

References relating to the presentation to 6KBW by Keith Porteous Wood

'Maintaining a level playing field in equality law between religion and other characteristics'

2 December, 2015

Employment Directive 2000/78/EC (see Article 4)

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>

Implementation concerns, e.g. on Regulation 7 of Equality (Sexual Orientation) Regulations 2003:

<http://www.secularism.org.uk/uploads/sexl-orntion-reg-7.pdf>

JCSI concerns

<http://www.publications.parliament.uk/pa/jt200203/jtselect/jtstatin/116/11604.htm#a6>

School Standards and Framework Act 1998:

<http://www.legislation.gov.uk/ukpga/1998/31/section/60> (see also ss 58 and 59)

Caste

Begraj case:

<http://www.theguardian.com/money/2013/feb/14/caste-discrimination-employment-tribunal-collapses>

Letter to PM:

<https://www.secularism.org.uk/news/2015/07/nss-calls-on-prime-minister-to-urgently-enact-legislation-outlawing-caste-discrimination>

Tirkey case:

<https://www.secularism.org.uk/news/2015/09/calls-for-government-to-outlaw-caste-discrimination-after-tribunal-rules-in-favour-of-victim-kept-in-domestic-servitude>

Equality & Human Rights

Nurse Caroline Petrie - praying for patients later reinstated:

<http://www.secularism.org.uk/106408.html>

ECtHR – NSS intervention:

<http://www.secularism.org.uk/press/2013/05/nss-welcomes-european-court-decision-to-refuse-appeal-to-christian-activists> (Ladele (Registrar declining civil partnerships) McFarlane (Relate counsellor declining sex advice to same sex couples) Nurse Chaplin (Jewellery health and safety – was crucifix) - all won. Eweida – BA crucifix on outer uniform conceded, so lost.)

Cornish hotel and gay couples seeking double bed:

<http://www.theguardian.com/world/2013/nov/27/christian-guesthouse-owners-appeal-gay-couples>

International trends?

ECtHR – Lautsi Grand Chamber judgment (2011) Note dissenting opinion at end by (Swiss) Judge Malinverni – last eight paragraphs

[http://hudoc.echr.coe.int/eng?i=001-104040#{"itemid":\["001-104040"\]}](http://hudoc.echr.coe.int/eng?i=001-104040#{)

Alternative to Universal Declaration - Cairo Declaration (1990) in which sharia appears 15 times

<http://www.oic-oci.org/english/article/human.htm>

Of possible additional interest

Speech on Religion and Human Rights in Brussels 17 November 2015

<https://www.secularism.org.uk/uploads/manifesting-religion-or-belief---a-human-rights-perspective-17-november-2015.pdf>

Speech on contribution of education to tackling radicalism and fundamentalism, at invitation of first vice president of European Parliament, Brussels 17 November 2015

<https://www.secularism.org.uk/uploads/interreligious-dialogue---how-can-education-contribute-to-tackle-radicalism-and-fundamentalism-in-europe-17-november-2015.pdf>

Lords Prayer advertisement controversy

<http://www.secularism.org.uk/blog/2015/12/time-for-the-church-to-come-clean-on-the-just-pray-controversy>

United Nations Human Rights Council/Committee on the Rights of the Child – abuse of minors by RC clerics:

[General background](#) to intervention in September 2015 and [detailed statement](#) tabled

SSFA 1998

Appointment and dismissal of teachers of religious education

Appointment and dismissal of certain teachers at schools with a religious character.

58. - (1) In this section-

- (a) subsections (2) to (6) apply to a foundation or voluntary controlled school which has a religious character; and
- (b) subsection (7) applies (subject to subsection (8)) to a voluntary aided school which has a religious character;

and references in this Chapter to a school which has (or does not have) a religious character shall be construed in accordance with section 69(3).

(2) Where the number of the teaching staff of a school to which this subsection applies is more than two, the teaching staff shall include persons who-

- (a) are selected for their fitness and competence to give such religious education as is required in accordance with arrangements under paragraph 3(3) of Schedule 19 (arrangements for religious education in accordance with the school's trust deed or with the tenets of the school's specified religion or religious denomination), and
- (b) are specifically appointed to do so.

(3) The number of reserved teachers in such a school shall not exceed one-fifth of the number of the teaching staff, including the head teacher (and for this purpose, where the number of the teaching staff is not a multiple of five, it shall be treated as if it were the next higher multiple of five).

(4) The head teacher of such a school shall not, while holding the post of head teacher of the school, be a reserved teacher.

(5) Where the appropriate body propose to appoint a person to be a reserved teacher in such a school, that body-

- (a) shall consult the foundation governors, and
- (b) shall not so appoint that person unless the foundation governors are satisfied as to his fitness and competence to give such religious education as is mentioned in subsection (2)(a).

(6) If the foundation governors of such a school consider that a reserved teacher has failed to give such religious education efficiently and suitably, they may require the appropriate body to dismiss him from employment as a reserved teacher in the school.

(7) If a teacher appointed to give religious education in a school to which this subsection applies fails to give such education efficiently and suitably, he may be dismissed on that ground by the governing body without the consent of the local education authority.

(8) Subsection (7) does not apply-

- (a) where the school has a delegated budget, or
- (b) to religious education in accordance with an agreed syllabus.

(9) In this section-

"the appropriate body" means-

(a) in relation to a foundation school, the governing body, and

(b) in relation to a voluntary controlled school, the local education authority;

"reserved teacher", in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of subsection (2).

Religious opinions etc. of staff

Staff at community, secular foundation or voluntary, or special school.

59. - (1) This section applies to-

(a) a community school or a community or foundation special school, or

(b) a foundation or voluntary school which does not have a religious character.

(2) No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship-

(a) from being a teacher at the school, or

(b) from being employed for the purposes of the school otherwise than as a teacher.

(3) No teacher at the school shall be required to give religious education.

(4) No teacher at the school shall receive any less remuneration or be deprived of, or disqualified for, any promotion or other advantage-

(a) by reason of the fact that he does or does not give religious education, or

(b) by reason of his religious opinions or of his attending or omitting to attend religious worship.

60. - (1) This section applies to a foundation or voluntary school which has a religious character.

(2) If the school is a foundation or voluntary controlled school, then (subject to subsections (3) and (4) below) section 59(2) to (4) shall apply to the school as they apply to a foundation or voluntary controlled school which does not have a religious character.

(3) Section 59(2) to (4) shall not so apply in relation to a reserved teacher at the school; and instead subsection (5) below shall apply in relation to such a teacher as it applies in relation to a teacher at a voluntary aided school.

(4) In connection with the appointment of a person to be head teacher of the school (whether foundation or voluntary controlled) regard may be had to that person's ability and fitness to preserve and develop the religious character of the school.

(5) If the school is a voluntary aided school-

(a) preference may be given, in connection with the appointment, remuneration or promotion of teachers at the school, to persons-

- (i) whose religious opinions are in accordance with the tenets of the religion or religious denomination specified in relation to the school under section 69(4), or
- (ii) who attend religious worship in accordance with those tenets, or
- (iii) who give, or are willing to give, religious education at the school in accordance with those tenets; and

(b) regard may be had, in connection with the termination of the employment of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.

(6) If the school is a voluntary aided school, no person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed for the purposes of the school otherwise than as a teacher.

(7) Where immediately before the appointed day a teacher at a school which on that day becomes a school to which this section applies enjoyed, by virtue of section 304 or 305 of the Education Act 1996 (religious opinions of staff etc.), any rights not conferred on him by this section as a teacher at a school to which it applies, he shall continue to enjoy those rights (in addition to those conferred by this section) until he ceases to be employed as a teacher at the school.

(8) In this section "reserved teacher", in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of section 58(2).

Employment Directive 2000/78/EC

Article 4

Occupational requirements

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the

general principles of Community law, and should not justify discrimination on another ground.

Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

Employment Regs 2003

7(3) This paragraph applies where— (a) (b) the employment is for purposes of an organised religion; (i) the employer applies a requirement related to sexual orientation— (ii) so as to comply with the doctrines of the religion, or (c) either— because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and (i) the person to whom that requirement is applied does not meet it, or (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.