

# Ethical veganism: a philosophical belief

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## Casamitjana v The League Against Cruel Sports (ET case no. 3331129/2018)

### Background

The Claimant, Mr Casamitjana, was dismissed from his role at the League Against Cruel Sports in April 2018 after disclosing to colleagues that the company's pension funds were being invested 'unethically'. This was considered by the Respondent to be contrary to a management instruction not to provide financial advice to his colleagues. The Claimant brought claims of indirect discrimination, direct discrimination/harassment and victimisation by reference to his belief in ethical veganism, and PIDA detriment and dismissal, and wrongful dismissal.

### Hearing

The matter was listed for a substantive preliminary hearing to determine (1) whether ethical veganism can amount to a philosophical belief, capable of protection, and (2) whether the Claimant adheres to that belief.

The Respondent conceded the issue prior to the hearing. As such, the Tribunal only had evidence and submissions from the Claimant and the evidence was not tested under cross-examination. Nevertheless, as the issue in question (of whether s10 of the Equality Act 2010 – see below) is satisfied is one of jurisdiction, the Tribunal considered that it must be satisfied from the evidence that the concession was made on a sound basis [2].

The evidence submitted by the Claimant included witness statements from Dr Rowely from the Vegan Society and Professor McMahan, professor of moral philosophy from the University of Oxford.

## Facts

The Tribunal noted that the Vegan Society defines veganism as: “*A philosophy and way of living which seeks to exclude – as far as is possible and practicable – all forms of exploitation of, and cruelty to, animals for food, clothing or other purpose...*” [13]. In addition to noting that the Claimant works in animal protection and has a 100% vegan diet, it also highlighted a number of particular points about the way the Claimant conducted his life. These included:

- He takes all reasonable steps to ascertain whether a product or service that he consumes complies with ethical veganism, including contacted food manufacturers when labels are not clear [17-18]
- He does not consume any animal products, including additives, or allow them into his home [20.2-20.5]
- He will not consume foods that may have harmed animals, giving the example of figs which may contain wasp lava [20.8]
- As far as possible he will not use cosmetics, household products, and medication that have been tested on animals. In addition, he actively seeks to avoid financial products (including bank accounts) which may invest in pharmaceutical companies which test on animals [20.10 and 20.12]
- He does not wear any clothes or accessories that come from animals [20.11]
- He is vocal about his support for an ethical vegan lifestyle, and attends and speaks at animal protection marches [20.18]
- He will avoid social gatherings with non-vegan food and will only date and live with vegans [20.19-20.20]
- He tries to walk to any destination within an hour to avoid accidental crashes with birds and insects when taking a bus or public transport [22.6]
- He will avoid using notes when paying for purchases as the new versions use animal product [22.7]

## Law

S10 Equality Act 2010 defines ‘belief’ as:

*“(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.*

*(3) In relation to the protected characteristic of religion or belief—*

*(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;*

*(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.”*

This definition mirrors that in Article 9 of the European Convention on Human Rights (the right to hold and manifest a belief). Domestic legislation must be read in line with ECHR rights pursuant to s3 Human Rights Act 1998.

The test for whether a belief is protected by s10 EqA comes from *Nicholson v Grainger* [2010] ICR 360 EAT (adopting principles originally set out in *R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246, in the Article 9 context). These are now set out in the EHRC Code of Practice on Employment (para 2.59).

The criteria are that a belief must:

- Be genuinely held
- Be held as a belief, not simply an opinion or viewpoint based on the present state of information available
- Be a belief as to a weighty and substantial aspect of human life and behaviour
- Attain a certain level of cogency, seriousness, cohesion and importance,
- Be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the rights of others.

## Reasoning

Considering the above, the Tribunal did not find it difficult to conclude that:

1. The Claimant's belief was genuinely held [33].
2. It was a belief founded on a longstanding tradition recognising the moral consequence of non-human animal sentience and the Claimant dedicated himself to this through what he eats and wears, where he works and shops, and with whom he associates. This demonstrated a real and genuine belief. This was notwithstanding the fact that the Claimant occasionally transgressed these principles when doing so was unavoidable [34].
3. As it is a belief which seeks to avoid the exploitation of fellow species, it concerns a weighty and substantial aspect of human life and behaviour [35].

4. The belief concerns the relationship between individuals and other living things in diet, clothing, consumption, travel, relationships and many other aspects of daily life [36-37].
5. It does not in any way offend society [38].

## Comment

While the issue was conceded and the evidence not tested, in the author's view, the conclusion must be correct. Philosophical beliefs are protected alongside religious beliefs, and the *Nicholson* test ensures that those that qualify have a quasi-religious quality. Where an individual's belief dictates diet, clothing, transport, investment, friendships and relationships to the level that it does for Mr Casamitjana, it must be right that this belief is offered the same protection as a religion.

The decision is not binding and is, of course, fact specific. The extent to which Mr Casamitjana holds and lives by his belief in ethical veganism is far more extreme than those who recently completely Veganuary and the recent case of *Conisbee v Crossley Farms Ltd* 3335357/2018 (concerning vegetarianism) demonstrates that a simply dietary choice (even with a moral basis) is unlikely to be sufficient. Nevertheless, as was submitted by counsel for Mr Casamitjana, the criteria for a philosophical belief are "modest threshold requirements" (citing *R (Williams)*) and do not have to constitute a fully-fledged system of thought (citing *Nicholson v Grainger*). This case provides a useful illustration of how the *Nicholson* test is met, and it appears that the door is open for others with ethical beliefs that influence their lives in significant ways to have those beliefs protected.



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