

Impact case study (REF3b)

Institution: Oxford Brookes University
Unit of Assessment: 20 – Law
Title of case study: Development of Policy in the Field of Equality in the Workplace
<p>1. Summary of the impact</p> <p>Research by Vickers and Manfredi has enhanced public and policy understanding of equality and diversity issues relating to religious belief, age discrimination and equality policies both nationally and internationally. Their work on equality has been instrumental in developing the equality policy of HEFCE and the equality framework of the REF 2014. They have advised human resources managers in relation to age equality, demonstrably influencing organisational policy development on retirement, through its application in personnel equality training programmes for a range of organisations and agencies. Additionally research by Vickers on religious equality has assisted conceptual understanding and capacity building nationally and within the European Union, underpinning legal challenges to government equality legislation.</p>
<p>2. Underpinning research</p> <p>Religious Equality: Professor Vickers' research expertise on human rights and religious equality at work developed from 2002 onwards (1) to her 2008 monograph <i>Religious Freedom, Religious Discrimination and the Workplace</i> (2). Her work on the issue establishes a principled basis for determining the proper scope of religious freedom at work, and considers the interaction of freedom of religion with the right not to be discriminated against on grounds of religion. It explores the complexities of protecting against religious discrimination, particularly given clashes with other rights and freedoms such as employer's economic rights, as well as gender and sexual orientation equality. It proposes an approach based on proportionality as a way to begin to reconcile conflicts, and considers the benefits of a duty of reasonable accommodation of religion at work. Her research on the issue involves an assessment of the European dimensions on the topic, "<i>Religion and Belief in Employment - The EU Law</i>",(3) and advocates the use of a proportionality based approach as a way to reconcile different European approaches to religion in the workplace. Follow-up research <i>Freedom of Religion and Belief and Employment in Faith Schools</i> (2009) (4) considered the employment rights of teachers in faith schools in England. This concluded that the lack of a proportionality test in the School Standards and Framework Act 1998 makes it incompatible with the EU Equality Directive 2000/78.</p> <p>Equality in Research Careers: Research on equality and the Research Assessment Exercise 2008 (RAE) was undertaken for Equality Challenge Unit/HEFCE in 2009 by Vickers and Manfredi (5). This research was commissioned on a competitive basis, and involved document reviews from 32 higher education institutions, and interviews with senior staff, and main and sub-panel members. Findings confirmed that the selection rate of women was lower than that of men in RAE 2008. This was broadly consistent with the findings of the HEFCE study (HEFCE 2009/34). In the RAE2008, individual sub-panels provided different equality guidance in their panel criteria statements. The research concluded that this was not justified by differences in the subject areas, and ambiguity in the sub-panel guidance might have led to exclusion of some staff from an RAE submission. The research recommendations included that equality training provision should focus on the Research Excellence Framework (REF) and make use of case studies to explore the implications of dealing with personal circumstances in the process of selecting staff for inclusion. It also recommended that there should be greater consistency in the equality guidance issued by different panels. These recommendations were implemented in the REF 2014 guidance: (para 111 Research Excellence Framework Second Consultation on the Assessment and Funding of Research (HEFCE 2009).)</p> <p>Research on Age Equality and Higher Education (HE): This was undertaken in 2008-9 by Vickers and Manfredi as part of the by HEFCE project <i>Developing Good Practice in Managing Age Diversity in the HE Sector</i>. The project partners included four universities, the Equality Challenge Unit, and representative unions. Research was undertaken to investigate staff perceptions of age discrimination and retirement across all occupational groups working in the HE sector. The research involved the collection of both quantitative and qualitative data in 12 universities. Follow-up research was undertaken in 2010-11 as part of a HEFCE funded project on <i>Managing Flexible</i></p>

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Retirement and Extended Working Lives, and a guide to managing without a retirement age was produced. Findings (6) suggested that many staff wish to retire after the age of 65, and that Human Resources managers expect to see a greater use of formal performance management processes as a response to the removal of mandatory retirement.

3. References to the research (indicative maximum of six references)

1. The Employment Equality (Religion or Belief) Regulations 2003 (2003). *Industrial Law Journal* 32(3) pp 188-193 doi: 10.1093/ijl/32.3.188 – Peer reviewed journal article.
2. Vickers, *Religious Freedom, Religious Discrimination and the Workplace*, (2008) Hart Publishing, Oxford ISBN 9781841136875 - Sole authored monograph, submitted to REF2014, Oxford Brookes University, UoA20-Law, LR Vickers, Output identifier 5971.
3. Vickers, "*Religion and Belief: Discrimination in Employment - The EU Law*" European Commission (Commissioned by the European Network of Legal Experts in the non-discrimination field) (2007)
http://www.migpolgroup.com/publications_detail.php?id=163
This report (76 pages) comprises commissioned research by the European Network of Legal Experts in the non-discrimination field for the European Commission, and was reviewed before publication by over 15 academic experts on non-discrimination law from around the EU.
4. Vickers, Religion and Belief Discrimination and the Employment of Teachers in Faith Schools (2009) *Religion and Human Rights*, 4, pp 1-20 DOI: 10.1163/187103109X12459002443655 – peer reviewed journal article.
5. Manfredi and Vickers, "Impact of the process to promote equality and diversity in the Research Assessment Exercise 2008" (2009) ECU, London.
<http://www.ecu.ac.uk/publications/files/equality-and-diversity-in-the-research-assessment-exercise-2008.pdf/view> - report reviewed by an expert advisory panel for Equality Challenge Unit before publication.
6. Manfredi and Vickers, Retirement and Age Discrimination: Managing Retirement in Higher Education (2009) *Industrial Law Journal* 38(4), pp 343-364 doi: 10.1093/indlaw/dwp025 – peer reviewed journal article, submitted to REF2014, Oxford Brookes University, UoA20-Law, LR Vickers, Output identifier 7573.

4. Details of the impact

Religious Discrimination:

The doctrinal legal scholarship on religious discrimination (1,2) led to commissioned research by the European Network of Legal Experts in the non-discrimination field for the European Commission. This resulted in the thematic report "*Religion and Belief in Employment - The EU Law*" published by the European Commission (3). This, together with doctrinal work on religion and employment (2), has had considerable and far-reaching impact on policy debate in a variety of contexts.

For example, it is cited in the International Labour Organisation (ILO) report on Legal prohibitions against employment discrimination available to migrant workers employed in Europe as part of the ILO International Migration Programme (7); and in the Equality and Human Rights Commission Human Rights Review 2012 (8). It has been widely relied on by non-academic commentators such as former Archbishop of Canterbury Lord Carey (9), and Joanna Łopbowska the Legal Adviser Commission of the Bishops' Conferences of the European Community (10). It has also been used by legal practitioners such as The Open Society Justice Initiative legal opinion in the German appeal hearing in *Diakonische Werk Hamburg v. Ms.Fadia*. (11) and The Church and Society Commission of the Conference of European Churches (12).

Vickers' has also influenced policy on religious equality in Europe through direct interaction with policy makers. Her 2008 monograph *Religious Freedom, Religious Discrimination and the Workplace* (2) led to an invitation to give the key note speech at a conference of the EU FP7-funded RELIGARE project in 2011, and again to contributions to the project in 2012 and 2013. This project engaged significantly with policy makers at the European Commission, as well as having input from a number of different faith groups. It made a number of policy recommendations to the EU relating to employment matters, including policy on the duty of reasonable accommodation. Vickers also spoke at the European Commission Legal Seminar on Approaches to Equality and Non-Discrimination Legislation Inside and Outside the EU, October 2011, Brussels (with Prof. Titia Loenen, University of Utrecht) on a proportionality approach to religious discrimination. Papers were attended by members of the European Commission, Government Representatives, and Representatives of Equality NGOs from across Europe.

Doctrinal work on the lack of any proportionality review in the legal protection for teachers in faith schools was used as the basis for a complaint by the British Humanist Association and National Secular Society to the European Commission. The complaint argues that UK law in this area infringes the EU Directive 2000/78(13). The European Commission is currently awaiting a response from the UK government to its request for information on the issue before considering whether to take infringement proceedings against the UK.

Vickers's work on religious discrimination (2) has also been cited in Employment Appeal Tribunal cases on religious discrimination (*Grainger PLC v Nicolson* [2009] UKEAT/0219/09.) (14)

Equality Policy

Work on equality policy in research careers has had demonstrable and direct impact on the content of the Funding Councils Equality Guidance for REF 2014. Recommendations formulated from the research on equality and RAE 2008 (4) were implemented in the REF 2014 guidance (15). The recommendations led the Funding Councils and Equality Challenge Unit (ECU) to take specific action including the provision of clearer guidance to higher education institutions (HEIs) by the Equality Challenge Unit (ECU) about self-disclosure of personal circumstances and that equality training should focus on the REF context. In response, ECU developed a template to be used to elicit equality-related personal circumstances and designed REF-specific equality training. The research also identified a need for greater consistency in the equality guidance issued by panels and sub-panels and this has led to the adoption of more consistent rules in REF 2014. For example, the distinction between clearly-defined personal circumstances that can be dealt by adopting a pro-rata approach and complex circumstance where a more flexible approach is taken.

The impact of this work has also been recognised by those affected by it. For instance, Manfredi and Vickers were commissioned to carry out REF equality training by the University of Surrey (September 2012) for those involved in decision making in the REF 2014.

Age Discrimination Policies and Training

Research on age discrimination and retirement policies funded by HEFCE has been used extensively in knowledge transfer workshops/training for HE human resources managers and trade unions representatives. Manfredi and Vickers were asked in 2009 by Equality Forward in Scotland to design and deliver a workshop based on their research to HR managers in higher and further education to help them develop policies and practice in response to the 2006 Age Regulations. The research findings have been used directly in training sessions for human resources managers (Oxford and London, 2011), and has been used by solicitors in their briefings and presentations to clients on the retirement. Training materials have been produced, and a web based good practice guide for the HE sector available to the HE sector through the ECU web-site(16).

5. Sources to corroborate the impact (indicative maximum of 10 references)

7. International Migration Papers No. 91. Legal prohibitions against employment discrimination available to migrant workers employed in Europe: A review of international

instruments and national law in four selected countries.

http://www.ilo.org/migrant/publications/working-papers/WCMS_201423/lang--en/index.htm

8. 'Article 9: Freedom of thought, conscience and religion' Human Rights Review 2012.

http://www.equalityhumanrights.com/uploaded_files/humanrights/hrr_article_9.pdf

9. Vickers, Religious Discrimination in the Workplace: An emerging Hierarchy?

Ecclesiastical law Journal. Sept 2010 cited by Lord Carey see

<http://www.rcpsych.ac.uk/pdf/lord%20carey%20intolerant%20secularism%20and%20its%20impact%20on%20modern%20britain.x.pdf>

10. Joanna Łopbowska the Legal Adviser Commission of the Bishops' Conferences of the European Community

http://www.deltapublicaciones.com/derechoyreligion/gestor/archivos/07_10_32_200.pdf

11. Expert Opinion in the Case of *Diakonische Werk Hamburg v Y. Fadia Concerning the application of the EU Employment Equality Directive, the EU Race Directive and Article 14 of the European Convention on Human Rights* July 2008 available at

<http://www.opensocietyfoundations.org/sites/default/files/expert-20080707.pdf>

12. 'Why Sunday should be included as a weekly rest day in the revised Working Time Directive'

http://csc.ceceurope.org/fileadmin/filer/csc/Social_Economic_Issues/CSCProtectionofSunday_EN.pdf

13. British Humanist Association 'European Commission to investigate whether 'faith' schools break European employment laws –July 24 2012

(<http://humanism.org.uk/2012/07/24/news-1084/>). Personal Email correspondence:

17/12/12 National Secular Society to Lucy Vickers (Corroborating statement author 1);

14/06/12 British Humanist Association (Corroborating statement author 2), to

Lucy Vickers confirms reliance by British Humanist Association and National Secular Society on the article by Vickers, Freedom of Religion and Belief and Employment in Faith Schools (2009) Religion and Human Rights 1-20 DOI:

10.1163/187103109X12459002443655

14. For citation: *Grainger PLC v Nicolson* [2009] UKEAT/0219/09

http://www.bailii.org/uk/cases/UKEAT/2009/0219_09_0311.html

15. Guidance from REF panel: http://www.hefce.ac.uk/research/ref/pubs/2011/03_11/

evidence of contribution to HE policy makers development of equality guidance for the REF

16. Web based reports on managing age diversity at work;

http://www.brookes.ac.uk/services/hr/cdprp/resources/evidence_based_approach_report_jun11.pdf

https://wiki.brookes.ac.uk/download/attachments/70582329/Retirement+Guide_web.pdf?version=1&modificationDate=1323164577000