

In applying the principles set down in *Re Blagdon Cemetery*,¹ the chancellor found that a fundamental mistake had been made, in that none of the family had appreciated or had had explained to them the concept of final Christian burial and that they had entirely failed to appreciate that ecclesiastical law does not readily recognise the idea of temporary burial. A faculty was granted. [RA]

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Noah v Desrosiers trading as Wedge

London Central Employment Tribunal, May 2008

Religious dress – headscarf – hairdresser – discrimination

The claimant, a Muslim, applied for a position as hair stylist. The respondent asked about the claimant's headscarf and indicated that the wearing of it was problematic, since the salon expected staff to display contemporary hairstyles to customers. The discussion of this topic was neither disparaging nor derogatory. The claimant was not appointed and the position was not filled. The claimant brought proceedings alleging direct and indirect discrimination on grounds of religion or belief. The tribunal found that there was no direct discrimination but that there had been indirect discrimination. In relation to indirect discrimination, the tribunal found that the provision, criterion or practice (PCP) applied was that an employee appointed to the position of assistant stylist would be required to display her hair at work. The respondent conceded that this PCP put persons of the same religion as the claimant at a particular disadvantage but contended that it did not put the claimant at a disadvantage since the claimant would not in fact have been offered a job, given that the position was never filled. Nevertheless the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, rendered unlawful discrimination in relation to job applicants and in relation to arrangements made as part of the recruitment process, whether or not an appointment was ultimately made. Despite the fact that no job would, in fact, have been offered, the claimant was put at a disadvantage by the decision to proceed no further with consideration of her as a candidate.

This prima facie finding of indirect discrimination meant that the tribunal needed to consider whether the respondent had shown that the PCP she had applied to the claimant was a proportionate means of achieving a legitimate aim. The tribunal found that a compromise situation of the type present in *Azmi v Kirklees Metropolitan Borough Council*,² was not an option in the

1 *Re Blagdon Cemetery* [2002] Fam 299, [2002] 4 All ER 482, Ct of Arches.

2 See *Azmi v Kirklees Metropolitan Borough Council* [2007] ICR 1154.

present case: it was clear that the claimant wished to wear her headscarf at all times in work. The tribunal also rejected the claimant's analogy with the employment tribunal decision in *Eweida v British Airways*,³ on the basis that the respondent ran an extremely small business and that the display of hair was related to the nature of the business in a very particular way, which pointed to a risk of a potential adverse impact different from that in the *Eweida* case. The tribunal found, however, that the respondent's application of the PCP was not justified. Although it was reasonable for the respondent to take the view that the issue posed a significant risk to her business, too much weight was accorded to that concern. The respondent herself would have continued to display her own hair and the reason why the claimant was not displaying her own hair would have been entirely apparent to customers or potential customers. These reasons, coupled with the discriminatory impact and the fact that the PCP did not constitute a core requirement of the job's function, meant that the claim of indirect discrimination was well founded.

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Re St Mary the Virgin, Oxford

Oxford Consistory Court: Bursell Ch, June 2008

Memorial – heresy and treason – departure from precedent

The petitioners – the vicar and churchwardens – sought to erect a memorial, in the form of a tablet placed above the choir stalls, to commemorate 'those who died for their faith, both Catholic and Protestant from the University and Oxfordshire, in the Reformation centuries'. The DAC had no objection to the proposal save an amendment to part of the design, which was accepted by the petitioners. The PCC had unanimously approved the proposal and there was considerable local and high-profile support for the scheme. The chancellor drew attention in his judgment to the fact that several of those commemorated had been executed for heresy and others for treason. He reviewed the law outlawing the burial of those who had died as heretics or excommunicate and of those who were executed for treason. He referred to his own judgment in *Re St Edmund's Churchyard, Gateshead*,⁴ noting the presumption against the commemoration of someone executed for high treason who had not been granted

3 See Case Note at (2008) 10 Ecc LJ 256 and L Vickers, 'Indirect discrimination and individual belief: *Eweida v British Airways plc*' on pp 197–203 of this issue.

4 *Re St Edmund's Churchyard, Gateshead* [1995] Fam 172, [1995] 4 All ER 103, Durham Cons Ct.