

Lord Justice Brooke: This is an appeal by SB against an order made by Bennett J in the Administrative Court on 1st June 2004 whereby he dismissed her application for judicial review of a decision of the Headteacher and Governors of Denbigh High School, Luton ("*the School*"), who had refused to allow her to attend the School if she was not willing to comply with their school uniform requirements. The same judge refused to grant her permission to apply for judicial review of the local education authority's actions in the matter, and she has not been granted permission to appeal against that refusal.

1. The School is a mixed community school for children between the ages of 11 and 16. Children at the school speak 40 different languages, and 21 different ethnic groups (and 10 different religious groups) are represented in the school population. In 1993 90% of the pupils were Muslim, but since that time the school's intake has become more diverse. 79% of the pupils now classify themselves as Muslim. About 71% are of Pakistani or Bangladeshi heritage.
2. The Headteacher, Yasmin Bevan, was born into a Bengali Muslim family. She grew up in India, Pakistan and Bangladesh before coming to this country. She has had a great deal of involvement with Bengali Muslim communities in this country and abroad, and she says that she understands the Islamic dress code and the practices adopted by Muslim women. She does not, however, purport to have a detailed knowledge of the theological issues which surfaced in this dispute.
3. She qualified as a teacher in 1977, and became headteacher at the school in 1991. In those days its performance was well below the national average, and it was viewed negatively by the local community. Its performance is now well above average for schools with a similar intake, and it cannot accommodate all the pupils who wish to attend it. It has ranked tenth in the country for adding value to its pupils' prior attainment. It has won school achievement awards from the Department for Education and Science (DfES), and it featured in a video on ethnic minority achievement which the department produced.
4. For many years the School has taught pupils from a wide variety of ethnic origins, cultural backgrounds and religious factions. The School's policy has been to accommodate everyone so far as it reasonably can, whilst providing a suitable environment in which children may learn and live together in harmony. The headteacher believes that a school uniform forms an integral part of the school's drive for high standards and continuous improvement. In her view a clear school uniform policy promotes a positive ethos and sense of community identity, and ensures that students are dressed in a way that is safe, practical and appropriate for learning. It also prevents them from feeling disadvantaged because they cannot afford the latest designer items, and makes them less vulnerable to being teased because they are wearing the wrong clothes.
5. This case is concerned with the School's uniform requirements for girls. No real issue arises over the requirements for the school jumper (navy blue v-neck jumper with school logo), shirt (plain white cotton/polyester shirt, short or long sleeve with collar), tie, socks and shoes. Girls may wear a skirt, trousers or a shalwar kameeze, and there are specifications for each. For the shalwar kameeze the specification reads: "*Shalwar: tapered at the ankles, not baggy. Kameeze: between knee and mid-calf length, not gathered or flared. Fabric must be cotton or poplin, not shiny, silky or crinkly.*"
6. The uniform requirements are accompanied by a sketch of the front and back views of a girl wearing a shalwar kameeze, with appropriate commentary. The kameeze is a sleeveless smock-like dress with a square neckline, so that the girl's collar and tie are visible. The shalwar consists of loose trousers which taper at the ankles. Except in hot weather the girls wear their school jumper under the kameeze.
7. Girls are also permitted to wear headscarves so long as they comply with three specific requirements. They must be lightweight and navy blue, and worn so that the collar and tie can be seen. They must also cover the head, be folded under the chin and taken round to the back of the neck, with their ends tucked in, in conformance with health and safety requirements.
8. The claimant contends that for a Muslim woman who has started to menstruate the shalwar kameeze does not comply with the strict requirements of her religion. She insists that she should be allowed to wear the jilbab, which is a form of dress worn by Muslim women which effectively conceals the shape of their arms and legs. Very strong religious beliefs are close to the centre of this dispute.

9. For the purposes of this judgment I will adopt the spelling of the words "kameeze" and "jilbab" that was used by the parties to this litigation.
10. The shalwar kameeze had featured in the school uniform policies prior to 1993, but in that year a Working Party report led to changes being made to details of the school uniform, and permission being given to girls to wear headscarves for the first time.
11. The shalwar kameeze was seen as satisfying the religious requirement that Muslim girls should wear modest dress, and girls from different faith groups, such as Hindus and Sikhs, also wear it. Parents, staff and students were all consulted over the new design, and there was also consultation with the local mosques. The design had to take into account not only religious considerations, such as the need for modesty, but also health and safety considerations, and it had to be suitable for all school activities.
12. The School's uniform policy has always had the support of the School's governing body. A quarter of the present governors have held that office since at least 1991. Four of the six parent governors are Muslim, as are three of the governors appointed by the local education authority. One of the community governors chairs the Luton Council of Mosques. In March 2004, shortly before the judge heard this case, the governors reaffirmed their unanimous support for the uniform policy.
13. The claimant's family came to England from Bangladesh. She has two older sisters and two older brothers. She was born in this country in September 1988. Her father died in 1992, and through most of the history of the dispute she was living at home with her mother (who did not speak English) and one sister and one brother: the others had moved out. Her mother died in 2004. One of her brothers is acting as her litigation friend in these proceedings.
14. She first attended the School in September 2000, and during her first two years there she wore the shalwar kameeze without complaint. As she grew older, however, she took an increasing interest in her religion, and she formed the view that the shalwar kameeze was not an acceptable form of dress for mature Muslim women in public places. In her brother's view the shalwar kameeze originated as a Pakistani cultural dress without any particular religious foundation, and she believed that the Islamic Shari'a required women over the age of 13 to cover their bodies completely, apart from their face and hands. The shalwar kameeze was not acceptable, because the white shirt (which at the School is covered by a jumper except in hot weather) revealed too much of the arms, and the skirt length (which at the School may extend to the mid-calf) should go down to the ankles.
15. At the start of the new school year in September 2002 she attended the School dressed in a jilbab. She was accompanied by her brother and another young man. They saw the assistant headteacher, Mr Moore, who told her to go away and change into proper school uniform. He felt that the young men were being unreasonable and threatening. The three then went away, with the young men saying that they were not prepared to compromise on this issue.
16. In his careful judgment ([\[2004\] EWHC 1389 \(Admin\)](#)) the judge set out in great detail the subsequent history of events. Sadly, the parties rapidly reached an impasse, with the claimant refusing to attend school unless she was allowed to wear the jilbab, and the School refusing to allow her to attend unless she was wearing the shalwar kameeze. What was sadder still was that the attempts to provide her with some form of education while the impasse lasted did not bear any very fruitful results, and she lost the better part of two years' schooling. In September 2004, following the hearing before the judge, she was accepted by a different local school which permitted her to wear the jilbab.
17. If the claimant succeeded in her claim that her rights under Article 9 of the European Convention on Human Rights ("ECHR") were violated, a court would have had to hear contested evidence in relation to her claim for damages about the reasons why she did not avail herself of the educational opportunities the School maintained that it made available to her. It would have had to decide whether an award of damages was appropriate, and if so, the amount. We were told after the hearing of the appeal, however, that she does not wish to pursue that claim. We are therefore concerned only with her application for a declaration. This raises three questions:
 - i) Was the claimant excluded from the school?

ii) If "Yes", was it because her rights under ECHR Article 9(1) were being limited?

iii) If "yes", were they being justifiably limited pursuant to Article 9(2)?

(I should note here that she also claims that her right to education under Article 2 of the First Protocol to the ECHR was violated in the course of this dispute).

18. The judge's answers to these three questions were:

i) No

ii) No (on the premise that the first answer had been "Yes").

iii) Yes (on the premise that the first two answers had been "Yes").

19. In recent years the topic of exclusion from a school has been the subject of a good deal of attention both in Acts of Parliament and departmental guidance. In this context "exclusion" means "exclusion on disciplinary grounds" (see section 64(4) of the Schools Standards and Framework Act 1998 ("the 1998 Act") and section 52(10) of the Education Act 2002 ("the 2002 Act"). A headteacher may exclude a pupil from the school for a fixed period or permanently, and in the former case, any fixed periods of exclusion may not exceed more than 45 school days in any one school year (1998 Act. s 64(1) and (2); 2002 Act s 52 (1)). A pupil may not be excluded from a maintained school (whether by suspension, expulsion or otherwise) except by the headteacher in accordance with s 64 of the 1998 Act. Statute provides for rights to make representations, and for rights of appeal in the event of an exclusion.

20. DfES Circular 10/99 gives special guidance to schools in relation to exclusions. It included the following statements:

"6.4 Exclusion should not be used for breaching school uniform...."

6.5 The law allows head teachers to exclude a pupil for up to 45 days in a school year. However, individual exclusions of more than a day or two make it more difficult for the pupil to reintegrate into the school...."

6.8 The Government is committed to ensuring that by 2002 all pupils excluded for more than 15 school days at a time receive full-time and appropriate education whilst excluded."

21. DfES Guidance 0087/2003 states:

"22. If the head teacher is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and the pupil is being removed from the school site for that reason, formal exclusion is the only legal method of removal. Informal and unofficial exclusions are illegal regardless of whether they are done with the agreement of parents or carers."

21. Exclusion should not be used for:

(c) breaches of school uniform rules, except where these are persistent and in open defiance of such rules."

As soon as a pupil has been excluded for more than 15 days, the local education authority is responsible for ensuring that he/she receives suitable full-time education (DfES Circular 11/99 para 5.1).

22. Departmental guidance on school uniform (DfES circular 0264/2002) contains advice at a high level of generality, which was superfluous at Denbigh High School. Thus it advises that schools must be sensitive to the needs of different cultures, races and religions, and contains the expectation that schools should accommodate these needs within a general uniform policy: *"For example, allowing Muslim girls to wear appropriate dress and Sikh boys to wear traditional headdress."* Para 11 of that guidance states: *"The Department does not consider it appropriate that any pupil should be disciplined for non-compliance with a school uniform policy which results from them having to adhere to a particular cultural, race or religious code."*

23. The judge held on the evidence that the claimant had not been excluded. The School earnestly and sincerely wanted her to attend school and placed no impediment or obstacle in her way. All it did was to insist that when she came to school she was dressed in accordance with the School's uniform policy, as indeed she had been happy to do for two years prior to September 2002:

"The Claimant had a choice, either of returning to school wearing the school uniform or of refusing to wear the school uniform knowing that if she did so refuse the Defendant was unlikely to allow her to attend. She chose the latter. In my judgment it cannot be said the actions and stance of the school amounted to exclusion, either formal, informal, unofficial or in any way whatsoever."

24. I do not accept this analysis. The school undoubtedly did exclude the claimant. They told her, in effect: *"Go away, and do not come back unless you are wearing proper school uniform."* They sent her away for disciplinary reasons because she was not willing to comply with the discipline of wearing the prescribed school uniform, and she was unable to return to the school for the same reason. Education law does not allow a pupil of school age to continue in the limbo in which the claimant found herself.

It was very soon clear that she was not willing to compromise her beliefs despite the best efforts of the educational welfare officers who visited her home and the teachers at the school who tried to persuade her to return. If the statutory procedures and departmental guidance had been followed, the impasse would have been of very much shorter duration, and by one route or another her school career (at one school or another) would have been put back on track very much more quickly.

25. Was she excluded because her freedom to manifest her religion or beliefs under ECHR Article 9(1) was being limited? Article 9 provides, so far as is material:
"(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom...in public or private to manifest his religion or belief....
(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 in the interests of public safety, for the protection of public order, health or morals or the protection of the rights and freedoms of others."
26. The importance of the values set out in Article 9(1) was articulated by the European Court of Human Rights in *Kokkinakis v Greece*, 25 May 1993, Series A No 160-A, p 17, at paras 31 and 32:
"31. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.
While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to 'manifest [one's] religion'. Bearing witness in words and deeds is bound up with the existence of religious convictions.
33. The fundamental nature of the rights guaranteed in Article 9 para 1...is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of Articles 8, 10 and 11...which cover all the rights mentioned in the first paragraphs of those Articles, that of Article 9 refers only to 'freedom to manifest one's religion or belief'. In so doing, it recognises that in democratic societies, in which several religions co-exist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected."
27. On this second issue the judge took note of the fact that the claimant had been content to wear the shalwar kameeze for her first two school years. He was willing to accept that her motives and beliefs in desiring the change were completely genuine, but he held that the School's Governing Body Complaints Committee, who eventually considered the matter in October and November 2003, were entitled to find that the school uniform policy satisfied all the requirements of the Islamic dress code.
28. He annexed a copy of the committee's decision to his judgment. After setting out the history of how the school's uniform policy had developed, the committee took into account the following matters when reaching its decision:
- i) *The current school uniform policy was concluded after consultation (which included local mosques) had found it to be acceptable;*
 - ii) *The policy was reviewed regularly, and this was the first complaint that had ever been made about its compatibility with the requirements of the Islamic dress code;*
 - iii) *Since the complaint had been made, the School had consulted various authoritative bodies and received the following advice:*
 - a) *The Islamic Cultural Centre in Regent's Park had confirmed that the shalwar kameeze constituted appropriate Islamic dress;*
 - b) *The Muslim Council of Britain had confirmed that the dress code prescribed by the School was in accordance with the tenets of Islam.*
 - iv) *The committee took note of the fact that the Imams of two local mosques had given the Claimant's solicitors different advice from the advice they had previously given to the School, but they could see no good reason for this change of mind;*
 - v) *The committee also took into account a written reply from the London Central Mosque Trust on these matters.*
29. Against this background the committee made the following findings of fact about the requirements of the Islamic dress code for a young woman of menstruation age:
- i) *A Muslim woman's dress should be strictly modest in public;*
 - ii) *It should cover all her body with the exception of her face and hands;*
 - iii) *It should not be tight or revealing but must be loose and thick enough in order to maintain complete modesty in public.*

The committee concluded:

"The committee decided that the shalwar kameeze of the design illustrated as part of the school uniform policy....satisfied all those requirements of the Islamic dress code. Whilst accepting that the jilbab such as [SB] wishes to wear constitutes proper Islamic dress for adult Muslim women in a public place, the evidence presented to the committee does not suggest that it is the only form of dress that meets these requirements. Indeed, the evidence in the form of the letter from the Islamic Cultural Centre....specifically refers to the fact that a wide variety of garments are found throughout the Muslim world that meet those requirements."

30. I now turn to consider the relevant evidence in rather greater detail.
31. There was no expert evidence before the court, still less any evidence that has been tested and explored in cross-examination. There were, however, letters and expressions of opinion from a number of well-informed sources, including the Imams of local mosques, whom the parties consulted during the course of this dispute. For anyone with a deep knowledge of the teachings of Islam, what follows is bound to appear superficial, but this superficiality necessarily flows from the nature of the limited evidential material that is before the court. For the purposes of this judgment, because the epithet "fundamentalist" has resonations which it would be inappropriate to carry into the discussion of the issues in this difficult case, I will refer to those Muslims who believe that it is mandatory for women to wear the jilbab as "very strict Muslims", and those Muslims whose South Asian culture has accustomed them to consider the shalwar kameeze to be appropriate dress for a woman as "liberal Muslims", while being conscious that experts may find these epithets equally inappropriate.
32. The main sources of the Muslim religion are the Holy Quran, which Muslims believe to represent the word of Allah, and Hadiths, or sayings of the Prophet Muhammad, on different topics. A secondary source of authority is a canon of practices and sayings that are ascribed to Muhammad. These are known as the Sunnah, and a combination of the Holy Quran, the Hadiths and the Sunnah provide the basis for the Islamic laws known as the Shari'a. Scholars differ about the authority of the Sunnah, and some of these differences are apparent in the present dispute. In this field familiar problems arise when early traditions pass down the generations by word of mouth, and there is much scholarly dispute about the authority and authenticity of the earliest surviving written texts.
33. All Muslims endeavour to follow the teachings in the Holy Quran, which include the following:
"And tell the believing women to lower their gaze and guard their sexuality, and to display of their adornment only what is apparent, and to draw their head-coverings over their bosoms...."
"O Prophet, tell your wives and daughters and the believing women to draw their outer garments around them when they go out or are among the men."
- A Hadith of the Prophet states:
"Whenever a woman begins to menstruate, it is not right that anything should be seen except her face and hands."
- So much is common ground. What I will describe as the mainstream modern view among Muslims in England today was expressed by Dr Anas Abushudy, the deputy director-general of the London Central Mosque Trust, and chairman of its Religious Affairs Department. He told the School that "looking around the Muslim world" there was an amazing variety of garments which met the requirements in these writings. The clothes worn by Muslim women differed from country to country, and sometimes in different regions in the same country. He did not see any anti-Islamic act in wearing a shalwar kameeze. The important thing was that the dress of Muslim women must be within the Islamic guidelines, and that whatever was worn should be a full and honest Islamic hijab (veil) which clearly reflected the wearer's identity.
34. He said that that there were many schools of thought on Islam, which differed sometimes in the interpretation of the sayings of Allah. What he described represented the general consensus of the vast majority of Muslim scholars.
35. A contrary view was expressed to the claimant's solicitors by Dr Ahmed Belouafi, of the Centre for Islamic Studies in Birmingham. He originally gave this brief response:
"[W]e can confirm that with respect to the dress code of the female in Islam is the fact that Hijab is the minimum required dress. The traditional dress, be it Pakistani or Egyptian...etc., that some females wore are not enough if they do not meet the required conditions of the dress code as laid down in the teaching of the Quran and the Sunnah of the Prophet."

36. In a follow-up letter he set out, with regard to "*the issue of the dress code of a woman in Islam*", certain rulings derived by Sheikh Al-Albani, a famous scholar and traditionalist, from various sources of Islamic jurisprudence:
- i) *The whole body except for the exempted parts [face and hands] should be covered;*
 - ii) *Any veil, which itself becomes an attraction, is to be avoided;*
 - iii) *Garments should not be semi-transparent;*
 - iv) *Dress should not be tight-fitting;*
 - v) *Garments should not be perfumed;*
 - vi) *The form of dress should not in any way resemble that of a man;*
 - vii) *It should not resemble that of non-believers;*
 - viii) *Garments should not reflect worldly honour.*
37. Dr Belouafi said that these basic requirements must be observed in any garments that women wore under the Islamic dress code, and that it was clear that the shalwar kameeze shown to him by the claimant's solicitors did not comply. (Unfortunately he had been sent a photograph of a girl in a shalwar kameeze whose arms were not covered, whose kameeze stopped at the knees, and whose shalwar consisted of ordinary trousers, rather than loose trousers gathered at the ankle: it may be that the opinions of other people consulted by the claimant's advisers might have been different if they had seen the School's actual design).
38. Dr Belouafi annexed to his response a copy of an article drawn down from the Internet. Although it is entitled "Hijab in the Light of the Quran and Hadith", it is clear that Sheikh Al-Albani also drew from other early texts when he drew up his "eight rules of hijab".
39. Dr Abushudy, for his part, had told the School that because the interpretation of sayings sometimes differed, what he described as the Seven Conditions of Hijab were not totally accurate and therefore not valid for all.
40. These two differing viewpoints, one more liberal, the other more strict, recurred again and again in the opinions expressed by other consultees, and sometimes within the same organisation. For instance, within the Muslim Council of Britain (which was founded in 1997 and now has over 350 institutions affiliated to it) there was a striking difference of approach between the chair of its Social Affairs Committee and the Chair of its Mosque and Community Affairs Committee.
41. The former, when consulted by the Comparative Religion Centre, produced a list of about 20 guiding principles entitled "*Dress Code for Woman in Islam*". This code said that Islam was a very practical and pragmatic religion. It allowed flexibility within its prescribed tenets. "Follow the middle path" was the proper approach. The wardrobe of a young Muslim girl or woman could be as varied as one would like it to be. Modesty should be observed at all times. If the headdress did not cover the bosom it could be covered by a separate cloth, scarf or jacket, and trousers with long tops and shirts for school wear were absolutely fine. A Muslim schoolgirl's uniform did not have to be so long that there would be a risk of tripping over and causing accidents.
42. The latter, however, said that in order to fulfil the obligation prescribed by the Holy Quran a Muslim woman must wear an outer garment, such as a jilbab, that was loose-fitting and did not show her body or shape in public. He said that the majority view of *ulama* (jurists) was that the shalwar kameeze would not be sufficient to fulfil the requirements of Shari'a, because the shape of the bodily parts was not hidden, although it was accepted culturally as the female dress of many South Asian Muslims. His own considered opinion, in the light of rulings of Shari'a, was that the shalwar kameeze did not fulfil the Islamic dress requirement in public.
43. This opinion was shared by the Muslim Welfare House in Seven Sisters Road, London, who gave advice along the lines of that given by Dr Belouafi. They said that descriptively these requirements could be translated as a headscarf to cover the head and an outer body garment similar to at least a three-quarter length coat. They added that the Pakistani clothing known as shalwar kameeze dress did not meet the requirement of an outer garment. There is no evidence that they were shown the School's design.

44. In December 2002 the Imams of two local mosques in Luton advised the School that the shalwar kameeze was the dress that fulfilled the requirements of Islamic dressing and that for a lady it was not an anti-Islamic dress. However, when they were each approached by the claimant's solicitors six months later they qualified this advice. The Imam of the Madinah mosque in Luton quoted not only from a translation of the Holy Quran which refers to the jilbab ("Jalbaab") but also from a commentary on the Quran in these terms:
"It is related from the son of Abbas...that the definition of Jalbaab is that it be a long cloak in which a woman be covered from head to toe." (Commentary of Huwair in refce from Al Quran, vol 7, p 217)
45. After reciting advice similar to that given by Dr Belouafi he said that in his opinion the claimant was correct in relation to the rights she was demanding from the School.
46. The Imam of the Central Mosque in Luton, Professor Masood Akhtar Hazarvi, made a distinction between his earlier answer to the effect that the shalwar kameeze was not anti-Islamic and his new answer that it did not comply with the Islamic rules for the dress required of a mature Muslim lady in a public place (like a school). He was of the opinion that the claimant's jilbab was *"a requirement from Islam"*.
47. This was clearly the professor's personal view as a theologian. He also happened to chair the Luton Council of Mosques, which was formed in April 2003 as an umbrella organisation representing about 36,000 local residents who embraced the Muslim faith. In that capacity he told the School in March 2004 that the council believed that the School's uniform policy was satisfactory for the majority of the Muslim community.
48. From all this evidence one can see clearly the two main schools of thought (I exclude, for instance, those who rely on the interpretation of other ancient texts for their belief that a woman's face should also be covered). The first, which represents mainstream opinion among South Asian Muslims, from whom most of this country's Muslim population are descended, is that a garment like the shalwar kameeze (coupled with a headscarf) complies sufficiently with Islamic dress requirements, and that there is no need to go any further. The other, which is a minority view among Muslims in this country, but is nevertheless sincerely held, is that the shalwar kameeze, even when it goes down to mid-calf, is not compliant, and that a garment like the jilbab, which disguises the shape of the wearer's arms and legs, is required. This minority view received respectable support among those who were consulted during the course of this dispute. It was no doubt what Professor Masood Hazarvi had in mind when he told the School that the Luton Council of Mosques believed that the School's uniform policy was satisfactory *"for the majority of the Muslim community"*.
49. The sincerity of the claimant's belief in the correctness of the minority view was not in issue in these proceedings. She believed that her religion prohibited her from displaying as much of her body as would be visible if she was wearing the shalwar kameeze, particularly if she was not wearing the school jumper over it in hot weather. So far as the legitimacy of her belief is concerned, in *Hasan and Chaush v Bulgaria* (26th October 2000: Appln No. 30985/96) the European Court of Human Rights said (at para 78):
"[The court] recalls that, but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate."
- It follows that her freedom to manifest her religion or belief in public was being limited, and as a matter of Convention law it would be for the School, as an emanation of the state, to justify the limitation on her freedom created by the School's uniform code and by the way in which it was enforced.
50. I turn now to the third question. For the purposes of this case, SB's freedom to manifest her religion or beliefs may only be subject to limitations that are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public morals, or for the protection of the rights and freedoms of others. There was no suggestion that the protection of public morals had any relevance, and a justification on health and safety grounds was dismissed by the judge and not resurrected on the appeal once evidence had showed that other schools (including the local school

which the claimant now attends) had been able to accommodate girls wearing the jilbab without any serious concern being raised on that ground.

51. Three witness statements from the School addressed this issue. Mr Moore, the Assistant Headteacher, devoted most of his evidence to explaining why he was concerned to enforce the School's uniform policy, and the support that policy had received from those the School had consulted, both locally and nationally. His witness statement ends in these terms:

"Several staff have been approached by non-Muslim pupils saying that they are afraid of people wearing the jilbab, as they perceive this form of dress to be associated with extreme views. This makes them feel vulnerable. Whilst I would not consider it right to pander to the prejudices or fears of some pupils, I think it would be most unfortunate if some pupils were to be held in fear by others, or regarded as in some way separate, because of the clothes they wear.

Similarly this view has also been reflected by some Muslim girls who have indicated to staff that they do not wish to wear the jilbab, as this would identify them as belonging to extreme Muslim sects. They do not wish to be identified with such people.

In a recent pupil survey, not connected with wearing of the jilbab, there was a space for further comments. Many pupils indicated how much they liked Denbigh High School and the uniform in particular. One pupil suggested that the school introduce the jilbab. She did not suggest that she wanted to wear one. As she wears trousers to school and not the shalwar kameeze, I think it unlikely that she would wish to adopt the jilbab. There have been no other suggestions from pupils, parents, governors or teachers that we adopt the jilbab.

At the Appeal hearing the Claimant indicated that although she does not regard Muslims who wear the shalwar kameeze as bad people, she does think better Muslims wear the jilbab. I would not wish to see the introduction of two classes of Muslim, the inferior class that wears the shalwar kameeze and the better Muslim who wears the jilbab. In my view that would lead to real risk of pressure being brought upon Muslim girls to wear the jilbab or be regarded as religious inferiors. I would fear that this could lead to some girls feeling pressured into wearing the jilbab when they would prefer to wear the shalwar kameeze and might wish to avoid being classified with the kinds of people they believe wear the jilbab."

He ended by expressing a concern that if the school uniform was changed in the way the claimant suggested, this would lead to divisiveness within the school and would threaten the cohesion within the school.

52. Mr Connor, who has been the Deputy Headteacher since 1997, had six years' experience in the culturally diverse London Borough of Brent in the late 1980s. The earlier part of his statement was devoted to the concerns on health and safety grounds that are not now being pursued on this appeal. He then turned to explain that a major learning objective on the part of the curriculum concerned with citizenship was for pupils to work together positively and co-operatively in a community that fosters respect for all.
53. In this context he drew on his experience of working in schools that incorporate wide diversity. He said there is the potential for pupils to identify themselves as distinct from other groups along cultural, religious or racial grounds, and for conflict to develop between such groups. He recalled an earlier incident in this school which had involved a very difficult and potentially dangerous situation of intransigent conflict between two groups of pupils who defined themselves along racial grounds. This was one of the reasons for a uniform policy that did not allow pupils to identify themselves obviously as belonging to a particular religion or race.
54. It was important in his experience to recognise that many adolescents require a lot of support to understand the importance of inclusion, equal opportunities, mutual respect and social cohesion, such as was fostered by the school's uniform policy. He attested to the same concerns among a number of girls at the school as Mr Moore had mentioned, and he believed that the school had a duty to protect these pupils from inappropriate peer pressures, or pressures from outside extremist groups. There had been an incident in February 2004 when some young men who represented an extremist Muslim group had picketed the school gates and distributed leaflets to the pupils which exhorted Muslims not to send their children to secular schools. A number of pupils understandably felt harassed by these activities.
55. At the end of his statement Mr Connor expressed a concern that any erosion of the uniform policy would make it more difficult for the school to recruit and retain staff. This was partly because he believed that the present clear policy contributed to the school's ethos of good behaviour and discipline. It was also partly because this was a secular school, and this was very important to many teachers who believe strongly that they do not wish to be associated with promoting a particular faith.

If a new school uniform policy resulted in a significant proportion of pupils outwardly identifying themselves according to their faith, this could create the impression that this was a school which favoured that faith.

56. Mrs Bevan, the Headteacher, gave evidence similar to that given by Mr Moore and Mr Connor about the concerns expressed by children at the school, both Muslim and non-Muslim, and also by a number of parents. She said that she had been given the firm impression that a number of girls relied on the school to help them resist the pressures from the more extreme groups. She was afraid that if the school uniform were to be adapted to include the jilbab these girls would be deprived of proper protection and would feel abandoned by those upon whom they were relying to preserve their freedom to follow their own part of the Islamic tradition. She also referred to the picketing that had taken place "by groups of mainly young men who would appear to be from the more extreme Muslim traditions".
57. She said that all the requirements of the school uniform were well publicised before the claimant chose to attend the School. She was being treated in exactly the same way as all other pupils, a very high percentage of whom were Muslim, and since the requirements of the uniform policy were satisfactory to her for two years, and were also satisfactory to all the School's other pupils both past and present, she did not see how the School was discriminating against her.
58. The reasons given by the Chair of the Governors and by the Governors' Complaints Committee in the autumn of 2003 for rejecting SB's complaints did not add significantly to the reasons given by the School's senior staff. The Complaints Committee observed that they did not purport to have the legal knowledge to interpret complex legislation.
59. On the assumption (which he had rejected) that Article 9(1) was engaged in this case, the judge accepted the School's case that the limitations on the claimant's right to manifest her religion or beliefs were necessary for the protection of the rights and freedoms of others. His reasons can be summarised in this way:
- i) *The School is a multi-cultural, multi-faith secular school;*
 - ii) *The school uniform policy clearly promoted a positive ethos and a sense of communal identity;*
 - iii) *There was no outward distinction between Muslim, Hindu and Sikh female students, and the shalwar kameeze also satisfied the right of Muslim female students to manifest their religion;*
 - iv) *Any distinction between Muslim students who wore the jilbab and those who wore the shalwar kameeze was avoided;*
 - v) *The present policy protects the rights and freedoms of not an insignificant number of Muslim female pupils who do not wish to wear the jilbab and either do, or will feel pressure on them to do so from inside or outside the school;*
 - vi) *If the choice of two uniforms were permitted for Muslim female pupils, it could be readily understood that other pupils of different or no faiths might well see this as favouring a particular religion.*
60. The judge concluded in these terms (at para 91):
"In my judgment the school uniform policy and its enforcement has, and continues to have, a legitimate aim and is proportionate. The legitimate aim was the proper running of a multi-cultural, multi-faith, secular school. The limitation was also proportionate to the legitimate aim pursued. The limitation was specifically devised with the advice of the Muslim community. Although it appears that there is a body of opinion within the Muslim faith that only the jilbab meets the requirements of its dress code there is also a body of opinion that the Shalwar Kameeze does as well. In my judgment, the adoption of the Shalwar Kameeze by the Defendant as the school uniform for Muslim (and other faiths) female pupils was and continues to be a reasoned, balanced, proportionate policy."
61. I turn now to set out my conclusions on this appeal. In my judgment, the limitation on the claimant's Article 9(1) freedom was one that was prescribed by law in the Convention sense. The governors were entitled by law to set a school uniform policy for the School. They published a clear, written policy which was available to all who might be affected by it, and the requirements of the ECHR for law that is both accessible and clear were satisfied in this respect. But was that limitation necessary?
62. The ECHR caselaw to which we were referred related to countries like Switzerland and Turkey which maintain a national policy of secular education in their state maintained schools. I did not derive any assistance from the cases we were shown which related to employment disputes.
63. In *Dahlab v Switzerland* (15th February 2001; Appln No 42393/98) the court declared inadmissible a complaint by a primary school teacher who had been prohibited from wearing an Islamic headscarf at

her school. The court acknowledged the margin of appreciation afforded to the national authorities when determining whether this measure was "necessary in a democratic society", and explained its role in these terms (at p 11):

"The Court's task is to determine whether the measures taken at national level were justified in principle – that is, whether the reasons adduced to justify them appear 'relevant and sufficient' and are proportionate to the legitimate aim pursued... In order to rule on this latter point, the Court must weigh the requirements of the protection of the rights and liberties of others against the conduct of which the applicant stood accused. In exercising the supervisory jurisdiction, the court must look at the impugned judicial decisions against the background of the case as a whole..."

64. In that case the need to protect the principle of denominational neutrality in Swiss schools was treated as a very important factor which militated successfully against the applicant's case.
65. In *Sahin v Turkey* (29th June 2004; Appln No 44774/98) the applicant had been denied access to written examinations and to a lecture at the University of Istanbul because she was wearing an Islamic headscarf. This was prohibited not only by the rules of the university but also by the Constitution of Turkey, as interpreted in 1989 and 1991 by the Constitutional Court of Turkey. The European Court of Human Rights noted (in paragraphs 53 to 57) that attitudes towards wearing the Islamic headscarf in schools differed in different European countries. It accepted (at para 71) that the applicant was motivated by her desire to comply strictly with the duties imposed by the Islamic faith. It found (at para 81) that there was a basis for interference in Turkish law which was accessible and sufficiently precise in its views. The applicant conceded (at para 83) that in view of the importance of upholding the principle of secularism and ensuring the neutrality of universities in Turkey, the interference could be regarded as compatible with the legitimate aims of protecting the rights and freedoms of others and of protecting public order. She vigorously disputed, however, the contention that the interference was necessary in a democratic society.
66. The Court first discussed the relevant principles and then applied them to the facts of this particular case. Although it made reference to the principle of gender equality, it placed most weight on the principle of secularism in Turkey. It said (at para 99)
"In a country like Turkey, where the great majority of the population belong to a particular religion, measures taken in universities to prevent certain fundamentalist religious movements from exerting pressure on students who do not practise that religion or on those who belong to another religion may be justified under Article 9(2) of the Convention."
67. It went on to say (at para 101) that where questions concerning the relationship between State and religion were at stake, on which opinion in a democratic society might reasonably differ widely, the role of the national decision-making body had to be given special importance. In such cases it was necessary to have regard to the fair balance that must be struck between the various interests at stake: the rights and freedoms of others, avoiding civil unrest, the demands of public order, and pluralism.
68. In applying these principles to the facts of the particular case the court said (at paras 104-6)
*"104. It must first be observed that the interference was based, in particular, on two principles – secularism and equality – which reinforce and complement each other....
105. In its judgment of 7 March 1989, the Constitutional Court stated that secularism in Turkey was, among other things, the guarantor of democratic values, the principle that freedom of religion is inviolable – to the extent that it stems from individual conscience – and the principle that citizens are equal before the law....Secularism also protected the individual from external pressure. It added that restrictions could be placed on freedom to manifest one's religion in order to defend those values and principles.
106. This notion of secularism appears to the Court to be consistent with the values underpinning the Convention and it accepts that upholding that principle may be regarded as necessary for the protection of the democratic system in Turkey."*
69. The court also noted (at para 107) the emphasis placed on the Turkish constitutional system on the protection of the rights of women. Gender equality – recognised by the European Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe – had also been found by the Turkish Constitutional Court to be a principle implicit in the values underlying the Turkish constitution.
70. Matters the court took into account (at paras 108-109) when concluding that the national authorities in Turkey were entitled to prohibit the wearing of a Muslim headscarf in a university included:

- i) *The impact which wearing a headscarf, which is presented or perceived as a compulsory religious duty, might have on those who chose not to wear it;*
- ii) *The fact that Turkey was a country where the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhered to the Islamic faith;*
- iii) *In such a context, imposing limitations on freedom in this sphere might be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims, especially since the Muslim headscarf had taken on political significance in Turkey in recent years;*
- iv) *The fact that there were extremist political movements in Turkey which might seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts: a Contracting State was permitted, in accordance with the ECHR provisions, to take a stance against such political movements, based on its historical experience.*

71. Against this background the court dismissed the applicant's complaint, saying (at para 110) that it was understandable in such a context where the values of pluralism, respect for the rights of others and, in particular, equality of men and women before the law, were being taught and applied in practice, that the relevant authorities would consider that it ran counter to the furtherance of such values to accept the wearing of religious insignia, including, as in the present case, that women students cover their heads with a headscarf while on university premises.
72. I have considered the case of *Sahin* in some detail for four main reasons. First, it is a recent judgment in which the European Court of Justice has set out carefully the structured way in which issues of this kind are to be considered under the Convention. Secondly, it shows that context is all-important: there are considerations to be applied in a state which professes the value of secularism in its Constitution which are not necessarily to be applied in the United Kingdom. Thirdly – and we did not receive any argument on this issue – there are clearly potential tensions between the rights and freedoms set out in a Convention agreed more than 50 years ago between Western European countries which on the whole adhered to Judaeo-Christian traditions, and some of the tenets of the Islamic faith that relate to the position of women in society. And fourthly, it is clear that a decision-maker is entitled to take into account worries like those expressed by the senior teaching staff of the School when it is deciding whether it is necessary to prohibit a person like the claimant from manifesting her religion or beliefs in public in the way in which she would wish.
73. The United Kingdom is very different from Turkey. It is not a secular state, and although the Human Rights Act is now part of our law we have no written Constitution. In England and Wales express provision is made for religious education and worship in schools in Chapter VI of the 1998 Act. Schools are under a duty to secure that religious education in schools is given to pupils, and that each pupil should take part in an act of collective worship every day, unless withdrawn by their parent. Sections 80(1)(a) and 101(1)(a) of the 2002 Act require the inclusion of religious education in the basic curriculum.
74. The position of the School is already distinctive in the sense that despite its policy of inclusiveness it permits girls to wear a headscarf which is likely to identify them as Muslim. The central issue is therefore the more subtle one of whether, given that Muslim girls can already be identified in this way, it is necessary in a democratic society to place a particular restriction on those Muslim girls at this school who sincerely believe that when they arrive at the age of puberty they should cover themselves more comprehensively than is permitted by the school uniform policy.
75. The decision-making structure should therefore go along the following lines:
- 1) Has the claimant established that she has a relevant Convention right which qualifies for protection under Article 9(1)?
 - 2) Subject to any justification that is established under Article 9(2), has that Convention right been violated?
 - 3) Was the interference with her Convention right prescribed by law in the Convention sense of that expression?
 - 4) Did the interference have a legitimate aim?
 - 5) What are the considerations that need to be balanced against each other when determining whether the interference was necessary in a democratic society for the purpose of achieving that aim?

- 6) Was the interference justified under Article 9(2)?
76. The School did not approach the matter in this way at all. Nobody who considered the issues on its behalf started from the premise that the claimant had a right which is recognised by English law, and that the onus lay on the School to justify its interference with that right. Instead, it started from the premise that its uniform policy was there to be obeyed: if the claimant did not like it, she could go to a different school.
77. The chair of the governors, whose decision is set out in full in paragraph 25 of Bennett J's judgment, adopted this line. He ended his decision dismissively by saying that it would not be appropriate "*to make any further provisions for individuals' interpretations of religious codes.*" The Complaints Committee, too, was satisfied that the shalwar kameeze constituted "appropriate Islamic dress" or was "*in accordance with the tenets of Islam*", and while it accepted that the jilbab constituted proper Islamic dress for adult Muslim women, it did not explore the reasons why the claimant sincerely believed that she must wear it. Indeed, the committee could see no good reason for the local mosques "apparently changing their minds", without appreciating that the two Imams had been addressing two quite different questions (see paras 45-48 above), namely whether the shalwar kameeze was or was not inappropriate for Muslim girls, and what in their view the teachings of Islam really required.
78. In my judgment, therefore, because it approached the issues in this case from an entirely wrong direction and did not attribute to the claimant's beliefs the weight they deserved, the School is not entitled to resist the declarations she seeks, namely:
- i) That it unlawfully excluded her from school;
 - ii) That it unlawfully denied her the right to manifest her religion;
 - iii) That it unlawfully denied her access to suitable and appropriate education.
79. So far as this third matter is concerned, I am satisfied that the claimant is entitled to this declaration without the need for any inquiry into the rights and wrongs of what actually happened during the two years in which she was away from school when the School maintained that it was trying to send schoolwork to her at home. Any such expedient would have been inferior to a proper education, at best: compare *A v Headteacher and Governors of Lord Grey School* [2004] EWCA Civ 382 per Sedley LJ at [60].
80. The claimant no longer seeks a mandatory order that the School make swift arrangements for her return to school, and she also no longer seeks damages.
81. Nothing in this judgment should be taken as meaning that it would be impossible for the School to justify its stance if it were to reconsider its uniform policy in the light of this judgment and were to determine not to alter it in any significant respect. Matters which it (and other schools facing a similar question) would no doubt need to consider include these:
- i) Whether the members of any further religious groups (other than very strict Muslims) might wish to be free to manifest their religion or beliefs by wearing clothing not currently permitted by the school's uniform policy, and the effect that a larger variety of different clothes being worn by students for religious reasons would have on the School's policy of inclusiveness;
 - ii) Whether it is appropriate to override the beliefs of very strict Muslims given that liberal Muslims have been permitted the dress code of their choice and the School's uniform policy is not entirely secular;
 - iii) Whether it is appropriate to take into account any, and if so which, of the concerns expressed by the School's three witnesses as good reasons for depriving a student like the claimant of her right to manifest her beliefs by the clothing she wears at school, and the weight which should be accorded to each of these concerns;
 - iv) Whether there is any way in which the School can do more to reconcile its wish to retain something resembling its current uniform policy with the beliefs of those like the claimant who consider that it exposes more of their bodies than they are permitted by their beliefs to show.
82. All this is for the future, and this case has achieved the result of ensuring that schools will set about deciding issues of this kind in the manner now required of them by the Human Rights Act. It may be thought desirable for the DfES to give schools further guidance in the light of this judgment: one is

bound to sympathise with the teachers and governors of this school when they have had to try and understand quite complex and novel considerations of human rights law in the absence of authoritative written guidance. For the present, however, I would allow this appeal and grant the claimant the three declarations she seeks.

Lord Justice Mummery :

83. For the reasons given by Brooke and Scott Baker LJ I agree that this appeal should be allowed. I only wish to add short comments on three points.

A. Justification

84. The claimant has succeeded in demonstrating that her right under Article 9(1) was engaged. She had the right to manifest her religion in the matter of dress at School. The effect of the School's stance on its uniform policy was that the claimant was unlawfully excluded from the School for not wearing the uniform, to which, for religious reasons, she objected. It was no answer for the School to say that she could have attended School if only she had chosen to wear the school uniform. Nor is it relevant to compare her position with that of an employee who is free to leave his employment and to find work with a different employer. (*Ahmad v. UK* (1981) 4 EHRR 126 and *Stedman v. UK* (1997) 23 EHRR CD 168 were cited on the position of employees asserting Article 9 rights). It is irrelevant to the engagement of Article 9 that the claimant could have changed to a school which accommodated her religious beliefs about dress. Education at the School or at another school was not a contractual choice. There was a statutory duty to provide education to the pupils. The School did not follow the proper statutory procedure for excluding her from education.

85. As the claimant has now moved to another school and will not be returning to the School, that is the end of the matter as far as she is concerned. She does not pursue a claim for damages. The case is about a point of principle. Declaratory relief is an adequate remedy. It should be emphasised, however, that, in general, the engagement of the right would not be the end of the matter. In fact, it would be the beginning of another stage. The next stage would be considerably more complex. The scope of the right and its exercise would be subject to the limitations in Article 9(2), which the School may seek to rely on to justify the school uniform policy. Freedom to manifest one's religion is subject, for example, to such limitations prescribed by law as "*are necessary in a democratic society ...for.....the protection of the rights and freedoms of others.*"

86. The process of justification of a limitation on the right to manifest one's religion involves a careful and wise analysis in the very difficult and sensitive area of the relation of religion to various aspects of the life of the individual living in community with other individuals, who also possess rights and freedoms. The right to manifest one's religion under Article 9 is not necessarily a valid reason for overriding the social responsibilities of the individual holder of the right to others living in the community.

87. As is pointed out in the judgment of Brooke LJ (paragraph 82) it would still be possible for the School, on a structured reconsideration of the relevant issues, including the Article 9 right of a person in the position of the claimant, to justify its stance on the school uniform policy. If it could, there would be no breach of the Article 9(1) right.

B. The Role of the Court

88. In some quarters this decision may be seen as an instance of the court and/or the claimant overruling the Headteacher and the Governors of the School, undermining their authority on an internal school matter and interfering in the running of the School. That would be a misconception. The role of the court is confined to deciding whether the claimant was unlawfully excluded from the School and unlawfully denied her right to manifest her religion. The court has found that the relevant issues were, from a legal aspect, approached from the wrong direction. The result is that there was unlawful treatment of the claimant. As already explained, this does not mean that would be impossible for the School, if the matter were approached from the right direction, to justify the school uniform policy with regard to another pupil adopting the same position as the claimant.

C. Guidance

89. I agree with Brooke LJ on the need for teachers and governors to be given authoritative written guidance on the handling of human rights issues in schools. There are many issues that members of the staff, parents and pupils could raise under the Human Rights Act 1998 in respect of most of the Articles in the Convention. Headteachers and governors of all kinds of schools need help to cope with this additional burden. They need to be made aware of the impact of the 1998 Act on schools. They need clear, constructive and practical advice on how to anticipate and prepare for problems, how to spot them as and when they arise and how to deal with them properly. It would be a great pity, if through lack of expert guidance, schools were to find themselves frequently in court having to use valuable time and resources, which would be better spent on improving the education of their pupils.

Lord Justice Scott Baker:

90. I agree with the judgment of Brooke L.J and the declarations that he proposes. In particular I wish to associate myself with his observations about the decision-making structure that should have been followed and should be followed in similar circumstances in future.

91. I have, however, considerable sympathy with the School and its governors in the predicament that they faced. They did not appreciate that they faced four square an issue that engaged Article 9 of the ECHR. It is perhaps understandable that a school that can rightly be proud of its contribution to the welfare of members of a multicultural society should have taken the line that it did, albeit one that on careful analysis has been shown to be erroneous in law.

92. Had the School approached the problem on the basis it should have done, that the claimant had a right under Article 9(1) to manifest her religion, it may very well have concluded that interference with that right was justified under Article 9(2) and that its uniform policy could thus have been maintained. Regrettably, however, it decided that because the shalwar kameeze was acceptable for the majority of Muslims the claimant should be required to toe the line.

93. As Brooke L.J. has pointed out, there are two different views in the Muslim community about the appropriate dress for women one, held by very strict Muslims, being that it is mandatory for women to wear the jilbab. The fact that this view is held by a minority, or even a small minority is in my judgment nothing to the point in considering the issue whether Article 9(1) is engaged. There is in my view force in the criticism that it is not for school authorities to pick and choose between religious beliefs or shades of religious belief.

94. The United Kingdom is not a secular state; there is no principle of denominational neutrality in our schools. Provision is made for religious education and worship in schools under Chapter VI of the School Standards and Framework Act 1998. Every shade of religious belief, if genuinely held, is entitled to due consideration under Article 9. What went wrong in this case was that the School failed to appreciate that by its action it was infringing the claimant's Article 9(1) right to manifest her religion. It should have gone on to consider whether a limitation of her right was justified under Article 9(2) in the light of the particular circumstances at the School. As it did not carry out this exercise it is not possible to conclude what the result would have been. The way matters progressed the claimant was excluded from the school without following the appropriate procedures and her Article 9(1) rights were violated in the process.

Cherie Booth QC, Carolyn Hamilton and Eleni Mitrophanous (instructed by the Children's Legal Centre) for the Appellant
Simon A Birks (instructed by Head of Legal Services, Luton BC) for the Respondents