

Mr Justice Bennett :

1. Shabina Begum (*the "Claimant"*) was born on 19 September 1988 and is therefore now 15 years old, and is a Muslim. In September 2000, when she was 12 years old, she started her secondary education at Denbigh High School, Luton in Bedfordshire. The school uniform for Muslim female pupils is the Shalwar Kameeze if they do not wish to wear the traditional uniform. The Claimant happily wore her Shalwar Kameeze to, from and in school until September 2002.
2. On 3 September 2002 the Claimant together with her brother, Shuweb Rahman, who subsequently became her litigation friend in judicial review proceedings, went to the school and asked to speak to the Headteacher, Mrs Yasmin Bevan. She was not available. They saw Stuart Moore, the Assistant Headteacher. Mr Rahman described the meeting in paragraph 4 of his statement of 12 November 2003 in this way:-
"Mr Moore informed us that Shabina could not enter the school unless she wore the standard school uniform. Shabina could not agree to this as it contradicted her religious beliefs."
The Claimant described it (and the subsequent history) in her statement of the same date in this way:-
"Since yearly (sic) September 2002 Mr Moore expelled me from coming into the school premises without the school uniform."
3. Mr Moore has described the meeting in his statement of 25 March 2004 as follows:-
"4. In the morning of 3 September 2002 I had referred to me, in place of the Headteacher, a matter relating to a pupil wanting to attend school wearing a long skirt. I have since been told that the pupil wanted to wear a jilbab. At the time I believed that she wanted to wear a long skirt.
5. I met the pupil, and the two young men who accompanied her. The men claimed to be her brother and a friend. They were very forceful in their approach to me, and talked of human rights and legal proceedings. I am a teacher and do not pretend to know about details of the law. So far as I was aware schools are entitled to insist upon their pupils wearing school uniform provided that it has been agreed by the governing body and taken into account issues regarding discrimination. I knew that Denbigh High School's uniform had been designed some years ago, and that the design had been kept under regular review. As I have outlined above the requirements of the school uniform policy are well publicised and are made known to parents and prospective pupils well before they enrol in the school. In addition I knew that the Claimant had attended the school for two years wearing school uniform having chosen to attend Denbigh High School as she lives outside our catchment area. I was therefore somewhat taken aback to receive, on the first day of the school year, a demand that a pupil be allowed to wear clothing which was not part of the school uniform particularly as I was not aware of the pupil ever raising this issue before. I thought the manner in which the demand was made was unreasonable as it verged on the threatening. I also thought that the timing was unreasonable in that the pupil arrived at school on the first day of term demanding to wear non-uniform clothing. On behalf of the Headteacher I decided that she had to wear, along with all the other pupils, the correct school uniform. I told her to go home and change and return wearing correct school uniform. This is the normal procedure for cases where children arrive at school in incorrect uniform. To date, with the exception of this one incident, pupils have always complied with this and returned straight to school in correct uniform.
6. The two men said they were not prepared to compromise over this issue and the Claimant was encouraged by them to leave the school, which she did. I immediately reported the matter to Mrs. Bevan, the Headteacher who wrote to the Claimant's family. A copy of that letter is at page D1 of the Claimant's bundle. It reflects what I said to the Claimant and her representatives.
7. At no time did I say or have I ever said that the Claimant could not enter the school. I did tell her to return to school wearing correct school uniform. I certainly never expelled or had the authority to expel the Claimant. No pupil would ever be excluded from Denbigh High School without discussion having taken place with the Headteacher first. I have at all times throughout encouraged her to return to school wearing school uniform."
4. Thereafter the positions of the Claimant and the Defendant, despite some attempted compromises, were that the Claimant would not come to school unless she could wear the jilbab and that the Defendant wished the Claimant to return to school provided she wore the appropriate school uniform i.e. the Shalwar Kameeze.
5. On 13 February 2004 the Claimant (by her brother as litigation friend) began judicial review proceedings against the Defendant and the Luton Borough Council ("LBC") for declarations, mandatory orders and damages. On 5 March the Defendant and LBC filed an Acknowledgment of Service resisting the claim.
6. On 23 February Newman J. granted permission as against the Defendant but refused it as against LBC stating:-

SB, R (on the application of) v Denbigh High School [2005] EWHC 1389

"I refuse leave to argue that she has been denied education by the second defendant, the Luton Borough Council, for the reasons given by it, on various occasions, in the course of correspondence."

7. On 27 February the Claimant gave notice of renewal of the claim for permission to apply for judicial review against LBC. That application was listed for hearing on 27 May immediately before the substantive hearing against the Defendant. Having heard Ms Spencer, solicitor advocate for the Claimant, and Mr Birks, of counsel, for LBC, I refused permission. I indicated I would give my reasons in the judgement to be handed down [see paragraphs 106 and 107 hereafter]. I then proceeded to hear submissions vis-à-vis the Defendant and reserved judgement.
8. **Facts** I set out the facts as I find them to be, in so far as I have not related them. I shall have to travel over rather a large area but I shall endeavour to be concise.
9. On 3 September 2002, Mrs Bevan wrote to the Claimant's brother and mother as follows:-
"You will be aware that a young man came into school today, with your daughter, a pupil in Year 9. She was dressed in a long skirt, which is not part of our school uniform.
The young man claimed to be your representative and demanded that we allow your daughter to wear the skirt to school. He claimed that this was a religious requirement and began quoting human rights at the Assistant Headteacher who eventually agreed to see him. He was told that our school uniform had been agreed with the governing body and that we allowed girls to wear shalwar kameeze or trousers. This is carefully explained to families when pupils start at the school. The young man did not accept this and took your daughter away saying that he was not prepared to compromise on this issue and that he would return with a letter from you giving him permission to act as the girl's legal guardian.
I have to say that the staff who dealt with your representative were not impressed with his manner which appeared unreasonable and threatening. I have spoken to Luton Borough Council's legal department about this matter. I need to inform you that they support our view that our uniform rules are more than reasonable in taking into account cultural and religious concerns.
I note that Shabina did not attend school today because she was removed by your representative. Shabina is required to attend school, dressed in the correct uniform according to school policy and we will be referring this matter to the Educational Welfare Service should she fail to do so.
If you have any further concerns about this matter, you may raise them with Mr Kilby, Chair of Governors who can be contacted through the school. Given the unfortunate nature of your representative's manner, any further contact with the school, until we can be assured of a more reasonable approach, should be made by telephone. "
10. The school was anxious to establish contact with the Claimant's guardian. On 4 September 2002 a member of the Support Team telephoned her house who spoke to a male member of the family who said the Claimant had seen her solicitor and was going to sue the school.
11. On 5 September Mr Moore telephoned and spoke to the Claimant's brother to ask why the Claimant was not in school. Mr Moore was told that he (the brother) was not prepared to let her attend school unless she was allowed to wear a long skirt.
12. On 11 September a letter concerning non-attendance was sent to the family (DHS 6). On 27 September a referral was made by the school to the Education Welfare Service ("EWS") who visited the family on 23 October.
13. On 22 October 2002 Messrs Neves, solicitors of Luton, wrote to Mrs Bevan, the school Governors and LBC to the effect that the Claimant had been "excluded/suspended" from school:-
"because she refused to remove her Muslim dress compromising of a head scarf and a long over garment. The dress she, as a practising Muslim, must wear. Shabina follows the opinion that it is an absolute obligation on her to wear this dress and is not prepared to take the dress off".
The letter continued that "your decision to exclude Shabina" broke Article 9 of the European Convention on Human Rights ("ECHR"), Article 2 of the First Protocol to the ECHR, and Article 14.
14. On 23 October the Education Welfare Officer, Maruf Ahmed, saw the Claimant and her brother. They put their views to Mr Ahmed. He, inter alia, emphasised the importance of the Claimant attending school. Mrs Bevan has stated at paragraph 24 of her statement that other attempts were made by EWS to get the Claimant back into school.
15. In December 2002 the Defendant/LBC sought independent advice whether the Defendant's uniform policy offended against the Islamic dress code. Advice was received from Imran Khateeb of the

Madinah Mosque in Oak Road, Luton that *"Shalwar Kamiz is the dress that fulfils the requirements of Islamic dressing"* and from Iman Hazarvi of the Central Mosque in Luton that *"wearing the Shalwar and Quameez for a lady is not an anti-Islamic dress."*

16. Further Dr. Abushady, Deputy Director-General and Chairman, Religious Affairs Department of the London Central Mosque Trust and the Islamic Cultural Centre, wrote on 18 December to the Defendant's solicitor:-

"However, looking around the Muslim world, we find an amazing variety of garments which meet these requirements. Also the clothes of women differ from country to country, and in some countries differ from region to region. Hence we don't see any un-Islamic act for wearing a Shalwar Kamize. Here the important thing is that the Muslim women dress must be within the Islamic guidelines..."

You must agree with me that in Islam there are many schools of thought.... Finally, may I add here that whatever I have described in the foregoing paragraphs are the general consensus of the vast majority of the Muslim scholars."

17. On 22 January 2003 the Defendant's solicitor wrote to the Claimant's solicitor in these terms:-

"Thank you for your letter of 3rd January and my apologies for the delay in replying. Since last writing to you we have received further advice from the London Central Mosque and Islamic Cultural Centre. I enclose a copy of that advice. Dr. Abushady was supplied with a copy of your letter, together with other documents, all suitably edited so as not to reveal your client's identity.

I do not see that we can take this matter any further in correspondence. In my view the school has a perfectly reasonable policy of requiring its pupils to wear a uniform. That uniform includes a form of dress which not only the local mosques but also the London Central Mosque and the Islamic Cultural Centre approve as satisfying the Islamic dress code. Your client's religious views have not only been considered, but provision has been made to accommodate them. I do not see how you can properly maintain that the school has failed to take account of your client's religious views, nor do I see that the school has failed to take account of her rights accorded by the Human Rights Act. Indeed it has bent over backwards to satisfy all reasonable and proper religious requirements.

I note with considerable regret that, as a result of Shabina's interpretation of the Islamic dress code, she has now missed over a term's education. It is Shabina who will suffer in the long term from missing so much of the school year. Unless she returns to school forthwith I shall invite the Education Welfare Officer to take all steps necessary to ensure that she returns, or that her family otherwise provides suitable education. You will appreciate that this could lead to criminal proceedings. I would much prefer that Shabina receives a decent education rather than the Council mounting a prosecution. I note that you have taken steps to encourage Shabina to return to school for which I am grateful. I would be even more pleased if Shabina returned to school."

18. On 16 May 2003 a meeting was held at the school with the Claimant, her brother and two members of EWS. The Defendant understood that the Claimant insisted that she would not return to school unless the school changed. I infer that the meeting was held in an endeavour to persuade the Claimant to return to school.

19. In May the Claimant changed her solicitors. On 11 June the Defendant's solicitor wrote to those solicitors that it was not correct that the Claimant had been *"constructively excluded"*. She was and remained on the school roll and had been able to attend school if she chose to. In common with all the pupils the Claimant had been required to wear school uniform. The Defendant's view was that the Claimant was not prepared to wear the school uniform and had preferred to absent herself from school.

20. At this time the Claimant's solicitors were busy obtaining statements to support her stance. On 12 June Dr. Ahmed Belouafi, on behalf of the Centre for Islamic Studies in Birmingham wrote to the Claimant's solicitors as follows:-

"Thank you for your letter dated 31st May 2003 and sorry for the delay. With regard the issue of the dress code of a woman in Islam, I would like to state the following rulings as derived by Shiekh Al-Albani from various sources of Islamic Jurisprudence (Fiqh):

- 1. The whole body, except for the exempted parts should be covered.*
- 2. But any veil, which in itself becomes an attraction, is to be avoided.*
- 3. Garments should not be semi-transparent.*
- 4. Dress should not be tight fitting.*
- 5. Garments should not be perfumed.*
- 6. The form of dress should not in any way resemble that of men.*
- 7. It should not resemble that of non-believers.*

8. *Garments should not reflect worldly honour.*

In the light of the above conditions it is clear that the shalwar kamize, as appearing in the enclosed picture, do not comply with those basic requirements that must be observed in any garments that woman wear under the Islamic dress code. Moreover, I am enclosing some material, regarding the case of Hijab in Islam, which discusses the matter in more details. In the meantime if you need further information or assistance do not hesitate to contact me. "

21. On 22 June Iman Hazarvi, who had previously given his views to the Defendant (see paragraph 15 above) wrote as follows:-

"Thank you for your letter regards to your client Shabina Begum. You said that Luton Council lawyers say I am supporting them against your client.

When a man from the Council ask me question he said to me that is Shalwar Quameez anti-Islamic. I answer to him that it is not anti Islamic. This is right because a women can wear all clothes unless they are from another religion or belief.

What you are asking me is what is requirement for mature Muslim lady in the public like school. According to the Islamic rules mature Muslim women must wear headscarf and cloak over other clothing. All part of body except the face and hands must be covered.

I do not agree that shalwar quameez is the alternative for the wearing of cloak and headscarf. Your client Shabina Begum is wearing cloak which is requirement from Islam."

22. On 23 June Iman Khateeb, who had previously given his views to the Defendant (see paragraph 15 above) wrote as follows:-

"In relation to the Islamic dress no particular restrictions have been mandated for. But certain restrictions have been stipulated. For example the dress should not be tight but be loose fitting so the parts of the body should not be visible. Men and/or women should not wear identical dress. The mature girl or lady when they are to leave the house they should wear the Jalbaab (long cloak). This long cloak/sheet is called a Jalbaab. The lady or the mature girl must be covered from head to toe.

In relation to the student that you have mentioned and the rights she is demanding from the school in relation to the Jalbaab I am of the opinion that she is correct "

23. On 9 July, after further correspondence between solicitors, the Defendant's solicitors wrote, inter alia:-

"The view which I take is that the school has at no time infringed any of your Client's rights. It has at all times acted reasonably and with proper consideration for your Client's religious beliefs. The school need do no more than show that it has acted reasonably. In this case the school was not required to make any alteration to its uniform. The school is a secular school in Luton that need do no more than adopt a uniform which is suitable for a secular school in Luton. In this case the school has gone further by way of making further accommodation for the female Muslim pupils in adopting the Shalwar Kameez as a form of its uniform. You will appreciate that before that variation was adopted there was a consultation process amongst all the parents and the Imams of the three local mosques. That consultation process did not reveal any objection to the Shalwar Kameez and it certainly did not suggest that the Shalwar Kameez failed to satisfy the requirements of the Islamic dress code. Furthermore none of those consulted which included parents and mosques, has since approached the school and suggested that its views have been misunderstood or that the Shalwar Kameez is inappropriate.

The school continued to act reasonably when the question arose as to the unsuitability of the Shalwar Kameez for Muslim pupils. The school again contacted the Imams of the Luton Mosques. None of the Imams indicated that their original advice was in any way wrong or that they wished to change it. In addition to that a further approach was made to the Islamic Cultural Centre in Regents Park in London. The reason for approaching an entirely separate mosque was to ensure that a fully informed and independent view was obtained. When seeking the views of the Islamic Cultural Centre the Council sent not only a copy of the design of the Shalwar Kameez but also sent a note written by the Education Welfare Officer, with names suitably removed, and a copy of a lengthy letter from Shabina's then solicitor setting out his interpretation of the requirements of the Islamic dress code. The reply which was received in no way indicated that the Shalwar Kameez failed to satisfy those requirements.

All that can be said now is that there appears to be a difference of opinion between no doubt very learned gentlemen as to the proper interpretation of the Islamic dress code. The school is not required to become involved in any such learned discussion. In my view so long as the school can be seen to have acted reasonably upon material properly obtained, it cannot be criticised merely because there is an alternative view which could be put forward.

As the school has not only acted reasonably but has also taken proper steps to find out what the Islamic dress code requires its female pupils to wear, and has adopted a uniform which satisfies those requirements as given to the school, it cannot be said that the school has in any way interfered with your client's religious beliefs, rights to family life, right to education or other freedom from discrimination. Essentially, the test is one of reasonableness. In my view if you wish to challenge either the approach or the decision taken by the school, you would have to do so on the grounds that it is Wednesbury unreasonable. In

short, you would have to show that the approach of the school was verging on the absurd. It is quite clear from the many months of correspondence that I have had that this cannot be done.

It is now well past time that this matter was resolved and that Shabina resumed her education, particularly as she has now missed an entire academic year. It is unlikely that we are going to resolve matters to your liking by way of further correspondence and I would urge you to give careful consideration to whether Shabina would be prepared to return to Denbigh High School wearing the appropriate uniform or whether her family would choose to pay for her to attend an independent Muslim school where a different view may be taken of the Islamic dress code and the wearing of the Zilbab"

24. On 11 July, Mr Moore wrote to the Claimant's solicitors that the Claimant was welcome to attend school but she must wear the school uniform rather than clothing of her choice. He invited the Claimant, if dissatisfied, to write to the Chair of the Governors asking him to review the case.

25. By 23 September that review had taken place by Mr Kirby, Chair of the Governors. He wrote to the Claimant's solicitors as follows:-

"Thank you for your letter of 22 July 2003 addressed to Mr Moore, Deputy Headteacher. I have now conducted my review of the school's position with regard to Shabina's complaint regarding uniform. As you are aware, it is the role of the Headteacher and her representatives to ensure that pupils comply with the uniform policy agreed by the governing body. It is my decision, following a review of this matter, that they have acted correctly and reasonably in upholding the school policy.

In conducting my review I have interviewed the Headteacher and her representative, Mr Moore. I have studied the correspondence from yourself, from Neves solicitors of Luton, from the Children's Legal Centre and associated appendices. I have consulted the guidance on uniform policy, specifically with reference to equal opportunities, issued by the Department for Education and Skills and I have taken into account the school's desire to be sensitive to the needs of different cultures, races and religions.

The reasons for my decision are as follows:

- 1. The school has a very clear uniform policy which has been agreed by the governing body and which is regularly reviewed by them. The governing body comprises a multifaith, multiracial group, including parents, that is representative of the school community. It is my view that it would be inappropriate to allow variations to a policy, for individual pupils, that has been so determined.*
- 2. The version of the school uniform incorporating the Shalwar Kameeze was adopted after full consultation with the parents, pupils and local mosques. When Shabina's family objected that the Shalwar Kameeze did not satisfy the requirements of the Islamic dress code, the school again consulted local mosques. In addition, full details of the complaint were sent by the Local Education Authority Legal Department to the Islamic Cultural Centre in Regents Park, London for an opinion from an independent learned source. All opinions were that the Shalwar Kameeze satisfies the Islamic dress code.*
- 3. Guidance from the Department for Education and Skills states, "Whilst pupils must adhere to a school's uniform policy, schools must also be sensitive to the needs of different cultures, races and religions. Schools are expected to accommodate these needs, within a general uniform policy." I regard the school's position as outlined in paragraph two to be consistent with this guidance.*
- 4. The governing body is responsible for the health and safety of pupils and the design of the school uniform takes into account these factors. With respect to Shabina's family's specific request, any garment which is of ankle-length would present a health and safety risk to Shabina and other pupils in a school where there are many staircases that are very busy with pupil traffic at various times in the day.*
- 5. The uniform policy has also been designed to facilitate the full range of National Curriculum subjects and the school cannot adopt variations to the policy that may preclude access for some pupils to all subjects.*
- 6. I have noted that Shabina's family opted to send Shabina to Denbigh High School at the time of her transition from Junior School despite the fact that they lived and still live outside the catchment area of the school. This required decisive action on their part when, under the terms of local admission policies, the most normal course of events would have been for Shabina to attend her catchment school. The family made this decision in full knowledge of the school's uniform policy which is communicated clearly to prospective parents in writing, through oral and visual presentations and through meetings with staff.*
- 7. I have also noted that Shabina attended the school for two full years without the family raising any objection to the uniform policy, despite the fact that it is constantly reiterated to parents and students in a variety of ways.*
- 8. It is my view that the school has acted reasonably in consulting widely on its uniform policy and offering a version of the uniform that satisfies the requirements of the Islamic dress code and that it will not be appropriate to make any further provisions for individual's interpretations of religious codes.*

I should advise you that if the family remains dissatisfied with my decision, they have the right to request a review by the Governing Body Complaints Committee under the terms of Stage 4 of the School Complaints Policy, a copy of which has been

previously forwarded to you. If the family wishes to pursue this course of action, they should write to Mr D Connor, Clerk to Governors, at the school address, who will arrange for the Committee to be convened.

Finally I would like to express my hope that, in the interests of Shabina's education, she will return to school as soon as possible to resume her studies."

26. In the meantime Ms Spencer, solicitor advocate, of the Children's Legal Centre in Essex, had been instructed for the Claimant. On 11 September she put to the Defendant two proposals to compromise the matter to enable the Claimant to return to school. The Claimant would attend school wearing the jilbab but would agree to be educated in the Inclusive Learning Room away from the main school community. Alternatively, the Claimant would attend school wearing a school uniform that accorded with her beliefs, which required a simple adjustment to the school uniform. She would still wear a white shirt and tie, but her arms and legs would be covered by one dark garment in accordance with the school's uniform colours.

27. On 15 September Mrs Bevan replied, inter alia, as follows:-

"Thank you for your letter of 11th September.

I need to clarify that Denbigh High School has at all times offered and continues to offer a place for Shabina. At no time has Shabina been excluded from school. She has, however, been required to wear a version of the agreed school uniform, an expectation which applies to all students who attend this school. Shabina has the choice of wearing the traditional uniform or the Shalwar Kameeze. Educational provision is therefore on offer to Shabina.

Shabina was given the option of returning to school wearing the Shalwar Kameeze in a form which covers most of her legs which would also be covered by the loose trousers worn underneath. The offer was made on the basis that acceptance of it was without prejudice to her right to argue that she should be entitled to wear the Jilbab and that no point would be taken against her if the offer to be accepted. Although not taken up the offer still remains open.

The school's position is that the version of the school uniform incorporating the Shalwar Kameeze was adopted after full consultation with the parents, pupils and local mosques and taking into account health and safety considerations. No objection was received during this consultation and the mosques approved the design. Shabina herself attended school for two years wearing appropriate school uniform. When Shabina objected last September that the Shalwar Kameeze did not satisfy the requirement of the Islamic dress code, the school again consulted the local mosques. In addition, full details of Shabina's complaint were sent by the Legal Department to the Islamic Cultural Centre in Regents Park, London for an opinion from an independent learned source. All four opinions were that the Shalwar Kameeze satisfies the Islamic dress code. The school's view is that it was acting reasonably in offering a version of the uniform in the form of the Shalwar Kameeze and that such a uniform satisfies the requirements of the Islamic dress code. The school is thus unable to make any further provisions for individual's interpretations of religious codes.

Luton Borough Council has been involved with this matter since its very early stages through the Education Welfare Service and its Legal Department. The Educational Welfare Service has suggested alternative educational provision for Shabina and offered to support the family in this process but I understand that this offer has not been taken up. You may not be aware that Shabina's teachers have sent work to her which Shabina has confirmed with the Education Welfare Service. However, none of this has been returned to the school.

This school has at all times offered and continues to offer to provide Shabina with a proper education. It has ensured, given Shabina's failure to attend, that the Education Welfare Service is pursuing the issue of non-attendance. If Shabina attended this school wearing appropriate school uniform like all the other pupils, she would benefit from the full range of educational facilities available at this school, as they do. At no time has this school ever resolved to cease to provide Shabina with an education. As Shabina has not been excluded from this school and is free to attend on the same terms as all the other pupils, I do not consider that your comments about her exclusion are relevant or that the compromises you suggest are acceptable."

28. On 25 September 2003 Ms Spencer wrote two letters before action, one to LBC and the other to the Defendant.

29. On 30 September Mr Shahid Akmal, Chairman of the Comparative Religion Centre in Harrow wrote to Mr Moore, enclosing the response from the Muslim Council of Britain (D112) setting out the dress code for women in Islam. The crucial points from the Defendant's point of view are:-

(i) there is no recommended style

(ii) modesty needs to be observed at all times

(iii) trousers with long tops/shirts for school wear are absolutely fine

(iv) a Muslim school girl's uniform does not have to be flowing or of such length that there will be a risk of tripping over and causing an accident.

Mr Akmal wrote:-

"In summary, the dress code prescribed by your school for Muslim females as per your "School Uniform Requirements" leaflet is in accordance with the tenets of Islam."

30. The response to the letter before claim is at D122. It reiterated what had been said in correspondence.
31. In accordance with the Defendant's procedures the Claimant through her solicitors requested a review of the matter by the Governing Body Complaints Committee.
32. On 23 October the Committee met. The Claimant, her brother, her solicitor, Mrs Bevan and Mr Moore were present, On 6 November the Committee gave its (written) decision:-
"that the Headteacher's position in requiring Shabina to dress for school in a manner that conforms to the school uniform policy of the governing body is quite correct."
The Committee's decision is an important part of the history. It is too long to incorporate in the body of the judgment. Accordingly I annex it to this judgment. I make it clear that it is part and parcel of the judgement in this case.
33. At about this time EWS offered support to the Claimant to transfer to another school. An application was made to transfer to Challney Girls' School. It was unsuccessful as the school was full. The decision was appealed. Unfortunately neither the Claimant nor anybody on her behalf received notification of the date of the appeal hearing. The appeal was dismissed. Nevertheless on 17 November the Defendant's solicitor wrote to Ms Spencer that it was the usual practice of the appeals panel to set aside a decision made in the absence of a party. Challney is an all girls' school. Girls may wear the jilbab to and from school but not in school. As I understand it that would have presented no difficulties for the Claimant (see paragraph 7 of Mr Rahman's statement). Further, EWS indicated that it would support applications for transfer to Putteridge High School and Rebia Girl's School. Very regrettably, none of these options were taken up by the Claimant. Mr Rahman said that there would be no point in appealing re Challney (see paragraph 8 of his statement). No explanation is given by or on behalf of the Claimant why she did not explore the possibility of transferring to Putteridge and Rebia.
34. On 2 January 2004 a letter was written on the Claimant's behalf to the Secretary of State for Education complaining that the Claimant's human rights had been breached and requesting that all necessary measures in the matter be taken to enable the Claimant to attend school in clothes which her beliefs made it mandatory for her to wear.
35. On 4 February the DES said there was no evidence to support the need for the Secretary of State to make a direction under section 496/497 of the Education Act 1996 and thus declined to take any action.
36. I now turn to give an account of the unchallenged evidence given on behalf of the Defendant as to the history preceding September 2002. It is contained in the statements of Mrs Bevan, Mr Moore and Mr Connor.
37. Mrs Bevan, the Headteacher, was born into a Bengali Muslim family and grew up in India, Pakistan and Bangladesh before coming to this country. She has an understanding of the Islamic dress code and the practices adopted by Muslim women.
38. Denbigh High School is a mixed, community school taking pupils from 11 to 16 years old. About 71% of students categorise themselves as being of Bangladeshi or Pakistani heritage. Twenty-one ethnic groups are represented in the school. 79% of the students categorise themselves as Muslim.
39. The school is highly successful.
40. School uniform is an integral part of the school's drive for high standards and continuous improvement. The uniform has been carefully designed to take into account a range of considerations and to be inclusive in serving the needs of a diverse community.
41. The school uniform policy is to be found at DHS 1. All pupils are expected to wear it. So far as is relevant to this case it provides:-
"Shalwar Kameeze. Shalwar: tapered at the ankle, not baggy. Kameeze: between knee and mid-calf length, not gathered or flared. Fabric must be cotton or poplin, not shiny, silky or crinkly."

Headscarves. Girls who wish to wear headscarves may do so as long as these conform to the requirements listed below."

Nothing turns on the requirements, so I do not list them.

42. The original uniform was adopted before, and then rationalised in, 1993. There was then a school uniform working party. The uniform was designed by the students who were given a brief to ensure their designs took into account certain requirements and the need for modesty. In October 1993 the governors approved the wearing of headscarves in response to requests by several girls. The design of the Shalwar Kameeze was re-considered by the Governors. It was also approved by parents, staff and the local mosques.
43. The school uniform has contributed to social cohesion and harmony amongst the pupils who are from a very wide range of faiths and backgrounds. Mrs Bevan has stated (paragraph 12 of her statement) that the Shalwar Kameeze satisfies the religious requirements for modest dress for Muslim girls and is also worn across a number of different faith groups such as Hindus and Sikhs.
44. All students, when they choose their school, are taken very carefully through the school uniform policy. This is done with parents as well as the pupil. That is done with parents in the October before a prospective pupil starts at the school the following September, and also with the prospective pupil. In the July prior to admission an open evening is held at the school for parents and child where the uniform policy is again explained. A letter is also sent in July to parents of existing pupils which includes a reminder about school uniform.
45. The school was outside the catchment area for the Claimant. At the time that the Claimant started at the school her elder sister was also attending it. For two years prior to September 2002 the Claimant wore the school uniform (without any complaint).
46. At no time has the Defendant ever received a complaint, other than from the Claimant in September 2002 and thereafter, that the uniform is unacceptable on religious grounds.
47. The claimant seeks a declaration that
 - (i) the Defendant has unlawfully excluded the Claimant from school contrary to sections 64-68 of the School Standards and Framework Act 1998 ("SSFA 1998") and/or section 52 of the Education Act 2002 ("EA 2002") and the Education (Pupils Exclusions and Appeals)(Maintained Schools)(England) Regulations 2002 ("Regulations 2002")
 - (ii) the Defendant and the LBC have unlawfully denied the Claimant access to suitable and appropriate education in breach of Article 2 Protocol 1 of the ECHR and section 6(1) of the Human Rights Act 1998 ("HRA 1998")
 - (iii) the Defendant and LBC have unlawfully denied the Claimant the right to manifest her religion in breach of Article 9 of the ECHR and section 6(1) of the HRA 1998
 - (iv) a mandatory order that the Defendant and LBC make swift arrangements for the Claimant's return to Denbigh High School
 - (v) damages.
48. Ms Spencer's fundamental submission is that the Claimant was constructively and unlawfully excluded from school in September 2002 and thereafter. Everything else i.e. the denial of education under Article 2 and of the right to manifest her religion under Article 9 flow from the unlawful exclusion. Ms Spencer categorically stated that unless the Claimant establishes that she was excluded as alleged the Claimant's claim fails.
49. I was taken through much statutory law and statutory and non-statutory guidance, including
 - a) sections 64-68 of the SSFA 1998
 - b) the statutory guidance contained in Circular 10/99 Social Inclusion: Pupil Support
 - c) the statutory guidance contained in DfES Publication on Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units (Jan 2003)
 - d) the non-statutory guidance in DfES Uniform Guidance 0264/2002
 - e) section 52 of the EA 2002 and the Regulations 2002, replacing the corresponding provisions in the SSFA 1998.

50. I summarise the statutory law provisions to which I was referred. The head teacher may exclude a pupil from the school for a fixed period or permanently. Exclusion must be on disciplinary grounds. The period/s of exclusion may not exceed a total of 45 days unless the exclusion is permanent. The governing body when informed of an exclusion must then consider it, hear representations, decide whether or not to reinstate the pupil, and inform the relevant persons. The local education authority must make provisions for appeals against exclusion. The Headteacher, governing body, local education authority and appeal panel must have regard to any guidance given from time to time by the Secretary of State.
51. I summarise the relevant statutory guidance. Exclusion "should not be used for... breaching school uniform policy including hairstyle or wearing jewellery". (see H 4.61). Formal exclusion (which can only be used for a disciplinary offence) "is the only legal method of removal. Informal or unofficial exclusions are illegal..." (see H 4.104). A pupil may be sent home, after consultation with the parents, on health and safety grounds in circumstances where he/she poses an immediate and serious risk to the health and safety of other pupils or staff. Exclusions may not be given for an unspecified period.
52. The non-statutory guidance in relation to school uniform provides as follows (see H 4.171):-
"Cultural, Race and Religious Requirements.
10. *Whilst pupils must adhere to a school's uniform policy, schools must be sensitive to the needs of different cultures, races and religions. The Department expects schools to accommodate these needs, within a general uniform policy. For example, allowing Muslim girls to wear appropriate dress and Sikh boys to wear traditional headdress.*
11. *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 dress code."*
53. I have not been referred to any provision in the statutory law, statutory guidance, or non-statutory guidance which defines "exclusion". Neither have I been referred to any case law which defines "exclusion" in educational matters. I have, however, been referred to a decision of Hooper J. (as he then was) in **The Queen on the Application of A v The Head Teacher of P School, the Governors of the School and the City and Council of Swansea** [2001] EWHC Admin 721, [2002] ELR 244. In that case the claimant was excluded from his school but reinstated after an appeal. Two trade-unions threatened either a ballot for industrial action or industrial action. The head teacher wrote a letter to the parents of all the pupils including A in the terms set out in paragraph 18 of that judgment. The claimant alleged that that letter amounted to an unlawful exclusion. At paragraphs 25 and 27 Hooper J. said:-
"[25] That letter makes it clear that the solicitors understood that the headteacher could not guarantee the claimant's health and safety were he to come to school. I was not shown any correspondence from the defendants which contradicted the assertion in the last sentence of the first paragraph of that letter.
- [27] In my judgment that paragraph meant and was intended to mean that the headteacher could not guarantee the health and safety of the claimant should he return to school. I am firmly of the view that the claimant's father was entitled to treat that as a strong warning as to the possible consequences to A should he return to the school and as strong advice that he should not do so. The parents were, in effect, being told that A would not receive the normal supervision and guidance that pupils receive and thus he was at risk of accidents which would normally be prevented and at risk from other pupils. Mr Guy writes in his statement that he had never refused education to A (pF16). Apart from this, he does not suggest that the paragraph should be read in some benign manner. A's parents were entitled, in my judgment, to treat the letter as, in effect, a letter excluding A from school. There is nothing in the documents before me to suggest the contrary. That warning and advice remained operative at least until the end of term."*
54. Ms Spencer submitted that the actions and behaviour of the Defendant during and after September 2002 amounted to "constructive" exclusion. I am not at all sure what she meant by constructive exclusion. Constructive dismissal is a familiar concept in employment law and arises from the nature of the relationship between employer and employee and the contract of employment. I do not consider that a concept of "constructive" exclusion has any real meaning in the relationship between a school and its pupils. It would be certainly artificial to speak of constructive exclusion in relation to a pupil at a primary school, given his/her age. I hardly think it is any more appropriate for pupils between the ages of 11 and 16.

55. In her reply to Mr Birks' submissions, Ms Spencer rather shifted her ground. She submitted that if I could not find "constructive" exclusion then I should find "positive" exclusion i.e. that the Defendant had actively excluded the Claimant by refusing her to allow her to come to school unless she wore the school uniform i.e. in her case the Shalwar Kameeze.
56. The Concise Oxford English Dictionary (9th Edition) defines exclusion as the act of excluding i.e. to shut or keep out a person from a place. Ms Spencer submitted that the Defendant effectively prevented the Claimant from returning to school by insisting that if she returned she had to wear the school uniform. Mr Birks submitted that it could not possibly be said that the school excluded her. Each letter made it clear that the Defendant wanted the Claimant to return to school. At no stage was there any decision excluding the Claimant from school. She could have returned to school at any time.
57. In my judgement, in September 2002 the Defendant was expecting the Claimant to continue her education at Denbigh High School where she had been educated for two years. In the previous July the Defendant had sent a letter to all parents reminding them, inter alia, of the school uniform policy, which, I am satisfied, the Claimant must have been, indeed was, well aware of. The Defendant had every reason to believe but that the Claimant would continue to attend school and abide by the school uniform policy.
58. I can well understand Mr Moore's reaction as set out in paragraph 4 of his statement. He asked the Claimant to go home, change into the school uniform, and return to school. The Claimant and her brother were not prepared to do that. They left and the Claimant did not return to school.
59. Ms Spencer has criticised the use of the word "skirt" in the letter of 3 September 2002. Mr Moore has explained in his statement that he then understood the Claimant and her brother to say that she wanted to wear a long skirt. In any event Mrs Bevan's letter is clear that the Defendant "required" the Claimant "to attend school, dressed in the correct uniform..." and that the defendant would refer the matter to the EWS should she fail to do so. To my mind that hardly sounds like a school excluding a pupil. Neither do I think the letter could be reasonably construed as an exclusion.
60. Ms Spencer was at pains, perfectly properly, to take me through much of the correspondence which I have set out in this judgment. What to my mind is abundantly clear is that the Defendant earnestly and sincerely wanted the Claimant to attend school. It put no impediment or obstacle in the way of the Claimant. What the Defendant did insist on was that when the Claimant came to school she was dressed in accordance with the school uniform policy, as indeed she had been happy to do for the two years prior to September 2002. The reality of the situation was and still is that the Claimant, entirely of her own volition, chose not to attend Denbigh High School unless the Defendant agreed to her wearing the jilbab. The Defendant did not so agree. 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 or stance of the school amounted to exclusion, either formal, informal, unofficial or in any way whatsoever.
61. Furthermore, I do not consider that the review by Mr Kirby, the decision of the Committee, or the rejection of the "compromises" suggested on behalf of the Claimant in September 2003 can be said to amount to "exclusion". Mr Kirby and the Committee scrupulously reviewed the matter, and the contrary is not suggested. Their decisions were confirmation of the Defendant's actions. If the Defendant's actions did not amount to exclusion, as I have found, I do not see how it can be said the decisions of Mr Kirby and the Committee did. As to the rejection of the compromise, the reasons are explained in the correspondence and Mrs Bevan's statement. As to the first proposal Mrs Bevan stated:-
"The school's Inclusive Learning Area is an integral part of its main school community and provision. It is there to provide short-term respite and support for individuals who require this. The provision is limited and does not, and is not intended to, offer full access to the curriculum. It is not an open-ended long-term provision. The same school expectations, including those for uniform apply to students while they are in this area."

In my judgement those reasons are unanswerable.

62. As to the second proposal, Mrs Bevan stated:-

"It also shows a complete disregard for due process in relation to how school uniform is agreed by governing bodies. The advice received by the legal department and the school and presented to the Claimant about appropriate dress for Muslim girls was not accepted."

In my judgement this proposal was no compromise at all. It was in reality a reiteration of the Claimant's fundamental stance. In any event given all the circumstances of the case the reaction of Mrs. Bevan cannot be categorised as unreasonable.

63. Ms Spencer, correctly in my judgement, submitted that if the Claimant could not establish that she had been excluded then the Claimant's claims failed at the outset. In my judgement the Claimant has not succeeded in showing that she was excluded and thus her claim falls to be dismissed.
64. However, given the extensive argument on Article 9 and Article 2 Protocol 1, I should nevertheless express my views upon the merits of the Claimant's case on those issues.
65. **Article 9 of the ECHR** : Article 9 provides:-
"FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION
1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
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 for the protection of the rights and freedoms of others."*
66. The Claimant in her statement of 12 November 2003 said:-
"I would like to clarify that the Shalwar Kameeze does not comply with Islam. It is not considered as a cloak, the Shalwar Kameeze does not cover the arm and the leg as required in the Islamic dress code,"
There is no elaboration as to why she was happy to wear the Shalwar Kameeze at school for two years, nor why she changed her mind.
67. It is her brother who vouchsafes the history and an explanation in paragraph 3 of his statement. He said:-
3. *Shabina has attended the Denbigh High School, Luton, since 2000. When she first attended the school, she wore the approved school uniform. The school stipulates a shalwar kameez. I exhibit a photograph of the shalwar kameez uniform for female Muslim students as exhibit SB/1. As Shabina become older she took an increasing interest in her religion. Through her study of religion she discovered that the shalwar kameez is not an acceptable form of dress for Muslim women in public places. The shalwar kameez is actually a Pakistani cultural dress and has no religious foundation. The Islamic Sharia (Islamic Jurisdiction) on the teachings of the Holy Qur'an, require women over 13 to completely cover the body with the exception of face and hands. The shalwar kameez school uniform is not acceptable because the white shirt reveals too much of the arms and the skirt length is not long enough, it should be down to the ankles.*
4. *In Year 8, Shabina brought this to the attention of some of her teachers. She became increasingly determined to follow her religion faithfully and therefore on the 5th September 2002 I went with her to the Denbigh School."*
68. It might have been expected that it would be the Claimant herself who would have given that evidence. One wonders why it should have been her brother who articulated what the Claimant was perfectly capable of saying herself. Nevertheless, Mr Birks did not suggest that I should find that the Claimant's motives and beliefs were anything other than completely genuine and I have proceeded on that basis in this judgment.
69. Ms Spencer submitted that the facts demonstrate that the Claimant wished to manifest her religion in "practice and observance" by wearing the jilbab including wearing it to and in school. She was denied that freedom. Her beliefs had attained a certain level of cogency, seriousness, cohesion and importance to be within Article 9- **Campbell and Cosans v UK** [1982], 4 EHRR 293 at paragraph 36. "Bearing witness in words and deeds is bound up with the existence of religious convictions", see **Kokkinakis v Greece** [1993] 7 EHRR 397 at paragraph 31, i.e., in the instant case, the wearing of the jilbab. It was submitted that the Claimant's belief was based on the Islamic dress code set out in paragraph 20 to 22 above. Her beliefs are supported by credible evidence (see paragraphs 20 to 22 above). Accordingly Article 9(1) was engaged.

70. As a subsidiary submission it was contended that the Committee had no right to impose their own interpretation of the Islamic dress code. Ms Spencer focused particularly on paragraph 9 of the Committee's reasoning. Paragraph 78 of the judgment of the European Court in **Hasan and Chaush v Bulgaria** [2000] 10 BHRC 646 was relied on:-
"... it recalls that, but for very exceptional cases, the right to freedom of religion as guaranteed under 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."
71. I accept the submission of Mr Birks that the Committee had conflicting evidence in front of it. The Committee found on the evidence that the Shalwar Kameeze of the design illustrated as part of the school uniform policy satisfied all those requirements (see paragraph 9 of their decision) of the Islamic dress code. I see nothing unlawful, unreasonable or impermissible in that finding. It was open to the Committee on the evidence. On a fair reading of the Defendant's reasoning the Committee was not determining whether the Claimant's beliefs were legitimate.
72. Mr Birks, in answer to the submissions set out in paragraph 70 above, referred me to the decision of the European Commission in **Stedman v United Kingdom** Application No. 29107/95, 9 April 1997, 23 EHRR CD 168. In that case the applicant alleged that her dismissal for refusal to work on Sundays constituted a violation of her freedom to manifest her religion in worship, practice and observance, contrary to Article 9. The report of the Commission's decision states that the Commission first had to consider whether in fact the applicant was dismissed for refusing on religious grounds to accept a contract which meant she would have to work on Sundays, constituted a prima facie interference with her rights guaranteed under Article 9. The Commission referred to Application No. 24949/94 Dec 3.12.1996, where an employee of the Finnish State Railways was dismissed for failing to respect his working hours on the basis that to work after sunset on a Friday was forbidden by the Seventh Day Adventist Church, of which he was a member. The Commission found in that case that, although his refusal was motivated by religious convictions, such a situation did not give rise to protection under Article 9(1). He was not prevented from manifesting his religion or belief (inter alia, he was free to resign). Likewise, the Commission said that in Stedman the applicant was dismissed for failing to agree to work certain hours rather than for her religious beliefs as such. The dismissal did not amount to an interference with her right under Article 9. Her complaint was therefore manifestly ill-founded under Article 27(2).
73. Mr Birks therefore submitted that by parallel reasoning there had been no breach of Article 9(1) in the instant case. The Claimant chose to enter a school outside her catchment area knowing full well what were the requirements of the school uniform policy. In 2001 she started another academic year at the school well knowing (and abiding by) the school uniform policy. It was her option to go to that school which had the uniform policy of which she was completely aware. It is not an infringement of Article 9 right that the Defendant was not prepared to change its policy in order to accommodate the Claimant's changed religious beliefs. Furthermore, there were two other suitable schools for her to transfer to, as I have already set out in paragraphs 33 above.
74. In my judgment Mr Birks submissions are well-founded. If, contrary to my finding, the Claimant was in some way excluded, she was excluded for her refusal/failure to respect the school uniform policy. Although her refusal was motivated by religious beliefs, she was excluded for her refusal to abide by the school uniform policy rather than her religious beliefs as such. Accordingly, no breach of Article 9(1) has been shown and thus her claim under Article 9 fails. I give my views on Article 9(2) below, although they are not strictly necessary given my previous findings.
75. **Article 9(2)** : Is the limitation prescribed by law? Ms Spencer submitted that there is and was no prescription in English law that allowed the defendant to deny the Claimant access to the school based on her desire to manifest her religion by wearing the jilbab- see **Silver v United Kingdom** [1983] 5 EHRR 347 paragraph 86. The statutory and non-statutory guidance provided no means for the Defendant to exclude the Claimant for failing to adhere to the school uniform policy. Ms Spencer went so far as to suggest in reality there was a prohibition against exclusion for breaches of a school uniform policy. Furthermore, an exclusion under statute law must either be for a fixed period or periods not exceeding 45 days in total or the exclusion must be permanent. It cannot be for an

indefinite period. In the instant case Ms Spencer submitted the Defendant excluded the Claimant for an indefinite period and thus it was unlawful under English, domestic law.

76. Ms Spencer further submitted that the Defendant failed to establish a restriction in domestic law that satisfied the element of certainty required by Article 9, see Silver paragraph 88. Even if there is a discretion the limits of the exercise should be clear. Section 61 SSFA 1998 and the Regulations 2002 provide that restrictions relating to behaviour and school uniform policy should be published in school policies and parents and pupils should have access to them. Although the policy for the Defendant's school uniform was published it did not mention sanctions that the Defendant would or might apply for non-compliance in particular exclusion. Accordingly they do not meet the requirement of "certainty".
77. Mr. Birks submitted that "prescribed by law" should be given a wide interpretation. If the Defendant is a public authority for the purposes of the HRA 1998 then any rules they make for the proper running of the school and/or to regulate the conduct of the pupils must be "law" in the school; otherwise it would be completely impossible to have a school uniform policy, or at least a credible policy. Further, the duties that the Defendant are under in relation to health and safety of the pupils must be a prescription by law. As to "certainty" he submitted the school uniform policy was clear. It was formulated with sufficient precision to enable the pupils to regulate their conduct- see Silver paragraph 88. If the pupils take advice as to the consequences of not wearing uniform they will presumably be advised that they will be sent home to change and return wearing the correct school uniform. That is indeed what happened on 3 September 2002.
78. In my judgment the "limitation" with a Muslim female pupil's wish to wear the jilbab was and is the school uniform policy. It prescribed a particular type of dress which took account of those Muslim female pupils' wish to manifest their religion i.e. by wearing the Shalwar Kameeze. In my judgment that limitation was clearly published. The evidence is that prospective students were aware of it, before they started at Denbigh High School, in the October and July preceding the academic year in which they started. It was again reiterated in the letter to parents each July. So far as the Claimant is concerned she would have had the school uniform policy brought to her attention in October 1999, July 2000 and again in July 2001 and 2002. That she wore the Shalwar Kameeze for two years prior to September 2002 reinforces the fact that the policy was well known and perfectly clear to her. It is to be noted that the Claimant does not say anything in her statement to the effect that she did not know of the policy and/or that it was unclear to her.
79. So far as sanctions are concerned, I agree with Ms Spencer that there is no document which stated that if a pupil came to school dressed contrary to the school uniform policy the pupil would be sent home to change into the school uniform and return to school; nor that if the pupil refused to change into the school uniform she would or might not be allowed to return to school. However, it was well known, in my judgment, to the pupils, that the school set great store by the policy- otherwise why did the school go to such lengths to make them aware of it? It must have been obvious that if a student did not abide by it the Defendant would seek to persuade the pupil to observe it and if necessary enforce it by requiring the student to go home and change. In the instant case the Claimant has not given any evidence to the contrary. Furthermore, if she was not aware of the Defendant's stance on "sanctions" for breach she rapidly became aware of it on 3 September 2002 and/or upon receipt of Mrs Bevan's letter of 3 September 2002 and/or the subsequent correspondence.
80. I do not accept Mr Birks' submission that the health and safety statutory law in some way prescribed a limitation. That law may have laid duties upon the Defendant in relation to its pupils but it can in no way be said to limit a person's right to manifest his or her religion, at least in so far as pupils at maintained schools are concerned.
81. The school uniform policy and its enforcement must, for the purpose of Article 9(2), also pursue a legitimate aim and be proportionate. In my judgment consideration of these important matters cannot be divorced as to whether the "limitations" are:-
"... necessary in a democratic society in the interests of public safety, for the protection of... health or morals, or for the protection of the rights and freedoms of others."

82. I now must return to set out the further evidence given on behalf of the Defendant. Mrs Bevan in her statement said:-

"15. Since the Claimant's case has been publicised, several children have spoken to staff about their concerns that the jilbab might become school uniform. It has been my view, which has been adopted by staff, that it would be inappropriate to enquire of the pupils their feelings about any specific changes to the school uniform. Part of the rationale for this has been that seeking such views might either cause or stir up division amongst pupils. Nevertheless, the publicity associated with this case has meant that a number of pupils have approached the staff of their own initiative. Firstly, Muslim girls have talked to teachers about their concern that they might be forced to wear the jilbab and, possibly, at a later stage, the niqab (face covering). Secondly, non-Muslim children have talked to teachers about their fears that the school would seem to be favouring a particular religion. They feel that this particular mode of dress is associated with extreme views and would make them very vulnerable as non-Muslims. In addition to this if the jilbab were to be introduced as part of the school uniform there is a risk of creating two classes of pupil. The risk would arise from the jilbab being worn by those who followed a particularly strict interpretation of the Islamic dress code whilst some other form of the school uniform would be worn by others. This could result in the view that better Muslims wear the jilbab. Any Muslim pupil wearing some other form of uniform could thus be regarded as a second class Muslim. A number of parents have expressed this as a concern. In addition to this, views have been expressed by pupils that those wearing the jilbab would be identified with extreme Muslim sects. Many Muslim girls do not wish to be so identified and therefore object to wearing the jilbab. The non-Muslims have expressed the view that they would be afraid of people wearing the jilbab as that would identify them with extremists.

16. From what I have been told by pupils and staff I am of the view that there is a number of girls in the school who are resisting the efforts of others to recruit them to extreme Muslim groups. They are grateful that they are not allowed to wear the jilbab at school as this would be unnecessarily restrictive as well as being associated with an extremist group. They are pleased that they can continue to wear the shalwar kameeze. I have been given the firm impression that there is a number of girls in the school which relies on us to help them resist the pressures from the more extreme groups. I fear that if the school uniform were to be either adapted to include the jilbab or if the jilbab were to replace the shalwar kameeze 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. The school has not previously put forward this argument as it did not wish to highlight the unfortunate position in which some of the girls found themselves in resisting certain religious views. Now that this matter is before the High Court I wish to put forward all the arguments which are reasonably available to me. In addition to that, since this case has been given publicity, the school has been picketed by groups of mainly young men who would appear to be from the more extreme Muslim traditions. The problem has thus become much more obvious.

42. My own views on the desirability for the school retaining a uniform are not only are those set out in the Governor's decision but include the need to support inclusion and social cohesion. If the school were to allow pupils to wear a variety of different forms of clothing there would be the potential for the forming of groups and cliques who would be identified by the clothes that they wear. In my view that would make the delivery of the curriculum more difficult as well as undermining the strong positive and inclusive ethos of the school.

43. I am very concerned that the Court is being given an erroneous impression of what the school requires of pupils who wear the shalwar kameeze. The design is set out in the diagram which forms part of DHS 1 (p4). The model shown is not wearing full school uniform as she is not wearing the v-neck jumper which forms part of the uniform. I find it extraordinary that the Claimant is prepared to bring a case to Court complaining about Denbigh High School's uniform without telling the Court what the requirements really are. The photograph at page D 35 of the Claimant's bundle does not fully set out the school uniform. The girl's arms are not covered, as they are required to be. She appears to be wearing ordinary trousers rather than loose trousers gathered at the ankle shown in the diagram of the school uniform. Whilst the tunic satisfies the requirements for minimum length, the photograph does not tell you that the tunic may extend to mid-calf.

45. The summary of the requirements of the Islamic dress code set out in the Governor's letter produced at DHS 15 (p128) accords with my understanding of the dress code. In my view the shalwar kameeze providing one version of school uniform satisfies all those requirements. Only the face and hands are exposed. The outlines of the body and limbs are obscured. Apart from the Claimant no-one has complained about the uniform being inadequate for Muslim girls. In the 12 years in which the shalwar kameeze has formed a part of the school uniform there has been not one complaint from a parent, teacher, governor or mosque that the shalwar kameeze is unsuitable. The school uniform cannot have escaped the attention of the local mosques in all those years, yet there has been no approach to the school even to suggest that the Shalwar Kameeze was unsatisfactory. On the contrary, the Luton Council of Mosques which represents fourteen local mosques supports the school's uniform policy.

51. I do not accept that the school has set out to discriminate against the Claimant either on the basis of who she is or what she believes. As I have set out above, the school has for many years taught pupils from a wide variety of ethnic origins, cultural backgrounds and religious faiths. It has set out to accommodate everyone so far as it reasonably can whilst providing a suitable environment in which to learn and live together in harmony. It is my view that a school uniform is necessary to instil the right ethos, and to enable pupils to do well academically. I believe that my views have been reflected in the

improvements made by the school since I became headteacher. Over those years the school has changed from being well below national averages and viewed negatively within the community to being well above average and oversubscribed.

52. It is against that background that I and the governors have insisted that the Claimant wears school uniform, in exactly the same way as all the other pupils. By adopting the tunic and loose trousers, together with the headscarf, the school has set out to accommodate the requirements of the Islamic dress code. As the requirements of the school uniform were well publicised before the Claimant chose to come to Denbigh High School (and must have been well known to her as her elder sister was already at the school) and as they were satisfactory to her for two years, and were also satisfactory to all the other pupils both past and present, I do not see how the school is discriminating against the Claimant. She is being treated in exactly the same way as all the other pupils, a very high percentage of whom are Muslim. "

83. Mr Daniel Connor has been deputy head teacher at Denbigh High School since 1997. In his statement he said:-

"3. Denbigh High is a very successful school in academic and social terms. The examination outcomes are regularly among the best in the country compared with other schools with a similar intake. The school makes a significant contribution to social cohesion in a catchment area that is racially, culturally and religiously diverse. The school has worked closely with the Department for education and skills on supporting a training video to support educational inclusion. Many other projects in the school such as the use of learning mentors, conflict resolution projects and the promotion of culturally representative activities such as Asian music, Caribbean music and facilities for religious expression celebrate diversity within a cohesive framework.

4. The governing body of the school has adopted for many years now a clear school policy to promote a positive ethos of cohesion and success. This policy has been carefully developed after extensive consultation to ensure that students share a sense of community identity, whilst taking account of cultural or religious sensitivities, particularly with respect to appropriate modesty.

5. The policy also recognises the need for students to dress in a way that allows them full access to the school curriculum that does not in any way compromise their health or their safety. The uniform adopted by the governing body meets these various requirements. A copy of that document can be seen at DHS 1(pp 1-5).

6. I became aware on 3 September 2003 that a female student in year 9 had presented herself wearing a long skirt that did not meet the requirements of the school uniform policy. I later learned that, on being required to go home and return in correct uniform, she re-presented with two young men who demanded that she would continue to wear the long skirt. I became aware of this matter through the daily leadership team briefings that we hold as a matter of course in the school. I found out from later involvement in the matter that her real demand was to wear a long, flowing garment worn by some women of the Muslim faith known as a jilbab.

7. The matter raised a number of concerns for me with respect to my curriculum responsibility, which I shared with my senior colleagues at the time.

8. My first concern is that we would not be able to guarantee full access to the school and the national curriculum for a student dressed in a long flowing garment. A significant part of the curriculum is delivered in science laboratories involving Bunsen burners, a variety of chemicals and equipment of a fragile nature such as glassware. There is a statutory obligation for the school to deliver the national curriculum in science to all its pupils and this requires that they take part in practical scientific activities using the equipment described above. It is my concern, supported by risk assessments conducted in the school that that a long, flowing garment such as the one the complainant wishes to wear could get caught in the flame of a Bunsen burner or upset and break glass equipment leaving sharp fragments or knock equipment over causing a spillage of chemicals.

9. Other parts of the curriculum are delivered in food technology workshops with naked flame gas cookers and resistant material workshops with woodwork and metalwork equipment. There is a danger that long, flowing garments could catch fire from the naked flame of a gas cooker or become trapped in machinery such as that designed for cutting and fashioning wood and metal.

12. A further important aspect of the school and national curriculum is physical education, sports and games. The school delivers a full physical education curriculum as required by the department for education and skills that incorporates a range of activities including team games such as football and netball, swimming, individual sports such as tennis, gymnastics and badminton, fitness activities such as cross country running to name but a few. Many of these activities are undertaken of necessity in mixed gender groups and on school playing fields and outside courts that are in full view of passers- by and adjacent classroom windows.

13. The school uniform policy as adopted by governors recognises the need to safeguard the modesty and religious sensitivities of some groups of girls while requiring them to dress in a way for appropriate for physical education. Their dress must allow them to participate fully without endangering safety by tripping over loose garments or endangering health by wearing clothes that would result in the wearer becoming inappropriately hot. To support their learning, they must dress in a

way that allows for extensive freedom of movement. The agreed code to support these requirements consists of tracksuit trousers, long-sleeved tee shirt and securely tied headscarf.

14. The school would not be able to meet its statutory responsibility to deliver to a student the national curriculum for physical education if the student were to wear a long flowing garment such as a jilbab. Such a garment would present a real danger of tripping, or of tripping others and it would not allow for the effective dissipation of body heat generated by vigorous physical activity. Also, such a garment would not allow for the freedom of movement required for a pupil to become fully involved in the physical activities required by the curriculum.

17. In my experience of working in schools that incorporate wide diversity, there is the potential for groups of pupils to identify themselves as distinct from other groups along cultural, religious or racial lines and for conflict to develop between such groups. Indeed, in my experience in this school a number of years ago, I had to deal with a very difficult and potentially dangerous situation of intransigent conflict between two groups of pupils who defined themselves along racial lines. It is for this reason, among others, that the school adopts a uniform policy that does not allow pupils to identify themselves obviously as belonging to a particular religion or race. The school uniform is designed to identify pupils as part of the inclusive community of the school and avoid the possibility of sub-groups identified by dress developing as might be the case if a school were to adopt a dress code that was non-uniform.

20. It is my experience that peer pressure is very powerful amongst adolescents. Another reason for adopting a uniform policy is to protect students from peer pressure to wear particular styles of dress. A number of girls have reported to colleagues of mine that they are concerned that if the jilbab were to be incorporated as part of the school uniform, they would come under peer pressure and pressure from outside extremist groups to wear the jilbab when their real preference is to wear clothes that do not associate them with what they perceive to be extremist views. I believe the school has a duty to protect these pupils from these pressures.

37. Teachers also apply to work at this school in the knowledge that it is a secular school. It is very important to many teachers who believe strongly that they do not wish to be associated with promoting a particular faith that they can work in a secular school. If governors were to adopt a school uniform policy which resulted in a significant proportion of pupils outwardly identifying themselves according to their faith, this could create the impression that this is a school which favours that faith. This could affect recruitment and retention, as well as undermine the principles of social cohesion referred to in earlier paragraphs."

84. Mr Moore has said in his statement:-

"23. 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 extremist 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.

24. 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.

25. 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.

26. 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.

27. It is my view that to change the school uniform in the way the claimant suggests would lead to divisiveness within the school and would threaten the cohesion within the school. Denbigh High School has a very diverse intake. The current school uniform has served the school well promoting a positive ethos and sense of community identity. It ensures that students are dressed in a way that is safe, practical and appropriate for learning and prevents students from feeling disadvantaged because they cannot afford the latest designer items. This makes pupils less vulnerable to teasing because of the clothes they are wearing. The current uniform has been carefully and sensitively designed to take into account a range of considerations and to be inclusive in serving the needs of our diverse community."

85. Ms Spencer put before me several matters. I take them in no particular order. On 14 March 2002 the Defendant had a charity day. The Claimant attended wearing the jilbab. I do not consider this incident

as of importance. Mr Moore has explained in paragraph 17 of his statement that on that day the normal curriculum was suspended so as not to compromise health and safety standards. Lessons were planned so that no use was made of practical equipment. Such a day is a one off event and cannot be sustained for longer; to do so would deny pupils the full access to the curriculum.

86. It is said on behalf of the Claimant that female staff are allowed to wear long skirts. Mrs Bevan again dealt with that point in her statement. Staff are expected to follow a dress code which must not compromise health and safety (see the staff handbook at DHS 2). A science teacher must not therefore wear clothing liable to knock over apparatus or catch fire if accidentally dangled over a Bunsen burner. A home economics teacher's clothes must not catch in equipment or drop into food. Similarly teachers operating lathes or saws must wear appropriate clothing. Members of staff who do wear long skirts are expected to look after their own safety.
87. Finally, and to my mind more importantly, Ms Spencer drew my attention to the dress of pupils in other schools. The Al-Risaala School in south London allows the wearing of the jilbab in all areas of the curriculum including science. No problems have been encountered. The Al-Islah School in Lancashire requires the girls to wear the jilbab. There is a photograph at E29 showing the girls of Cheltenham Ladies' College wearing long skirts. At E30 and 34 are photographs of pupils at Christ's Hospital School in Sussex wearing the distinctive uniform of a long coat. Whether the pupils wear this uniform all the time and/or for P.E. or science lessons is unknown.
88. Thus it is submitted the "public safety" and "for the protection of health" arguments put forward on behalf of the Defendant are overblown. No risk assessment, it is said, were carried out in respect of the jilbab. By inference it is said that had there been, the wearing of the jilbab would not have been shown to increase the danger of tripping on stairs or the risk of an accident in science or other similar lessons.
89. In my judgment the choice of the Shalwar Kameeze by the Defendant to be the school uniform for those female pupils wishing to wear it had considerably more to do with its acceptability to the pupils, parents and the wider, particularly Muslim, community than it did with issues of safety or health. In respect of the evidence from other schools I bear in mind that some of it was not capable of being checked by the Defendant because it came in late. But it would suggest that they either do, or may, cope with risks of tripping etc. by pupils wearing the jilbab. In all these circumstances it is, in my judgement, difficult to say realistically that, in the words of Article 9(2) the limitation was and is "necessary" in the interests of public safety or for the protection of health. As a footnote, Mr Birks rightly in my judgment did not press the argument very hard that the limitation was necessary for the protection of morals.
90. However, in my judgment the submission of Mr Birks that the "limitations", were and are necessary "for the protection of the rights and freedoms of others" is well founded. Denbigh High School is a multi-cultural, multi-faith secular school. The evidence adduced on behalf of the Defendant, which I have set out above extensively, clearly establishes that the school uniform policy promotes a positive ethos and a sense of communal identity. Not only does the Shalwar Kameeze satisfy the right of Muslim female pupils to manifest their religion but also it is worn by a number of different faith groups such as Hindus and Sikhs. Thus at the school there is no outward distinction between Muslims, Hindu and Sikh female students. Furthermore there is no outward distinction between Muslim female pupils. Thus any division between those who wear the jilbab and those who wear the Shalwar Kameeze is avoided. Furthermore, it is clear from the evidence that there are a not insignificant number of Muslim female pupils at Denbigh High School who do not wish to wear the jilbab and either do, or will, feel pressure on them either from inside or outside the school. The present school uniform policy aims to protect their rights and freedoms. Further, if the choice of two uniforms were permitted for Muslim female pupils, it can be readily understood that other pupils of different or no faiths might well see that as favouring a particular religion.
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.

92. Accordingly, to the extent that I have indicated the Defendant has succeeded in satisfying the requirements of Article 9(2).

93. **Article 2 Protocol 1** : Article 2 provides:-

"RIGHT TO EDUCATION

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

94. Has the Claimant been denied her right for education? I have already decided that the Defendant did not exclude the Claimant from school. Thus, in a sense, it is rather artificial to pose the question because the question, in the Claimant's case, must assume an "exclusion".

95. Ms Spencer referred me to **Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v Belgium (Merits)** [1968] 1 EHRR 252 where at paragraph 4 the European Court said:-

"The first sentence of Article 2 of the Protocol (P1-2) consequently guarantees, in the first place, a right of access to educational institutions existing at a given time, but such access constitutes only a part of the right to education. For the "right to education" to be effective, it is further necessary that, inter alia, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and one form or another, official recognition of the studies which he has completed. The Court will deal with this matter in greater detail it examines the last of the six specific questions listed in the submissions of those who appeared before it."

96. She also referred me to **A v The Headteacher and Governors of Lord Grey School** [2004] EWCA Civ 382. The issue in that case was defined by Sedley L.J. in paragraph 1 of the judgment of the Court of Appeal, namely if a state school unlawfully excludes a pupil who is on its roll, has it violated his right to education under the ECHR? So far as the instant case is concerned, Ms Spencer relied on paragraphs 45, 46, 58, 59, 60 and 61 of the judgment of the Court of Appeal in A, namely:-

"45. The realistic principle that, subject to the Convention's own limits, the right to education takes the form prescribed in each member state carries in my judgment the necessary corollary that any question whether there has been a violation of the right has to be answered initially in terms of the applicable domestic law. For the reasons given by Ms Booth, which I accept, the answer yielded by the latter will not be determinative, but it is the indispensable starting point. Thus if no breach of domestic law is found, it is only if that law itself materially offends against the Convention that the Human Rights Act moves one on to the question of a remedy. If a breach of domestic law is found, it remains to be decided whether it has resulted in a denial of the Convention right. Put broadly, there will be such a denial where the breach of domestic law has resulted in the pupil's being unable to avail himself of the means of education which presently exist in England and Wales – not, for example, by being temporarily unable to reach the school premises for want of transport, but by being shut out for a significant or an indefinite period from access to such education as the law provides for him or her.

*46. This does not necessarily mean access to every available aspect of education. We are bound in this regard by the decision of a majority of their Lordship's House in **R (L(a minor)) v Governors of J School** [2003] 2 AC 633 that "reinstatement" in a school can accommodate the almost complete segregation of the pupil from the rest of the school community. But the question in the present case is whether the accepted unlawfulness of A's complete exclusion from the school which he would otherwise have been entitled to attend amounted, while it lasted, to a denial of his Convention right to education in the form in which it was vouchsafed by domestic law – a different question from that decided by their Lordship's House.*

55. On the latter view, the factual differential would fall to be reflected in damages, though these might well turn out to be modest or nominal. I accept, too, that the argument on which this view depends is the more principled argument. But my preference in the end is for the first and more pragmatic of the two approaches. Given the common ground that it cannot be every unlawful act or omission on the part of the state which, by blocking the pupil's access, amounts to a breach of the Convention right to education, it follows that the quality of a breach of the law cannot be divorced from its consequences or sequel. In other words, an unlawful exclusion during which the pupil is offered no education at all by either the school or the LEA is a different thing in Convention terms from an unlawful exclusion during which adequate or appropriate substitute education is offered. This gives s.19 a proper role in gauging domestic compliance with the Convention, for I have no doubt that, if the school itself does not send useful work home for an excluded pupil, s.19 triggers LEA intervention. "Illness,

exclusion from school or otherwise" seems to me to eliminate any question about the legality of the exclusion, though one would always expect the LEA independently of s.19 to satisfy itself that an exclusion which came to its notice was lawful and appropriate.

59. *In such a situation does the school's continuing offer to provide work at home still furnish an answer? Alternatively, should the LEA carry the full blame for not having picked up A's needs under s.19? I will consider the second question separately.*

60. *I suggested earlier in this judgment, in relation to the first three phases, that the quality of a breach of the law cannot be divorced from its consequences or sequel, so that the provision or offer of homework was material. If that is right, it must equally be true of the fourth phase. But it does not follow that the same approach to the fourth phase produces the same answer, and in my judgment it does not produce the same answer. It makes practical sense to hold that excluding a pupil at a time when, and in circumstances in which, temporary exclusion is both lawful and factually permissible, but going about it otherwise than in accordance with the law, is a denial of the pupil's right to education only if no worthwhile substitute is meanwhile put in place. It offends good sense and justice, by contrast, to hold that to exclude a pupil otherwise than permanently from the school at which he is enrolled when to do so is prohibited by the law and, even more, when it becomes apparent that there is anyway no factual basis for doing so, is still not a denial of his right to education so long as substitute homework is offered to him. The denial of education – which is what it seems to me to have been – was compounded by the failure of the governors to consider whether the exclusion could lawfully continue. Had they considered it, they could have come to only one conclusion.*

61. *I would hold accordingly that in phase 4 A's Convention right to education was denied, notwithstanding that the school was still offering to provide him with substitute work to do at home. The availability of such work may go to the damages for this phase of exclusion, but it does not affect liability."*

97. Mr Birks' submissions were very short. Article 2 carried the matter no further. There could be no interference with the right under Article 2 Protocol 1 unless there had been an exclusion. There was no exclusion. The right was to be educated, not to be educated at a particular school. As long as education was offered at other schools there was no breach.
98. The facts of **A v The Headteacher...of Lord Grey School** are very different from the instant case. A was suspected, amongst others, of being responsible for deliberately starting a fire in a room at his school. He and others were charged with arson. The criminal proceedings were subsequently discontinued. He was informally and then formally excluded and eventually removed from the school roll. The Court of Appeal had to consider the legal consequences of the events in six separate phases- (see paragraph 23 of that judgment). Nevertheless, I have borne in mind the passages set out in paragraph 96 above in considering Article 2 Protocol 1 in the instant case.
99. The thrust of the statutory and non-statutory guidance is to discourage exclusion of a pupil for breach of the school uniform policy. However, I would have thought that the argument could be advanced that the guidance does not prohibit exclusion in accordance with the statutory or regulatory framework if the pupil flatly refuses to wear the appropriate school uniform as opposed to breaching the school uniform in some particular respect e.g. refusing to put on the school jersey but otherwise wearing the school uniform. In the instant case the Claimant refused to wear the appropriate school uniform i.e. the Shalwar Kameeze.
100. Nevertheless the question has to be posed, has there been a denial by the Defendant, admittedly a public authority, of the Claimant's right to education?
101. On the one hand the Defendant's stance did entail the consequence of the Claimant, because of her beliefs, not coming to school. If the Defendant had not taken the stand it did, it seems very likely that the Claimant would have attended the school.
102. On the other hand, this was an exclusion which it was in the power of the Claimant to avoid. She had for two years worn the school uniform. Abruptly- at least so it seemed to the Defendant- she changed her beliefs, which put the Defendant in a very awkward situation. The Defendant wanted the Claimant to continue to be educated at Denbigh High School and made every effort to persuade her to return. The Claimant refused because she felt compelled by her religious beliefs. It was at all times open to her to change her mind, dress in the school uniform and return to school. The fact that she felt she could not change her mind does invalidate the fact that she had a choice.

103. Having considered the matter carefully, it seems to me very unrealistic and artificial to say that the Claimant's right to education has been denied in the particular circumstances of this case. Further, other schools were open to the Claimant to apply for a transfer. She applied to one and did not then carry through the appeal process. So far as I am aware, she never applied to the other/s.
104. Accordingly, in my judgment the Defendant was not in breach of Article 2 Protocol 1.
105. The claim for judicial review against the Defendant is dismissed.
106. Finally, I must give my reasons for not granting permission to bring proceedings against LBC.
107. Ms Spencer accepted, rightly in my view, that if the Claimant did not succeed against the Defendant, the Claimant could not succeed against LBC. Her arguments against LBC were exclusively under Article 2 Protocol 1 and **A v The Headteacher...of Lord Grey School** and were virtually identical to those advanced in respect of the Defendant. Further, I could see no practical benefit to the Claimant in allowing her to bring proceedings against LBC. If she succeeded against the Defendant there was no additional remedy or benefit available to her if she succeeded against LBC as well. Ms Spencer submitted that LBC were vicariously liable for the acts or omissions of the Defendant. Assuming (without deciding) that she is right it seemed to me very unlikely that the Defendant could not satisfy any award of damages. It is more probable than not that LBC as the local education authority would pay any damages awarded to the Claimant if the Defendant was unable to. Further, a grant of declarations or mandatory orders against LBC in addition to those against the Defendant would not have been of any material advantage to the Claimant.

ANNEXURE

Our Ref: HA/JP

5 November 2003

Mr Basharat Ali

Aman Solicitors Advocates

37 Alum Rock Road

Saltley, Birmingham, B8 1LR

BY FAX

01213285544

Dear Mr Ali

Re Shabina Begum DOB: 19.09.88 - Governors Complaints Committee

108. *I am writing following the meeting of the Complaints Committee of the Governing Body on 23 October 2003 at 4.30pm. The meeting was attended by the following people:*
Complaints Committee - Mrs Helen Abji (Chair – co-opted governor)
Mrs Heather Cox (Co-opted governor)
Mr Neville White (LEA governor)
Mr Joe Murtaza (Parent governor)
Complainant - Miss Shabina Begum
Mr Rahman (Shabina's elder brother)
Mr Khuram Liaquat (Representing Shabina's family)
School - Mrs Yasmin Bevan (Headteacher)
Mr Stuart Moore (Assistant Headteacher)
Clerk to Governors - Mr Dan Connor
109. *Having listened to the complaint presented by Shabina Begum and her representative, Mr Khuram Liaquat and the response to that complaint made by the Headteacher and her representative, Mr Moore, it is the decision of this committee that the Headteacher's position in requiring Shabina to dress for school in a manner that conforms to the school uniform policy of the governing body is quite correct. The committee also, therefore, agrees with the response made by the Chair of Governors subsequent to his review of the complaint. This decision was reached after careful consideration of the points made by both parties and accompanying documentation.*
Cont/d...-2-cont/d
110. *Much of the complainant's argument was based on references to statute, particularly the Human Rights Act 1998 and the Education Act 2002. It will be appreciated that this committee does not purport to have the legal knowledge to interpret complex legislation. We have made our decision based on the evidence presented to us within the context of the law as we understand it, and of school policy. The reasons for the committee's decision are as follows:*

111. *The school uniform policy has been determined by the governing body of the school within the guidance issued by the Department for Education and Skills (DfES). The committee heard from the Headteacher and the Assistant Headteacher who explained through their presentations and subsequent questioning, the reasons behind the governors having adopted a school uniform policy. These reasons included:*
- *To instil an ethos of pride in the school and a sense of community identity.*
 - *To ensure that pupils are dressed in a way that is safe and appropriate for school work.*
 - *To ensure all pupils came to school in smart, practical clothing and none would be discriminated against through an inability to afford fashionable attire.*
 - *To ensure no pupil is self conscious or vulnerable to teasing because of the clothes they are wearing.*
112. *The governors regard the policy as an essential tool to enable the school to meet its statutory responsibility to deliver the National Curriculum. It is therefore the responsibility of the Headteacher and the school staff to ensure the consistent implementation of this policy.*
113. *The committee accepted the reasons given for governors having adopted a school uniform policy and that the Headteacher and staff are required to implement it.*
114. *The committee heard evidence from Mr Moore that the school uniform policy had been modified to incorporate the shalwar kameeze some time prior to 1991 and that a further review was conducted in 1993 when the hijab was introduced as appropriate headdress for Muslim girls. This review of the school uniform policy was concluded after consultation, including with local mosques, had found the policy to be acceptable. The committee also heard that the policy is reviewed regularly by the governing body and after many years of adoption had been found to satisfy the requirements of the Islamic dress code until a complaint was made by Shabina Begum. As a result of Shabina's complaint, the school made further enquiries as to the appropriateness of the shalwar kameeze for Muslim girls. Mr Liaquat complained that the policy did not satisfy the requirements of the Islamic dress code and that the consultations that had taken place were insufficient. He said that the school had asked the wrong question, namely, "is the shalwar kameeze an un-Islamic dress or not?" Having heard from Mr Moore and having looked at copies of the letters written by the Local Education Authority's legal department to Shabina's solicitor, Mr Ali and copies of letters written from two local mosques to Shabina's solicitors it is clear that although the question that the school asked of one mosque was as quoted by Mr Liaquat, other authoritative bodies have also been consulted with a detailed and comprehensive account of the issue. In particular, the committee noted that the Islamic Cultural Centre in Regents Park was given a copy of the design of the shalwar kameeze and a copy of a lengthy letter written by Shabina's then solicitor setting out his interpretations of the Islamic dress code. It is within this context that the Islamic Cultural Centre confirmed that the shalwar kameeze constitutes appropriate Islamic dress. Mr Moore also gave evidence of further consultation that had taken place with the Muslim Council of Britain who confirmed that the dress code prescribed by the school as per its school uniform requirements leaflet is in accordance with the tenets of Islam.*
Cont/d.... -3-cont/d
115. *The committee then looked at the replies from the local mosques to see exactly what had been said. The committee felt justified in looking at this written material as reference had been made to it by both Mr Liaquat and Mr Moore and it was clear that copies of all this material had previously been provided to all the parties. The committee had also been provided with copies of more recent responses from the local mosques in reply to enquiries made by Mr Liaquat. The committee noted that there appeared to be some conflict between the replies given to the school and to Mr Liaquat. Mr Liaquat's submission, as noted previously, was that the school had merely asked whether the shalwar kameeze was un-Islamic. Having examined copies of the letters written in relation to consultations the committee saw that was not how the question was phrased except in one case. As a result of that the committee was unable to accept Mr Liaquat's explanation for this discrepancy with respect to the totality of consultations. In the absence of an explanation the committee could see no good reason for the local mosques apparently changing their minds on this point, particularly as it was not suggested that any complaint had been raised by them since the school uniform policy was adopted some years before.*
116. *Mr Moore told the committee that there had been further consultation with The Muslim Council of Britain and The London Central Mosque Trust (incorporating the Islamic Cultural Centre). The committee took into account the written reply from The London Central Mosque Trust (incorporating the Islamic Cultural Centre). Having considered the above, the committee made the following findings of fact as to what the Islamic dress code requires for a young woman of the age to menstruate:*
- *A Muslim woman's dress should be strictly modest in public.*
 - *It should cover all her body with the exception of face and hands.*
 - *It should not be tight or revealing, but must be loose and thick enough in order to maintain complete modesty in public.*
117. *The committee decided that the shalwar kameeze of the design illustrated as part of the school uniform policy (see annexe) satisfied all those requirements of the Islamic dress code. Whilst accepting that the jilbab such as Shabina 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 that Mr Moore raised specifically refers to that fact that a wide variety of garments are found throughout the Muslim world that meet these requirements.

118. The committee noted Mr Liaquat's proposal that the school consult the Luton Council of Mosques about the school uniform policy, but it is our view that appropriate consultation with relevant bodies has taken place. We took into account that two local mosques had already been consulted and that consultations had also taken place with The Muslim Council of Britain and The London Central Mosque Trust (incorporating the Islamic Cultural Centre). We will suggest to governors that they may wish to consult with the Luton Council of Mosques along with others during any future consultations.
Cont/d.... -4-cont/d
119. We heard from Mr Moore of the dangers that loose clothing such as a jilbab could become caught in machinery such as is found in design technology workshops and home economics workshops, that there is a danger that it could catch fire in Bunsen burners used in science laboratories and in gas cookers used in home economics workshops. The committee also heard of the dangers presented by a pupil wearing an ankle length garment such as a jilbab on crowded and busy stairways such as are found in the school at particular times of day. The committee found that there was a serious risk of both the wearer of the jilbab and of others tripping on a staircase if a pupil were to step on the hem whilst going up or down stairs. The committee found that these risks of injury by way of being trapped in machinery or equipment by being pulled into machinery or of being burnt if clothing caught fire by being too close to a gas cooker or Bunsen burner were wholly unacceptable.
120. Of greater weight, however, is the fact that the committee does not see how the school could fulfil its statutory obligation to deliver the National Curriculum to Shabina within her particular views on how she should dress. This would certainly be the case with respect to physical education (PE) and could also be the case in practical activities in science and technology lessons where teachers with a duty of care to pupils may regard the jilbab as compromising health and safety. It just would not be possible for any pupil to participate fully in the PE classes if she were to be wearing clothing such as a jilbab. The committee accepted these submissions. Mr Moore submitted that if a pupil were to be unable to attend classes held in the design technology workshops, the home economics workshops, and the science laboratories and were unable to attend PE lessons it would not be possible to deliver to her the full range of lessons required by the National Curriculum. If this were to happen, the school would not be fulfilling its statutory obligation to that pupil. The committee accepted these submissions.
121. Having heard from the Headteacher on this point, it is the committee's view that the current school uniform policy is flexible. It has been carefully and sensitively devised to take account of the diverse nature of the school population. Indeed it is a much more inclusive policy than is found in many other schools and it adequately addresses the needs of a variety of faiths and cultures whilst supporting an ethos of equality, learning, dignity and social cohesion as well as broader considerations such as the effects an unwieldy policy would have on the recruitment and retention of staff.
122. It was noted that the school uniform policy is made clear to all families. The committee was told that parents and prospective pupils are invited to an open day and open evening in the October of the year preceding the child's transfer to secondary school. At that open day/open evening reference is made to the school uniform policy. Shabina herself said that she has an elder sister who has just left the school and who wore appropriate school uniform. It therefore must have been clear to both to Shabina and her family at the very latest by the October preceding her enrolment at the school that there was a school uniform policy and what the requirements were for that policy. In addition to that, written notice is sent out to all parents of prospective pupils in the summer preceding the beginning of the school year setting out in detail the requirements for the school uniform. As both Shabina and her family had been fully aware of the requirements of the school uniform since some time prior to the beginning of Year 7 and that parents and pupils are reminded of the policy on a regular basis we are surprised that the issue of what Shabina wished to wear to school was not raised before September 2002.
Cont/d.... -5-cont/d
123. Given the strength of Shabina's view on this matter, the committee is concerned that the family and their representatives have not used the channels open to them to seek a school for Shabina where she would feel more comfortable. Shabina herself expressed a willingness to attend a local girls' school where she would not be required to wear a jilbab, but we note the family failed to attend the appeal hearing that considered their application for a transfer there. We understand that they did not receive notification of the appeal hearing and we urge them to consider pursuing the matter with the Local Education Authority. The committee did not accept the argument that the local girls' school was too far away from Shabina's home as she lives within the catchment area for that school.
124. As a result of questions asked of Shabina by the committee it became clear that she has at all times lived outside the catchment area for Denbigh High School. Shabina therefore had to choose to attend Denbigh High School rather than the school within whose catchment area she fell. The committee noted that Shabina had opted to attend Denbigh High School despite knowing of the school uniform policy.
125. The committee rejects the argument that Shabina has been excluded from school either directly or constructively. On the contrary, it is clear from the evidence presented by Mr Moore who made it very clear that the school has at all times invited and required Shabina to attend that it is Shabina's family that has removed her from the school and continues to refuse to

SB, R (on the application of) v Denbigh High School [2005] EWHC 1389

send her to school. This is despite considerable efforts made by the school and the Education Welfare Service (EWS) to get Shabina to attend. The committee heard evidence from Mr Moore that these efforts included:

- Correspondence with Shabina's family in September 2002.
- Referral to the EWS in September 2002.
- A visit to Shabina's home by the EWS in October 2002.
- Notification to the family in January 2003 that if Shabina did not return, legal action by the EWS could be instigated.
- Advice to the family on applying to transfer to another school during the period March to June 2003. This included a meeting between Shabina's family and the EWS in May to discuss again Shabina's return to school and where it was made clear to the family that Shabina was not excluded.
- A further meeting between the family and the EWS in September 2003 to offer continuing support to get a place in another school if that is what they wish and also to notify the family of the imminence of fast-track prosecution should they continue to fail to send Shabina to school.

126. The committee also wishes it noted that it strongly objects to the repeated use of the term "forcibly removed" by Shabina's representative. This phrase seriously misrepresents the school's policies and actions in this matter.
127. We find that, since Shabina has not been excluded, but the family chooses not to send her to school, the school is not responsible for any limitations on Shabina leading a "normal life".
Cont/d.... -6-cont/d
128. Mr Liaquat made detailed submissions on the law making reference in particular to the Human Rights Act 1998 and the Education Act 2002. We considered his submissions very carefully and concluded that the school uniform policy did not infringe Shabina's rights as set out under the Human Rights Act. We also considered that the school, by continuing to offer a full education to Shabina was not in breach of any of its duties under the Education Act or otherwise.
129. It was the view of the committee that many of the arguments presented by Shabina's representative related to individual choice in the context of the adult world of work and employment. We took into account Mr Liaquat's submissions on these points, but had in the forefront of our minds that we were dealing with a pupil at a school and we considered that the appropriate policies of the governing body have been formulated to support children and young people who are at an important stage of learning and development in their lives.
130. It is the responsibility of this committee to suggest ways forward from the current situation. We are extremely concerned at the damage being caused to Shabina's education by her family's continuing failure to send her to school.
131. Firstly, we urge her family to send Shabina back to school in correct school uniform and without delay to recommence her education in full.
132. Failing the above, Mr Liaquat proposed that Shabina be allowed to attend school, without prejudice to the school's contention that she should wear uniform in accordance with school policy, until the matter of her uniform is resolved one way or another. A compromise has already been offered to the family to facilitate this and the committee takes this opportunity to renew that offer, namely that Shabina should attend school in a modified version of the Shalwar Kameeze as previously discussed without prejudice to her right to argue that the shalwar kameeze does not satisfy the requirements of the Islamic dress code and that she should be entitled to wear the jilbab.
133. It appeared to the committee from Shabina's contributions that she would be comfortable attending a local girls' school. We therefore recommend the family to pursue this possibility further, particularly as it seems an earlier opportunity to make an oral presentation of her case was lost due to postal failure.
134. Finally, we would like to state that we appreciate the measured and helpful way in which the arguments were presented by both sides and would urge you to take steps to ensure that Shabina's education is secured within a mutually acceptable framework.

Yours sincerely

Mrs Helen Abji

Chair – Governor Complaints Committee