the slaughter of Shambo was the objective of the

Government, when in fact it was a means of protecting public health (paragraph 72). He also noted that a reason for Hickinbottom's decision was that he had less facts presented to him due to the urgency of which the case had to be processed.

Lord Justice Lloyd also agreed to allow the appeal. He made clear that the Government had seriously taken into account the Community's rights to manifest their beliefs. To slaughter Shambo was legitimate under Article 9 (2) only if necessary and he came to the conclusion "that she [the Minister of the Government] was entitled to come to the view that elimination of the risk of infection was necessary" (paragraphs 130, 131). He also noted that in light of the numerous cases of bTB in south West Wales meant that the proposed provisions the Community wanted to follow were not sufficient enough to preserve public safety. The post-mortem test was also essential to this end.

After the appeal had been allowed, Shambo was slaughtered on July 26, 2007.

X v Y School & Ors

Neutral Citation Number: [2007] EWHC 298 (Admin) (21 February 2007)

SUMMARY

- **BACKGROUND:**

The names of the claimant and the school involved were not disclosed and will be referred to by using the letters as the case judge used.

X, the claimant, was a 12-year-old Muslim girl who attended Y, a selective, all-girls grammar school starting in 2005. Upon entering her second year at the school in September 2006, X had reached puberty and in line with her religious beliefs decided to wear the niqab, a face veil, in the presence of male teachers. Not long after term started, X was asked by her head of year why she was wearing the veil which surprised her because her three older sisters, A, B, and C, all previously attended Y and wore the niqab without complaint by the school. Shortly after this meeting, she and her parents were notified by the head teacher that X would not be allowed to wear the niqab because it was not in line with Y's uniform policy. X's sisters attended Y from 1995-2004 and were not in attendance when X began her schooling. In a letter written in late September, X was told by Y that she could wear the niqab until October 6, 2006, but on October 9, she must have her face uncovered or else she would be excluded from the school (paragraph 15). Y also arranged for X to attend another selective all-girls grammar school, Q, where she would be permitted to wear the niqab and would have transportation provided for her. October 6, 2006 was the last day that X attended Y.

X is seeking judicial review of the school's decision not to allow her to wear the niqab, and she claims that the school acted unlawfully in breaching her Article 9 rights as outlined in the (European Convention on Human Rights) ECHR. She also claims that she had legitimate expectation that she would be permitted to wear the niqab since her three sisters had done so

without problems, and would not have applied to the school otherwise. This led X to the final claim that there was no good reason for the school to change their policy and treat her differently than her sisters were treated.

- **DECISION:**

  Justice Silber's decision was heavily influenced by the reasoning and decision made by the House of Lords in R (Begum) v Governors of Denbigh High School [2005] 2 WLR 3372 (refer to page 10). In the Begum case, "the article 9 rights of a Muslim claimant had not been infringed when she was not allowed to wear to her school a jilbab, which is a long coat-like garment. It was also decided unanimously that the school could in any event rely on Article 9(2.) with the result that the claimant's article 9 rights had not been infringed" (paragraph 25). In evaluating the claims of a breach of X's Article 9 rights to religious freedom and expression as well as manifestation of belief by the school in the present case, Justice Silber referenced Lord Hoffman's statement that, "Article 9 does not require that one should be allowed to manifest one's religion at any time and place of one's own choosing…"(paragraph 32). Justice Silber pointed out that X had the option of attending Q which would have accommodated her belief to wear the niqab, but she did not accept the offer. He decided that since there was no precedent of a case where a person's claim of Article 9 infringement was granted if the person had another place for them to exercise their belief (paragraph 38). He therefore concluded that X's rights were not infringed upon because she had the option of attending another school, granted to her by Y.

  Y justified their decision not to allow the wearing of the niqab by X by the following reasons: "first educational factors resulting from a teacher being unable to see the face of the girl with a niqab; second the importance of a uniform policy as promoting "uniformity and an ethos of equality and cohesion"; third security; and finally avoiding applying pressure on girls to wear a niqab" (paragraph 64). Justice Silber dismissed X's claim that she had legitimate expectation that she would be allowed to wear the niqab because the school took "a proportionate response having regard to the legitimate aims pursued by the school in the public interest"(paragraph 129). To the third claim, the school argued that in the time gap from which her sisters left the school and X came to it, there had been a uniform policy change. Sister C had attended the school until 2004, but had stopped following the school policy in 2002 as she was in the sixth form level of which there is no uniform regime to be followed. In this time from 2002 onwards, a new head teacher was enlisted and the uniform had been changed (paragraph 135). Justice Silber dismissed X's claims and recommended that X accept the position at Q (a reason for why it was not suitable enough for her was never given) to ensure she would not miss anymore schooling.

E v The Governing Body of JFS & Anor

Neutral Citation Number: [2008] EWHC 1535 (Admin) (03 July 2008)

SUMMARY:

- **BACKGROUND:**

This case's inherent question that was sought to be answered was "Who is Jewish?" The answer to this question was not easily answered due to the numerous opinions held by affiliations within the Jewish faith in Britain which include: Orthodox, Progressive (Reform and Liberal), Strictly Orthodox (Haredi), and Masorti (Conservative). Each has its own detailed opinion on the specifics of what would classify a person as being Jewish, but the overarching agreement as seen by Justice Munby is that, "Jewish identity is determined by either descent or conversion" (paragraph 20).

JFS (formerly the Jews' Free School) follows the religious character of Orthodox Judaism is a state-funded faith school for Jewish students and it seeks to ensure the culture and ethos of the school are in line with the traditions of this religious faith (paragraph 29). This hearing concerns M whose father is Jewish by birth, E (Claimant), and a mother who is Jewish by conversion. M's mother converted to Judaism by following the course approved by an independent Progressive synagogue. In October 2006, E applied for M to be admitted as a pupil to JFS for the academic year of 2007/08. The school's admissions policy states that as long as the school is undersubscribed, it cannot use religious criteria to determine who receives a place. However, once the school is oversubscribed it could lawfully restrict entry by giving priority to children whose parents are regarded as sharing the school's faith. In summary, it can discriminate on religious grounds in times of oversubscription but cannot discriminate on racial grounds at any time. In November 2006, after being informed of JFS's admissions policy, E wrote to the school objecting to the request that asked "for information concerning M's mother's halachic status" (paragraph 59). On April 13, 2007, E was notified that they would not be able to offer M a place at JFS. The school was oversubscribed and was therefore entitled to select pupils, in accordance to its admissions policy, by giving priority to children who are recognised as Jewish by the Office of the Chief Rabbi (the OCR) or are following a course of conversion approved by the OCR. Since the OCR does not recognize the validity of conversions made by the Progressive synagogues, M was not recognized as Jewish and since he was not on the course to conversion by the standards of the Orthodox division, he was not allowed admission to JFS. Two other families, L and S, who were similarly adversely affected by JFS's admission policy supported E's claim although they did not bring forward their own cases. E brought forward a case of appeal to JFS's Admissions Appeal Panel on June 5, 2007 which stated that M was being discriminated against on racial grounds. His appeal was dismissed by the Appeals Panel because "there was no evident unlawfulness in the criteria in question" (paragraph 64). On July 2, 2007, E brought forth an objection to the Schools Adjudicator concerning JFS's admission policy, but his claims were dismissed.

There were two applications for judicial review which were presented to the court. The first challenges three decisions: refusing M a place at JFS ("the Refusal"), the dismissal of the appeal made by the Appeals Panel ("the Appeal Decision"), and that both the Governing Body of JFS and the Appeal Panel "failed…to discharge their duties under section 71 [of the Race Relations Act 1976]" (paragraph 73). The relief being sought was a declaration that JFS's admissions policy was unlawful because it discriminates directly or indirectly on racial grounds against children who are

not of ethnic Jewish descent through the maternal line as well as that the Governing Body of JFS discriminated against M by refusing him admission. The second application for judicial review was to challenge the decision made by the Schools Adjudicator by saying that it erred in law by reaching its decision.

- **DECISION:**

Justice Munby's decision on the above stated claims was to dismiss both applications for the following reasons. It was emphasised that membership to the Orthodox Jewish community is defined by a status acquired either through conversion or through the matrilineal line. A finding of direct discrimination would "make it unlawful for any school to give preference in its admission criteria to Jewish children for there are…no alternative admission arrangements, consistent with any Jewish definition of who is a Jew, that could lawfully be adopted by Jewish schools if JFS's admissions policy is directly discriminatory" (paragraph 103). "A finding of indirect discrimination would cause implications for a wide range of faiths that use 'membership' of a religion but not its practice in their admission criteria" (paragraph 104). The central point on which E's case stands or falls, according to Justice Munby, was M's ethnic origins since both claims of discrimination were based on M's ethnicity instead of his faith. It was rejected that there was racial discrimination because "The fact that someone is of a particular "descent" or has a particular "status" at birth does not mean that that is their 'ethnic origin'…there is discrimination 'on racial grounds' only if it based on someone's Jewish ethnic origins and not if it occurs on grounds of Jewish status or Jewish descent" (paragraph 162). JFS's admissions policy was based on religion—not racial/ethnic grounds—and so reflects a religious view on who is admitted based on who, in the eyes of the OCR and JFS, is a Jew (paragraph 168). Therefore, it was found by the court that there had been no direct race discrimination.

On the matter of indirect race discrimination, Justice Munby evaluated the claim in relation to other faith schools. Many faith schools give preference to students who are members or adherents to a certain religion which puts them at an advantage above others who are not. JFS therefore has a legitimate aim of which it seeks to fulfill by giving preference to Orthodox Jews. The proportionality of balancing this aim with the adverse effects created by its admission policy to people like M is justifiable since other faith schools have and continue to give preference to a certain group of the population (paragraph 190). The indirect race discrimination claim failed.

On the matter of whether section 71 of the Race Relations Act was engaged, Justice Munby agreed that JFS failed to comply in full with the requirements set out by the section. "Proper compliance with section 71 requires that appropriate consideration has been given to the need to achieve statutory goals whose achievement will almost inevitably, given the use of the words 'eliminate' and 'promote', involve the taking of *active* steps" (paragraph 213). JFS was not found to be taking such active steps and so section 71 had been breached. E was entitled to a declaration of this fact but not to any other relief (paragraph 214).

Both claims for judicial review failed and were dismissed, except for the claim against JFS breaching section 71 of the 1976 Act. E's counsel had made reference to Nazi Germany's Nuremberg Laws to support their case in defining how to classify a Jew. Justice Munby expressed his "distaste…at having to address arguments about 'laws' which are so universally recognized as having been so wicked and immoral that some would deny them recognition as law altogether" (paragraph 288).

Eweida v British Airways Plc

Neutral Citation Number: [2008] UKEAT 0123_08_2011 (20 November 2008)

SUMMARY

- **BACKGROUND:**

The Claimant in this case is Ms. Nadia Eweida, a Christian woman who worked part-time for British Airways plc ("BA") as a member of the check-in staff since 1999. The job requires her to wear a standardized uniform and their policy requires jewellery to be worn concealed by the uniform. Ms. Eweida was denied the ability to wear a 1-2" plain silver cross (not a crucifix) which would have been visible over her uniform (paragraph 1). BA's rules did not allow for this as the only circumstances that allowed religious items to be worn visibly were those that were "mandatory" scriptural requirements such as the hijab, the turban, and the skull cap. Ms. Eweida accepted that the cross was not an obligatory article of the Christian faith that was required of all Christians to be worn, but she saw it as a personal expression of her faith. On September 20, 2006, Ms. Eweida was sent home after she insisted on wearing the cross even though she had been warned not to. BA did offer the Claimant different type of work that would not require her to wear the uniform and wear the cross visibly, but these were unsuccessful. On February 3, 2007, after BA amended its policy to permit staff to wear authorised symbols including the cross and the Star of David in response to widespread public debate and publicity concerning Ms. Eweida's case, the Claimant returned to work. Ms. Eweida brought claims of direct and indirect discrimination that she claimed violated Equality (Religion or Belief) Regulations 2003 of religious belief as well as harassment and unlawful loss of wages since her absence, to the Employment Tribunal (ET). Her claims failed at the ET, and so this appeal is only on the claim of indirect discrimination which would then validate her claim of loss of wages. She claims that the ET erred in law by finding that the provision put persons of the Christian faith at a disadvantage when compared to other persons. Her counsel also claims that there were no others who shared the Claimant's strongly held desire to proclaim her religion.

- **DECISION:**

The Employment Appeal Tribunal (EAT) was headed by Justice Elias on this case in coming to the conclusion to dismiss her claims. The court found that the wearing of the cross was not a religious manifestation. "The fact that a person holds a strong belief that jewellery should be allowed to be worn openly obviously does not make that belief a religious one" (paragraph 47). Ms. Eweida's

counsel argued that the Claimant's views of wearing the cross were not unique to her—many Christians wear the cross openly as a sign of their faith (paragraph 46). From this premise, it was argued that Christians as a group were being adversely treated by not being allowed to wear the cross since some people who complied with the policy did so while objecting to it. Justice Elias found that there was no evidence of group disadvantage. "The claimant did not adduce any evidence that some who complied with the provision did so despite objecting to the provision on religious grounds, and in our judgment there was no proper basis for making an assumption that such persons would necessarily exist" (paragraph 62). Thus, it was decided that there had been no indirect discrimination. In line with the court's logic, since there was no indirect discrimination, then there was no unlawful loss of wages.

Ms. Eweida's appeal failed. The court found that there was no indirect discrimination because there was no evidence to show that a sufficient number of people other than the Claimant that worked for BA shared her religious view that wearing the cross visibly was necessary. The ET's decision was found to have no error of law and their decision was upheld.

Lillian Ladele v London Borough of Islington

Case Number: 2203694/2007 (8 July 2008)

SUMMARY

- **BACKGROUND:**

The Claimant in this case, Ms. Lillian Ladele worked for the Respondent, London Borough of Islington, since 1992 and on November 14, 2002 she became a Registrar of Births, Deaths and Marriages. Ms. Ladele was a Christian who held that according to her orthodox Christian view of marriage being between one man and one woman, she could not reconcile her faith with "taking an active part in enabling same sex unions to be formed" (paragraph 7). The Civil Partnership Act 2004 introduced civil partnership arrangements which were not part of the duties required by Registrars at Ms. Ladele's appointment in 2002. She spoke with the Respondent's Director of Corporate Resources during an informal meeting in 2003 where she indicated that she did not want to perform civil partnership duties (paragraph 11). Ms. Ladele was absent from work on long-term sick leave from May to November 2005 and it was during this period that the Respondent was planning to introduce the new provisions that would allow for same-sex partnerships. Training for civil partnership ceremonies was only given to certain staff and was then cascaded down to other staff. Ms. Ladele developed an informal arrangement with fellow Registrars to swap work when there was a civil partnership scheduled to her (paragraph 14). In early 2006, two other Registrars raised concerns regarding civil partnerships in according to religion. In a meeting on March 29, 2006 with the Superintendent Registrar, Ms. Mendez-Child, Ms. Ladele was told that avoiding to "carry out civil partnership duties could be in breach of the Council's 'Dignity for All policy'" (paragraph 19). Ms. Ladele countered by saying that she was being discriminated, bullied and harassed at work and that her religious beliefs were not being respected. The Respondent agreed to a temporary measure

of not asking Ms. Ladele to participate directly or officiate at civil partnership ceremonies, but that she would still be required to perform all other duties which relate to civil partnerships (paragraph 20). In the next months, the "atmosphere in the office had deteriorated" due to the continued disagreements among Ms. Ladele, the Respondents, and her colleagues of whom two were homosexual (paragraph 33). An investigatory hearing was held by the Respondent into these matters and it was agreed that a possible consequence of Ms. Ladele losing these proceedings was that she would lose her job (paragraph 40). The Claimant raised the following complaints against the Respondent: direct discrimination on the grounds of religion and belief; indirect discrimination on the grounds of religion or belief as violated by the Civil Partnership Act 2004; and a claim of harassment under the Employment Equality (Religion or Belief) Regulations 2003.

- **DECISION:**

Sitting on the Employment Tribunal (ET) was Ms. Lewzey, Mrs. May, and Mr. Storr. They came to the unanimous judgment in favour of the Claimant on all complaints. It was noted that, "this is a case where there is a direct conflict between the legislative protection afforded to religion or belief and the legislative protection afforded to sexual orientation" (paragraph 50). On the matter of direct discrimination on the grounds of religion and belief, it was found that the Respondent's threat of terminating Ms. Ladele's contract, based on her refusal to perform civil partnerships because of her orthodox Christian beliefs, was discriminatory (paragraph 76). The ET determined that Ms. Ladele had proven that she was treated less favourably and so her claim succeeded.

The claim that the provision from the Civil Partnership Act 2004 which required that all Registrars should carry out civil partnership ceremonies and registration duties, was seen to be indirectly discriminating on the grounds of religion or belief. The argument made by Ms. Ladele's counsel that supported this outcome was that "although the promotion of the rights of the lesbian, gay, bisexual and transsexual community was a legitimate aim, it was not proportionate because the acts were deliberately designed to appeal to one section of the community over the rights of another" (paragraph 81). The ET agreed upon this premise that making Ms. Ladele officiate civil partnerships was not a proportionate means of achieving a legitimate aim.

The final complaint of harassment under the Employment Equality (Religion or Belief) Regulations 2003 succeeded. Ms. Ladele claimed that Ms. Mendez-Child did not take her views seriously among other complaints including breach of confidentiality, subjecting her to a disciplinary hearing, and the claims of discrimination already discussed above. "These acts disregarded and displayed no respect for Ms. Ladele's dignity and created an intimidating, hostile, degrading, humiliating or offensive environment for her on the grounds of her religion or belief" (paragraph 104).

The ET unanimously accepted all claims submitted by the Claimant against the Respondent.

London Borough of Islington v. Ladele

Neutral Citation Number: [2008] UKEAT 0453_08_1912 (19 December 2008)

SUMMARY

- **BACKGROUND:**

This case is an appeal against the decision made by the Employment Tribunal (ET) in the case of Lillian Ladele v London Borough of Islington 2008 (refer to page 31) in which Ms. Lillian Ladele's claims of direct and indirect discrimination as well as harassment succeeded against her employer, the now Appellant. The issues in this case were raised following Ms. Ladele's refusal to partake in civil partnerships as she was a Registrar of Births, Deaths and Marriages. Ms. Ladele had been employed by the Claimant from 1992 and she became a Registrar in November 2002. Ms. Ladele was a Christian who held the orthodox Christian beliefs of marriage being only between a man and a woman. She did not want to be put to work on cases that would allow for civil partnerships between same-sex couples. The Civil Partnership Act of 2004 which came into effect in December 2005 led to Registrars at the London Borough of Islington to being trained and performing ordinances in such cases. Ms. Ladele first raised her objections to having to conduct civil partnerships because of her religious beliefs in the summer of 2004. The Superintendent Registrar, Ms. Mendez-Child, decided to assign the duties to conduct civil partnerships among existing staff giving cases to each Registrar in the same manner as marriage hearings had been assigned. Ms. Ladele and two of her Registrar colleagues objected to carrying out these duties. One accepted a different job position with the same rate of pay while the other left the job (paragraph 6). Ms. Ladele was given the option of only being responsible for one aspect of the civil partnership requirements that did not involve direct involvement, but she did not find this to be an acceptable compromise. This offer was proposed by Ms. Mendez-Child in a letter which also threatened Ms. Ladele with disciplinary hearings (paragraph 8). By establishing an informal agreement with her colleagues, Ms. Ladele was able to avoid having to conduct civil partnerships by adjusting her roster accordingly. Tensions in the office were rising, however, as two gay employees complained that it was an act of homophobia to allow Ms. Ladele to avoid conducting civil partnerships. Following a disciplinary hearing in which it was decided that Islington should not accommodate Ms. Ladele's wish and if she were to continue to avoid her duties, "the council would have seriously to consider its position" (paragraph 19).

- **DECISION:**

The Employment Appeal Tribunal (EAT) comprised of Justice Elias, Mrs. McArthur, and Ms. Switzer. The decision reached by the EAT was to overturn the decision made by the ET in favour of Islington which meant that the claims of discrimination on the grounds of religion or belief were no longer valid. On the matter of direct discrimination, the court found that Ms. Ladele's complaint had been based on a failure to accommodate her difference rather than a complaint of her being discriminated against due to her not wishing to perform civil partnerships. According to Justice Elias, "It cannot constitute direct discrimination to treat all employees in precisely the same way" (paragraph 53). Islington's refusal to allow Ms. Ladele to sit out of having to perform civil partnerships did not constitute direct discrimination.

On the issue of the allegations of harassment, the EAT allowed the appeal and found that there had been no unlawful harassment because of an error in the ET's reasoning. The ET used the logic that since Ms. Ladele was asserting a religious view and she then suffered unwanted conduct as a consequence, then that resulting conduct was because of the religious view (paragraph 93). The Appellant had not been concerned as to the reason Ms. Ladele was refusing to carry out civil partnerships; it was simply "that she was doing so which caused them to respond in the way they did" (paragraph 93). The EAT found no proper basis for the claim of harassment on the grounds of religious beliefs to be sustained.

On the matter of indirect discrimination, it was found that even though the requirement that all Registrars perform civil partnerships had the effect of putting people like Ms. Ladele at a disadvantage in comparison to those who did not share the same belief, it was a proportionate means of achieving a legitimate aim (paragraph 95). Furthermore, it was found that it would be wrong for employers to accommodate Ms. Ladele because "that would lend support to discrimination which the law forbids" (paragraph 104). As Justice Elias put it, "It would be bizarre if the council could be under a duty to provide the relevant service without discrimination and yet could not require its own employees to act likewise" (paragraph 105). The appeal against the claim of indirect religious discrimination thereby succeeded.

The appeal succeeded and it was found that Islington had not taken disciplinary action against Ms. Ladele because she held her religious beliefs against same-sex unions; they had done so because Ms. Ladele was refusing to fulfill her duty as a Registrar. The EAT thus concluded that the ET had erred in law in reaching its decisions.

Saini v All Saints Haque Centre & Ors

Neutral Citation Number: [2008] UKEAT 0227_08_2410 (24 October 2008)

SUMMARY

- **BACKGROUND:**

The Claimant in this case, Mr. G. Saini, worked at All Saints Haque Centre, an immigration advice centre in Wolverhampton, as a senior advice worker from August 11, 2003 until July 2006. He was of the Hindu faith as was his manager, Mr. Chandel. The second and third respondents in this case, Mr. Bungay and Mr. Paul, were of the Ravidassia faith. Mr. Saini and Mr. Chandel claimed that they were wrongfully dismissed by the Respondents because they are Hindu.

Mr. Bungay and Mr. Paul lost their jobs when funding for their posts ran out in June 2005; however, they remained on the Board of Directors. "Both the second and third Respondents resented the fact that they had lost their posts and that non Ravidassias had, as they saw it, been retained in post by the Hindu manager, Mr. Chandel" (paragraph 4). In late October 2005, the membership composition of the Board changed its makeup to being fully controlled by people of the Ravidassia faith. This Board included Mr. Bungay and Mr. Paul who felt that Mr. Chandel was looking after the Hindu

employees rather than those who were Ravidassis and so they blamed him for their loss of jobs. They wanted to remove him from his post and "the reason that they wanted to do so was that he was a Hindu" (paragraph 5). Following a report that was given by the Office of the Immigration Services Commissioner that was critical of Mr. Chandel's work supervision, the second and third Respondents were given support in their plan to remove Mr. Chandel from his post (paragraph 6). Mr. Bungay and Mr. Paul commenced disciplinary proceedings against Mr Chandel. They told Mr. Saini that they were only interested in removing Mr. Chandel of his post and that his position was safe. The Claimant said that he was harassed by Mr. Bungay and Mr. Paul and pressured to provide them with information that would implicate Mr. Chandel to help in justify their decision to dismiss him (paragraph 12). Mr Chandel was dismissed on July 7, 2006 and Mr Saini resigned in the following days on July 11. At the Employment Tribunal (ET), Mr. Saini's claims of unfair dismissal and wrongful dismissal in breach of Regulation 3(1)(a) of the Employment Equality (Religion or Belief) Regulations 2003 succeeded while his discriminatory harassment claim under Regulation 5(1)(b) failed. The claim of harassment failed in part because there was no evidence to show that Mr. Saini being a Hindu had led to the Respondents' conduct. It was found that a non-Hindu in a similar position would have been treated the same as Mr. Saini was treated. Since the Respondents' wanted evidence against Mr. Chandel to have him fired, they would have sought information from anyone who had it to meet their ends (paragraph 15).

This is an appeal made against the ET's dismissal of the claim of harassment on grounds of religion or belief made under Regulation 5 (1) b.

- **DECISION:**

Lady Smith provided the judgment on this case along with Mr. Jacques and Mrs. McArthur. Mr. Saini's appeal to the Employment Appeal Tribunal (EAT), as argued by his counsel, that the ET had only focused on whether the Respondents' conduct was made on the grounds of his own religion or belief and not of Mr. Chandel's religion or belief. If the ET had focused on the fact that Mr. Chandel being Hindu had led to Mr. Saini being the target of pressure to provide information that would implicate his manager, then the harassment claim would have succeeded. In essence, it was argued that Mr. Saini was being harassed by association. "Regulation 5(1)(b) will be breached not only where an employee is harassed on the grounds that he holds certain religious or other relevant beliefs but also where he is harassed because someone else holds certain religious or other beliefs" (paragraph 28).

The appeal on this case was therefore upheld and it was decided that the ET had erred in not finding that the Respondents had committed discriminatory harassment against the Claimant. The treatment of Mr. Chandel was clearly because he was a Hindu and as Mr. Saini was also of the Hindu faith, the pressure against them was "really quite profound" (paragraph 30). The Respondents' anti-Hindu policy was discriminatory and the Claimant was harassed on the grounds of religion, in contravention of Regulation 5.

Chondol v Liverpool City Council

Neutral Citation Number: [2009] UKEAT 0298_08_1102 (11 February 2009)

SUMMARY

- **BACKGROUND:**

The Appellant in this case was Naphtali Chondol, a social worker who was employed by the Respondent, Liverpool City Council as well as a being a member of a Community Mental Health team which was under the scope of Mersey Care NHS Trust. Mr. Chondol was a committed Christian. The allegations against him stemmed from incidents which included one that took place on May 8, 2006 where he had given a service user a Bible. The Appellant defended this action in saying that the service user had asked him "if he had a Bible and that since he had one on him he handed it over" (paragraph 10). This issue was raised at a supervision meeting on the same day with Mr. Chondol's manager Bronwen Evans. On May 18, 2006 at another meeting with Ms. Evans, Mr. Chondol was told that it was inappropriate to give his telephone number to service users and that it was wrong of him to visit a service user on a Saturday, which fell outside of normal working hours as this violated work policy (paragraph 4). Another incident took place in December 2006 during which Mr. Chondol had tried to promote his beliefs once again which led to the service user contacting the Respondent "to complain that he did not want to see the Appellant again because 'he was talking about God and church and crap like that'" (paragraph 9). He defended his actions here in saying that he had simply asked the person whether they believed in God or went to church (paragraph 10). In a third incident which occurred on January 1, 2007, the Appellant had been called by a Somali friend of his ("OM") who suffered from a mental illness. OM had asked Mr. Chondol to visit him for a few hours on New Year's Day and the Appellant did so: he signed into the hostel where OM was staying as a social worker with the community mental health team (paragraph 11). Mr. Chondol took OM to his own home and doing so on a holiday was against policy. Upon returning OM to the hostel, the Appellant was asked to record patient notes and in doing so it was noted that OM wished to accompany Mr. Chondol to church. This incident was evidenced as showing Mr. Chondol to have blurred the lines of distinction between friend and client. At all of the material times, Mr. Chondol was aware that it was prohibited by the Respondent to promote any religious beliefs that may be held by social workers while they were working.

In May 2007, Mr. Chondol was dismissed by the decision of Mrs. Jan Sloan, Development Manager of the Respondent. He was seen to be inappropriately promoting his religious beliefs as well as arranging for a service user to visit his home in a manner that blurred the client-friend distinction. Mr. Chondol brought claims forth for unfair dismissal and religious discrimination contrary to regulation 6 of the Employment Equality (Religion or Belief) Regulations 2003 to an Employment Tribunal (ET) where both of his claims were dismissed. This case is an appeal against that decision.

- **DECISION:**

The Employment Appeal Tribunal (EAT), which comprised Justice Underhill, Mr. Jenkins, and Mr. Mallender, found that the evidence presented to the court did not support or justify a finding of inappropriate promotion of religious beliefs. On the matter of religious discrimination, after assessing whether Mr. Chondol was being treated differently than a comparator of a different religion or philosophical belief would have been treated in the same circumstances, it was found that the Respondent would have treated others the same way (paragraph 23). On the claim of unfair dismissal, the EAT agreed with the decision made by the ET to dismiss the claim because Mr. Chondol's misconduct was reason for dismissal. "He showed no appreciation of the important boundaries between his position as a friend and his role as a social worker. This was amply illustrated by the events of 1 January, which in any event had to be seen against the background of the previous advice that he had received" (paragraph 31). It followed that the appeal was to be dismissed.

E, R (on the application of) v Governing Body of JFS & Ors

Neutral Citation Number: [2009] EWCA Civ 626 (25 June 2009)

SUMMARY:

- **BACKGROUND:**

This case was an appeal against the decision made by Justice Munby in *E v The Governing Body of JFS & Anor* [2008] EWHC 1535 (Admin) on July 3, 2008 to dismiss claims of racial discrimination (refer to page 27). M was the child of a Jewish born father, E, and of an Italian Jewish mother who converted to the faith by a Progressive synagogue. E wanted to enrol his son at JFS (formerly the Jews' Free School) in London but due to the school being oversubscribed, the school was entitled to select students by giving priority to Jewish children or children undergoing conversion to Judaism as recognized by the Office of the Chief Rabbi (the OCR) in line with its admissions policy. Since the OCR did not recognize conversions made by Progressive synagogues, M's mother was not seen to be Jewish. Since being a Jew is determined by descent through the matrilineal line or by conversion, M was denied admission to JFS. E's argument on behalf of his son had been that being a Jew was a question of ethnicity and to refuse M a place at the school because his mother was not Jewish constituted direct race discrimination. E also held a claim of indirect race discrimination since JFS's purpose was to make a "purely ethnic distinction" which is not a legitimate aim (paragraph 3). The Respondents, JFS, said that the school's admissions criteria were strictly religious and not racial and that as a faith school it is justified to give preference to Orthodox Jews.

The appeal sought to answer whether the school's oversubscription admission criteria, which allowed for priority to be given to Orthodox Jews, are unlawfully discriminatory. As mandated by Article 2 of the First Protocol of the European Convention on Human Rights (ECHR), faith schools are exempted from the prohibition of religious discrimination because "their purpose is to educate children in what are generally the religious beliefs of their parents, a right recognized by Article 2," (paragraph 10). If a faith school was undersubscribed, it could not sort through which children are

admitted based on religious criteria, but once the school was oversubscribed it was legally permitted to do so (paragraph 12). It was unlawful, however, to discriminate on racial grounds (colour, race, nationality or ethnic or national origins) in relation to admissions.

- **DECISION:**

The judgment set out by Lord Justice Sedley, Lady Justice Smith, and Lord Justice Rimer was to allow the appeal and grant E that M was being discriminated against on the grounds of his race. On the claim of direct racial discrimination, reference was made to *Mandla v Dowell-Lee* [1983] 2 AC 548 which concerned the refusal of a private school to admit a Sikh boy who could not comply to the uniform policy because of his religion. By following the reasoning used in that case, the judges said it was clear that "Jews constituted a racial group defined principally by ethnic origin and additionally by conversion, and to discriminate against a person on the ground that they were or were not Jewish was therefore to discriminate on racial grounds" (paragraph 32). It was therefore decided that by refusing to admit M he was being treated less favourably on racial grounds. It was found that JFS's admissions policy meant that children like M would not be able to gain admission to the school and this was not a proportionate means of achieving the school's aim to educate Orthodox Jews. "In our judgment an aim of which the purpose or inevitable effect is to make and enforce distinctions based on race or ethnicity cannot be legitimate" (paragraph 46).

The point that the Court of Appeal disagreed upon in relation to Justice Munby was that what he characterised as religious grounds were in their opinions racial grounds "notwithstanding their theological motivation" (paragraph 48). The appeals thereby succeeded.

E, R (on the application of) v Governing Body of JFS & Anor

Neutral Citation Number: [2009] UKSC 15(16 December 2009)

SUMMARY

- **BACKGROUND:**

This case was held in appeal to the decision made by the England and Wales Court of Appeal on June 25, 2009 concerning *E, R (on the application of) v Governing Body of JFS &* Ors [2009] EWCA Civ 626 (refer to page 37). This case involves a thirteen-year-old boy referred to as M who was the son of E, a Jewish born man, and whose mother was an Italian Roman Catholic turned Jewish by conversion through a Progressive synagogue. E complained on behalf of his son that his exclusion from admission to JFS (Jewish Free School), a Jewish state faith school, had been racially discriminatory. The school applied an Orthodox Jewish religious test which did not count him as Jewish because of his family history and since the school was oversubscribed by students, it had the discretion to give priority over who received entry. The Office of the (Orthodox) Chief Rabbi ("OCR") provided JFS with the provisions of how to determine who classifies as an Orthodox Jew based on conversion or matrilineal testing.

- **DECISION:**

This case was held at the United Kingdom Supreme Court and nine judges sat on the hearing. JFS's appeal failed by a majority decision of five to four and the decision made by the England and Wales Court of Appeals was upheld. Lord Phillips, Lady Hale, Lord Mance, Lord Clarke and Lord Kerr held that JFS had directly discriminated against M based on racial grounds. As Lord Clarke wrote, "I do not accept they were not considering M's ethnic origins or making a decision on ethnic grounds....As I see it, once it is accepted...that the reason M is not a member of the Jewish religion is that his forbears in the matrilineal line were not Orthodox Jews and that, in that sense his less favourable treatment is determined by his descent, it follows that he is discriminated against on ethnic grounds....The question is, in my opinion...whether it is discrimination on ethnic grounds to discriminate against all those who are not descended from Jewish women" (paragraph 148). The matrilineal test as used by the OCR and by JFS was a test of ethnic origin and racially discriminatory (paragraph 215). According to Lady Hale, "M was rejected because he was not considered to be Jewish according to the criteria adopted by the Office of the Chief Rabbi. We do not need to look into the mind of the Chief Rabbi to know why he acted as he did" (paragraph 65). M's lack of descent from a specific ethnic group was the reason he was not given admission.
In opposition to the majority, Lord Hope gave his judgment by saying the OCR distinguished religion from ethnicity. He recognized the right of the OCR to define Jewish identity as being through conversion or descent, as a matter of Jewish religious law: "to say [its] ground was a racial one is to confuse the effect of the treatment with the ground itself" (paragraph 201]. He found that certain Jews were being indirectly discriminated against but that JFS had a legitimate aim in doing so and so it was justifiable (paragraph 209).

Lord Walker agreed with Lord Hope in saying there had been indirect discrimination but not direct racial discrimination for the same reasons.

Lord Rodger and Lord Brown both gave their dissent to the majority's ruling and would have allowed the appeal in favour of JFS to succeed. According to Lord Rodger, "The majority's decision leads to such extraordinary results, and produces such manifest discrimination against Jewish schools in comparison with other faith schools, that one can't help feeling that something has gone wrong" (paragraph 226). The dissenting judges argued that M was not given admission by a choice based on his religion not being Orthodox Jewish—not on whether his mother had been Italian—if she had converted under the auspices of the Orthodox Jewish synagogue, then M would qualify for membership to the school (paragraph 228).

Majority ruled and the appeal was dismissed.

Ghai v Newcastle City Council

Neutral Citation Number: [2009] EWHC 978 (Admin) (08 May 2009)

SUMMARY

- **BACKGROUND:**

The Claimant in this case was Davender Kumar Ghai who was an orthodox Hindu who wished to have his body cremated on an open air pyre following his death. He also wanted this funeral rite to be available to other Hindus in the UK. The Defendant in this case was the Newcastle City Council ("the Council") which was the group Mr. Ghai approached in his attempt to allow for the open air pyre cremations. The request was sent at the end of January 2006 to Councillor Peter Arnold, the leader of the Council, from Mr. Ghai on behalf of the Anglo Asian Friendship Society. Mr. Ghai communicated that open air funeral pyres are an essential component for "the transmigration of peoples' souls, and that the absence of this in Britain led bereaved families to suffer remorse" (paragraph 2). He also indicated that the cremations would be carried out at no cost to those from low income families who could not afford the necessary trip to India for cremation there (paragraph 4). For this reason, he submitted, the need for dedicated grounds to allow for this accommodation would be the only way to safeguard this need for sincere religious observants. Mr. Ghai was seeking dedicated grounds to perform this traditional funeral pyre as well as for a declaration for the legality of the ritual. Mr. Arnold replied to this request by stating that funeral pyres were prohibited by law and so until the law was changed, the Council could not consider the request for land to be given (paragraph 3). The Council was not in a position to change the law. The Secretary of State for Justice who had the responsibility for cremation laws in Newcastle gave reasons that justified the ban on open air cremations. These were concerned with public safety, the protection of public health from the released chemicals, and for the protection of public morals and the rights and freedoms of others who might have reactions to the practice of burning human remains being conducted outdoors (paragraph 12).

This claim was in challenge of the Council's decision to refuse Mr. Ghai's request of granting the Anglo Asian Friendship Society a section of land for the purpose of holding open air funeral pyres in Newcastle. The court was also asked to determine the legality of open air cremation whether the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008, SI 2008 No 2841 allowed for open air cremation.

DECISION:

Justice Cranston presided on this case and he found that the Cremation Act 1902 and the 2008 Regulations clearly did not permit open air cremation. His logic for this aspect of the decision was clearly summed up: "a cremation is the burning of human remains: regulation 2(1)); all cremations must take place in a crematorium: regulation 13; a crematorium is a building: (1902 Act, section 2); and the burning of human remains other than in accordance with the provisions of the 2008

Regulations is a criminal offence (1902 Act, section 8). Thus the burning of human remains, other than in a building, such as on open air pyre, is an offence" (paragraph 83).

Justice Cranston also decided on whether Article 9 of the European Convention on Human Rights, which protects the manifestation of beliefs, was being violated. He decided that open air pyres were "simply a matter of tradition for Sikhs in India, Sikhs and Hindus sharing cremation grounds" (paragraph 102). It was decided that although Article 9 was engaged, any interference with this right would have been justified because a legitimate aim was being sought, namely those outlined by the Secretary of State for Justice (paragraph 104). Article 14 of the ECHR which protects against discrimination was also not engaged because the interference of not allowing for open air cremations was proportionate and justified (paragraph 151).

Justice Cranston concluded that the burning of human remains other than in a crematorium constituted a criminal offence and so it was not legal under the Cremation Act of 1902 and the 2008 Regulations to allow Mr. Ghai to receive land and permission to build an open air pyre. Any limitations on religious rights were justified because a legitimate aim was being sought. The claim thereby failed.

Grainger Plc & Ors v. Nicholson

Neutral Citation Number: [2009] UKEAT 0219_09_0311 (3 November 2009)

SUMMARY

- **BACKGROUND:**

This case concerned Mr. Nicholson, a believer in Man Made Global Warming, who was employed by the Appellants in this case, Grainger Plc, until July 28, 2008. Mr. Nicholson's employment by Grainger was terminated due to redundancy; however, conflicting arguments from both sides existed concerning why. Grainger stated that the reason Mr. Nicholson was let go was based on the grounds of redundancy, but "the Respondent claims that his dismissal was unfair and that he was discriminated against…because of his asserted philosophical belief about climate change and the environment" (paragraph 2). He argued that the Employment Equality (Religion or Belief) Regulations 2003 protected him from being discriminated against for holding religious or philosophical beliefs. He also supported this by arguing that the 2003 Regulations were to be interpreted in accordance with the European Convention on Human Rights (ECHR) Article 9 and Protocol 1, Article 2. Mr. Nicholson's belief in Man Made Global Warming and its effects on climate change were strongly held beliefs that affected his way of life. "For example, I no longer travel by airplane, I have eco-renovated my home, I try to buy local produce, I have reduced my consumption of meat, I compost my food waste, I encourage others to reduce their carbon emissions and I fear very much for the future of the human race, given the failure to reduce carbon emissions on a global scale" (paragraph 3).

This court was asked to assess whether the belief held by Mr. Nicholson concerning climate change constituted a philosophical belief for the purposes of the 2003 Regulations which would allow him to pursue his claims of discrimination in a later case.

- **DECISION:**

Justice Burton sat alone on this case and his decision was only on the preliminary issue of whether holding strong beliefs about climate change could be classified as philosophical beliefs. Mr. Nicholson succeeded in his claim that his beliefs qualified for protection as a "philosophical belief" for the purpose of the 2003 Regulations. "In my judgment, if a person can establish that he holds a philosophical belief which is based on science, as opposed, for example, to religion, then there is no reason to disqualify it from protection by the Regulations" (paragraph 30). Grainger had made a counter argument to this in saying that if belief in climate change constituted a philosophical belief, then not holding a belief in climate change was a philosophical belief in itself as well and was to be protected. Justice Burton did not agree with this by saying, "The existence of a positive philosophical belief does not depend upon the existence of a negative philosophical belief to the contrary" (paragraph 31).

Ladele v London Borough of Islington

Neutral Citation Number: [2009] EWCA Civ 1357 (15 December 2009)

SUMMARY

- **BACKGROUND:**

For a more complete summary, refer to pages 31 & 32.

This case was an appeal made by Ms. Lillian Ladele against the decision given by the Employment Appeal Tribunal (EAT) on December 19, 2008 which had overturned decisions made at an Employment Tribunal (ET) on claims of discrimination and harassment under the Employment Equality (Religion or Belief) Regulations 2003 regulations 3 or 5. The question this court was seeking to answer was whether the London Borough of Islington was right to insist Ms. Ladele conduct civil partnerships as a Registrar. She objected to the Civil Partnership Act 2004 and she said this was to do with her religious beliefs. As a Catholic who held orthodox Christian beliefs about marriage being only between one man and one woman, Ms. Ladele refused to perform civil partnerships which allow for unions between same-sex couples. Ms. Ladele sought to reinstate the decision of the ET; however, Islington wanted the EAT's decision to be upheld as well as arguing that they could not have acted any different in dealing with Ms. Ladele in light of the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263.

- **DECISION:**

The decision made in this case was to uphold the decision of the EAT of finding that there had not been direct or indirect discrimination and no harassment made against Ms. Ladele based on her

religious beliefs. In his judgment, the Master of the Rolls found that there had been no reason to remit the case because the ET had in fact erred in its findings. On the matter of direct discrimination and harassment, he decided that the "ET failed to ask itself the right questions, in particular whether the grounds for the alleged harassment fell within regulation 5" (paragraph 41). Ms. Ladele's actions of refusing to perform the civil partnerships were the cause of disciplinary action and not her actual religious beliefs.

In deciding upon whether the claim of indirect discrimination could be reinstated, the court found the same conclusion as the EAT: the requirement for all Registrars to perform civil partnerships did put people like Ms. Ladele at a disadvantage but this was proportionate and was done in pursuit of a legitimate end (paragraph 43). "The fact that Ms. Ladele's refusal to perform civil partnerships was based on her religious view of marriage could not justify the conclusion that Islington should not be allowed to implement its aim to the full, namely that all registrars should perform civil partnerships… Ms. Ladele's refusal to perform that task involved discriminating against gay people in the course of that job… Ms. Ladele's objection was based on her view of marriage, which was not a core part of her religion; and Islington's requirement in no way prevented her from worshipping as she wished" (paragraph 52). The EAT's decision was thereby upheld.

The Master of the Rolls highlighted that even though some sympathy is to be given to people like Ms. Ladele who hold those beliefs, living in a modern liberal democracy means that outlawing discrimination based on sexual orientation is of importance and is subject to very narrow exceptions (paragraph 73).

Lord Justice Dyson and Lady Justice Smith both agreed with the Master of the Rolls and so the appeal was dismissed.

Watkins-Singh, R (on the application of) v Aberdare Girls' High School & Anor

Neutral Citation Number: [2008] EWHC 1865 (Admin) (29 July 2008)

SUMMARY

- **BACKGROUND:**

This case was raised to decide whether a school was entitled to refuse to allow a Sikh girl from wearing the Kara bracelet: a plain steel bangle (width 50mm) which has great significance for Sikhs. The Kara could not be seen when the Claimant, Sarika Angel Watkins-Singh, wore a long sleeved sweater. Ms. Singh was a 14-year-old girl of Punjabi-Welsh heritage and also a practicing Sikh. She had attended the non-denominational Aberdare Girls' High School ("the School") in Wales since September 2005. In April 2007, a teacher at the school observed Ms. Singh wearing the bangle and asked her to remove it since it violated the school's uniform policy which "permitted only one pair of plain ear studs and a wrist watch" (paragraph 10). The Claimant refused to remove the Kara because the wearing of it was central to her ethnic identity and religious observance as a Sikh and

she sought an exemption from the policy for those reasons. In a letter to Ms. Singh's mother, the Head Teacher Miss Rosser wrote that "I have no problem with [the claimant] wearing her bracelet if governors agree" (paragraph 11). The School could not allow Ms. Singh to wear the Kara before approval had been given by the Governing Body of Aberdare Girls' High School ("the Defendant") because it would have counted as discrimination to those students who were not permitted to wear crosses. In a July 12, 2007 letter from Miss Rosser, the Claimant was told that she could wear the Kara to school only if she agreed to the condition of being taught in complete isolation from her peers to the point of being accompanied to the bathroom. On July 20, 2007 the Defendant refused Ms. Singh's request for an exemption and she was told she could not wear the Kara to school unless she agreed to isolation. The Defendant did not believe that the wearing of the Kara was a requirement of the Sikh religion and stated that it was possible that Ms. Singh carry the bracelet in her bag instead and forego having to be taught in isolation all together. The Defendant felt the possibility of bullying would arise from Sarika being singled out by being exempted to wear the bracelet, and they also had cited health and safety issues (paragraph 15). Ms. Singh proposed a compromise of wearing a sweat band over the Kara during gym classes if safety was a concern, but this was refused. Upon returning to school in September, the Claimant was placed in seclusion once again. The Claimant's parents appealed the Defendant's decision but their claim was refused by the Defendant's Appeals Committee on October 26, 2007. Following the mid-term break, the Claimant was subject to a series of "fixed-term exclusions" from the School. Miss Rosser wrote in a letter on November 15, 2007 that Miss Singh would not be permitted to attend school if she wore the Kara but that "this was not an exclusion because the claimant could attend school if she was dressed compatibly with the school's uniform policy" (paragraph 19).

On February 21, 2008 Ms. Singh began attendance at Mountain Ash School which did permit her to wear the Kara. In this case, she argued her education had been disrupted and that she wished to return to the School only if she could wear the bracelet. She challenged the decision made by the Defendant which prevented her from wearing a Kara to the School. Ms. Singh claimed that by not allowing her to wear the bracelet, she was being indirectly discriminated against based on race and religion. She also claimed that the Defendant's uniform policy was not in compliance with section 71 of the Race Relations Act 1976 "which "had 'due regard' to the need (i) to eliminate unlawful racial discrimination; and (ii) promote equality of opportunity and good relations between persons of different racial groups" (paragraph 31.b). She claimed her Article 8 rights were breached, as stipulated in the European Convention on Human Rights (ECHR): "Everyone has the right to respect for his private and family life, his home and his correspondence" with "private life" in this context including "the right to establish and develop relationships with others" (paragraph 124). This was allegedly breached when she was segregated for months and taught alone.

- **DECISION:**

Justice Silber began his consideration of the claims raised with the issue of indirect discrimination. In following the judgment of *Mandla v Dowell Lee [1983]* it was determined that by being a Sikh, Ms. Singh was part of a "race", in line with the Race Relations Act, as well as also being a part of

the religion of Sikhism. It was therefore necessary to determine whether the school's uniform policy that allowed only one pair of plain stud earrings to be worn was indirectly racially discriminating against students of the Sikh race. The group that was used as a comparator to Sikhs was a group of students whose religious or racial beliefs were not affected by the uniform policy. This made clear that the Claimant suffered "a particular disadvantage" or "detriment" by not being able to wear the Kara, which would not have been felt by the comparator group (paragraph 66). What was discriminatory in this case was "not the uniform policy itself but the decision of the defendant not to grant an exemption in respect of the Kara" (paragraph 72). In reference to *Begum 2006, X v Y School 2007, Playfoot 2007* (refer to pages 14 and 21 respectively), Justice Silber stated that the arguments used in those cases did not apply to the current case because the niqab and jilbab were much more visible to the observer than the "very small and very unostentatious Kara" (paragraph 77). The claim on indirect discrimination thereby succeeded.

On the matter of the Defendant's uniform policy not being in compliance with section 71 of the 1976 Act, Justice Silber found that there was a failure to comply with section 71. This was supported by the evidence of the School arguing that the wearing of the Kara would lead to bullying. It was made clear that there should have been a "clear obligation to avoid bullying by explaining to all pupils why it was so important to the claimant to wear the Kara and why they should be tolerant of her" (paragraph 116). If that had been followed, the School would not have had that fear.

On the matter of whether Article 8 of the ECHR was engaged, Justice Silber rejected her claim because he felt that the unhappiness felt by the Claimant did not sufficiently infringe her Article 8 rights (paragraph 137).

Ms. Singh's claims on indirect discrimination succeeded as well as her claims of unlawful exclusion and of the School being in breach of section 71 of the 1976 Act. Justice Silber concluded that "the fear of the school that permitting the claimant to return to school wearing her Kara will lead to an end of its uniform policy with many other girls wearing items to show their nationality, political or religious beliefs is totally unjustified" (paragraph 162).

Eweida v British Airways Plc

Neutral Citation Number: [2010] EWCA Civ 80 (12 February 2010)

SUMMARY

- **BACKGROUND:**

This is a case that was taken to the Court of Appeal in response to the dismissal of Ms. Nadia Eweida's claims of indirect discrimination by the Employment Appeal Court (EAT). The court is being asked to assess the question of whether the British Airways plc ("BA") uniform dress code, which does not allow for the wearing of visible jewellery, which prevented Ms. Eweida from wearing a silver cross was indirect discrimination against Reg. 3 of the Employment Equality

(Religion or Belief) Regulations 2003. Ms. Eweida is a devout practising Christian who worked for BA since 1999 and in 2004 when a new uniform was introduced that meant a lower neckline Ms. Eweida's cross become visible. On September 20, 2006 when she refused to hide the cross from sight, she was sent home and did not return until February 2007. Her return to work came after a large amount of negative publicity fell upon BA which led them to amend their policy to allow for approved crosses and Stars of David to be worn. In the 2008 case of *Eweida v British Airways Plc* (refer to page 30), Justice Elias of the EAT dismissed her claim of indirect discrimination because it was not found that a number of other Christian employees were being adversely treated.

DECISION:

The judgment on this case was decided in part by Lord Justice Sedley who reassessed the claims of indirect religious discrimination as per regulation 3 of the above stated law. Ms. Eweida's counsel brought forth an argument that the EAT had erred in law in interpreting Reg. 3 (1) (b):

> **3. Discrimination on grounds of religion or belief**
>
> (1) For the purposes of these Regulations, a person ("A") discriminates against another person ("B") if –
>
> (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same religion or belief as B, but -
>
> (i) which puts or would put persons of the same religion or belief as B at a particular disadvantage when compared with other persons,
>
> (ii) which puts B at that disadvantage, and
>
> (iii) which A cannot show to be a proportionate means of achieving a legitimate aim.

Ms. Eweida's counsel argued that 'persons' includes a single individual (Ms. Eweida) and so even if only she was disadvantaged by the uniform policy, "the test of indirect discrimination is met" (paragraph 10). This argument failed because it would mean that no evidence of a group being disadvantaged would ever be necessary, contrary to legal precedent (paragraphs 12, 13).

Lord Justice Sedley could not see how a rule that had received no objections from its approximately 30,000 employees could suddenly "become disproportionate once the claimant had raised the issue, even on the assumption that it was a rule that disadvantaged Christians as a group within the workforce" (paragraph 37). This along with the fact that Ms. Eweida agreed that the wearing of the cross visibly was not a religious belief but a "personal preference" added to the decision. He further stated that had the case of indirect discrimination succeeded, BA would have had justification to enforce its mandate of uniformity (paragraph 39).

Her appeal was dismissed and Lord Justice Carnwath and Lady Justice Smith agreed with the judgment. Ms. Eweida has further appealed this decision and it is to be taken to the European Court of Human Rights in September 2012.

Ghai, R (on the application of) v Newcastle City Council & Ors

Neutral Citation Number: [2010] EWCA Civ 59 (10 February 2010)

SUMMARY

- **BACKGROUND:**

This case is an appeal made by Davender Ghai against a decision reached by Justice Cranston on May 8, 2009 in *Ghai v Newcastle City Council [2009] EWHC 978 (Admin)*(refer to page 40) . Mr. Ghai is an orthodox Hindu who wishes his body be cremated on an open air funeral pyre, in accordance with his religious beliefs. He asked Newcastle City Council ("the Council") for a provision of land to be dedicated to this end. The Council replied to his request saying that it was not possible to do so because of the Cremation Act, 1902 which provides the restrictions on cremations. Mr. Ghai had sought judicial review of this decision by the Council and argued that his wish for an open air cremation was a manifestation of religion as stipulated in Article 9 of the European Convention on Human Rights (ECHR). Justice Cranston found that the law did not allow for the type of cremation Mr. Ghai was seeking and that his rights were not being violated by this law.

The approach taken in this case was to first tackle the issue of whether the type of crematorium Mr. Ghai wanted to build actually infringed upon the law. The court's belief was that if this issue was properly addressed first, then there would not be a need to consider any further arguments concerning Article 9 (paragraph 5). A particular form of crematorium with an either fully or partially open roof was suggested and it was up to the Court of Appeal to decide whether this would fall within the definition of crematorium as stated in the Cremation Act, 1902. The Act defines crematorium as "any building fitted with appliances for the burning of human remains"; 'building' was left undefined (paragraph 7).

- **DECISION:**

The Master of the Rolls, Lord Justice Moore-Bick, and Lord Justice Etherton were the judges that sat on this hearing. In following the above-stated approach, it was decided that a building without a roof would be considered a building and so this would allow Mr. Ghai to construct an open air pyre which was still in line with the 1902 Act. In the previous hearing, the detail of what building was required for the cremations had not been as fully addressed as it had been during this case. "Mr Ghai's religious belief would be satisfied if the cremation process took place within a structure, provided that the cremation was by traditional fire, rather than by using electricity, and sunlight could shine directly on his body while it was being cremated" (paragraph 3). Deliberation on what a 'building' was as stated in the Act led to the Master of the Rolls concluding that "there is no reason not to give the word 'building' its natural and relatively wide meaning" (paragraph 35).

In reaching the conclusion that the 1902 Act should be interpreted generously in its reference to buildings, it was unnecessary for the court to consider any of the other issues Justice Cranston had

ruled upon regarding Mr. Ghai's Article 9 rights. The appeal succeeded with the unanimous agreement of the court.

Johns & Anor, R (on the application of) v Derby City Council & Anor

Neutral Citation Number: [2011] EWHC 375 (Admin) (28 February 2011)

SUMMARY

- **BACKGROUND:**

This case concerns the approach that was used by Derby City Council (the "Defendant") to consider Mrs. Eunice and Mr. Owen Johns' (the "Claimants") application to be approved as "short-term, respite, foster carers" based on the Johns' view about homosexuality (paragraph 2). The Claimants were members of the Pentecostal Church who shared the belief that sexual relations were reserved for marriage and that any sexual relations outside of marriage as well as between same-sex couples, was morally wrong. They had been previously approved to be foster carers by the Defendant during the period of August 1992 and January 1995. In January 2007, Mr. and Mrs. Johns applied to Derby City Council to become short-term foster carers. The Claimants were assessed by Jenny Shaw, an independent social worker, who compiled a report on August 27, 2007 detailing the discussions she had with the Claimants on July 23 and August 7, 2007. According to one such discussion, Ms. Shaw wrote that "both Eunice and Owen expressed strong views on homosexuality, stating that it is 'against God's laws and morals'. They explained that these views stemmed from their religious convictions and beliefs…when asked if, given their views, they would be able to support a young person who, for example was confused about their sexuality, the answer was in the negative" (paragraph 6). It was also reported that when asked whether the Claimants would be able to take a child to a mosque, the couple did not assent. Ms. Shaw reported that she expressed concerns on the Johns' view on homosexuality; Mrs. Johns asserted that she would not compromise her religious beliefs but that she and her husband would support any young person. Furthermore, it was recorded that if put in the situation to support a child who was confused about their sexuality or thought they might be homosexual, Mr. Owen had stated that he would "gently turn them round" (paragraph 7). Ms. Shaw suggested to the Claimants that it might be difficult to be approved by the Fostering Panel of the Defendant and advised that they withdraw their application (paragraph 9). Ms. Shaw and the Service Manager of the Fostering Panel, Ms. Penrose, visited the Claimants on September 13, 2007. During this meeting, it was communicated that there were doubts of the couple's ability to not impose their "very strong beliefs" upon a young person who may be confused about their sexual identity. Mrs. Johns stated that Ms. Shaw and Ms. Penrose "were really saying that they could not be foster-carers because they are Christians" (paragraph 10).

The Fostering Panel met on November 13, 2007 to consider the issues brought forth by Mrs. Johns in relation to her and her husband's application to be foster carers. Mrs. Johns was recorded as saying "there has got to be a way where I don't have to compromise and say that it is ok to be homosexual" (paragraph 11). On December 5, 2007 the Claimants' application was closed by the

Defendant after it was thought to have been understood that the Claimants had been withdrawing their application following the meeting with the Fostering Panel. On February 5, 2008 the Claimants made clear that they had not been withdrawing their application and that they still wished to purse their application (paragraph 12). On March 3, 2008 the Claimants' application was reinstated; however, the Claimants believed that they were being discriminated against on religious grounds as well as noting that the Derby City Council's approach to processing applications would not allow for any application made by "any believing Christian" to succeed (paragraph 14). Another Fostering Panel hearing was held on March 10, 2009 and the decision of this meeting was deferred to be taken under judicial review by the court in this case (paragraph 17).

- **DECISION:**

This case was peculiar for multiple reasons: the Panel had not actually made a decision at its hearing and no evidence, outside those that have been referred to, was presented to the court. The High Court was therefore asked to make a hypothetical decision as to the lawfulness of the Defendant to refuse to allow the Claimants to be foster carers based on their view on homosexuality.

The question posed to the court was:

> How is the Local Authority as a Fostering Agency required to balance the obligations owed under the Equality Act 2006 (not to directly or indirectly discriminate on the grounds of religion or belief), the obligations under the Equality Act (Sexual Orientation) Regulations 2007 (not to discriminate directly or indirectly based on sexual orientation), the Human Rights Act 1998, the National Minimum Standards for Fostering Services and Derby City Council's Fostering Policy when deciding whether to approve prospective foster carers as carers for its looked-after children. Within that balancing exercise does the Local Authority have a duty to treat the welfare of such looked-after children as its paramount consideration? (paragraph 26)

Lord Justice Munby and Justice Beatson heard this case and decided not to make an order concerning what should be done by the Defendant. The reasons of the court to not issue a decision were that the parties had not been able to agree on a focused question; the questions that were submitted could not be answered simply and the court did not have the expertise to provide guidance; and the court was not given evidence (paragraph 107). Had the Fostering Panel made a decision, the lawfulness of that decision could have been evaluated, but since that was not the case, the court could not provide an answer as to whether the Defendants were right in their approach to considering the Johns for becoming foster carers.

Bull & Bull v Hall & Preddy

Neutral Citation Number: [2012] EWCA Civ 83 (10 February 2012)

SUMMARY

- **BACKGROUND:**

The Appellants in this case, Peter and Hazel Mary Bull, owned the Chymorvah Private Hotel where they let out single-bedded and twin-bedded rooms which could be rented by anyone. The double-bedded rooms could only be rented by a married couple which was a provision that was made clear on their website (paragraph 6). This was driven by the Appellants' religious belief that monogamous heterosexual marriage was the only morally acceptable form of partnership for sexual relations and that any sexual relations, both heterosexual or homosexual, that took place before marriage were sinful (paragraph 3). On September 4, 2008 the Respondent, Steven Preddy telephoned the hotel to book a double room and had not seen the online provisions regarding this type of room. Upon arriving at the hotel on September 5, 2008 with his partner Martin Hall, Mr. Preddy was informed of the double-bed rule by Mr. Quinn, on behalf of the Appellants, and was reimbursed his £30 deposit (paragraph 6). The Respondents had gone through a civil partnership ceremony and as such believed that they should be treated the same as any other married couple, but instead felt that they were being discriminated against on the basis of their sexual orientation.

The Appellants were appealing against a decision made by Justice Rutherford on January 18, 2011 during which it was decided that they had directly discriminated against the Respondents by refusing to honour their September 4 booking of the double-bedded room. Damages for injury to feelings had been set at £1,800 for each of the Respondents (paragraph 1). The Appellants claimed that the double-bedded room rule was a manifestation of their religious beliefs which was to be protected by the European Convention on Human Rights (ECHR). They argued that the policy had affected many more unmarried heterosexual couples than homosexual ones (paragraph 2). Since the policy was directed to both heterosexual and homosexual people, the Appellants claimed that they cannot be accused of direct discrimination. Section 81 of the Equality Act 2006, Regulation 3 defined the provisions about discrimination or harassment on grounds of sexual orientation. The Appellants argued that these Regulations were to be understood with consistency in reference to Articles 8, 9, 14, and 17 of the ECHR. These protected the right to respect for private and family life; the freedom of thought, conscience, and religion; the prohibition of discrimination; and the prohibition of abuse of rights (paragraph 10).

DECISION:

The Court of Appeal was comprised of Chancellor of the High Court, Lord Justice Hooper, and Lady Justice Rafferty. They came to the unanimous decision to dismiss the appeal. Lady Justice Rafferty found that the Appellants' argument concerning the ECHR protecting their policy was not justifiable and that they were directly discriminating against Mr. Hall and Mr. Preddy. "To the extent to which under the Regulations the restriction imposed by the Appellants upon the Respondents constitutes direct discrimination, and to the extent to which the Regulations limit the manifestation of the

Appellants' religious beliefs, the limitations are necessary in a democratic society for the protection of the rights and freedoms of others" (paragraph 51). Lady Justice Rafferty dismissed the appeal and upheld the decision of Justice Rutherford. Lord Justice Hooper agreed with her judgment. The Chancellor agreed with Lady Justice Rafferty as well and he went on to write that, "they are not obliged to provide double bedded rooms at all, but if they do, then they must be prepared to let them to homosexual couples, at least if they are in a civil partnership, as well as to heterosexual married couples" (paragraph 66). The Bulls' hotel was open to all of the public and restricting access to a room based on sexual orientation did constitute direct discrimination.

National Secular Society & Anor, R (on the application of) v Bideford Town Council

Neutral Citation Number: [2012] EWHC 175 (Admin) (10 February 2012)

SUMMARY

- **BACKGROUND:**

This case dealt with the issue of whether Christian prayers could be said at the beginning of meetings held in Bideford Town Council. The Town Council was comprised of 16 members and full meetings were held monthly and in public (paragraph 1, 4). The Claimants in this case included the National Secular Society and Mr. Clive Bone. The former was a group that campaigned for the separation of religion from public and civil life and the latter a former Bideford Town councillor who raised complaints to stop the prayers on two occasions, both of which were rejected by majority rule (paragraph 2). "Mr. Bone is not a Christian, and does not wish to participate in or even to be thought to be associated with acts of religious observance" (paragraph 11). No complaint had been made prior to Mr. Bone being elected in 2007, who made his first claim in January 2008 nine months after being elected. He complained that the practice was a tradition that was "no longer appropriate, which could deter some from seeking office, contrary to equality policies" (paragraph 8). This motion was defeated and another complaint filed in September 2008 asking for the prayer to be replaced with a "short period of silence" was also defeated (paragraph 8). The Council in response to these allegations said that attending the prayers was not a mandatory part of the meeting; councillors could choose to stay and not participate or leave and return without being marked as absent (paragraph 4). The prayer in question lasted approximately 2-3 minutes and was offered by a Christian Minister from one of the 8 local churches. Mr. Bone had felt that he was to either participate in the prayers or to leave the chambers right after the Mayor had entered, which he found to be "embarrassing and inconvenient…especially so because the press and public attend most meetings" (paragraph 12).

The Claimants argued that the practice of holding prayer before the start of meetings was a breach of the Equality Act 2006's prohibition on religious discrimination as well as being in breach of the Equality Act 2010: claims of indirect discrimination against people like Mr. Bone. They also raised a challenge of the practice being in breach of Mr. Bone's Article 9 rights not to hold religious beliefs, as stipulated in the European Convention on Human Rights (ECHR), as well as to not be

discriminated against for his lack of religious beliefs as guaranteed under Article 14. Furthermore, it was argued that prayers were "outside the powers of s111 Local Government Act 1972" (paragraph 3).

- **DECISION:**

Justice Ouseley presided over the court in this case and came to the conclusion that Bideford Town Council's practice of holding prayers as part of formal meetings was not lawful under s111 of the Local Government Act 1972 which provides the details councils are supposed to follow. Justice Ouseley wrote that Bideford Council had made the prayers a part of the formal business of the Council but had then made attending the prayers optional. "If the Council does not regard it as business for which attendance is summoned, then it should not be on the agenda. If it regards it as business to which the summons applies, it cannot make attendance for it optional on the grounds that participation could be objectionable to some Councillors" (paragraph 25). He found that the practice of the prayer at the meetings was something that was beyond the power of the Council to provide (paragraph 28). On the matter of the claims concerning Equality Act's 2006 and 2010, Justice Ouseley determined that there was an insufficient amount of hostility from the reading of the prayers to amount to a disadvantage (paragraph 67). On the matter of Articles 9 and 14 of the ECHR, the court decided that the prayers were not infringing upon Mr. Bone's human rights nor was he a victim of indirect discrimination (paragraph 80).