



# EMPLOYMENT TRIBUNALS

**Heard at:** Exeter (by video) **On:** 20 July 2022

**Claimant:** Miss Patrycja Wierowska

**Respondent:** HC-One Oval Limited

**Before:** Employment Judge Fowell

**Representation:**

**Claimant** Dr Anna Loutfi of counsel, instructed by Tilbrook's Solicitors

**Respondent** Mr Stuart Irving, HR Manager

## JUDGMENT ON A PRELIMINARY ISSUE

1. The claimant's beliefs in relation to Covid vaccines constituted a religious belief for the purpose of Section 10 Equality Act 2010.

## REASONS

### Introduction

1. These written reasons are provided at the request of the respondent. As usual, some editing has taken place to avoid duplications or digressions, and these written reasons are therefore the final version.
2. Miss Wierowska worked as a care worker until her dismissal on 28 April 2021. One of the reasons for this, she says, was that she refused, on religious grounds, to take a covid vaccine. She is a lifelong Roman Catholic and says that it is against her faith to do so, for a number of reasons:
  - a. it involves the use of foetal blood;
  - b. she fears that they might interfere with DNA in the nucleus of cells; and
  - c. she takes the view that they are, or were, experimental, with unknown long-term repercussions.

3. The way that it was put in the case management order in March this year was as follows:
  38. The claimant believes, in accordance with the dicta of Roman Catholicism that
    - 38.1 blood is God given and therefore sacrosanct and it is therefore contrary to the tenets of the faith to alter the blood by adding man made vaccines.
    - 38.2 life is sacrosanct and that it is contrary to the tenets of the faith to use foetuses in the creation of Covid vaccines.
4. This preliminary hearing is to decide whether or not Miss Wierowska is entitled to rely on her religion as a protected characteristic in these circumstances. That question therefore involves a consideration of the degree of connection between her faith and her attitude to vaccines. The extent of the connection required is a matter of law, to be decided from a number of previous cases to which I have been referred.

### **Procedure and evidence**

5. In addressing that issue I heard evidence from Miss Wierowska. There was also a bundle of about 116 pages and skeleton arguments were provided on each side.
6. In Miss Wierowska's written account she explained that she was brought up attending Mass every week, and on Holy Days, and that she was committed to her religious upbringing. For her there is no question about the absolute truth of a creator or of the presence of sin in the world. She prays daily to the Blessed Virgin Mary and described her "earthly struggle" to negotiate the temporal demands of "our rulers in government and the culture that seeks to deny our Holy Lord." One of the tenets of her faith is that life is sacred so that, for example, "taking the life of the most innocent, in the womb is a mortal sin".
7. That concern on her part about the practice of abortion extends to the use of aborted foetuses in scientific treatments. She states that once she heard that mRNA vaccines contained such foetal material, alarm bells sounded for her. For many people, she explained, these were not a concern, but for her any interference with a genetic inheritance and with traceable bloodlines was against the will of God. She views blood as having a sacred component, and quoted in her statement from a biblical passage, the first letter of St. Paul to the Corinthians, 6:19, to the effect that a person's body is the temple of the Holy Spirit.
8. It appears from the material in the bundle that she is not alone in these views and that there has been a debate in Catholic circles about the morality of taking vaccines. According to the BBC article at page 55, in response to these concerns, the Vatican issued a statement to the effect that such vaccines were "morally acceptable". The Vatican spokesman accepted that both the Pfizer/BioNTech and Moderna viruses used a cell line derived from an aborted foetus to test the

vaccines, while the Oxford/AstraZeneca vaccine used such cells in the design, development, production and testing stages. The first of these alternatives was considered to be better but the prevailing view was that where there is no choice available it would be permissible to accept the AstraZeneca vaccine. This was for a number of reasons. It was said that the connection between the vaccine and cells taken from an aborted foetus was remote – the abortion might have occurred decades earlier. Against that there was the urgency of the crisis and the moral duty to reduce the spread of infection. Hence, ‘in the absence of any alternative, such vaccines “can be used in good conscience”’.

9. That article also reported a debate on the subject at the US conference of Catholic Bishops in July 2021. Other articles referred to serious moral objections taken by Polish bishops to the AstraZeneca and Johnson & Johnson vaccines on similar grounds. Some of the Bishops, on the other hand, viewed the vaccines as a gift from God. The upshot is that the prevailing view in July 2021 was that there is no moral objection to using any of the vaccines although concerns remained in many Catholic quarters.
10. Miss Wierowska was questioned at some length about the basis of her concerns about the vaccine. She accepted that the Vatican view was that it was acceptable to take the vaccines but she pointed to the fact that she had free will, which was God-given and that no one could take that decision from her. She also accepted the moral case for preventing the spread of infections in order to protect the weak, such as the residents of the care home, but she said that she was doing everything else to prevent transmission. She was sceptical about the value of face masks however, given the size of airborne particles, and accepted that when she attended the Freedom March in London on 20 March 2021, which had about a million people present, she had not worn one.
11. She was taken to a UNICEF report which said that the mRNA vaccines cannot alter a person’s blood cells but was not prepared to accept that as a fact. When medical opinions were put to her to the effect that the RNA does not penetrate the nucleus, but she said that other doctors have different views, and then referred to the possible side effects for pregnant women. She was concerned that later on she might not be able to have children and there was no guarantee that there would not be such side effects in the future.
12. When it was suggested to her that these concerns did not have anything to do with religion she said that it was all connected and she was looking at the bigger picture. Asked to expand on this in re-examination she referred again to the body being a temple of the Holy Spirit and said that her life generally was regulated by that view; hence she is concerned about what she eats, takes exercise and so forth.
13. She was also taken to a Reuters “fact-checker” website to the effect that these vaccines were not experimental and have not skipped any of the usual trial stages.

Again she was unpersuaded; she felt that they had been rolled out in an emergency and in other circumstances would not have been allowed.

14. A final line of questioning related to her Facebook posts. Many of these were sceptical of government. There was a reference to the Orwell novel "1984" and other references to the importance of being a free spirit, or of not being a robot.

### **Submissions**

15. Mr Irving submitted that this view of vaccines was not a religious belief, so much as a philosophical point of view, and that it should therefore have to meet the tests in the leading case of **Grainger plc and ors v Nicholson** 2010 ICR 360, EAT. In that case, which concerned veganism, it was held that a philosophical belief can only qualify for protection if it is genuinely held, is not simply an opinion or viewpoint based on the present state of information available, concerns a weighty and substantial aspect of human life and behaviour, attains a certain level of cogency, seriousness, cohesion and importance, and is worthy of respect in a democratic society.
16. A particular parallel he drew was with the case of **McClintock v Department of Constitutional Affairs** [2008] IRLR 29. That case concerned Mr McClintock's objection to the adoption of children by same-sex couples. The Employment Tribunal's conclusion was that this was not a religious belief on his part but merely an opinion based on the information or lack of information available to him. The Employment Appeal Tribunal did not interfere with that view and quoted from the original reasons of the Tribunal:  
  
"45. ... For our part, on the facts of this case, we feel bound to conclude, notwithstanding the fact that Mr McClintock may be a man of Christian beliefs, even strong ones, that the way he expressed his concerns to those whose task it was to deal with them was based on doubts resulting from a lack of research into adoption by same sex couples. He viewed the possible placement of children with same sex couples as being a 'social experiment', with children being used as 'guinea pigs'. He considered it to be 'political correctness' on the part of the government. Those are views many might share, even on a rational basis, irrespective of whether that view is underscored by religious or other similar beliefs. Whilst we can appreciate that people with strong religious convictions or beliefs may not shout them from the rooftops or need to do so, in this case Mr McClintock presented his case on the basis of the matter which concerned him being under researched."  
  
17. Mr Irving submitted that Miss Wierowska's views were of the same type, and that she was simply unconvinced by the current evidence.  
  
18. Dr Loutfi, on the other hand, submitted that Miss Wierowska's vaccine views were deeply embedded in her religious perspective and worldview. It was not necessary, she submitted, for her view of vaccines to be the mainstream or orthodox view of the Catholic Church; a religious belief may be protected even

where it is not mandated by the religion, provided it is a manifestation of her beliefs. As stated in her skeleton argument,

“A religious belief will be a ‘manifestation’ if it is ‘intimately linked to the religion or belief’ and there is ‘a sufficiently close and direct nexus between the act and the underlying belief. Whether or not the act is mandated by a recognised religion is irrelevant’ (Eweida v United Kingdom [2013] ECHR 37; IRLR 231).”

19. That passage also sets out the relevant degree of connection required.

### **Conclusions.**

20. The starting point is that section 10 of the Equality Act 2010 distinguishes between cases based on religion and cases based on other religious or philosophical belief. That is clear from the opening words:

#### **“10. Religion or belief**

- (1) Religion means any religion and reference to a religion includes a reference to a lack of religion
- (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

21. Miss Wierowska was also clear in her evidence that she was relying on her religious faith. She was not seeking to argue that her opposition to vaccines or her general scepticism about government guidance was in any sense a standalone philosophical belief, and so there is no place here for the tests set out in **Grainger**.
22. The only question, just as with Mr McClintock and Ms Eweida, is whether Miss Wierowska’s views are sufficiently rooted in her religion. In other words, is this a case like Mr McClintock, where the claimant had an underlying religious orientation or perspective which was instinctively averse to the practise of same sex couples adopting children, but about which he was open to debate depending on the evidence and information available; or is it one, as with Ms Eweida, where her desire to manifest her religion, by wearing a crucifix at work, was intimately connected with her religion?
23. It seems to me that this case falls squarely into the second camp. This is an issue which has troubled the worldwide Catholic community, so much so that the definitive statement had to be made by the Vatican on behalf of the Pope in an effort to resolve matters. Even that declaration did not go so far as to criticise any Catholic for refusing to take the vaccine on moral grounds, and it is implicit in the statement made that this remained an issue of personal conscience. Those moral concerns are closely linked to the longstanding Catholic position on abortion and to the resulting opposition to the use of stem cells or foetal material in medical experiments of any sort. They are therefore part and parcel of a fundamental view about the sanctity of human life.

24. Beyond the fundamental nature of the issue, there is the fact that Miss Wierowska was not open to debate about the matter. The points that were put to her to challenge her views only appeared to strengthen her objections. Religious views are often criticised on scientific grounds for failing to take into account the available scientific evidence, and Miss Wierowska did indeed strongly resist any suggestion that the vaccine was safe and could not affect cell DNA. That stubbornness demonstrated that the use of vaccines is not for her one of balancing the evidence or obtaining more information, it is a firm and rooted aversion. She resorted to some practical arguments, such as the risk that it may, in the longer term, have some effect on her genetic makeup, but that did not detract from the basic position that on moral grounds she was against using vaccines which had been developed using foetal stem cells. That position was not challenged, and it must follow that even if all her concerns about side-effects were overcome by argument, and even if she could be satisfied that there could be no interference with DNA, her objection to vaccines developed in this way would remain, and would remain on religious grounds.
25. The suggestion that her concerns were essentially health-based or linked to diet and exercise, was not, in my view, well founded. The passage from St Paul quoted in her witness statement about the body being the temple of the Spirit, and there being an obligation to take care of the fabric, fully explains this view. The importance of good health is a view shared by religious people and non-religious people alike and does not indicate a secular or evidence-based approach.
26. Nor does her concern with free will, or with thinking for herself and exercising her own choices, invalidate that view. In her witness statement she referred to the tension between religious views and secular culture – her “earthly struggle” – and her concerns over not following the prevailing view are all in that context – a context of challenging the conventional, secular orthodoxy.
27. Overall therefore, applying the test in Eweida, I am satisfied that her views about the vaccine are intimately connected with her religious faith, and there is a sufficiently close and direct nexus between her refusal to take a covid vaccine and her underlying beliefs. Hence, she is entitled to rely on that religious faith as a protected characteristic.

Employment Judge Fowell

Date 3 August 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

10 August 2022 By MR J McCormick

For the Tribunal Office