

## **Is the House of Lords decision in the Begum case consistent with freedom of expression in a multicultural society?**

Written by Amy Brown (Nov 2008)

### Introduction

In this essay I will be discussing the House of Lords decision in the case of Regina (SB) V Denbigh High School and its consistency with the freedom of expression under the European Convention on Human Rights. In this case a pupil of the school, Shabina Begum was expelled for wearing a jilbab, a form of Muslim clothing, not permitted under the schools uniform policy. The school was a multi-cultural one with a majority of Muslim pupils and a choice of three Muslim suited uniforms. The jilbab was not one of these choices and so Begum made a claim to the High Court in 2004 and the Court of Appeal where her case was finally dealt with in the House of Lords. Begum claimed that her freedom of conscience and religion and her right to education had been breached, although the House of Lords decided she did not have a claim based on these.

### European Convention on Human Rights

In 1950 the European Convention of Human Rights was adopted by the Council of Europe to protect the human rights and freedoms of individuals in the member states. The Human Rights Act 1998 was passed to incorporate these into UK law. If an individual feels that their rights or freedoms under this convention has been breached they can make a claim to the European Court of Human Rights in Strasbourg. However, the Human Rights Act gave UK Courts the power to award damages for this breach and saves individuals having to visit the court in Strasbourg. The Act also ensures it gives effect to the rights under the European Convention.

The purpose of the Convention is to ensure that individuals are treated fairly and are free from discrimination, for example. The Convention includes rights such as the right to live, to security and liberty, to a fair trial, to privacy and to education. It also includes freedoms to expression, conscience, religion and assembly and association. Article 9 of the Convention, freedom of thought, conscience and religion was the main freedom Begum claimed she had been deprived of. This freedom closely links to the freedom of expression and when deciding on the Begum case the House of Lords were in effect judging “the freedom of expressing her religion” and would have had to have considered both freedoms together.

### Freedom of expression in relation to the Begum case

The freedom of expression under the Convention is the freedom “to hold opinions and to receive and impart information without the interference by public authorities and regardless of frontiers”. The freedom is however subject to restrictions where it is in the interests of “national security, public safety, for the prevention of crime and disorder, for

the protection of health or morals and for the protection of the reputation or rights of others...” As a religious belief is almost an opinion the case would also relate to this freedom of expression. Begum was prevented from expressing her opinion/belief that a jilbab was the correct form of Muslim wear for women. The school could argue, however, that the restriction was valid on the ground of the “prevention of disorder” and the “protection of rights of others” in relation to the other pupils at the school. In this case, the school had in fact argued that by allowing the jilbab to become part of the uniform, which was only a belief of a minority of Muslims, it would pressurize other Muslim pupils into also wearing this form of clothing.

### House of Lords Decision

The House of Lords decided that Begum did not have a claim as the freedom to manifest ones religion does not apply at any time or place one chooses. The House of Lords also praised the school for encouraging a uniform policy that demonstrated diversity in a multicultural society.

In one way, the decision of the House of Lords seems to undermine the freedom of expression. The Article states, “the freedom to hold opinions... without the interference of public bodies”. It could be argued that Denbigh High School, a public body, had interfered with Begum expressing her belief and therefore the freedom had been breached. However, the freedom to express religion also states that there are limitations by law. The law has given the school this power to enforce a uniform policy and is, in effect, a limitation by law itself.

On the whole, the House of Lords decision was consistent with the freedom of expression. This was because it recognised that the school’s reasons for the banning of the jilbab were valid limitations under the Article. As the Article states, the freedom of expression will be limited where it is “for the prevention of disorder and crime” and “for the protection of the rights and freedoms of others”. The school claimed that their diverse uniform policy was as a result of previous suffering when groups of pupils decided to define their racial lines which caused conflict in the school. As a solution, after much consultation, the school had adapted this uniform policy that respected the several religious groups within the school. Therefore the limitation proves a necessity to the “prevention of disorder” in the school. Another valid reason is “for the protection of the rights and freedoms of others”. Under the Convention, Article 14 provides every individual with the right to be protected from discrimination. Besides, feeling pressurized to also wear the jilbab, other pupils may feel that they are being treated unfairly and unequally to Begum and others if the jilbab was to become part of the uniform policy. As a multi-cultural school, there would be many different beliefs, some minority and others not, which may not be possible for the school to cater for. By catering for this one belief of Begum’s and allowing her to wear the jilbab, the school would have to do the same for every pupil’s individual religious belief, in order not to discriminate. Therefore, this limitation was also necessary in protecting the pupil’s rights to be free from discrimination. The school has a duty to provide equally for all religious groups the best

they can and their uniform policy was held as a suitable way to do this by the House of Lords.

Despite, Begum's individual hardship from the House of Lords decision, they were justified in their reasons. Begum knew of the uniform policy when she joined Denbigh High School and was free to express her religious belief by wearing a jilbab at other nearby schools. The school had also catered best for the majority of the Muslim pupils at the school by providing a choice of three uniforms all compatible with the religion. Therefore, the House of Lords were justified in refusing Begum's claim both on the facts of the case and by its consistency with the freedom of expression and of conscience and religion, under the convention.

### Conclusion

Overall, it can be seen that the House of Lords were justified in their decision of the Begum case and that they were consistent with the freedom of expression in a multi-cultural society. The school argued and the House of Lords agreed that the fair way in which they were catering for the whole of their students through their uniform policy outweighed the individual need for Begum to be allowed to wear the jilbab. The school were justified in their limitations on Begum's freedom of expression and the House of Lords held this.