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Neutral Citation Number: [2007] EWHC 1698 (Admin)

Case No:CO/9235/2006

IN THE HIGH COURT OF JUSTICE
 QUEEN'S BENCH DIVISION
 ADMINISTRATIVE COURT

Royal Courts of Justice
 Strand, London WC2A 2LL
 16/07/2007

B e f o r e :

Michael Supperstone Q.C.
 (Sitting as a Deputy High Court Judge)

**THE QUEEN on the application of LYDIA
 PLAYFOOT (a Minor) (by her father and litigation
 friend Philip Playfoot)** **Claimant**

-and-

GOVERNING BODY OF MILLAIS SCHOOL **Defendant**

**PAUL DIAMOND (Instructed by Direct Access) for the Claimant
 JONATHAN AUBURN (Instructed by Legal Services, West Sussex
 C.C.) for the Defendant**

Hearing Date 22nd June 2007

HTML VERSION OF JUDGMENT

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The Deputy Judge:

Introduction

1. The Claimant, Lydia Playfoot, is now aged 16 and was until very recently a pupil at Millais School in Horsham, West Sussex ("the School"). She left the School at the end of the Summer Term after the completion of her GCSE examinations. Her departure from the School does not affect the outcome of these proceedings.
2. The Claimant, who brings this claim for her father and litigation friend, seeks judicial review of the decision of the Defendant, the Governors of the School, not to permit her to wear a "purity" ring as a symbol of her commitment to celibacy before marriage. She contends that this decision unlawfully interferes with her right to manifest her religion or beliefs, contrary to Article 9(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and unlawfully discriminates against her in breach of Article 14 of the Convention.
3. On 8 May 2007 Goldring J. refused permission to apply for judicial review on the papers. He ordered that if the application be renewed it should immediately be followed by the substantive hearing in the event of it succeeding. At the outset of the hearing before me I indicated that I would hear full argument from the parties and thereafter give my decision on both the renewed application for permission and the substantive application, if I granted permission. I also made an order under Section 39 of the Children & Young Persons Act 1933 preventing the disclosure of, amongst other things, the name of any child or young person concerned with these proceedings other than the Claimant herself.

Factual Background

4. The School is a maintained non-denominational girls secondary school which admits pupils from age 11 to 16. The Claimant started at the School in Year 7. Her two older sisters attended the School ahead of her. She also has a younger sister at the School. At the time of the hearing of this application the Claimant was in Year 11, her final year.
5. The School has a uniform policy which provides in respect of jewellery that:

"This is not part of school uniform and MUST NOT BE WORN.

Girls with pierced ears may wear one pair of plain ear "studs" - which must be removed for P.E.

Other studs including nose and tongue studs are not permitted."

The School has had the same dress code since the early 1990's.

6. The Claimant says that she commenced wearing the Silver Ring Thing purity ring ("SRTpr") at school in June 2004 and that "she wore it quite happily for a year until the summer 2005. It was then that [she] was told to cease wearing the SRTpr on grounds that it was not in conformity with school uniform policy". (Para 13 of first Witness Statement). Mr Nettley, Head Teacher at the School, says that he would be "surprised if this were the case (i.e. that staff had seen her with a ring for a year and permitted this) as [he knows] staff routinely challenge pupils wearing jewellery, and ask them to remove it". (Para 21 of first Witness Statement; and see paras 3-6 of his second Witness Statement).
7. On 13 June 2005 Mr Playfoot, the Claimant's father, wrote to Mr Nettley raising two issues: first, his concerns as to the content of the sex education curriculum in PHSE for girls at the end of Year 9 or beginning of Year 10; and second, that Lydia had not been allowed to wear a ring in school. He described the ring as "demonstrating her personal commitment to sexual abstinence prior to marriage which [he believed] could help promote some healthy discussion and create positive peer pressure". Mr Playfoot wrote further to Mr Nettley on 5 July 2005 claiming that the refusal to allow Lydia to wear a ring showing her commitment to abstinence "as an expression of her personal faith" would amount to discrimination (if Muslim girls are allowed to wear head coverings) and in addition be contrary to Article 9 of the Convention. By letter date 13 July 2005 Mr Nettley informed Mr Playfoot that the issue of Lydia's ring had been raised at a full Governors' Meeting and that the Governors had endorsed the view that for her to wear the ring would be in breach of school rules.

8. On 20 October 2005 Mr and Mrs Playfoot attended a meeting with two Governors, Mrs Barnes (Chair of Governors) and Mrs Coate and, also, Miss Quint, Head of PHSE. The meeting addressed the issues of sex education and the ring. Mr Playfoot expressed his view that the ring was part of the Claimant's faith and not decorative. The Governors advised that the ring was representative of a moral stance and not a necessary symbol of Christian faith.
9. On 21 October 2005 Mr Playfoot wrote to Mrs Barnes expressing his disappointment that the Governors feel they cannot give "positive support to girls who want to take this stand" by wearing a ring as a sign of commitment to sexual abstinence. He said that he was looking at the legality of the School's position. On 10 November 2005 Mrs Barnes replied setting out the School's position. Mr Playfoot wrote further to Mrs Barnes on 21 November 2005 and on 5 December 2005 he took up the issue of the ring with the local education authority. Mr David Sword, Head of School Improvement Support for West Sussex County Council, replied to that letter on 13 January 2006.
10. During January and February 2006 there was further correspondence between Mr Playfoot, the Governors and the LEA. On 10 February 2006 Mrs Barnes wrote to Mr and Mrs Playfoot and referred to the meeting they had on 20 October 2005 when it had been explained to them that "the Governors had earlier considered the wearing of wristbands and had decided that these could be attached to bags, as could other keyrings etc. as a visible sign of any causes that a pupil was supporting".
11. During the summer term 2006 Lydia began to wear her ring again in school. Whilst in the past she had complied with requests to remove the ring, in May 2006 she refused. The matter was referred to Mrs Mitchell, Assistant Head Teacher, who decided that Lydia should receive a disciplinary sanction for refusal to follow the instructions of staff and persistent defiance of school rules. Her punishment was to be taught separately from her class for an afternoon (similar to a detention, but within the school day), a sanction used for a range of offences within the School.
12. Following this incident the Claimant wrote to Mrs Mitchell on 12 May 2006 explaining why she wished to wear her purity ring. This letter was copied to the Chair of Governors, other teachers and Mr Nettley. Lydia stated that she is a committed Christian with a genuine belief that she should remain sexually abstinent before marriage, and that the ring is a sign of this belief.
13. On 8 October 2006 the Claimant wrote to Mrs Barnes (copies to Mr Nettley and the Director of Legal Department, West Sussex County Council) stating, "As advised by my barrister, I am writing to say that I intend to commence legal proceedings in my own name unless I receive categorical assurances that I can wear my purity ring (including other girls who wish to wear a purity ring) within the next 7 days. I do not wish to delay any longer as I have suffered since 2004".
14. As a result of this threat of legal action Mrs Barnes wrote to Mr & Mrs Playfoot on 16 October 2006 stating that a meeting of the Governing Body would be convened to discuss this issue and to consider all of the representations made by Mr & Mrs Playfoot and the Claimant.
15. On 6 November 2006 the Claimant filed her claim for judicial review. (The seal of the Administrative Court Office on the Claim Form is dated 3 October 2006.)
16. By letter dated 28 November 2006 Mrs Barnes informed Mr Playfoot and the Claimant that:

"Following confirmation in your letters of 18 and 23 October that you had nothing further to submit, nor did you wish to address the Governors directly, the full Governing Body met on two occasions, on 30 October and 20 November, to review and discuss the issues fully and make a considered, final decision.

The Governing Body has decided not to grant an exemption to the uniform policy for Lydia in this matter. "

The letter then identified the matters that were considered by the Governors in their decision-making process.

Article 9 of the Convention

17. Article 9 provides, so far as relevant to this case:

"Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society ... for the protection of the rights and freedoms of others."

Article 9 protects both the right to hold a belief, which is absolute, and a right to manifest a belief, which is qualified (see *R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246 at para 16, (Lord Nicholls)).

18. It is common ground in these proceedings that the Claimant sincerely held the belief "in sexual restraint and that the appropriate framework for sexual relations is within marriage" (para 5 of her first Witness Statement). She says that she has made her own decision to remain a virgin until marriage and "this is because I am a Christian" (para 6 of her first Witness Statement). Mr Auburn, on behalf of the School, accepted that the Claimant holds a religious belief for the purposes of Article 9(1) which arises from her religious views.

19. The issues between the parties in respect of Article 9 are: (1) whether the wearing of the ring is a manifestation of that belief; (2) whether refusing to permit the Claimant to wear the ring interferes with her freedom to manifest her belief; and (3) if so, whether such interference was justified under Article 9(2).

manifestation

20. Mr Auburn submitted that only those practices which are necessary or required by the belief are protected. I accept that there is some support for this submission in decisions of the Commission. For example in *X v UK* (App. No. 5442/72, 1 Eur. Comm'n HR. Dec and Rep 41 (1974)) a Buddhist prisoner was not permitted to send out material for publication in a Buddhist magazine. He produced statements to the effect that communication with other Buddhists is an important part of his religious practice. However the Commission held the complaint to be manifestly ill-founded because he failed to prove that it was a necessary part of this practice that he should publish articles in a religious magazine. (See also *Xv Austria* (App. No. 8652/79, 26 Eur. Comm'n HR. Dec and Rep 89 (1981); and cases referred to in C Evans, *Freedom of Religion Under the European Convention on Human Rights* (OUP, 2001), pp. 115-117). However it is far from clear that there was ever a consistent body of Strasbourg case-law to the effect that only practices which are necessary or required by the belief are protected. (See, for example, *App. No. 10295/82 v United Kingdom* (2005) 41 EHRR 8; *Hasan and Chaush v Bulgaria* [2002] 34 EHRR 1339, at p.1358, para 60, [2002] 34 EHRR 55 and *Sahin v Turkey* (Application No. 44774/98) (unreported), [2004] ECHR 299, 29 June 2004, para 66).

21. Guidance as to what amounts to manifestation is now to be found in the House of Lords' decisions of *R(Begum) v Governors of Denbigh High School* [2007] 1 AC 100 and *Williamson*. The relevant principles can be summarised as follows:

(1) Article 9 does not require that one should be allowed to manifest one's religion at any time and place of one's own choosing. (*Begum* at para 50, (Lord Hoffmann)).

(2) Article 9 does not protect every act motivated or inspired by a religion or belief (*Williamson* at para 30, (Lord Nicholls); and *Sahin v Turkey* at para 66).

(3) In deciding whether a person's conduct constitutes manifesting a belief and practice for the purposes of Article 9 one must first identify the nature and scope of the belief. (*Williamson* at para 32, (Lord Nicholls)).

(4) If the belief takes the form of a perceived obligation to act in a specific way, then, in principle doing that act pursuant to that belief is itself a manifestation of that belief in practice. In such cases the act is "intimately linked" to the belief, in the Strasbourg phraseology: see *Application 10295/92 v United Kingdom* [1983] 6 EHHR 558; and *Hasan and Chaush v Bulgaria* [2002] 34 EHRR 1339, 1358, para 60, [\[2002\] 34 EHRR 55](#). (*Williamson* at paras 32 (Lord Nicholls) and 63 (Lord Walker)).

(5) By the time that the Court has reached the stage of considering the manifestation of the belief, it must have regard to the implicit (and not over-demanding) threshold requirements of seriousness, coherence and consistency with human dignity (*Williamson* at paras 23 (Lord Nicholls) and 64 (Lord Walker)).

22. Applying these principles, in *Williamson*, Lord Nicholls said :

"The essence of the parents' beliefs is that, as part of their proper upbringing, when necessary children should be disciplined in a particular way at home and at school. It follows that when parents administer corporal punishment to their children in accordance with these beliefs they are manifesting these beliefs. Similarly, they are manifesting their beliefs when they authorise a child's school to administer corporal punishment. Or, put more broadly, the claimant parents manifest their beliefs on corporal punishment when they place their children in a school where corporal punishment is practised. Article 9 is therefore engaged in respect of the claimant parents". (para 35; and see Baroness Hale at para 78).

On a similar analysis in *Arrowsmith v UK* [1975] 3 EHRR 218 Article 9 was not engaged. Miss Arrowsmith distributed leaflets to soldiers, urging them to decline service in Northern Ireland. This was dictated by her pacifist views. The contents of the leaflets did not express pacifist views, nor did the act of distributing the leaflets do so. She was not thereby manifesting her pacifism. (*Williamson* at para 31 (Lord Nicholls)).

23. In my judgment the act of wearing a ring is not "intimately linked" to the belief in chastity before marriage. As Mrs Barnes wrote in her letter to Mr Playfoot and the Claimant dated 28 November 2006 informing them of the decision of the full Governing Body, the Governors

"...found no evidence or explanation linking the belief in sexual abstinence to wearing the ring to the extent that [they] could conclude that wearing the ring was a manifestation of her belief."

The Claimant was under no obligation, by reason of her belief, to wear the ring; nor does she suggest that she was so obliged.

24. Accordingly, in my judgment, the Claimant was not manifesting her belief by wearing the ring and Article 9 is not engaged. In reaching this decision I have only been concerned with the facts of this particular case.

interference

25. In *Begum* Lord Bingham reviewed the Strasbourg case-law on this issue and summarised the position as follows:

"23. The Strasbourg institutions have not been at all ready to find an interference with the right to manifest religious belief in practice or

observance where a person has voluntarily accepted an employment or role which does not accommodate that practice or observance and there are other means open to the person to practise or observe his or her religion without undue hardship or inconvenience.....

24. This line of authority has been criticised by the Court of Appeal as overly restrictive (*Copsey v WWB Devon Clays Ltd* [2005] ICR 1789, paras 31-39, 44-66), and in *Williamson's* case [2005] 2 AC 246, para 39, the House questioned whether alternative means of accommodating a manifestation of religious belief had, as suggested in the *Jewish Liturgical* case, para 80, to be "impossible" before a claim of interference under Article 9 could succeed. But the authorities do in my opinion support the proposition with which I prefaced para 23 of this opinion. Even if it be accepted that the Strasbourg institutions have erred on the side of strictness in rejecting complaints of interference, there remains a coherent and remarkably consistent body of authority which our domestic courts must take into account and which shows that interference is not easily established."

26. *Copsey v WWB Devon Clays Ltd* was a case in which a Christian employee objected to a new shift system which involved Sunday working. The Court of Appeal expressed some disquiet about the application of the jurisprudence of the European Court of Human Rights when the employer had introduced new duties inconsistent with the practice of the employee's religion or where the manifestation of his beliefs could easily have been accommodated. In *Begum* Lord Hoffmann said:

"I say nothing about such cases because Shabina's family had chosen to send her to a school which required uniform to be worn and her wish to manifest her religious belief could not have been accommodated without throwing over the entire carefully crafted system". (Para 54).

27. In *Begum* there was not only an alternative school available but also a rule prescribing the wearing of Jilbabs. In *R (On the application of X) v The Headteacher of Y School* [2007] EWHC 298 (Admin) Silber J determined that there was not an interference with an Article 9 right when there was merely an alternative school available, but where (unlike the position in the *Begum* case) there was not a well-known practice at the Claimant's school of prohibiting the wearing of the article in question, (paras 29-35).

28. The relevant evidence in the present case on this issue is not, in any material respect, in dispute. It is contained in the first Witness Statement of Mr Nettley.

29. As to voluntary acceptance, the evidence is, in summary:

- (1) the School is a non-denominational girls secondary school (para 2);
- (2) the School's uniform policy, which includes a prohibition on the wearing of jewellery, has been in operation since the early 1990's (paras 5 and 6);
- (3) the uniform policy is publicised to all prospective pupils and their parents in a prospectus before children start school. The Claimant's older sisters also attended the school (para 8);
- (4) before children start at the School the Head of Year explains the dress code to them in a detailed speech given at the induction evening when the uniform is shown to parents and the dress standards explained (para 9);
- (5) the dress code is also referred to in the Code of Conduct which is contained in all pupils' homework diaries (para 9);
- (6) in September 2002, at the time the Claimant started at the School, she and both her parents signed the Home-School Agreement, in which the Claimant

agreed to adhere to the Code of Conduct and her parents agreed to encourage her to do so. The Code of Conduct stipulates that pupils are required to comply with the School uniform, (para 20);

(7) the School was the Claimant's first preference. She could have chosen to list other schools as her first preference, such as Holy Trinity Church of England School in Crawley which is a secondary school with a specifically Christian character and ethos (although it also appears to have a ban on jewellery for pupils in Years 7-11) or Thomas Bennett Community College (which does allow the wearing of rings), (paras 7 and 19).

Mr Diamond accepted that the uniform policy is lawful. He did submit that the ring is not jewellery because it is not designed to be decorative. It was, he submitted, a religious artefact and as such not covered by the uniform policy. I reject that submission. Whatever the ring is intended to symbolise, it is a piece of jewellery.

30. As for other means by which the Claimant can express her belief, the evidence is, in summary:

(1) the Governors said in the meeting held on 20 October 2005 and in a letter dated 10 February 2006 that the Claimant could attach her ring, or a keyring or other visible sign, to her bag, (para 44). There is no evidence that her belief can only be expressed by the wearing of a ring. Mr Nettley states: "It is not a Christian symbol, and is not required to be worn by any branch within Christianity. It is regarded by other pupils merely as jewellery, and there are alternatives within the School rules", (para 42);

(2) the SRT group itself offers other options which are acceptable to the School, such as keychains, badges and stickers (para 44);

(3) the School has encouraged the Claimant to make a contribution in her PSHE or other classes by sharing her views with other pupils and generating an open discussion of these issues and also in conversation outside lessons (see letters dated 10 November 2005 and 10 February 2006 from Mrs Barnes to Mr & Mrs Playfoot, and para 45 of Mr Nettley's Witness Statement);

(4) the Claimant could have sought transfer to another school, such as Thomas Bennett Community College, which would allow her to wear the ring, (para 46).

31. In *Begum* Lord Hoffmann noted that "there [was] nothing to show that Shabina would have ... found it difficult to go to another school. Until after the failure of her application for judicial review ... she did not seriously try because she and her family were intent upon enforcing her "rights"". Similarly in the present case there is no evidence that the Claimant attempted to transfer to any other school or even made any enquiries in that regard.

32. In my judgment the Claimant's Article 9 rights have not been interfered with both because she voluntarily accepted the uniform policy of the School which does not accommodate the wearing of the ring and there are other means open to her to practice her belief without undue hardship or inconvenience.

justification

33. As Lord Bingham stated in *Begum*:

"To be justified under Article 9(2) a limitation or interference must be (a) prescribed by law and (b) necessary in a democratic society for a permissible purpose, that is, it must be directed to a legitimate purpose and must be proportionate in scope and effect" (para 26).

34. The School's uniform policy was plainly prescribed by law. I did not understand Mr Diamond to suggest to the contrary. The School had statutory authority to lay down rules on uniform. The rules were made for the legitimate purpose of protecting the rights and freedoms of others. They were clearly communicated to the Claimant by the means referred to in para 29 above.
35. The issue in the present case is whether the rules on uniform and the School's decision to enforce them so as to forbid the Claimant from wearing the ring were in all the circumstances proportionate. In determining this issue I adopt the following approach:

(1) in *Begum* Lord Bingham said (at para 29):

"...the focus at Strasbourg is not and has never been on whether a challenged decision or action is the product of a defective decision-making process, but on whether, in the case under consideration the applicant's Convention rights have been violated. In considering the exercise of discretion by a national authority the court may consider whether the applicant had a fair opportunity to put his case, and to challenge an adverse decision ... But the House has been referred to no case in which the Strasbourg court has found a violation of Convention rights on the strength of failure by a national authority to follow the sort of reasoning process laid down by the Court of Appeal. This pragmatic approach is fully reflected in the 1998 Act. The unlawfulness described by section 6(1) is acting in a way which is incompatible with a Convention right, not relying on a defective process of reasoning, and action may be brought under section 7(1) only by a person who is a victim of an unlawful act".

(Cited with approval recently by Lord Hoffmann in *Miss Behavin' Ltd v Belfast City Council* [2007] UKHL 19 at para 14);

(2) the intensity of review is as described by Lord Steyn in *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532, paras 25-28. The court must make a value judgment, an evaluation by reference to the circumstances prevailing at the relevant time (*Wilson v First County Trust Ltd (No.2)* [2004] 1 AC 816, paras 62-67). Proportionality must be judged objectively (*Williamson* at para 51 (Lord Nicholls); and *Begum* at para 30 (Lord Bingham)).

36. In my judgment the uniform policy serves a number of important functions. These are identified by Mr Nettley at paras 10-17 of his first Witness Statement. First, it fosters the School identity and an atmosphere of allegiance, discipline, equality and cohesion. Second, it allows children to learn in an environment which minimises the pressures which result from marking differences on grounds of wealth and status. Third, it reduces the risk of bullying at school, which may arise where social pressures develop around clothes and jewellery through peer expectations. Fourth, it assists in promoting the highest standards of achievement in all aspects of a young girl's life, including her attitudes and conduct. In addition there are health and safety reasons for not allowing the wearing of jewellery (see letters dated 16 December 2005 and 10 February 2006 from Mrs Barnes to Mr and Mrs Playfoot).
37. I note that the first and second of these functions are in similar terms to those upheld as legitimate and proportionate in the *Y School* case at paras 73-76. Further all four functions form part of the recommendations to Schools when setting their uniform and appearance policies (see draft DfES Guidance to Schools on School Uniform Related Policies issued on 20 March 2007, at para 1.2).
38. In my judgment the School was fully justified in acting as it did. The School recognises exceptions to its general ban on jewellery where the imposition of the strict rule would impose a disproportionately harsh result on a pupil. These fall into three categories (see Mr Nettley's first witness statement, paras 38-45):

(i) first, on health and safety grounds, in particular where there is a specific medical need. This exception has no application in the present case.

(ii) second, where enforcing the policy would be likely to result in an unlawful breach of the pupil's human rights. The School has permitted a Muslim girl to wear a headscarf where it was considered by her to be a requirement of her faith; two Sikh girls have been allowed to wear a Kara bangle on a similar basis; and a pupil was allowed to wear a headscarf as it was believed that this form of dress was required as part of her faith as a member of the Plymouth Brethren. By contrast there is no evidence in the present case that the Claimant's religious belief required her to wear the ring and she did not suggest that it did;

(iii) third, where there are exceptional and compelling grounds. There are no such grounds in the present case. The Claimant was not obliged by her religious faith to wear the ring and the School offered her other means by which she could express her belief (see para 30 (i-iii) above).

Section 13 of the Human Rights Act 1998

39. Section 13 provides:

"If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right".

40. Mr Diamond in the Grounds for Judicial Review and in his Skeleton Argument suggested that this case raised an issue requiring consideration of Section 13 of the Act. However he did not pursue this matter at the hearing. In my judgment Section 13 has no application in the present case.

Article 14 of the Convention

41. Article 14 prohibits discrimination. It provides:

"The enjoyment of the rights and freedoms set forth in this Convention 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."

The Claimant alleges that she was being discriminated against because Muslim girls wear Islamic headscarves and Sikh girls can wear the Kara bangle. (First Witness Statement, para 14). She says that she believes "Christianity is singled out for *adverse treatment*" (para 35). In my judgment there is no evidence that the School has unlawfully discriminated against the Claimant in breach of Article 14. The evidence before me supports the submission made by Mr Auburn that the School reached carefully considered decisions on each occasion it has been called upon to permit exceptions to the uniform policy. (See first Witness Statement of Mr Nettley at paras 38-43). In particular, as summarised in para 38 (ii) above, the School has permitted a Christian girl to wear a headscarf as it was believed that this form of dress was required as part of her faith as a member of the Plymouth Brethren; a Muslim girl to wear a headscarf as it was understood this was considered by her to be a requirement of her faith and, at the time the decision was taken, the School believed that to do otherwise might unlawfully breach her human rights; and to allow two Sikh girls to wear a Kara bangle on a similar basis. I note that the draft DfES Guidance to Schools on School Uniform Related Policies (see para 37 above) sets out in Appendix 1 a summary of religious clothing requirements. The decisions of the School in relation to the Plymouth Brethren (described as a Christian sect) and Muslim pupils referred to above appear to be consistent with the views expressed therein. The Guidance does not refer to the Sikh practice of wearing Kara bracelets, but the School, on the information it had at the time, formed the view that this was a requirement of Sikhism.

Delay.

42. Mr Auburn submits that there has been considerable delay in bringing this claim; that it was not filed promptly and in any event later than 3 months after the grounds to make the claim first arose (CPR.54.5); and that there is no proper basis for extending time. Accordingly he submits the claim should be dismissed on account of delay.
43. However these proceedings are brought only on Convention grounds. In my judgment the applicable time limit is that contained in Section 7(5) of the Human Rights Act 1998 by which proceedings under sub-section 1(a) must be brought before the end of (a) the period of 1 year beginning with the date on which the act complained of took place; or (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances (subject to any rule imposing a stricter time limit in relation to the procedure in question). In *R (Quark Fishing Ltd) v Secretary of State for Foreign & Commonwealth Affairs* [2003] EWHC 1743 (Admin) 22 July 2003, unrep) Collins J. said : "the test set out in s7(5)(b) gives the court a very wide discretion, Relevant considerations will be the reason for the delay and whether any prejudice will be caused to the defendant if the claim is permitted to proceed".
44. The Claimant's evidence is that she was first prevented from wearing the ring in the summer of 2005. On 13 June 2005 Mr Playfoot wrote to Mr Nettley referring to his dismay that the Claimant had not been allowed to wear the ring in school. On 5 July 2005 he wrote again to Mr Nettley expressing his belief that this refusal was contrary to Article 9 of the Convention. He then raised the matter at a meeting with Mrs Barnes, the Chairman of Governors, and others on 20 October 2005. By letter dated 21 October 2005 Mr Playfoot said that he was "looking into the legality of the School's position on not allowing girls to wear a ring as a sign of commitment to sexual abstinence as an expression of their faith ..." (see paras 7-9 above).
45. In my judgment the grounds of challenge had arisen more than a year before these proceedings were commenced. However I do consider it equitable in the circumstances to extend the 1 year time limit (and I would extend the 3 month time limit if, contrary to my view, the 3 month time limit applies) for two reasons. First, if the School has acted in breach of the Claimants Convention rights by the refusal to allow her to wear the ring, that breach is continuing, Second, the Claimant and her parents were in communication with the School in an attempt to persuade them to reconsider their decision until the letter dated 28 November 2006 from Mrs Barnes informed the Claimant and her father of the "final decision" of the Governors (see para 16 above). No prejudice to the School or third parties has been caused by the delay. Accordingly I do not dismiss these proceedings on the ground of delay.

Conclusion

46. I have heard full argument from the parties. In my judgment the threshold for the grant of permission is crossed (albeit only by a narrow margin). Accordingly I grant permission to apply for judicial review. However for the reasons which I have explained, this claim must be dismissed. The decision of the Defendant not to permit the Claimant to wear a "purity" ring as a symbol of her commitment to celibacy before marriage was not unlawful. The decision does not breach Article 9 or Article 14 of the Convention.