

The Wearing of the Cross: What does the Government really believe?



Shirley Chaplin had worn her confirmation cross on a small chain around her neck, without incident, throughout her nearly thirty years in front-line nursing. Then, as part of a new uniform policy, she was told to remove it. Now her case will be heard at the **European Court of Human Rights** on **4th September 2012**.

Her case has serious ramifications for the freedom of Christians in the UK and across Europe. It is indicative of a wider trend of the marginalisation of Christian belief and practice from public life and the increasing difficulties faced by those whose professional and public service is driven by their Christian faith.

The UK Government is contesting her case, in spite of statements by Government Ministers in support of wearing the cross.

What UK Government Ministers have said publicly:

1. The Prime Minister

"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."

Rt Hon. David Cameron MP, 11 July 2012

2. The Secretary of State for Communities and Local Government

"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."

Rt Hon. Eric Pickles MP, Secretary of State for Communities and Local Government, 12 March 2012 in response to the following Parliamentary Question: "I thank the Minister for that welcome news, but as part of his duties as Secretary of State will he defend the right of Christian local authority workers discreetly to wear crosses or crucifixes at work, just as he would I hope defend the right of Sikhs to wear the turban, given a pending European judgment?"

What the Government has said to the European Court of Human Rights:

"The Government submit that (a) the applicants' wearing of a visible cross or Crucifix was not a manifestation of their religion or belief within the meaning of Article 9, and (b), in any event, the restriction on the applicants' wearing of a visible cross or Crucifix was not an "interference" with their rights protected by Article 9."

(Paragraph 3, Page 3)

"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."

(Paragraph 10, page 5)

"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."

(Paragraph 22, Page 13)

UK Government Submission to the European Court of Human Rights in the cases of Nadia Eweida and Shirley Chaplin, 14th October 2011

What Government Ministers have said publicly:

3. The Attorney General:

"The Government also believes that people should be able to wear crosses, a view that I share. The law allows for this, and employers are generally very good at being reasonable in accommodating people's religious beliefs. The law does not deny people the right to express religious views, including through the wearing of religious symbols while at work.

Employers need to have a specific and legitimate reason in order to restrict their employees from openly wearing a cross or any other religious item."

Rt Hon. Dominic Grieve QC MP, Attorney General, 21 May 2012, emphasis added

4. The Minister for Equalities and Criminal Information

"What the government has been arguing (and British law states) is that people should be free to wear crosses if they wish, unless their employer has a compelling reason to say 'no' (such as risk of it carrying an infection in hospitals). **The grounds for saying 'no' have to be reasonable and cannot be used as a backdoor way to discriminate against any religion.** ... The current law applies in the same way to people of all religions and beliefs. It makes clear that any actions that would directly discriminate against those of a particular religion, such as Christianity, are unlawful. **In addition, where a policy indirectly discriminates against those of a particular religion and this policy cannot be justified, that is also unlawful."**

Lynne Featherstone MP, Parliamentary Under-Secretary of State for Equalities and Criminal Information, 12 April 2012, emphasis added

The Details of the Case

- At the outset, no mention was made of 'Health and Safety considerations' being the reason for the policy or prohibition of Shirley's cross. The original issue was visibility.
- The 'Health and Safety justification' for the ban was only introduced later in the dispute. The 'Health and Safety considerations' cited did not relate to 'risk of infection' but to risk of scratching and injury resulting from the chain being pulled.
- Shirley was prepared to make reasonable adjustments to the necklace to address the Trust's concerns (e.g. the fitting of a magnetic clasp such that the necklace would come away if pulled).
- The uniform policy was applied asymmetrically. Accommodation was made for the religious dress (including jewelry) of those of other religions that arguably did increase health and safety risks.
- Shirley's employer (an NHS Trust and hence a public body) was only happy for her to continue to wear her cross if it were not visible.

Questions arising

- Did the introduction of a new uniform policy that involved the prohibition on wearing the cross satisfy the requirement of a 'specific and legitimate reason'? If so, what was that reason?
- If 'Health and Safety considerations' were the justification, why was that not made plain from the outset? Could such concerns not be addressed through the accommodations that Shirley was willing to make?
- If 'Health and Safety concerns' were an overriding consideration and provided a legitimate reason for restriction, why were exceptions made for other clothing, rather than the policy being applied uniformly?

The Issues at Stake

- Article 9 of the European Convention on Human Rights provides strong and extensive protection of religious freedom. Article 14 prohibits discrimination on the basis of religion.
- The Government has offered a very narrow interpretation of Article 9, holding, for example, that:
 - (a) *The wearing of a Cross is not a means of manifesting Christian faith under Article 9.*
 - (b) *If an individual is free to wear a cross outside their employment or could conceivably find a job where a cross could be worn, then Article 9 is not relevant.*
- If accepted, this logic would suggest that Article 9 only secures protection from extreme persecution rather than upholding the more general principle of religious freedom in a civilized society.
- No 'reasonable grounds' for the prohibition of Shirley's cross have been offered.
- The asymmetry in treatment of those of other religions in this case suggests discrimination on the basis of religion.