

# Was the prohibition of prayer an act of indirect religious discrimination?

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## Introduction

1. On 16 April 2024, The High Court (Linden J) handed down Judgment in [R \(TTT\) v Michaela Community Schools Trust](#)<sup>1</sup>. This was a judicial review claim concerning a Muslim pupil (“The Pupil”), who challenged Michaela School’s (“The School”) policy of prohibiting prayer for all its pupils. In Islam, Salah (prayer) is one of the five pillars of the faith, which is obligatory for Muslims who have reached puberty. The High Court dismissed the Pupil’s challenge, and upheld the School’s Policy on prayer, but decided that one of the Pupil’s suspensions had been procedurally unfair.
2. Understandably, the Judgment would evoke emotion regardless of the outcome. The Islamic Human Rights Commission (“IHRC”) published a statement following the Judgment headed *School prayer ruling is exclusionary and Islamophobic*<sup>2</sup>. To summarise the IHRC’s statement, it believed the Judgment to be discriminatory, was an example of Islamophobia, created second-class citizenship for Muslims, and denied Muslims the right to practise their faith.
3. Principally, the submissions made on behalf of the Pupil were that the ‘Prayer Ritual Policy’ (“PRP”) was contrary to her right to freedom of religion under Article 9 of the ECHR, and that it was indirect religious discrimination under the Equality Act 2010 (Ground 2). In this article, my analysis will be solely confined to indirect religious discrimination.

## Relevant background

4. The School’s headteacher is Katharine Birbalsingh (“The Headteacher”), who has been described in the tabloids as *“Britain’s strictest teacher”*<sup>3</sup>. Half of the School’s pupils are

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<sup>1</sup> TTT, R (On the Application of) v Michaela Community Schools Trust [2024] EWHC 843 (Admin) (16 April 2024)

<sup>2</sup> <https://www.ihr.org.uk/school-prayer-ruling-is-exclusionary-and-islamophobic/>

<sup>3</sup> <https://www.standard.co.uk/news/uk/katharine-birbalsingh-michaela-community-school-britain-london-brent-b1151676.html>

Muslims. The School has strict rules on break times, socialising is limited to groups of 4, and it has a unique approach to integration between pupils from different backgrounds.

5. Between 17.03.2023 – 24.03.2023, several students prayed in the schoolyard using their blazers and prayer mats during the lunch break. The School explicitly told pupils not to bring prayer mats into the School. This instruction was ignored. A Teacher instructed pupils to put the prayer mat away. The Pupil became rude and aggressive, which resulted in a fixed-term-exclusion.
6. Between 23.03.2023 and 24.03.2023 (in the Holy month of Ramadan), it was the School's submission that some Muslim students sought to intimidate other Muslim students who had chosen to eat, rather than fast. Furthermore, it was submitted that a Muslim student was intimidated into wearing a headscarf and another student was encouraged to drop out of the School choir as it was 'haram' (forbidden).
7. An online petition was started calling for the School to provide Muslim pupils with a prayer room, which had over 4000 signatories. The petition also accused the School, the Teacher and the Headteacher of Islamophobia and disrespect because pupils were made to pray outside in dirty and wet conditions rather than inside a prayer room. Two videos were posted on social media making similar accusations. Threatening and abusive emails were sent to the School's email address and individuals phoned the School shouting abuse at staff.
8. On 25.03.2023 and 26.03.2023, an email was sent to the School suggesting that bombs had been planted on school premises, which resulted in the police attending the School to sweep the premises for explosives. In light of these incidents, the Headteacher decided to ban prayer rituals for all pupils.
9. Following the Headteacher's decision, a brick was thrown through the windows at the home of one of the teachers; glass bottles were smashed into the schoolyard; there was an attempt to break into a teacher's home; two further videos criticising the School were uploaded on to social media.

## Commentary

10. The legal principles are well-established and uncontroversial. It was accepted that *Section 85 of the Equality Act 2010* ("the Act") applied to this case. In particular, the Pupil's case was advanced under *Section 85 (2) (d)* and/or *(2)(f)* of the Act. Furthermore, *Section 19* of the Act defines indirect discrimination as follows:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

11. It was conceded by the School that the PRP was a PCP, as per *Section 19 (1)* of the Act. This was because it applied to all pupils irrespective of their religious beliefs. Similarly, it was accepted by the School that the PRP put or would put the Pupil at a particular disadvantage. This concession was based on the understanding that Muslim pupils were more likely to undertake prayer at the School when compared with pupils of other faiths or no religion, thereby satisfying *Section 19 (1) (c)* of the Act.

12. However, Linden J found at [232] that “*the disadvantage to Muslim pupils at the School caused by the PRP is in my view outweighed by the aims which it seeks to promote in the interests of the School community as a whole, including Muslim pupils.*”. Accordingly, Linden J decided that the PRP was a proportionate means of achieving a legitimate aim. In arriving at this decision, Linden J took into account the reasons given in the context of the Article 9 ECHR Ground at [192] – [207]. These reasons are summarised below as follows.

- a. It could not seriously be argued that it would be appropriate for Muslim pupils to pray outside in the yard in the winter months, nor was that argument put forward on behalf of the Pupil.
- b. If prayer indoors was permitted, parents, pupils or members of the public would have no reason to feel that Islam was being disrespected in circumstances where pupils were not being required to pray outside in wet and dirty conditions, using their blazers instead of prayer mats.

- c. Part of the reason for the pupils' defiant behaviour towards the School in March 2023 is likely to have been that they understood that the act of praying at School was prohibited & had made up their minds to challenge the regime. If prayer was permitted indoors, there would be no need for such defiance.
- d. It would remain the case that prayer would be subject to close supervision by teachers and there would therefore still be scope for differences of view about whether the presence or behaviour of a pupil within the School was or was not appropriate. In unsupervised prayer, there was the risk of peer pressure or intimidation of Muslim pupils who would not otherwise wish to pray and/or were less observant.
- e. In March 2023, the pressure and intimidation for other Muslim students to pray occurred notwithstanding the strict behavioural regime at the School. It was plausible to say that there would be moral pressure placed on Muslim pupils to participate in lunchtime prayer now that it was permitted. If prayer were permitted at the School, there would be no good reason not to pray and Muslim pupils would likely feel obligated to do so.
- f. There was a rational connection between the aims of the School, its approach to integration and the PRP. To allow a significant number of Muslim pupils to withdraw from secular school life to go and pray would serve to emphasise their religious differences in the minds of the other pupils. In this context, the PRP was a way of protecting and promoting the ethos of the School.
- g. There are logistical difficulties for the School to facilitate prayer, and the Headteacher was in a better position to assess the same. The School was entitled to say that the level of effort, costs involved, effect to the School's ethos, would not be proportionate to make the arrangements for prayer.
- h. There were no other less intrusive measures that could have been introduced.
- i. In measuring the severity of the effects of the PRP, it was not raised as an issue in relation to Years 7-11 before March 2023.
- j. It is relevant that the essential nature of the School's regime is one which the Pupil and other pupils (or their parents) have chosen & have remained at the School.

## Conclusion

13. Drawing these threads together, it is understandable that this Judgment may come as a disappointment and has evoked emotion, particularly from the IHRC and some parts of the

Muslim community. However, this was a fact-specific decision, where the Court had to grapple with, and analyse, factors on either side. The Court accepted the Pupil's arguments at [193] & [194]. However, it was not the Court's role to substitute its view for that of an experienced headteacher "on the ground", who is in a better position to make such an assessment over its ethos and the logistical difficulties in implementing prayer in a secular School: see [197] & [200].

14. As to the submission that prayer serves to emphasise religious differences, Linden J also noted at [198] that "...I do not suggest that this would inevitably be a good or bad thing, as **it is not my function to take a view about this**. The point is merely that it is **clearly rational for the School to take the view that the permitting and facilitating ritual prayer in school would have these effects, and that the PRP is, therefore, a way of protecting and promoting the ethos of the School**" (emphasis added).

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