

Islam & Issues in the Workplace: Comparative Discussion of Turkish and Western European Norms

(including issues of employment discrimination/limits on right -to-work; religious accommodation; wearing of head and face scarves; prayer; sex discrimination)

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INTRODUCTION

The aim of this paper is to provide an overview of the law in Europe and more specifically in the United Kingdom, relating to religious freedoms, dress and the employment of women. The European Union, disseminated through its Directives, emphasizes the importance of tolerance of all religions and prohibits discrimination on the grounds of a person's religion and belief.

However, in practice, it can be difficult to balance opposing religions' beliefs in the workplace and Members States' courts have had to interpret Directives accordingly to accommodate tensions which have arisen. Case law provides helpful guidance as to how to achieve this without compromising one person's rights and practical steps, which employers should consider.

TURKEY AND EU LAW

Turkey is not yet a member of the European Union and so is currently under no obligation to accommodate the European discrimination legislation. If it becomes a member, it will need to implement certain mandatory directives relating to religion and belief, race and sex discrimination into its domestic laws. Given Turkey's commitment to being a secular state, this may present some challenges and conflicts with existing national legislation.

European Directives do not automatically become part the domestic law of each Member state of the European Community. Instead, the directives require each Member State to implement the directives by way of appropriate and compatible legislation. This allows a certain amount of freedom but there are still certain standards to which Member States need to adhere.

OVERVIEW OF EUROPEAN LAW ON RELIGION AND BELIEF, RACE AND SEX DISCRIMINATION

The key pieces of legislation governing discrimination protections under European law are as follows:

- **Article 141**

The main article of the Treaty of Amsterdam, which is relevant to discrimination law, is Article 141, which states the following principle:

“Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied”

- **Equal Pay Directive (EC Directive 75/117/EEC)**

Article 141 is expanded by the Equal Pay Directive which states that the principle of equal pay means that for the same or similar work or for work to which equal value is attributed, there should be the elimination of all discrimination on the grounds of sex with regards to all aspects and conditions of remuneration

- **Equal Treatment Directive (76/207/EEC)**

This Directive implements the principle of equal treatment for men and women as regards access to employment, vocational training, promotion and working conditions. It requires that there be no discrimination whatsoever on the grounds of sex either directly or indirectly or by reference to marital or family status.

Material amendments to the 1976 Directive (such as amending the definition of indirect discrimination and inserting a separate definition of harassment) were brought in by a Directive passed in 2002 [2002/73/EC].

The Directive (as amended) outlaws direct discrimination, indirect discrimination, harassment and victimisation.

- **Race Directive (2000/43/EC)**

This Directive implements the principle of equal treatment between persons irrespective of racial and ethnic origin in relation to access to employment, vocational training, employment and working conditions and pay.

Using similar language to that of the Equal Treatment Directive, it outlaws direct discrimination, indirect discrimination, harassment and victimisation on the grounds of race and ethnic origin.

- **General Framework Directive for equal treatment in employment and occupation (2000/78/EC)**

This Directive aimed to combat discrimination on the grounds of religion or belief, disability, age and sexual orientation.

It mirrors the principles as set out above for sex and race discrimination and makes direct discrimination, indirect discrimination or harassment and victimisation on the grounds of religion, disability, age or sexual orientation unlawful.

The Directive includes the genuine occupational requirement exceptions in relation to religion and belief and the requirements of churches.

- **Article 9 of the European Convention of Human Rights**

Article 9 sets out the following basic principles:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The balance between parts 1 and 2 of Article 9 can be difficult to achieve and has generated significant case law interpreting these provisions.

EUROPEAN CASE LAW ON RELIGION AND BELIEF IN THE WORKPLACE

Overview

The issue of headscarves is a major area of debate within Turkey itself. As a secular country, it resists manifestations of religion of any kind. There was a ban on women wearing headscarves at university for 80 years. This ban on wearing headscarves in universities was overturned by Parliament in 2008 but remains a live topic for debate.

Other Countries within the European Union, such as France and Belgium have also entered into this debate and case law has tended to support a state's right to prohibit the wearing of headscarves.

There have been several cases heard at the European Court of Human Rights on whether preventing a woman from wearing a headscarf is a breach of her human rights. Generally, the courts have found that it is not a breach of a person's human rights if they are prohibited from wearing headscarves at a learning institution. The emphasis has been on whether or not the limitations on the right to manifest your religion freely can be justified by a legitimate aim and are a proportionate response.

There have been few recorded cases on religion and belief in the European Court of Justice. However, certain key cases refer to religion and belief and the possible impact that will be felt in this area of discrimination law. The case of **Coleman v Attridge law and another (C-303/06 ECJ)** and "the concept of discrimination by association" is particularly of relevance.

European Court of Human Right Decisions

CASE OF LEYLA SAHİN v. TURKEY- Application Number 44774198 November 2005 case in the European Court of Human Rights (ECHR) in which Ms Sahin alleged that there had been a breach of Article 9 of the Human Rights Convention as she was prohibited from wearing a headscarf to university. The ECHR stated that there had been no such breach because Turkey was pursuing a legitimate aim of protecting the rights and freedoms of others and maintaining secularism. The ECHR particularly commented on the need to maintain equality for men and women, stating:

"It is understandable in such a context where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women, are being taught and applied in practice, that the relevant authorities would consider that

it ran counter to the furtherance of such values to accept the wearing of religious insignia, including as in the present case, that women students cover their heads with a headscarf while on university premises”

The ECHR clearly considered the balance needed between an individual's rights and how that will impact on the wider population.

CASE OF DOGRU v. FRANCE- Application Number 27058105, December 2008

Another case on the wearing of headscarves in educational establishments. Again the European Court of Human Rights held that there had been no breach of Article 9, following the rationale established in Sahin.

OVERVIEW OF UK LAW ON RELIGION AND BELIEF, RACE AND SEX DISCRIMINATION

- The Sex Discrimination Act 1975

This is the major piece of legislation governing the prohibition of discrimination on the grounds of a person's (male or female) sex. It also covers discrimination on the grounds of marital status. Direct, indirect, harassment and victimisation are all unlawful as a result of this Act.

- The Race Relations Act 1976

Prior to the implementation of specific legislation prohibiting religion and belief discrimination, individuals tried to rely in race discrimination protections if they believed that they had been targeted as a result of their faith. The Race Relations Act 1976 prohibits discrimination on the grounds of race, ethnic or national origins, nationality or colour. Again, direct, indirect, harassment and victimization are all prohibited.

- The Employment Equality (Religion or Belief) Regulations 2003.

Discrimination on the grounds of religion or belief has only been unlawful since 2003 in the UK, when it became necessary for the UK to implement the relevant European Directive into European law. As with the legislation on sex and race discrimination, direct, indirect, victimisation and harassment are all unlawful.

Since that date (and the case law will be explored below), there has been a spate of cases interpreting the UK legislation implementing the underlying EU law outlawing religious discrimination in the workplace. Of particular interest in recent months, has been the balancing of strong religious beliefs manifested in the workplace with other employees' conflicting views and beliefs.

- The Equal Pay Act 1970

The importance of women receiving equal pay was first highlighted as early as 1970 with the implementation of the Equal Pay Act. Embodying the principles set out in the European Directive, the Act states the right to equal pay between men and women for work of equal value. Effectively the individual is entitled to the same pay and other terms and conditions as someone of the opposite sex, in a comparable job. Claimants need to name a comparator of the opposite sex who is employed "in the same employment" as them.

Case law under this legislation is extensive.

- Protection from Harassment Act 1997

This Act makes it both a criminal and a civil offence for a person to stalk or bully another person. It also covers persistent bullying in the workplace.

The Act defines harassment as a "course of conduct" which causes alarm or distress. A course of conduct means at least two incidents of harassing behaviour. An individual who has suffered such harassment may pursue a civil remedy for damages for anxiety or request a restraining order. This can be backed up by the power of arrest if needed. The harasser may also be subject to criminal proceedings and face a jail sentence of up to 6 months or a fine.

- Human Rights Act 1998.

The Human Rights Act 1998 mostly came into force on 2 October 2000. Its aim was to incorporate into UK law the rights contained in the European Convention on Human Rights (the Convention). By way of the Act, individuals can seek a remedy from the UK courts for breach of a Convention right, without the need to go to the European Court of Human Rights in Strasbourg.

The Act makes it unlawful for any public body to act in a way which is incompatible with the Convention, unless there is no other way of complying with national laws. It also requires UK judges to take account of decisions of the Strasbourg court, and to interpret legislation, as far as possible, in a way, which is compatible with the Convention. However, the Act provides that if it is not possible for Judges to interpret an Act of Parliament so as to make it compatible with the Convention, the legislation cannot be overridden. All they can do is to issue a declaration of incompatibility.

Some of the cases relating to religious dress code have been brought under the Human Rights Act 1998.

- Maternity and Parental Leave Regulations 1999

These provisions govern the protections that women receive during any period of maternity leave. The Regulations state that women continue to benefit from most of their existing contractual terms during maternity leave (although there are some differences depending on the amount of time a woman spends on leave), save that they are not entitled to normal salary during maternity leave. Instead, there are separate provisions governing pay during this period.

Men and women who are parents or adoptive parents (subject to certain qualifying conditions) are entitled to take up to 13 weeks unpaid parental leave per child, before their child reaches 5 years old.

- Equality Act 2006

Under the Equality Act 2006, it is unlawful for someone to discriminate against someone because of their religion or belief (or because they have no religion or belief):

- in any aspect of employment
 - when providing goods, facilities and services
 - when providing education
 - in using or disposing of premises, or
 - when exercising public functions.
- The Racial and Religious Hatred Act 2006

This Act was brought in partly as a response to offences, which took place against Muslims post September 11th 2001. The Act creates an offence of inciting (or 'stirring up') hatred against a person on the grounds of their religion. Religious hatred is defined in the Act as hatred against a group of persons because of their religious belief or lack of religious belief.

UK CASE LAW ON RELIGION AND BELIEF IN THE WORKPLACE

Religious Dress at work

Headscarves

Noah v Sarah Desrosiers t/a Wedge ET2201867/2007- a Muslim hairdresser succeeded in her claim that she had been indirectly discriminated against on the grounds of her religion as a result of the company's requirement that she remove her headscarf while at work. The hairdressers argued that in order to promote a certain image of the salon, all hairdressers needed to have their own hair on show.

The Employment Tribunal found that the requirement for hairdressers to have their own hair visible was not a proportionate means of achieving a legitimate aim. The salon had not looked at other ways of achieving its aim of maintaining a certain "look". Ms Noah was awarded £4000 in damages.

Veils

Azmi v Kirklees Metropolitan Borough Council UKEAT/0009/07. Mrs Azmi brought a claim for religious discrimination on the grounds that her employer (she was a teaching assistant) required her to remove her veil when in class.

The Employment Appeal Tribunal upheld the Employment Tribunal's finding that an instruction to remove the veil (which covered all but Mrs Azmi's eyes) when carrying out her duties was neither direct or indirect discrimination on grounds of religion and belief. Mrs Azmi had not been treated differently than a comparator would have been (namely a woman who, a Muslim or not, wore a face covering). The removal of the veil was required to achieve a legitimate aim, namely to enable children to learn as effectively as possible. The School argued that children would struggle to understand Mrs Azmi's instructions if her face was entirely covered in the veil. The instruction was a proportionate means of achieving this aim and the request was therefore justified. The Employment Appeal Tribunal would not give Mrs Azmi leave to refer this case to the European Court of Justice.

Religious dress issues outside the workplace

Begum v Governors of Denbigh High School [2005] 2 All ER 396: Ms Begum was a student at Denbigh High School; she wished to wear a long religious dress, the Jilbab, to school. The school would not allow this. She argued that it was a breach of the Human Rights Act 1998 if she was not to be able to wear the Jilbab.

She took her case all the way to the House of Lords (the UK's highest court) which held that, following the European Court of Human Rights in **Sahin**, there had been no breach of Ms Begum's human rights. The school could justify the requirement that its students did not wear this type of dress; one of the reasons for the decision was that it could be interpreted as pressuring other female students (most of whom were Muslim) to wear a more extreme form of dress. It was a proportionate means of achieving a legitimate aim, in accordance with second limb of Article 9 of the European Convention.

Religious symbols at work

Eweida v British Airways plc UKEAT/0123/08- the Employment Appeal Tribunal upheld the Employment Tribunal's finding that a Christian employee did not suffer indirect discrimination on the grounds of her religion or belief where the airline, British Airways, in accordance with its uniform policy for all staff, insisted that Ms Eweida's cross was not on show over her uniform. BA's uniform policy required that any adornment which could be concealed, needed to be hidden from view.

Ms Eweida argued that she had been treated differently from other Muslim and Hindu employees who were allowed to wear their religious dress to work. The Employment Appeal Tribunal differentiated between the comparators on the basis that the wearing of her cross was not mandatory for the Christian religion and the cross could be easily concealed. In contrast (focusing on a Sikh employee who was permitted to wear a bangle), this was a mandatory manifestation of their religious belief and could not be easily concealed. BA's uniform policy allowed employees to wear an item which was worn as a result of the mandatory religious requirement and which could not be concealed under the uniform. BA's approach was a proportionate response and could be justified.

Religious symbols outside the workplace

R (on the application of Watkins-Singh) v (1) Governing body of Aberdare Girls' High School (2) Rhondda Cynon Taf Unitary Authority [2008] EWHC 1865 the High Court considered a situation where a schoolgirl had asserted her right to wear a bangle, which is of great religious significance in the Sikh religion. Aberdare School had refused her request to wear the bangle as it was not in accordance with the school's uniform policy; this permitted pupils to wear only one pair of ear studs and watch.

Ms Watkins Singh brought the following claims: an indirect race discrimination claim under the Race Relations Act 1976 (RRA), a claim for religious discrimination under Part II of the Equality Act 2006, a claim for breach of equality procedures under section 71 of the RRA and also she claimed that the restriction on wearing a bangle was a breach of her human rights under article 6 of the ECHR and article 14 of the European Convention on Human Rights.

The High Court held that failing to allow Ms Watkins Singh to be exempt from the uniform policy in relation to her bangle was indirect discrimination. As a result of her religion and belief as well as her race and culture, the wearing of the bangle was of

"exceptional" importance. The bangle was only small and unobtrusive. Requiring her to remove the bangle was not a proportionate means of achieving a legitimate aim.

Restrictions on beards

Prior to the implementation of the religious discrimination protections into UK law in 2003, most dress code claims were brought under the Sex Discrimination Act 1975. An employee brought a claim against Safeway Supermarket (**Smith v Safeway Plc [1996] IRLR 456**) on the basis that he had been discriminated against on the grounds of his sex because his employer had dismissed him for having a pony tail. Company policy required men to have tidy hair, not below shoulder length and no unconventional styles. The Employment Tribunal found that Safeway was justified in this policy as although women were allowed to keep hair long, it is not necessary for an employer to apply identical rules to both men and women. The Employment Tribunal considered the overall impact of the dress code and determined that in essence, the same standard of appearance was applied to both men and women. There had therefore been no difference in treatment.

Mohmed v West Coast Trains Ltd EAT/0682/05 involved a case where an employee brought a religious discrimination claim against Virgin Trains on the basis that a dress code requirement that he kept his beard neatly trimmed was less favourable treatment on the grounds of his religion. As a practising Muslim, Mr Mohmed was required to keep his beard at least at one fist's length. His employer's issue was not with the length of his beard (which he was allowed to keep at the appropriate length for his religion) but because he did not keep it tidy. The Employment Tribunal determined that his employer's rule was a health and safety/uniform issue rather than because of his religious beliefs. Therefore, there had been no less favourable treatment and his discrimination claim must fail.

Religious views at work and balancing rights of other workers

(1) proselytising and expressing religious views in the workplace

Apelgun-Gabriels v London Borough of Lambeth ET/2301976/05 - Mr Apelgun Gabriels distributed sections from the Bible (which commented on homosexuality being a sin) to his work colleagues. He was subsequently dismissed. He claimed that he had been discriminated against on the grounds of his religion (he was a committed Christian and believed he needed to spread God's word). The Employment Tribunal disagreed (and the Employment Appeal Tribunal upheld the decision) and found that the cause of his dismissal was his conduct, not his religion.

Chondol v Liverpool City Council UKEAT/0298/08 – This case was similar to that of **Apelgun-Gabriels** as Mr Chondol, a social worker with vulnerable adults, gave a Bible to a client and asked another whether he believed in God. He was disciplined and subsequently dismissed for failing to observe the council's policy, prohibiting the overt promotion of religious beliefs. The Employment Appeal Tribunal, agreeing with the Employment Tribunal at first instance found that the reason for his dismissal was because he had improperly imposed his Christian beliefs on service users, not because of his religion. The Employment Appeal Tribunal was satisfied that the council would have treated anyone acting in that way in the same manner and there had been no less favourable treatment.

(2) Impact of religious beliefs on ability to perform duties

London Borough of Islington v Ladele UKEAT/0453/0– Ms Ladele is a Registrar for Islington Council. She refused to undertake civil partnerships as a part of her duties. As a result, she was disciplined and threatened with dismissal. She brought religious discrimination proceedings, claiming direct discrimination and harassment. She was successful in the Employment Tribunal but this decision was overturned on appeal. The Employment Appeal Tribunal found that she had not been disciplined because of her religious beliefs but because of her conduct in failing to carry out core duties, namely officiating over legal ceremonies.

McClintock v Department of Constitutional Affairs UKEAT/0223/07– Mr McClintock was a serving magistrate. As part of his duties as a family magistrate, he was required to sit on same sex adoption cases. He felt unable to do so and asked to be excused from determining the outcome of such cases. He said he felt that same sex adoptions were not in the best interests of the child but at no point did he state that his religious views prevented him from sitting on such cases.

His request was refused and he subsequently brought religious discrimination proceedings. His claim was unsuccessful both at Tribunal and Employment Appeal Tribunal level. It was found that the Employment Equality (Religion or Belief) Regulations 2003 were not even engaged because he had not said that religion was the reason why he wanted to be excused. The Employment Appeal Tribunal did say, however, that even if the Regulations had been engaged, that Mr McClintock would have been unsuccessful because requiring all magistrates to sign an oath to serve faithfully (and obey instructions) was a proportionate means of achieving a legitimate aim.

McFarlane v Relate Avon Ltd - Mr MacFarlane was a relationship counselor working for a company which provides confidential sex therapy and relationship counseling services to couples. He was required to comply with the code of ethics of the British Association for Sexual and Relationship Therapy which required members to respect the value and dignity of clients on issues such as sexual orientation. As a Christian, Mr MacFarlane however believed that same-sex sexual activity contravened his religious beliefs and refused to work with gay clients where it would involve promoting same sex-sexual activity; he requested they be referred to another counselor. He was dismissed for breach of the company's equal opportunity and ethical practice policies and brought claims of direct and indirect religious discrimination.

The tribunal decided the company would have treated in the same way any other counselor unwilling to assist gay couples and that there was no direct religious discrimination. Whilst the requirement to adhere to the company's equal opportunities and ethical policies put employees with the same religious views as Mr Mac Farlane, and he himself, at a particular disadvantage and therefore amounted to indirect religious discrimination, it was held that it was justified: the Company had adopted proportionate means to achieve a legitimate aim – namely to provide a discrimination free service to all members of the community. It was proportionate to require employees to act in accordance with that aim, rather than accommodating them by allocating gay couples to other counselors.

(3) Saini – discrimination by association

Mr G Saini v 1) All Saints Haque Centre 2) Mr D Bungay 3) Mr S Paul UKEAT/0227/08/ZT– The Employment Appeal Tribunal found that it was possible for someone to be discriminated against on the grounds of someone else's religious belief. There will be a breach of the Employment Equality (Religion or Belief)

Regulations 2003 not only where an employee is harassed on the grounds that he holds certain religious beliefs but also where he is harassed because *someone else* holds certain religious beliefs. In this case, Mr Saini was dismissed because he would not give negative witness evidence about his manager who was of a particular religion. The Tribunal found that the reason for the witness evidence being sought was discriminatory as the investigation was targeting the manager because he held particular religious beliefs. As such, Mr Saini had been discriminated "by association" even though he himself was not of the religion which was being attacked.

Religious holidays

Khan v NIC Hygiene (ET 1803250/04)- Mr Khan applied to use all his annual leave and one week of unpaid leave to go on Hajj. Mr Khan did not get a formal reply from his employer before going on Hajj, so was told by his line manager to assume the request had been granted and to go. When he returned from Hajj, Khan was dismissed for gross misconduct on the basis that this leave had not been authorised.

The Employment Tribunal awarded Mr Khan £10,000 compensation and accepted that he had been directly discriminated against and unfairly dismissed. The Company's failure to consider his request properly and in a timely manner and their lack of grounds to justify their refusal to authorise the leave, placed Mr Khan at a particular disadvantage and was because of his Islamic faith.

Prayer times and time off for religious observance

Hussain v Bhullar t/a BB Supersave ETS/1806638/04- Mr Hussain, a Muslim, alleged that he was threatened with disciplinary action for taking time off following the death of his grandmother in Pakistan. He argued that as part of his religion, he was required to stay at home and receive condolences for the death of his grandmother. He compared his treatment to that of a Sikh employee, who had been allowed two weeks off to fly to India when his mother died. The Employment Tribunal found that the Sikh employee was not a true comparator as his mother who died and not his grandmother. The Employment Tribunal accepted that the company would have taken a different approach if Mr Hussain's mother had died. It found no evidence that the treatment of Mr Hussain was influenced by his religion. In fact the reason for the refusal of the request was entirely justifiable – namely that it was impossible for the company to arrange cover for Mr Hussain at such short notice (even though every effort was made to do so).

Shah v. Harish Finance Ltd Shah ET/3302110/2004 –Mr Shah, a Muslim used his lunch breaks to attend his local mosque to pray. However, his employer suddenly shortened his Friday lunch breaks. He was then dismissed without explanation. The Employment Tribunal found that this was discrimination on the grounds of his race and religion and belief and that an employee who was not Pakistani would not have been treated in this way. In particular, the Employment Tribunal took into account that the Company was unable to provide any explanation for his treatment, the predominant religious background of the workforce was Hindu and that there was no adequate equal opportunities policy in place.

Williams-Drabble v. Pathway Care Solutions 2601718/2004 - Mrs Williams-Drabble brought a claim for indirect religious discrimination on the basis that as a Christian, she was forced to work Sundays. Her employer had introduced a new work rota which required all employees to be able to work on Sundays. The shift changes clashed with her attendance at church. She had previously stated when she was interviewed for the role that she was unable to work on Sundays for religious

reasons. She complained about the new shifts and was told that if she did not like the changes, she would have to find an employee who would work the shifts for her instead. On complaining to the managing director of the company, she was told that the shift changes were permanent and she should resign if she did not like them.

She was successful at the Employment Tribunal as her employer did not submit a defence and could provide no explanation as to why the shift changes were a proportionate means of achieving a legitimate aim.

Conclusions

The various cases which have emerged under the EU and implementing UK legislation prohibiting religious discrimination all demonstrate that an employer needs to have a justifiable reason if adopting a particular stance which may come into conflict with an employee's religious views and beliefs. Given that it is not always possible to accommodate every single person's views and opinions, a fair and proportionate response must be adopted.

The cases demonstrate that individuals succeed in their discrimination claims where an employer has failed to prove that the aim pursued is legitimate and the approach adopted proportionate. Are there other ways to reach the same outcome? For example, in **Noah v Sarah Desrosiers t/a Wedge** the requirement for employees to show their hair when working in the salon, was deemed to be disproportionate. The employer did not adequately consider other possible ways of maintaining the company's image whilst still allowing the employee to conceal her hair. Similarly in relation to time off for religious observance, Pathway Care Solutions was unable to show that Mrs Drabble's shift change was necessary. Was there a different way of adopting the shift pattern without requiring her to miss her church's weekly service?

In contrast, Mrs Azmi failed in her discrimination claims against her employer because the Employment Tribunal accepted that it is vitally important for a child's learning to see the face of the teacher. Requiring the removal of the veil was a reasonable request given Mrs Azmi's role. It is critical that an employer has considered the aim it is seeking to achieve, the best way of achieving it and whether it is a reasonable response to the situation. This will be the best way of defending possible discrimination claims.

Many of the cases on dress codes show that although employers are entitled to adopt a general dress code, they need to do so carefully and allow a certain degree of flexibility in such policies. A key challenge, as in all religious discrimination cases, is balancing competing religious needs and beliefs. Each case should be considered on its individual facts. Employers will need to be able to demonstrate a clear rationale for adopting a particular dress code and have considered alternatives which may have a less discriminatory impact. British Airways successfully defended Ms Eweida's indirect discrimination claim as it had thought through the different options for maintaining its dress code and could explain its decision making. Similarly, West Coast Trains argued that for health and safety reasons it was important for Mr Mohamed to keep his beard tidy and applied this to all employees. However, in Watkins- Singh's case, the fact that her bangle was an important manifestation of her faith and was such a discrete item of jewellery, was determinative in her succeeding in her claims.

There has been a spate of cases involving employees imposing their religious views on other employees in the work environment. The Tribunals have adopted a fairly

strict approach and stated that you need to look at the reasons behind an employee's dismissal/disciplinary proceedings. If the employer has taken a particular approach as a result of an employee's conduct and not their religion, then this is not religious discrimination. Similarly, where an employee refuses to carry out certain core duties because of their religious beliefs, the court needs to consider whether their subsequent treatment by their employer is a result of their religion or because of the impact on their roles going forward. As Ms Ladele and Mr McClintock discovered, the courts will look at the practical effect on an employee's ability to do their role and whether the employer's response is therefore appropriate.

The cases all demonstrate that whilst respect and understanding of differing religious views and dress and needs is important, this has to be balanced against the impact it may have on other employees and members of the workforce. In accommodating one person's views, you may be offending another's perspective. The ECHR has provided helpful guidance as to the process that Member States need to follow when carrying out this balancing act. In certain circumstances, it is more important to maintain wider principles for the common good, instead of focusing on one individual alone. This is best approached by maintaining concepts of reasonableness, cogency and proportionality.

Practical Take Away Points

UK case law provides helpful practical guidance points for employers when balancing different religions in the workplace:

1. Employers need to show a clear rationale (backed up by evidence, written if possible) when making decisions which affect members of staff;
2. Ensure that Company Handbooks include up to date equality and diversity policies;
3. Handbook policies should state the need for respect and tolerance of all views in the workplace whilst also emphasising that imposing personal views on others may not always be welcomed;
4. Such policies should include the steps that management will take when there is evidence of harassment or inappropriate behaviour in the workplace.
5. All senior staff should be trained in all relevant policies and be able to implement them swiftly where needed.
6. Managers should be encouraged to be proactive in identifying potential problems in the workplace;
7. Employers need to think laterally about all the options. Is there a different way of achieving the same result?
8. If appropriate, involve staff in the decision-making process when drafting a dress code or working hours policy. This may help iron out problems early on and assist in determining whether there is different way of achieving the same aim.

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April 2009

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