



Runnymede Trust response to Equalities and Human Rights Commission submission on cases of religious discrimination

About the Runnymede Trust

Runnymede is a social policy research organisation focused on race equality and race relations. We work by identifying barriers to race equality and good race relations; enabling effective action for social change and influencing policy at all levels through providing thought leadership and robust evidence.

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We welcome the opportunity to respond to the Equalities and Human Rights Commission's (the Commission) request for input on their submission on four cases of religious discrimination; Nadia Ewieda & Shirley Chaplin against the United Kingdom (Application numbers 48420/10 and 59842/10) and Lillian Ladele and Gary McFarlane against the United Kingdom (Application numbers 51671/10 and 36516/10). Runnymede would like to begin by stating that we feel that these are important issues to discuss and that we welcome the Commission's decision to engage with what is a difficult and provocative subject.

We note that the Commission has decided to adopt 'Reasonable Accommodation' as a model for their response to this issue, following precedents set in the area of disability. We appreciate that there are distinct advantages to this model. Primarily it offers a framework whereby individual cases can be assessed without necessitating protracted litigation and according to tried and tested patterns in an area in which ambiguity is a common feature, but nonetheless frequently arouses passionate and occasionally violent responses. Assuming that it is the degree of accommodation that is being assessed then this model also appears to allow courts, stakeholders and other decision makers to avoid being drawn into potentially damaging debates regarding the validity of individual belief systems.

However we are concerned that the submission could set a troubling precedent and is potentially in opposition to the philosophy of the European Convention on Human Rights (ECHR).

Runnymede's Concerns:

1) There remains a need to pass judgements upon individuals' beliefs

We believe the model advocated by the commission would still require judges and legislators etc to come to some conclusion as to which beliefs are "reasonable" i.e. acceptable within the public sphere. It is important to note that religious beliefs, unlike disabilities are not value neutral, by their nature they involve an explicit set of principles as to what constitutes 'the good' and by implication (stated or otherwise) what constitutes a bad or morally reprehensible life.

Just as religious beliefs necessarily entail a judgement on others; it seems to us that there are some beliefs (not necessarily religious) to which no accommodation would reasonably be made. As you state in your briefing document "It would not be reasonable for an accommodation on religious – or indeed any other grounds – to result in other unlawful discrimination". This would require a court to rule on whether this had occurred and in doing so, the court would be making a judgment about which views are worthy of reasonable accommodation and which are not.

2) Decisions could potentially challenge the ECHR

It is conceivable that the reasonable accommodation model could be employed in a manner which challenges the spirit and or letter of the ECHR. For instance a registrar could put forward a coherent set of beliefs regarding the inappropriate, undesirable or immoral nature of mixed-race marriage and subsequently claim reasonable accommodation to allow them to refuse to marry couples of differing ethnicities. This would clearly be an unacceptable outcome which runs quite contrary to the spirit and letter of both the ECHR and the duties of the Commission. It should be stressed at this juncture that we are not equating religious beliefs with xenophobic prejudices, but we are stating that it is conceivable for the two to operate in a comparable manner

Discussion of the cases

We note that in your briefing document you make reference to two articles of the ECHR:

Article 9

Everyone has the right to freedom of thought, conscience and religion...

Article 14

The enjoyment of rights and freedoms ... shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other

opinion, national or social origin, association with a national minority, property, birth or other status

If we now look at the principles involved in the four cases we find that in fact different degrees of accommodation – or alternatively different conceptions of what is reasonable – apply.

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Eweida & Chaplin

Wearing a Cross or any form of religious clothing implies a value judgment on a range of moral and metaphysical principles. However, this implied judgment does not interfere with the provision of any service and it is not a judgment which necessarily contravenes principles of the ECHR.

Ladele & McFarlane

In the cases of Ladele and McFarlane however, the judgment being made is explicit. It is therefore a matter of principle whether reasonable accommodation should be made for such circumstances. To believe that it should is to make judgments about a set of beliefs which contravene principles of the ECHR – namely that individuals should not suffer discrimination based on their sexual orientation. It may be possible to reasonably accommodate such beliefs, this does not evade the issue of whether it is right for such beliefs to be accommodated. In limiting or denying accommodation the state is not saying that people are not allowed to hold such beliefs, but it is affirming the principle that they are not allowed to impose them upon other citizens / institutions. While we do not wish to imply that the Commission is compromising or altering its commitments in the area of sexuality, or any other protected characteristic, this remains an area that requires special consideration if the model advocated by the Commission is to be pursued.

We therefore advise against employing the reasonable accommodation model

Public services in particular carry an important symbolic as well as practical significance. If public sector employees, paid by the public purse are accommodated in putting into practice beliefs which run contrary to the ECHR then this has a bearing on what the society expresses to its citizens about the ECHR itself and the standing of some of its citizens more generally. With reference to Ladele and McFarlane in particular we think the reasonable accommodation model is not appropriate. However we believe that this highlights broader problems with its application namely that, at the very least significant stipulations must be applied to delineate the limits of its application. These limits would need to be of a stringent nature, such that the intention of simplifying the position of the law and extending the license granted to religious belief with regard equalities legislation would be significantly compromised.

To conclude, while we appreciate the advantages of a reasonable accommodation model; we feel the it is inappropriate to apply it to issues of religious discrimination as it must either be accompanied by so many caveats that it ceases to be practical or it will establish precedents that are deeply problematic.

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