Religious Freedom, Religious Discrimination and the Workplace

LUCY VICKERS


This book is a much-anticipated discussion of religious rights in the workplace and follows a series of journal articles and reports by the author over the last few years. The overarching theme is a justification for the protection of religious interests in the sphere of employment and a consequent approach to assessing the extent of that protection in the face of other competing interests in the workplace. Within this context, the positions of both religious employees and religious organisations are discussed, although the emphasis is very much on the former.

The book is divided into seven chapters. Chapter one comprises a helpful introduction to the topic, including a useful survey of the available demographic and social research on religious affiliations and experiences in the United Kingdom. Chapter two is a brief but comprehensive exploration of the definition of religion and belief, drawing on a range of approaches to the issue (content-based definitions, definition by analogy, purposive approaches) and exploring the strengths and weaknesses of each, while concluding by favouring the purposive approach as the one that most reflects the deeper significance of a religion to an individual’s identity.

The third chapter is the most substantial; its purpose is to develop a theory for the protection of religion and belief at work. Vickers advances a number of bases to legitimise this, such as the ‘pragmatic’ reasons of conflict resolution and the advancement of social inclusion, ‘religious reasons’ and aesthetics – all of which she acknowledges as limited as justifications and unlikely to compete successfully against the stronger bases for other rights in the workplace, such as employers’ contractual rights or rights based on race or gender. However, her final justification, based on liberal political theory, is that of the promotion of individual autonomy and human dignity, which, she argues, is the most robust platform for protecting religious freedom. While the author’s case is strongly persuasive, it is slightly disappointing that more space was not devoted to a greater exploration of what she calls ‘religious reasons’ – that is, that religious freedom is worthy of protection on the grounds of arguments based upon the worldview of the religion itself. Vickers quickly dismisses this as unworkable within a pluralist public square; although this may be a conclusion shared by many, it is nevertheless contentious, and it might have enhanced the discussion to see this issue treated in greater depth.

In chapter four there is a useful discussion on the European Convention on Human Rights and its jurisprudence, including the extent to which the
freedoms under its relevant articles apply – or should apply – in the workplace, above and beyond the much criticised ‘right to resign’.

Chapter five is a specific consideration of the effect of domestic discrimination law, in particular the Employment Equality (Religion and Belief) Regulations 2003. The discussion of the operation of general discrimination law principles and the particular provisions of the statutory material will be helpful to most readers. Within this context, the subsection dealing with harassment – and under what conditions activities such as proselytism in the workplace might be considered to create an offensive environment for non-religious employees – is particularly welcome given the potential significance of this issue for restricting religious liberty. The discussion of case law, particularly sparse at the time of publication, is understandably more limited, although Vickers does include a helpful analysis of arguably the most important decision thus far under the 2003 Regulations – *Azmi v Kirklees Metropolitan Council* (p 164).

The chapter also contains a section identifying and classifying the areas where conflicts might exist between religious employees and employers, to which most space is devoted to dress codes and working time. Comparatively little space is given to the issue of conscience (considered briefly under the heading, ‘Refusal of work tasks’); this is perhaps regrettable, with the benefit of hindsight, since it has led to some of the more high-profile tribunal cases in the last few months under these regulations. The discussion that does appear is useful and illuminating, however, particularly on the headscarf question. With regard to working time, interestingly, not least because of the author’s useful subsection about Sunday working, it is difficult entirely to accept the earlier contention (p 92) that ‘failure to protect religion is likely to cause few problems for Christians’.

Also of note in this chapter is a brief but insightful section considering the effect of the Regulations on that peculiar and often controversial category of employers – religious schools. This allows for a consideration of the scope of some of the exemptions for faith schools as employers, and the compatibility of these exemptions with constraints imposed by other forms of regulation.

Chapter six briefly presents approaches to the question of religion in the workplace within other legal jurisdictions. The section on the USA is the most detailed, and helpfully illuminates some of the key differences in approach in comparison to the United Kingdom, particularly the additional constitutional right enjoyed by US employees that their religion should be ‘reasonably accommodated’ in the workplace.

In chapter seven, Vickers concludes that religious rights are as worthy of protection as other rights but, as with all rights, protection in the workplace cannot be absolute and must be balanced against other factors. Her conclusion is that the test of ‘proportionality’ (which is developed and explained in the book) should be applied to determine the proper extent of religious freedom in each
individual case. She goes on to defend this position by debating possible objections.

Overall, this work is a comprehensive overview of the topic with some extremely useful material, particularly in the early chapters. The author’s style is concise and accessible, which will render this book useful to academics, students and practitioners both within and without the law, although they may wish to read it alongside a more recent discussion of the relevant case law.

Andrew Hambler
University of Wolverhampton Business School
doi:10.1017/S0956618X0900204X

Law and Ethnic Plurality: Socio-legal Perspectives
Edited by Prakash Shah
Martinus Nijhoff, Boston, MA, 2007, 250 pp (hardback €85.00, $122.00)

The frenzied media reaction to the Archbishop of Canterbury’s speech on sharia law in Britain in early 2008 represents one unfortunately all-too-prominent aspect of the debate about diversity. And for many, news of the long-standing operation of the Beth Din and Muslim Councils in the UK came as a surprise. However, there has for many years now been nuanced and serious research on legal pluralism and diversity undertaken in the leading academic institutions around the world. As the contributions in Law and Ethnic Plurality reveal, the issues that pluralism and diversity throw up are highly complex, controversial and require a sound factual footing through field work before comment can be made. As such, the book provides a valuable and important addition to the expanding academic writing on these issues. While the text predominantly focuses on the position in the UK, its themes are topical, universally relevant and will therefore be of wide interest both in the UK and outside.

Mindful of its title, the book takes a diverse approach in its subject matter, the professional backgrounds of its contributors and its themes. It draws on research by sociologists, anthropologists and former legal practitioners, among others. It covers a broad range of issues, from drugs and criminal justice policy in the UK to the history of the negotiations between a Birmingham mosque and the local council over the amplification of the call to prayer (azan). Its chapters are individually authored and necessarily do not directly connect or adopt a uniform approach.