

Judgment in Four Landmark UK ‘Christian Freedom’ Cases at the European Court of Human Rights

Judgment expected: Tue 15th Jan 2013 – 09:00 UK time

Four cases were heard by the Court on 4th September 2012

- **Shirley Chaplin** had worn her confirmation cross on a small chain around her neck, without incident, throughout her nearly thirty years in frontline nursing. Then, as part of a new uniform policy, she was told to remove it despite indicating that it was a symbol of her faith and the fact that allowances were made for the religious dress of others. She was moved from frontline nursing to clerical duties, a role that ceased to exist 6 months later. She also lost the opportunity to pursue locum nursing.
- **Gary McFarlane**, an experienced relationships counsellor, indicated during a training course that on account of his Christian faith he might have a conscientious objection to providing sex therapy to a same-sex couple if the situation ever arose. He was dismissed for gross misconduct for discrimination on the grounds of sexual orientation, despite the fact that the issue involved a hypothetical scenario and the fact that there was no risk of anyone being denied a service, since there were other counsellors who were prepared to provide it.
- **Nadia Eweida**, a British Airways employee, was also prevented from wearing a cross.
- **Lillian Ladele**, a civil registrar, was disciplined by Islington Council for not being prepared to conduct civil partnership ceremonies in spite of the fact that other registrars were prepared to meet any demand for the service and Ms Ladele's conscience could have been easily accommodated by her employer.

These cases all relate to freedom to express Christian identity in public life

- All four individuals were forced to choose between masking their Christian identity or losing their jobs and suffering detriment to reputation and livelihood.
- Two cases (Chaplin and Eweida) relate to the wearing of the cross in the work-place.
- Two cases (McFarlane and Ladele) relate to the exercise of Christian conscience in the work-place (allowing Christian identity and convictions to guide working practice).
- At issue is whether the restrictions placed on their freedom by their employers was legitimate.

All four individuals could have been easily and reasonably accommodated

- Their Christian identity could have been respected and easily accommodated without (i) any undue risk to the wellbeing of others, (ii) any danger of anyone being denied a service to which they were entitled and (iii) any undue burden falling on their employer.
- This would have been the ‘common sense’ approach. The fact that they weren’t accommodated suggests an unjustified antipathy towards their Christian faith – hence the ‘religious freedom’ nature of these cases.
- In Nurse Shirley Chaplin’s case no credible health and safety risk was demonstrated (indeed such concerns were only raised later in the dispute). Accommodation was made for the religious dress of others (in spite of possible health and safety risks associated with these) suggesting discrimination on the grounds of religion.
- In Gary McFarlane’s case, no actual situation ever arose and no service was ever denied. Gary raised a possible conscientious objection about a hypothetical situation, in the context of a conversation following a training course for a new skill that he was interested in developing.
- In Lillian’s case, Islington was content that it had all the registrars required to provide a first class civil partnership service without utilising Lillian. It was under no legal obligation to designate all of its marriage registrars as civil partnership registrars. Yet it chose to do so, without consultation, although it knew of Lillian’s concerns.

Further information and interview

Shirley Chaplin and Gary McFarlane are represented by the Christian Legal Centre (CLC). They are available for print and broadcast interview as are representatives of CLC. Further information (including legal documents, judgment, photos, video clips etc.) will be available from the Media Centre or at www.christianconcern.com/EuropeanCases.

Please see clarification of common points of confusion in their cases - overleaf.

The PM has expressed support for the ‘wearing of the cross’ and indicated that the Government would change the law if the cross cases are lost

- Speaking at PMQs on Wed 11th July 2012, David Cameron told the House of Commons:
“I fully support the right of people to wear religious symbols at work; I think it is a vital religious freedom. If it turns out that the law has the intention as has come out in this case, we will change the law and make it clear that people can wear religious emblems at work.”
- Other members of the Government have also spoken in support, including Rt Hon Eric Pickles MP:
“It is certainly my view that, provided any object does not get in the way of someone doing their job, a discreet display of their religion is something that we should welcome.” (12 Mar 2012)
- The Attorney General’s office has suggested that the above Parliamentary response was the PM’s personal view and could not be construed as the Government’s official position.

However the British Government has contested the cases

In its submissions to the Court, the Government claimed that:

- The wearing of the cross is not a recognisable means of manifesting Christian faith:
“In neither case is there any suggestion that the wearing of a visible cross or Crucifix was a generally recognised form of practising the Christian faith, still less one that is regarded (including by the applicants themselves) as a requirement of the faith. The applicants’ desire to wear a visible cross or Crucifix may have been inspired or motivated by a sincere religious commitment. It was not, however, a recognised practice or requirement of the Christian faith. It therefore does not fall within the scope of Article 9.”
(Submission in Eweida and Chaplin, Paragraph 10, Page 5)
- Gary and Lillian’s desire to allow their Christian identity and convictions to guide their working life is not an aspect of the practice of their religion.
“Neither Mr McFarlane nor Ms Ladele can justify a refusal to provide services to homosexual couples on the basis of their beliefs, however sincerely held. Both applicants may have been inspired or motivated by their religious beliefs ... however, neither could be said to be practising their religion in a generally recognised form and neither case therefore falls within Article 9.”
(Submission in Ladele and McFarlane, Para 8, Page 4)
- Gary and Lillian’s employers were justified in restricting their Christian freedoms since they were seeking to protect the freedoms of others (even though there was no danger of anyone actually being denied a service to which they were entitled).
“If there was interference with the applicants’ Article 9 rights, it is permissible if “necessary in a democratic society” in order to protect “the rights and freedoms of others”. There can be little doubt that promoting equality and tackling discrimination on grounds of sexual orientation is a legitimate aim pursuant to Article 9(2).”
(Submission in Ladele and McFarlane, Para 19, Page 12)
- If an individual is free to express their Christian identity outside their employment or could conceivably resign and find a job where they could express their Christian identity then their ‘freedom of thought, conscience and religion’ has not been infringed.
“Where the individual in question is free to resign and seek employment elsewhere or practise their religion unfettered outside their employment, that is sufficient to guarantee their Article 9 rights in domestic law.”
(Submission in Eweida and Chaplin, Para 22, Page 13)

“The state has no positive obligation to intervene where the individual in question is free to resign and seek employment elsewhere and can practise their religion entirely unfettered outside their employment. That is sufficient to guarantee their Article 9 rights in domestic law.”
(Submission in Ladele and McFarlane, Para 17, Page 11)

The Government offered a very narrow interpretation of religion and of Article 9

- It suggests that ‘Christian faith’ is a private matter that can be ‘left behind’ or ‘worked around’ employment and community involvement, rather than a core part of someone’s Christian identity that informs their public service.
- It suggests that Article 9 provides almost no practical protection to individuals at all, except in cases of extreme persecution.

UK public opinion supports Christian freedoms

- 73% of British adults agree that ‘the right of people to wear Christian symbols such as a cross in their workplace should be protected by law’ according to a Nov 2010 ComRes poll (24% disagreed).
- 72% of British adults agree that ‘Christians should be able to refuse to act against their conscience without being penalised by their employer’ according to a Nov 2010 ComRes poll (22% disagreed).
- 84% of British adults agree that ‘the Government should be required to review regularly the impact of equalities legislation on vulnerable groups and on personal liberty’ according to a March 2011 ComRes poll (10% disagreed).

The Judgment can be appealed

- Judgments can be appealed to the Grand Chamber of the Court within three months.
- In the recent Lautsi case, the Chamber of the Court ruled against the display of a crucifix in an Italian school but the Court’s Grand Chamber subsequently overturned the decision to allow the continued display of the cross. (2010).
- However, the Prime Minister has indicated that if the cross cases are lost then the Government will change the law to make it clear that crosses can be worn at work (see above).

Points of clarification in the Case of Gary McFarlane

Gary never refused to counsel same-sex couples

- Gary had provided relationship counselling to same-sex couples during his five years as a relationship counsellor; he had never refused to do so.



The situation never arose – it was a hypothetical scenario

- There was no evidence that anyone had ever requested the service.
- There was no danger of anyone ever being refused a service which his employer wished to offer or to which people were entitled – since there would be colleagues able and willing to meet any realistic demand, without undue burden.

Gary chose to undertake additional training for a very specific form of directive sex therapy

- Gary was a relationships counsellor.
- He decided to train for a form of psychosexual therapy that involves working with a couple over several weeks and involves detailed exploration and direction of sexual activity.
- This was not general relationship counselling in which Gary was already involved.

This sexual therapy was not an existing part of Gary’s duties

- During the training, it occurred to Gary that he might have a conscientious objection to providing such directional sexual therapy to same-sex couples.
- He discussed these concerns in a private conversation with his supervisor.

Gary suggested addressing the possible scenario only if it ever actually arose

- From the outset and throughout disciplinary hearings, Gary suggested a ‘common sense’ way forward.
- He suggested that if any problems arose in the future then he would speak to his supervisor at that point in time and address the options at that point in time.

Points of clarification in the Case of Shirley Chaplin



'Health and Safety' was not the issue

- When Shirley was told to remove her cross, no mention was made of 'Health and Safety'.
- The health and safety 'justification' was only introduced later in the dispute. The original issue was visibility.
- Later, when 'Health and Safety' considerations were raised, 'risk of infection' was not cited. The issues raised related to the risk of scratching and the risk of injury resulting from the chain being pulled (even though this had never happened in Shirley's nearly 30 years in frontline nursing).

Shirley suggested amendments to address the 'health and safety' objection

- Shirley suggested solutions (e.g the fitting of a magnetic clasp such that the necklace would come away in the unlikely event that it was pulled by a patient).
- However, these suggestions were not accepted by her employer. The Trust was only willing for Shirley to continue to wear her cross if it were concealed (unless Shirley was prepared to remove the cross from the necklace and pin it to her identity badge, something that Shirley felt was not appropriate).

The uniform policy allowed the wearing of jewellery for religious reasons

- The Trust's uniform policy stated: "Any member of staff who wishes to wear particular types of clothes or jewellery for religious or cultural reasons must raise this with their line manager who will not unreasonably withhold approval."

Accommodation was made for the religious dress of others

- Accommodation was made for the religious dress (including jewellery) of other religions – including items that arguably did increase health and safety risks.
- Evidence was presented in Court of how the policy was not applied uniformly.

It is false to claim that a practice must be mandatory to reflect Christian identity and to enjoy protection

- Not all Christians wear crosses and some people wear crosses who aren't Christians! However, that doesn't negate the fact that wearing a cross is a genuine and widely recognised expression of Christian identity for many Christians (c.f. not all Jews eat Kosher food; not all Muslim women wear the Hijab).
- It is a false test to suggest that a practice has to be mandatory or exclusive to a particular religion to be protected. The European Convention makes no such demand.
- If a practice has to be practised by all, larger and more diverse religious groups are likely to be disadvantaged in the enjoyment of Article 9 protections.
- Likewise, faiths such as Christianity that place a high premium on individual conscience (and not just external law) would be disadvantaged.

Broader Background

The European Convention on Human Rights provides very strong protections for 'freedom of thought, conscience and religion'

- Article 9 of the Convention guarantees 'freedom of thought, conscience and religion'. This freedom extends to worship, teaching, practice and observance. It can only be restricted for specific, limited circumstances.
- 'Freedom of thought, conscience and religion' is a primary, explicit right. In contrast, 'sexual orientation' rights for example are secondary, derived rights (from the right to a private life under Article 8).
- The presumption behind Article 9 is not that religion is a social evil that should be tolerated (and only given as much space as is absolutely necessary) but rather that religion is a social good that should be protected and given space to flourish.
- 'Freedom of thought, conscience and religion' is an expansive freedom and the burden of proof lies on those who seek to restrict it, not on those who seek to promote or protect it.

‘Freedom of thought, conscience and religion’ is recognised as a hallmark of a civilised society and is valued even by those who don’t identify as ‘religious’

- Freedom of religion is recognised as a public good and worthy of protection for the benefit that it brings to society.
- Religion provides a ‘relativising’ authority – an important bulwark against the tyrannising tendency of the state.
- ‘Freedom of conscience’ is an important protection for all manner of viewpoints and convictions that differ from the ‘reigning orthodoxy’. Such freedoms are always tested ‘at the margins’; the real test of the character of a society is how it deals with dissenters – bullying or accommodating.

The UK has a history of respecting conscience (e.g. abortion, military service)

- Abortion, for example, is another contentious ethical issue. Doctors can excuse themselves from facilitating abortion on the basis of their conscience – and many do – yet no one is denied a service to which they are entitled.
- Many more people are affected by this provision than would have been in Gary’s case, for example.

The two conscience cases raise issues of the ‘policing of thought’

- Neither Gary nor Lillian’s employers needed them to perform the disputed service in order to meet any actual demand for the organisation’s service. The issue therefore related to their thoughts, beliefs and attitudes.
- They were forced to choose between (i) keeping their job and (ii) keeping their job but being prepared to act against their conscience and Christian identity.

These cases raise questions about whether we can tolerate diversity in society – diversity of ‘thought, conscience and religion’

- These cases raise issues of whether we can tolerate diversity of opinion and thought in organisations and society.
- The alternative is the dilution of protections for diversity and the imposition of a bland uniformity.

These cases have implications for the freedoms of others, not just Christians

- Other groups and individuals will be affected if Article 9 is only held to offer weak protections – especially those holding minority or unpopular viewpoints.
- ‘Freedom of conscience’ is an important protection for all manner of viewpoints and convictions that differ from the ‘reigning orthodoxy’.

There is no valid parallel with race or racism

- If ‘sexual identity’ is held to include choices about sexual behaviour then it is *at least in part* a chosen identity.
- In contrast, race is an intrinsic characteristic and has no element of behavioural choice. There is no sense in which someone’s race is defined by the behaviour in which they engage.
- Gary expressed a possible conscientious objection to facilitating certain sexual activity that might not be in someone’s best interests. His objection was not based on a characteristic of a person but on a particular behaviour.

Accommodating sincerely held Christian belief is not analogous to accommodating racism for example

- No one is arguing that all beliefs should be accommodated all of the time. There are some beliefs and actions that should not be accommodated by employers.
- But a Christian’s view on marriage is not unreasonable or hurtful and should be accommodated where it can be.

Court judgments about what constitutes core practice or belief for Christians are problematic

- Suggestions that ‘wearing the cross’, ‘Sunday observance’ or the belief that ‘marriage is the union of one man and one woman for life’ are not core elements of Christian faith and hence not protected are problematic.
- It is not necessary for a practice or belief to be held by every single Christian for it to be a genuinely recognised form of practising the Christian religion and hence worthy of protection.

The European Court recognises the importance of the issues in these cases

- It is rare for the Court to hear Article 9 cases and especially to afford cases a full oral hearing (4th Sep 2012).

These cases will have implications for people across Europe

- The Council of Europe has 47 member states (with a total population of more than 800 million).

Society loses out unnecessarily when Christian identity becomes a bar to public service

- Christian individuals, local churches and Christian organisations who share the identity and convictions of these Christians are heavily involved in community service projects and in welfare, education and caring professions – fuelled by their faith to serve others.
- Christian individuals and organisations (e.g. [Catholic adoption agencies](#)) have had to stop serving society because they have been told they cannot do so if they retain their Christian ethos.
- Society suffers significant loss of skill and service as a result of a small number of contentious scenarios that could be worked around – e.g. the extensive and highly regarded work of Catholic adoption agencies is lost on account of the issue of placement with same-sex couples (for which there is proportionately low demand; demand that in any case could have been met by other adoption services).

The interpretation of recent ‘equalities’ legislation has been problematic in creating a ‘hierarchy of rights’ and penalising rather than protecting Christians

- In February 2012, a committee of UK Parliamentarians (‘Clearing the Ground’ Inquiry) found that: “The Equality Act 2010 fails to deal with the tensions between different strands of equality policy. Court decisions have relegated religious beliefs below other strands and effectively created a hierarchy of rights. The place of religious belief suffers because companies, institutions and the government do not take sufficient action to accommodate it...”
- ‘Equality’ legislation was promoted as ‘protecting difference’; in fact it is being used to ‘punish difference’ – in particular difference of opinion, belief and conscience, especially where a view differs from the establishment’s dominant viewpoint on sexual ethics. Legislation that was claimed to be ‘permissive’ is being used to compel.
- Where an individual’s Christian identity and the implications of that identity for their work can be ‘reasonably accommodated’ without any significant risk to others, without any danger of anyone being denied a service to which they are entitled and without any undue burden on their employer, then it should be accommodated. The failure to practise ‘reasonable accommodation’ suggests an unfair antipathy and discrimination toward Christians.

Cases such as these are a cause of growing concern in the UK and Europe

- In February 2012, a committee of UK Parliamentarians (‘Clearing the Ground’ Inquiry) concluded: “The experiences of Christians in the UK seeking to live out their beliefs and speak freely illustrate a very real problem in the way religious belief, and in particular Christianity is understood and handled. The problem is a pressing challenge to our idea of a plural society;”
- The Parliamentary Assembly of the OSCE recommended in July 2011 that “in view of discrimination and intolerance against Christians, that legislation in the participating States, including labour law, equality law, laws on freedom of expression and assembly, and laws related to religious communities and right of conscientious objection be assessed;”
- These developments have caused a ‘chilling effect’ whereby Christians feel pressure not to articulate or demonstrate their faith and some public bodies/ employers are suspicious of Christian faith and may restrict it.
- The Christian Legal Centre handles many similar cases each year.

Many UK Christians are concerned by the direction of the Coalition government

- The judgments come at a time when many UK Christians feel that Government policy is undermining the UK Christian framework – and attacking rather than protecting Christians
- The Government’s plans to redefine marriage would cause even greater problems in the area of Christian freedoms and are an area of great concern.