



## **CES Guidance Note**

### **Pupils of other faiths in Catholic Schools, Academies and Sixth Form Colleges in England and Wales**

#### **Introduction**

The purpose of this guidance is to provide an overview of the current legal position relating to an individual's right to freedom of thought, conscience and religion in the education context. This guidance sets out the source of that right, including its incorporation into UK law, and the case law that has developed the wording of the legislation to give it its current meaning. This guidance will also explore how the right to freedom of religion may be construed within the context of a Catholic school.

#### **Article 9 European Convention on Human Rights**

Article 9 of the European Convention on Human Rights ("ECHR") provides:

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 conformity with others and in public or private, and 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".*

It can be seen from the wording of Article 9(1) that the right to freedom of thought, conscience and religion is an absolute right and cannot be derogated from. However, the right to *manifest* one's religion or belief is a qualified right and so interference with that right *may* be justified for certain prescribed reasons which are set out at Article 9(2).

#### **The Human Rights Act 1998**

Article 9 of the ECHR is incorporated into domestic law by Schedule 1 Part 1 of the Human Rights Act 1998 ("HRA 1998") which sets out the wording of Article 9.

## **Equality Act 2010**

Part 6 of the Equality Act 2010 applies in the context of ‘education’ and aims to protect persons in the education environment from harassment, discrimination (both direct and indirect) and victimisation on the grounds of certain protected characteristics, including religion and belief. We have issued separate guidance on the Equality Act 2010 for Catholic schools<sup>1</sup>.

### **Interpretation of Article 9 – summary of domestic case law**

Below we set out a summary of some important legal cases over the last few years which have developed the meaning of ‘manifestation of a religion or belief’.

The leading case is *R (Begum) v. Headteacher and Governors of Denbigh High School [2007] 1 AC 100*.

Denbigh High School had a majority of Muslim pupils and, in consultation with representatives of the local Muslim community, had devised a uniform policy which allowed an alternative uniform based on the shalwar kameez (a traditional Muslim form of dress), specifically allowing the wearing of a hijab (a head covering) so as to accommodate religious and cultural needs. Ms Begum, a Muslim pupil attending Denbigh High School, requested that she be allowed to wear a jilbab, a full body covering, to school as she said that her Muslim beliefs required her to be more covered. She argued that the school’s uniform policy breached her Article 9 right to manifest her religion without unjustified interference.

The House of Lords held, by a majority, that there had been no interference with her Article 9 right as Ms Begum had the choice of attending two other schools in her locality where the wearing of the jilbab was permitted. The minority of Law Lords held that there *was* likely to have been an interference but that that interference was justified in the circumstances as the school had taken advice and had been told that the policy conformed with the requirements of mainstream Muslim opinion. The dissenting Law Lords expressed a view that the policy may have interfered with her right to manifest her religion because it may not be as simple as saying that Ms Begum could quite easily attend a different school; the school was a good school and it was conceivable that Ms Begum would wish to continue to attend that particular school.

Two further cases followed from *Begum* and applied the same reasoning.

*R (X) v. Headteacher and Governors of Y School [2007] EWHC 298 (Admin)* concerned a pupil who was not permitted to wear a niqab, a veil covering her whole face except for her eyes, at school. The school had refused the pupil’s request on the basis that its school uniform policy was aimed at encouraging pride in the school, enabling children to feel safe in their environment, ensuring that girls of different faiths felt welcome and encouraging a sense of equality and cohesion at the school and reducing pressure for pupils to dress in a certain way. The High Court, following *Begum*, held that there was *no* breach of the pupil’s Article 9 right to manifest her religion as she had been offered a place at another selective school, which achieved good academic results, which was easy to get to and which permitted the wearing of the niqab. Further, the court also considered that there may be issues

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<sup>1</sup> <http://www.catholiceducation.org.uk/schools/guidance-for-schools/item/1000069-equality>

of security by allowing the wearing of the niqab as an unwelcome visitor could move around the school incognito wearing a niqab.

In both *Begum* and *X*, the central issue was not ‘is what the pupil is requesting to do a manifestation of their religion or belief?’ It was accepted that the wearing of the hijab and the niqab was a manifestation of their religious beliefs, however, it was held that the schools were not interfering with that right or, even if they were found to have been interfering, such interference would have been justified in any event (for the reasons given in those cases).

*R (Playfoot) v. Millais School Governing Body [2007] EWHC 1698 (Admin)* concerned the question of whether what the pupil was requesting to be allowed to do was a manifestation of her religious beliefs. In this case, the school had a general ban on the wearing of jewellery, subject to some exceptions relating to jewellery required to be worn by a pupil’s faith. Miss Playfoot was, therefore, prohibited from wearing a purity ring as a symbol of her commitment to abstinence from sex before marriage. The judge held that Article 9(1) had not been engaged as the wearing of a purity ring was not intimately linked to the belief in chastity ; Miss Playfoot was not under any obligation to wear the ring by reason of her religion or belief and so was not ‘manifesting’ her religion or belief by so wearing it. The judge also held that the school uniform policy was proportionate and that Miss Playfoot could have practised her belief without undue hardship by, for example, wearing the ring on her school bag or attending a different school.

#### A recent decision of the European Court of Human Rights

More recently, the case of *Eweida & Ors v. United Kingdom (2013) 57 E.H.R.R. 8<sup>2</sup>* has developed the definition of ‘manifestation’ further and has widened its scope. This case concerned four conjoined cases that arose in the context of employees manifesting their religious beliefs in the workplace and whether their employers’ interference was a proportionate means of achieving a legitimate aim.

In all but one of the four cases, the European Court of Human Rights held that the employers were justified in interfering in the employees’ rights to manifest their religious beliefs as their actions were proportionate in securing a legitimate aim, specifically ensuring the health and safety of hospital users and staff and promoting equality of services in the context of the provision of a public service. Only Mrs Eweida was successful in her claim. She was a British Airways (BA) employee who wanted to wear her crucifix displayed *visibly* around her neck. This contravened BA’s uniform policy which provided that items of jewellery may not be worn visibly.

When the case reached the European Court of Human Rights (“ECtHR”) Mrs Eweida argued that the wearing of a cross *visibly* was a manifestation of her Christian beliefs. The ECtHR held that, even though the wearing of a cross is not a *requirement* of Christianity, it did not prevent it from falling within the scope of Article 9. It also said that, where an employee complains about a restriction on their right to manifest their religious beliefs, rather than finding that an employee could change job and thereby negate the interference with their rights, the better approach is to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate.

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<sup>2</sup> For full case report see: <http://www.bailii.org/eu/cases/ECHR/2013/37.html>

This approach, of which UK courts are bound to take account when determining questions that relate to rights enshrined in the ECHR, is a considerable widening of the previous definition attributed to ‘manifestation’ as well as the courts’ approach to ‘interference’.

Previous ECtHR case law determining the issue of whether a person is manifesting their religious beliefs drew a distinction between, on the one hand, acts or omissions which did not directly relate to, or which were only partly connected with, the religion or belief concerned, and, on the other hand, acts that were “intimately linked” to the religion or belief. In the first case, where the religion or belief was only partly connected to the act, the person would not be afforded protection under Article 9. In the latter case, where there was an intimate link, the person would be afforded Article 9 protection. However, in *Eweida*, the ECtHR widened the scope of the boundaries of Article 9 as previously defined in case law. It said:

*“...the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question”.*

The reasoning in *Eweida*, whilst given in the context of an employment relationship and manifesting ones religious beliefs in the workplace, will equally apply in the context of schools and to pupils manifesting their religious beliefs whilst at school.

It is possible that if the cases of *Begum*, *X* and *Playfoot* were to be considered following and applying *Eweida*, the outcomes may be very different. In respect of *Begum*, the court would not be able to rely on the possibility of attendance at another school as a justification for a policy which interfered with the right to manifest religious beliefs. The possibility of moving schools would now be considered along with all of the other relevant factors to be weighed in the balance when considering whether the interference was a proportionate means of achieving a legitimate aim. In *Playfoot*, a court would now need to decide if there is a sufficiently close nexus between the wearing of a purity ring and the particular religious belief.

The recent decision of the Court of Appeal (England and Wales) in *Mba v. Mayor and Burgesses of the London Borough of Merton AC/2013/0201* is the first opportunity that a UK appeal court has had to consider the domestic consequences of the *Eweida* decision. In that case, the Court of Appeal stated that, in determining whether interference with an Article 9 right is proportionate, “...the justification is likely to relate to the difficulty or otherwise of accommodating the religious practices of the particular individual”.

Ultimately, the effect of the decision in *Eweida* in respect of the widening of the definition of ‘manifestation’ will undoubtedly affect schools. Schools need to be able to justify decisions that they make about the prohibition or restriction of items which can be said to be linked with a religion or belief in order to avoid breaching pupils Article 9 rights.

### **Pupils of other faiths in Catholic Schools**

Catholic schools in England and Wales are established to serve the Catholic community and to provide a Catholic education for Catholic children within the diocese. However, Catholic schools also educate many non-Catholic pupils. The latest census figures show that in 2013, the number of non-Catholic

children in maintained schools, academies, sixth form colleges and Further Education institutions designated as Catholic in England was 29.8% and, in Wales, the figure was 42.1%<sup>3</sup>.

There is nothing within education law to require schools which are designated as Catholic to incorporate any other provisions or practices which are not Catholic e.g. a practice required by any other faith. Catholic schools are entitled to provide religious education and collective worship in accordance with the tenets of the Catholic faith. That is not to say that Catholic schools do not embrace other faiths and encourage children to learn about, and be tolerant of, other faiths within our multi-cultural society.

Catholic schools are obviously bound by the legislation as set out above, as both a public authority and as an employer, and developing case law in respect of Article 9 rights would be applied to schools as a public authority providing education in the same way as it would be applied to Catholic school governing bodies as employers of staff.

Respect for other faiths should be a mutual obligation in a Catholic school; the Catholic school and its governors, staff, pupils, parents and carers should respect those of other faiths and none who attend the school (or who are wishing to attend the school). Furthermore, governors, staff, pupils, parents and carers who are of other faiths or none should equally respect the Catholic character of the school, its Catholic staff, pupils and the wider Catholic community. Catholic schools recognise that “true education is not limited to imparting knowledge; it promotes human dignity and genuine human relationships and prepares the way for opening oneself to the Truth that is Christ”<sup>4</sup>.

It is important to remember that, whilst parents and carers of children in maintained schools may lawfully withdraw their children from religious education and collective worship, a school designated as Catholic is entitled, and indeed required, to provide education and collective worship in accordance with the religious tenets of the Catholic faith. As such, Catholic schools will have a legitimate expectation that pupils from other faiths and none who have chosen to attend a Catholic school will be respectful of the way in which religious education is taught and collective worship is celebrated. The census data collected for 2013 illustrates that a mere 0.01% of pupils were withdrawn from collective worship in Catholic schools in England, and that none were withdrawn in Wales.

Catholic schools must ensure that, in complying with their obligations under Article 9 and the Equality Act 2010, they are open to finding out about the requirements and desirable practices of other religions and beliefs, particularly those that are represented within their school. Further, Catholic schools should be encouraged to build relationships with leaders of other faiths within their communities to further enhance mutual understanding and tolerance and to provide a network for advice, support and guidance, particularly in cases where a pupil is making a request as a result of their religious beliefs.

## **Conclusion**

It is accepted that different faiths have different requirements, different desirable practices and different levels of observance of such beliefs and practices by the persons who hold that particular

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<sup>3</sup> Figures obtained from CES Census: <http://www.catholiceducation.org.uk/ces-census>

<sup>4</sup> *Lay Catholics in School – Witnesses to Faith*, Sacred Congregation for Catholic Education (Rome 1982), no 28.

faith. It is, therefore, not possible to provide a definitive guide as to what schools must and must not do when it comes to embracing other faiths into Catholic school life.

It is generally unacceptable to issue blanket bans through school policy or decision-making as there is likely always to be an exception to a rule. Catholic schools must ensure that, in the drafting and adoption of school policies, they consider the impact that any proposed provision, criterion or practice would have on the pupils and their parents and carers and ensure that there is no substantial adverse effect on a group of persons with a protected characteristic, such as, for the purposes of this guidance, religion or belief, unless such adverse effect can be shown to be a proportionate means of achieving a legitimate aim. Schools are advised to record their decision-making processes when drafting policies to show that an impact assessment has been carried out and that justifications have been made where an adverse impact has been identified.

The widening of the scope of the definition of ‘manifestation’ in *Eweida* means schools will need to ensure that they consider each case on its own facts to determine whether what the pupil is requesting to be allowed to do is a ‘manifestation’ of their religion or belief under the new, wider definition. The answer now is more likely to be ‘yes’ than it was previously, although that is not to say that schools must simply agree to any requests; a proper assessment must be carried out in each case with, if necessary, legal advice and an opinion from the relevant religious authority.

If what the pupil is requesting to do *is* a manifestation of their religion or belief, it will then be left to determine whether the school’s policy is an interference with that manifestation and, if so, whether such interference is justified. This is where a record of decision-making is evidentially crucial.

Finally, it is worth remembering when drafting policies and making decisions under those policies in respect of pupil actions or omissions which appear to contravene those policies, that the more serious the sanction imposed on the pupil for a breach of the policy, the more difficult it will be for the school to justify the policy decision i.e. the threshold will be set higher to justify the decision to interfere with the manifestation of their religious beliefs.

### **Further Reading**

- (i) Nostra Aetate – Declaration on the relation of the Church to non-Christian religions: [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_decl\\_19651028\\_nostra-aetate\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html)
- (ii) Catholic Schools, Children of Other Faiths and Community Cohesion: Cherishing Education for Human Growth (CES, 2008): <http://www.catholiceducation.org.uk/schools/guidance-for-schools/item/1000069-equality>
- (iii) Catholic Schools and Other Faiths (The Bishops’ Conference of England and Wales, 1997).