

Impact case study (REF3)

Institution: Oxford Brookes University		
Unit of Assessment: 18, Law		
Title of case study: Impact on religious non-discrimination policy in the UK workplace and schools		
Period when the underpinning research was undertaken: 2006–ongoing		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Lucy Vickers Peter Edge	Professor of Law Professor of Law	[text removed for publication]
Period when the claimed impact occurred: 2014–ongoing		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>Vickers has had instrumental and conceptual impact on public policy on religion and belief equality. Her research on equality and human rights law as it relates to religion or belief has been decisive in establishing the Equality and Human Rights Commission's (EHRC) policy on religion and belief. It provided the evidence base for the EHRC's 2016 evaluation of the effectiveness of the religion or belief legal framework in the UK and directly influenced three of the EHRC recommendations and its subsequent guidance for employers, employees, trade unions and stakeholders on religion or belief issues in the workplace. Vickers' research-based evidence has been also vital in supporting the efforts of civil society organisations to reform UK laws that currently allow for discrimination against teachers in schools with a religious character. Her research advocates a moderate approach based on proportionality in both the workplace and schools. Its foremost significance has been in steering policy away from hasty or reactive legal reform, thereby protecting religious or sexual minority groups who could otherwise be vulnerable to discrimination if religion or belief were given greater precedence in the employment context.</p>		
2. Underpinning research		
<p>The primary underpinning research was undertaken by Vickers, and published in her Arts and Humanities Research Council funded monograph <i>Religious Freedom, Religious Discrimination and the Workplace</i> (output 1) and the European Union (EU)-funded research report <i>Religion and Belief in Employment – The EU Law</i> (output 2). In collaboration with Edge, she wrote the EHRC-commissioned report <i>Review of Equality and Human Rights Law Relating to Religion or Belief</i> (output 3). This research offers three original insights.</p> <p>First, Vickers establishes a principled basis for determining the proper scope of religious freedom at work when self-expression clashes with the needs of employers. For example, secular employers may require employees to dress in a religiously neutral manner, causing difficulties for some religious staff, whilst the religious ethos of other workplaces may prove incompatible with employees' beliefs and lifestyles.</p> <p>Vickers' research should be seen in the context of a number of high-profile calls for the enhanced protection for religion and belief, including claims from the former Archbishop of Canterbury and the Christian evangelical group The Christian Institute that the law discriminates against, and provides inadequate protection for, Christians (e.g. former Archbishop of Canterbury Lord Carey's witness statement in <i>McFarlane v Relate Avon Ltd</i> [2010] EWCA Civ 771; and <i>Marginalising Christians</i>, The Christian Institute, 2009). The European Parliamentary Forum on Population and Development has recognised that such interventions form part of increased activism across Europe that aims to reassert Christianity's dominance (<i>Restoring the Natural Order</i>, European Parliamentary Forum on Population and Development, Brussels, 2018).</p> <p>In this context, in which religion is often presented as clashing with other equality grounds including sex and sexual orientation, Vickers' work (output 1) proposes a robust, reasoned set of criteria for</p>		

addressing tensions that arise between individual freedom of religious expression on the one hand, and workplace requirements on the other. These include the need to uphold equality as well as employer and employee autonomy, and contextual workplace issues such as the size and type of employer. Her research develops an analytical methodology based on assessing proportionality that is capable of respecting and reconciling the different interests at stake.

Second, Vickers' research has been key in challenging prevailing opinion on the merits of 'reasonable accommodation' as a method for resolving conflicts involving religion and belief at work. Those calling for the introduction of a duty of reasonable accommodation for religion include: then Deputy President of the Supreme Court, Lady Hale (e.g. *Bull & Anor v Hall & Anor* [2013] UKSC 73, para 47); the EU funded *Religare* project (www.religareproject.eu); and the UN Special Rapporteur on Freedom of Religion or Belief in his Interim Report on tackling religious intolerance and discrimination in the workplace (2014, UN Doc A/69/261). In addition, a Council of Europe Parliamentary Assembly resolution invites member states to seek reasonable accommodations in order to guarantee equal freedom of religion (*Freedom of Religion and Living Together in a Democratic Society*, Council of Europe Parliamentary Assembly, Res 2017, 30 September 2013).

Vickers argues against an emerging assumption that a duty of reasonable accommodation would improve the legal protection for religious staff. Her reservations include the lack of clarity caused by individualised requests; the potential for inappropriate pressure to accommodate religion; the lack of clear theoretical underpinning for the duty of accommodation creating difficulties when deciding evenly balanced cases; and consequent risks to vulnerable members of staff (e.g. sexual minorities) whose interests may be outweighed by religious claims (outputs 1, 3, and 4).

Thirdly, Vickers' research (output 5) explores religious discrimination against teachers in schools of a religious character, which make up over one-third of state primary schools and one-fifth of state secondary schools in England. The School Standards and Framework Act 1998 (SSFA) allows schools with a religious character to take religious considerations into account when appointing or dismissing teachers, regardless of whether the subjects taught relate to religion. Vickers argues that the provisions of the SSFA are incompatible with Article 4(2) of the EU Employment Equality Directive, because they do not comply with the EU law requirement that any exceptions to the prohibition on discrimination should be legitimate and justified. The legal basis for this assertion is strengthened by recent Court of Justice of the EU cases such as *Egenberger v. Evangelisches Werk für Diakonie und Entwicklung e.V.* C-414/16 (discussed in output 6).

3. References to the research

- (1) Vickers, L. (2008). *Religious Freedom, Religious Discrimination and the Workplace*. Oxford: Hart Publishing ISBN 9781841136875 (Second Edition 2016) – Sole authored monograph
- (2) Vickers, L. (2007). *Religion and Belief: Discrimination in Employment – The EU Law*. European Commission ISBN 92-79-03114-7 available at <https://op.europa.eu/en/publication-detail/-/publication/e4285a0c-d43a-4cf8-81aa-ceac422e1b7b> (Commissioned by the European Network of Legal Experts in the non-discrimination field)
- (3) Edge, P. and Vickers, L. (2015). *Review of equality and human rights law relating to religion or belief (Research Report 97)*. London: Equality and Human Rights Commission, available at <https://www.equalityhumanrights.com/sites/default/files/research-report-97-review-of-equality-and-human-rights-law-relating-to-religion-or-belief.pdf>
- (4) Vickers, L. (2019). Conscientious Objections in Employment: Is a Duty of Reasonable Accommodation the Answer? In J. Adenitire (ed), *Religious Beliefs and Conscientious Exemptions in a Liberal State*. Oxford: Hart Publishing ISBN 9781509920952
- (5) Vickers, L. (2009). Religion and Belief Discrimination and the Employment of Teachers in Faith Schools. *Religion and Human Rights* 4(2-3), 137-156 DOI: 10.1163/187103109X12459002443655
- (6) Vickers, L. (2019). *Religious Ethos, Employers and Genuine Occupational Requirements Related to Religion: the Need for Proportionality*. *International Labor Rights Case Law Journal* 5(1), 75-79 DOI:10.1163/24056901-00501012

4. Details of the impact

Vickers' research has had a major impact by providing the evidence base for the development of policy regarding religion and belief within governmental institutions such as the EHRC (the UK national equality body responsible for safeguarding and enforcing human rights and equality law), and non-governmental organisations (NGOs) such as the National Secular Society (NSS) and the Accord Coalition for Inclusive Education (Accord), a coalition of organisations including religious groups, humanists, teachers, and trade unionists working for inclusive education. Other beneficiaries include individual employers and employees seeking legal clarity. The foremost significance of Vickers' research has been in influencing policy away from hasty or reactive legal reform, thus avoiding harmful effects on those in religious or sexual minority groups who could otherwise be vulnerable to discrimination if religion or belief were to be given greater precedence in the employment context.

Vickers' research has had three key impacts. **(1)** Her recommendations **shaped EHRC policy on religion and belief**. **(2)** Vickers **drafted and amended EHRC guidance** to employers on managing religion and belief at work. **(3)** Her research has **supported civil society organisations**, including the NSS, in their campaign to reform the SSFA.

(1) Shaping EHRC policy on religion and belief discrimination:

Vickers' and Edge's research (output 3 above) provided the starting point for and underpinned the EHRC's 2016 report *Religion or Belief: Is the Law Working?* (sources 1 and 2). Three of the EHRC recommendations were as follows: the existing legal framework provides sufficient protection for people manifesting religion or belief, and should therefore remain untouched; a duty of 'reasonable accommodation' should not be introduced into law; and the Department for Education should review the SSFA to ensure compatibility with the EU Equality Directive. All three recommendations arose directly from Vickers and Edge's review of the legal framework on religion and belief in the workplace in Great Britain, commissioned by the EHRC and published as EHRC Report 97 in 2015. Rebecca Hilsenrath, Chief Executive of the EHRC has said that the report 'directly influenced the EHRC's recommendations in its 2016 report *Religion or Belief: is the law working?*' (source 2). According to David Perfect, a Research Manager at the EHRC, 'Vickers has made an invaluable contribution to the Commission's work on religion or belief' (source 3).

Vickers' monograph (output 1 above) was a key academic influence on the EHRC 2016 report and recommendations. It is cited directly eight times and strongly influenced two sections: the employment of teachers in schools of a religious character and a duty of reasonable accommodation. As confirmed by David Perfect, Research Manager at the EHRC (source 3), 'both issues are hotly contested by stakeholders and in the wider literature and Vickers' clear, balanced, and authoritative analysis helped shape the Commission's recommendations'. Her expertise on the issues, evidenced by her research on religious discrimination, led to her membership of the EHRC's 'Friends of the Chair', which had a small core membership of academics and religion or belief stakeholders, providing a forum for open discussion of issues relevant to the Commission's equality and human rights role on religion or belief. The EHRC's approach on a number of key issues was established through the 'Friends of the Chair' group, whose discussions fed directly into the EHRC's 2016 report, and helped shape EHRC thinking on religion and belief issues (confirmed by the Chief Executive of the EHRC in source 2).

The first significant contribution to policy on religion and belief was the underpinning evidence from Vickers from which the EHRC concluded that the law is largely clear and consistent, and does not need substantial change. The significance of this conclusion should be understood in the context of calls for law reform outlined in section 2 above. Despite substantial pressure, the decision of the EHRC to recommend no significant change to the legal framework is evidence of Vickers' decisive influence on national policy on religion and belief discrimination. Beneficiaries of this position include employees and employers who retain a workable legal framework, as well as minorities who could become vulnerable to discrimination if the law were amended to give priority to religion or belief within the legal framework.

Beyond the impact of avoiding unnecessary law reform, two more specific recommendations from the EHRC directly resulted from Vickers' research.

Duty of accommodation: The EHRC advised against the introduction of a duty of accommodation for religion or belief at work, a recommendation underpinned by Vickers' research. As a result, employees, and employers benefit from a simpler, well-established legal framework; and minorities, whose non-discrimination rights might be undermined by the provision of additional protection for the manifestation of religion or belief, enjoy greater protection from equality law.

The significance of this recommendation should again be seen in the context of many calls, both nationally and internationally, for the introduction of such a duty, detailed in section 2. In contrast, Vickers' work provides a moderating response to the debate, arguing that the rights of those seeking to have religion and belief accommodated at work remain adequately protected under the legal provisions on indirect discrimination, a view that shaped the EHRC recommendation (source 3).

Discrimination against teachers in schools with a religious character: A key recommendation in the EHRC 2016 report was that the government should review the laws relating to the employment of teachers in schools with a religious character. The EHRC position on protection against discrimination for teachers in faith schools can be traced to the discussion among the EHRC 'Friends of the Chair' (source 1 and 2), of which Vickers was a core member. These discussions led the EHRC to recommend that the Department for Education should review sections 60 (4) and (5) of the SSFA, and the Scottish Government should review section 21 (2A) of the Education (Scotland) Act to ensure their compatibility with the EU Equality Directive. The Chair of Accord has said 'It is our view that [Vickers] has done more than anyone to shift opinion at the EHRC, which in 2016 accepted that the teacher discrimination laws were unsatisfactory and disproportionate' (source 5).

(2) Drafting EHRC guidance:

The EHRC drew on Report 97 (output 3) to develop an accessible and easy to use guidance 'Religion or belief: a guide to the law' (<https://www.equalityhumanrights.com/en/religion-or-belief-workplace>) for employers across the private and public sectors (source 6). More specifically, the EHRC sought Vickers' consultation in drafting two sections of this guidance: guidance for organisations with a religious ethos, and guidance on religion and belief in recruitment contexts. This guidance consists of a downloadable guide to the law and provides employers with a practical decision-making tool with a step-by-step approach to properly considering a religion or belief related issues at work. It is available on the EHRC website as a public resource and is a primary source of guidance for employers, employees, and stakeholders on religion or belief issues in the workplace (source 4). The EHRC 'Religion or belief in the workplace' guidance is regularly consulted by employers and employees, and has had over 9,000 unique page views (source 6).

(3) Supporting civil society organisations:

Vickers' research (output 5) has stimulated and informed civil society organisations' work on religion and belief at work including NGO campaigns for reform of the law regarding religious discrimination in schools of a religious character (over one-third of primary schools and one-fifth of secondary schools in England). Since 2014, campaigning for the reform of the SSFA by the NSS, Humanists UK, and Accord has continued. Vickers' research provides the underpinning evidence for the legal basis of Accord's campaign work (confirmed by the Chair of Accord, source 5). The NSS case for change is based on Vickers' research, as confirmed by the President of the NSS: 'We have continued to advance our campaign arguments, including the submission of a series of parliamentary questions in 2016/2017 with confidence because they are underpinned by her research' (source 7).

5. Sources to corroborate the impact

1. Equality and Human Rights Commission (2016). *Religion or belief: Is the law working?* Manchester: Equality and Human Rights Commission. (Output 1 referenced eight times on pages 20, 27, 28, 31, 38, 39; Output 3 referenced eight times on pages 3, 14, 21, 26, 38, 39, 55). Available here: <https://www.equalityhumanrights.com/sites/default/files/religion-or-belief->

[report-december-2016.pdf](#)

2. CEO of the EHRC, letter to L. Vickers, 18 May 2020.
3. Research Manager of the EHRC, email to L. Vickers 19, December 2016.
4. EHRC Guidance on Religion or belief: recruitment (Last updated: 27 Mar 2017) (<https://www.equalityhumanrights.com/en/advice-and-guidance/religion-or-belief-recruitment>) and dedicated website hosting resources on Religion or belief guidance for employer (<https://www.equalityhumanrights.com/en/religion-or-belief-workplace>) including *Religion or belief: a guide to the law* (<https://www.equalityhumanrights.com/en/publication-download/religion-or-belief-guide-law>) (First published: 2 Dec 2016) which drew on Output 3.
5. Chair of the Accord Coalition for Inclusive Education.
6. EHRC Religion and Belief analytics and website statistics, confirmed by email correspondence between Research Manager, EHRC, and L. Vickers, 19 August 2020.
7. President, National Secular Society, letter to L. Vickers, 14 May 2020.