

The Crown (on the application of Sarika Watkins-Singh)

– v –

The Governing Body of Aberdare Girls' High School

The Religious and Cultural Significance of the Sikh *Kara*

by

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1 The basis on which this report has been prepared

1.1 My instructions

This report has been prepared in response to instructions from Stephen Grosz of Bindman and Partners, Solicitors, who are in turn instructed by UNITED SIKHS to file a third party intervention in the application for judicial review brought by Sarika Singh ("Sarika"), to prepare a report on the underlying social, cultural, religious and racial issues which lie in the background of the dispute as to whether or not she should be permitted to wear a Sikh *kara* whilst attending Aberdare Girls' School as a pupil.

1.2 My academic and professional knowledge and experience of issues in this sphere

During the course of my professional career as a social anthropologist I have taken a specialist interest in South Asia. As an academic, I have been actively involved in researching these developments for the past thirty years, and during the course of so doing I have conducted extensive ethnographic fieldwork in both India and Pakistan, as well as amongst the settlers from those areas who have established themselves in the UK. In doing so I have taken a particular interest in the interpersonal consequences of the processes of racial, ethnic, and religious polarisation which have become such a salient feature of the local social order in all of the social arenas with which I have been concerned. Over the years I have published a large number of academic papers outlining my findings, and I am recognised as one of Britain's leading academic experts in this field. As a result I am frequently called upon to prepare expert reports for use in all manner of proceedings – in both civil and criminal proceedings and in the Asylum and Immigration Tribunal – in which people of South Asian descent have found themselves involved. I gave expert evidence for the Plaintiff in the initial trial of *Mandla v. Dowell Lee* [1983] 2 AC 548. My current academic post is Director of the Centre for Applied South Asian Studies in the University of Manchester. (I have attached a fuller CV as an Appendix to this document).

1.3 The materials on which I have relied

In preparing this report I have relied primarily on the contents of Sarika's witness statement, together with the contents of the Amended Statement of Facts and Grounds, the Defendant's Summary Grounds served by the Governing Body of Aberdare Girls' High School and to the Claimant's reply to those grounds, all of which I have read and considered and reviewed in the light of my professional knowledge and experience of contemporary practices with the

Sikh community in the UK, as well as the dynamics of processes of ethnic polarisation which have been precipitated as a consequence of the arrival of substantial numbers of South Asian settlers in the UK during the course of the past half century.

In the course of my academic career I have written extensively on all these matters. Hence the great majority of the arguments and analyses which I have set out in this report are grounded in those which I have set out at much greater length in the publications which I have listed on the second page of my CV.

1.4 My approach to the issues

I have prepared this report as an anthropologist, so that all the arguments and analyses which I develop within it, and all the conclusions which I have reached, are anthropological rather than legal in character. I should also emphasise that in this report, as in all the others I prepare, I have looked at the issues in the round. In doing so my analysis has several stages.

In the first place I set out the basic facts of the case as they appear from the documents before me, although in doing so I immediately acknowledge that from a legal perspective I am most certainly not the 'finder of fact', and that it is no part of my role to encroach on the role of the court in this regard.

Having done so I then go on to set those facts within the relevant cultural and legal context – although once again I should emphasise that I do so as an anthropologist rather than a lawyer, so any references I might make to legal decisions simply reflects an effort to locate my argument within what appear to me – from an anthropological perspective – to be the relevant legal principles as I understand them.

Finally my report sets out the conclusions which I have drawn from my analysis of all the material set before me.

1.5 Statement of truth

I understand that in preparing this report, my principal obligation is to the court, rather than to those instructing me, and I have complied with that obligation to the best of my ability. In fulfilling my instructions I have also made my best efforts to present an objective account of current developments in and around the Sikh community in the UK. I can consequently confirm that all the analyses I have developed and conclusions that I reached in the Report represent my considered professional opinion and are true to the best of my knowledge and belief.

2 The facts of the case

2.1 Sarika's personal background

Sarika was born in Wales on 20th September 1993 to a Punjabi Sikh mother and a Welsh Christian father, Craig Watkins. However her father passed away when she was only one year old, and her mother subsequently remarried when Sarika was around five years old. Her second husband, Satnam Singh, is a Punjabi Sikh. Ever since her mother's remarriage Sarika has regarded Satnam as her dad. Hence even though she is biologically of a mixed background and grew up in Wales, she has been brought up as, and identifies herself as, a Sikh.

2.2 Sarika's experiences at school

In her statement Sarika recounts her experiences as follows:

I was still at primary school when I started wearing [my *kara*], and I was wearing it when I began to attend Aberdare Girls' school in September 2005. Most of the time the Kara is hidden underneath my jumper and no-one appeared to notice. I was in the lower school in years 7 and 8 which is at a different site and the head of the lower school is Mrs. Woodrow, with whom I have always got on very well. I think it is quite possible that teachers did notice me wearing the Kara in lower school but did not mention it or make an issue of it.

In late August / early September 2006 I had my nose pierced for my birthday. My mother and her sisters had their noses pierced when they turned 13 as a mark of becoming a teenager and I wanted to follow that tradition as well. I wore the nose stud to school and was asked to remove it. My mother wrote a note to the school saying that it was part of our tradition, but the school still asked me to remove it and I did so after about 2 days. The nose stud did not have anything like the same importance to me as the Kara.

From about October 2006, I was racially abused by some of the girls at the school. They called me 'nigger', 'black cunt' and other names. I was really upset about this, particularly because it seemed to me that some of the teachers were not really on my side. On one occasion it seemed to me that a girl who called me 'nigger' in the classroom, Kelly, was given a lot of sympathy and treated as the victim (because she was crying), whereas I was simply expected to get on with it and go back to class (although I had been crying too).

My parents went to see Ms Rosser the headteacher in about February 2007 and asked her to do something about it. Ms Rosser said to my parents that there was a lack of awareness of racial issues in the school and she would tackle this by holding an assembly on racism. I was not at school due to illness but understand from my friends that Ms Rosser held an assembly on tolerance, not on racism, in early February 2007. Following this meeting there were two further incidents when I was called racist names by other students.

In about late April 2007 (I cannot recall the exact date), a PE teacher, Mrs. Marriott noticed me wearing my Kara, and asked me to remove it. I refused because I believed that it was against my religion. I talked to my mum about it when I got home and she said it was fine to take it off or cover it for lessons which involved PE, design and technology, cooking or using machines so that it couldn't harm me or other

people. My mum spoke to the school and Miss Rosser said that the matter would have to be referred to the Board of Governors for a decision on whether I could wear the Kara to school. In the meantime, I continued to wear it.

On 2 May 2007 Miss Rosser wrote to my parents saying that if I continued to wear the Kara the school could decide to educate me away from the other pupils. She also said that she would hold an assembly on tolerance on 4 May 2007 as she had earlier promised my mother. At no time has the school tried to confiscate the Kara from me. I was present when Miss Rosser held an assembly on 4 May 2007. She did not mention racism once. She said the assembly was on "respect and tolerance" and that thankfully in this school we do not have to deal with anyone being disrespectful. She said that many Muslims were coming into the country now and the population is building up. She also said words to the effect that "We have to tolerate Muslims and other ethnic minorities coming into the country".

I found this quite upsetting because of the suggestion that I am something unpleasant to be tolerated. During the assembly I felt very visible, and different, and that all eyes were on me.

On 10 May 2007 I asked Mrs. Marriott if I could cover the Kara with a wristband or something during games, so that it wouldn't move, or it couldn't hurt anyone or myself as it would be covered. She said "with that thing on you can't do games". I was upset at the way she had spoken, so I did not take it off for that lesson, but sat out. On the two other times I did PE, I took the Kara off (on two other occasions the teacher was absent so we did not have PE). On 16 May 2007 the headteacher wrote to my parents banning me from physical education lessons whilst wearing the Kara on health and safety grounds.

I continued to wear the Kara to school but I found the atmosphere increasingly upsetting and it was very difficult to concentrate on my work. I felt that most of the teachers were against me. Whereas previously I would be called on to answer questions five or six times during lessons, once the wearing of the Kara had become an issue, I noticed that despite continuing to put my hand up, I would now only be allowed to answer once per lesson, usually towards the end. I also felt that teachers were less willing to help me when I was stuck with work. They helped other students first. I felt like I was invisible. This was new to me as I had never experienced difficulties in obtaining help before. I often went home from school in tears and began to develop bad headaches from the stress. I was very worried that I would be taught in isolation, as Miss Rosser had threatened in her letter of 2nd May 2007.

On 25 May 2007 the Clerk to the Governors wrote to my parents inviting them to a meeting of the Hearing Committee of the Board of Governors to be held on 13 June 2007. My mother attended but I did not. She was upset and angry when she got home, because she said that the Governors had not been listening to her, but only to the headteacher. She said they had refused to discuss the racist name calling or the way the school had handled it, or anything except the Kara. She told me that the Governors wanted me to carry the Kara in a pocket or in my bag whilst they considered their decision as to whether they would make an exception to the uniform policy for me. She said it was up to me to decide.

I did not, and do not, want to hide the Kara in my bag or my pocket. The Kara is supposed to be worn on the wrist. It is meant to be a visible demonstration of my faith and my identity. On my wrist it serves as a reminder to me of the principles of my faith.

At the Governors' meeting they had said to my mother that I could be sent home if I went to school wearing the Kara. Ms Rosser interrupted to say to my mum that I could be taught in isolation. My family and I didn't know whether I would be sent

home or taught in isolation, so I stayed at home after that for 2-3 weeks. I was scared and didn't know what would happen. My mum collected work for me from the school office and dropped it back again when I had completed it.

During this time I tried to attend my trumpet lessons at school but, after the first time, I was not allowed to. I was not allowed to sit the part of my Grade I trumpet exam which took place at school, but my trumpet teacher agreed to mark me on the basis of my previous work. I found out later that I passed the exam. Normally this type of achievement is announced in assembly but mine was not.

After a while a welfare officer came to my home to see why I was not at school. The welfare officer said that the school had told her that they didn't know why I wasn't there. My mum and I went for a meeting with Ceirion Williams, the Principal Officer of the Behaviour Support Service, at the local education authority. He advised me to go back to school and see what happened.

On 12 July 2007 I went back to school and was called to a meeting with Miss Rosser and Mrs. Woodrow, the head of the lower school. The notes of that meeting, which were taken by Mrs. Woodrow, are at [C54-55]. Although the notes of the meeting are broadly accurate, they do not include everything that was said. I felt upset, intimidated and frightened because Miss Rosser demanded again and again to know whose decision it had been that I return to school wearing the Kara, mine or my mother's, why I had been off school, and why I had returned. She must have asked about 20 times although the notes do not record this. In the end I said it was both of our decision, mine and my mum's. I did not tell Miss Rosser about the meeting with the LEA because I thought it might cause trouble. I also said that my mum had said she was told during the Governors meeting on 13 June 2007 that if I came in wearing the Kara I would be sent home.

I didn't really understand much of what Ms. Rosser was saying because she kept referring to law and legislation and I was only 13 at the time. I asked her to call my mum to talk about it but she insisted on talking to me. The notes of the meeting record that she said at the beginning that she would call my mum, but the notes do not show that at the end of the meeting, Ms. Rosser said it was no longer necessary for her to call my mum, although I do not know why she changed her mind about this. She also said that if she allowed me to wear the Kara she would be discriminating against 99.9% of the school's population, who were not allowed to wear jewellery, and that the Kara could have health and safety implications even in the corridor, as I could catch it on a coat hook or someone else's bag. I found this hard to understand, because as I have already said, the Kara is smaller than my watch, and less likely to catch on things. I did not feel able to say so at the time because I did not want to challenge my headteacher and I was frightened.

I was really upset in the meeting. Miss Rosser said that while I continued to wear the Kara, I would be put into isolation for all the time at school, including lessons and breaktimes, and that food would be brought to me at lunchtime for me to eat on my own if necessary. At the end she went out of the room to get my timetable. Mrs. Woodrow asked if I was ok because I was crying. She was kind to me (as she always has been) and gave me tissues.

On 16 July 2007 my mum attended a meeting with Miss Rosser, with Mr. McCarthy taking notes. I did not attend this meeting but I know that my mum was very upset afterwards and felt that Miss Rosser has been very rude to her.

I remained in isolation from 12 July 2007 until the end of the summer term on 20 July 2007. I was not in isolation for two of those days, because on the 18 July we went on a trip to Drayton Manor theme park and we were not required to wear school uniform so I could go. The last day of term, the 20 July, was also a 'no uniform' day so I was

allowed to mix with the others. On the days when I was in isolation, I was set work to carry out alone and in a separate room to the other students. I was prohibited from talking to them during break and lunch times, when I had to sit outside a teacher's office. I was not permitted to go to the toilet without being accompanied by a teacher. I was supervised on a rota basis by two teaching assistants who collected work from my regular classes and brought it to me to carry out. If I did not understand the work, or finished it early, the teaching assistants were usually unable to help me as they did not know enough about the subject.

When any activities took place or letters were given to the girls to take home about events like charity fundraising, non-school uniform days, or the school newsletter, I was not given them. I only found out about non-uniform days from my friends. When the other girls were taken to visit the middle school (which is at a different site to the lower school), and to meet their new teachers in advance of moving up to year 9, I was not taken with them. I was shocked and upset to have been isolated from my friends and everyone else. I found that I was crying every night and most days and I continued having serious headaches and nightmares, which I had not had before.

The Governors' decision was sent by a letter of 20 July 2007 which arrived at my house two days after the end of the summer term. The Governors gave three reasons for refusing to allow me to wear the Kara to school, which I set out below.

Firstly, the Governors were not convinced that it was a requirement of my religion that I wear the Kara on my wrist. The Governors thought I could carry it in my pocket or bag. I have already explained above that as a Sikh, it is unacceptable for me to hide the Kara away as the Governors suggested. The Kara is intended to be worn on the wrist, both as a reminder to myself of my faith, and also as a visible symbol to others of my Sikh identity.

Secondly, the Governors felt that I might be singled out and bullied if I was allowed to wear the Kara. I found this very surprising since I had already been bullied (the racist comments detailed above), and felt that the school had done little to address the problem. My mum had also told me that the Governors had refused to discuss the racist abuse at the meeting on 13 June 2007.

I do not believe that wearing the Kara would cause me to be bullied. I have plenty of friends at school and most of the students have been very supportive of me through this episode. The girls have said that they think it is wrong that I have been put in isolation and excluded. Some have even said this to the school without any prompting from me. The students have not bullied me about wearing my Kara to school. It is the teachers, particularly the headteacher, that have been bullying me. I do not think that wearing the Kara would single me out because everyone already knows that I am a Sikh.

Thirdly, the Governors considered that my wearing the Kara would give rise to unspecified health and safety issues. As I have already said, this is difficult to understand because I am allowed to wear a watch which is considerably larger than the Kara and more likely to catch on things. In addition, I have offered to compromise by removing or (preferably) covering the Kara with a wrist sweat band during any lessons, such as PE, where health and safety might be a real risk. I do not believe that any unacceptable health and safety issues would arise in normal classroom lessons or in the corridors.

Difficulties of a similar kind occurred when Sarika returned to school wearing her *kara* in the autumn term, although the details need not detain us. However, the way in which Sarika sums up her statement deserves close attention:

I want to continue to wear the Kara to school as a visible manifestation of my faith. I do not want to miss any more of my education, and I do not want to continue to be taught in isolation, which I feel stigmatises me and draws attention to me as 'different' or 'difficult'. I accept that I may need to cover the Kara with a wrist sweat band or remove it for PE lessons and for other lessons which could pose a health and safety risk. I would prefer to cover it than to remove it, since it should not be removed.

The reason I have continued wearing the Kara despite my isolation and all the problems that have followed is because it is very important to me and is part of my identity and who I am. After everything I have been through since this all started, including the nine weeks in isolation, I feel very strongly that I should not be treated in this way because of my colour, religion or culture, and nor should anyone else in a similar situation. As a Sikh, I feel it would be wrong for me to sit back and let myself be bullied, just as it would be wrong for me to watch it happening to anyone else. I believe that I should stand up for my beliefs, and those of others.

Whilst the school may seek to challenge the *judgements* which Sarika makes about the way in which she was treated – such as her suggestions that she was being bullied and/or treated unfairly – I have prepared this report on the assumption that the *factual contents* of her statement are broadly correct, and hence will not be disputed .

3 An anthropological commentary

3.1 The issues

From an anthropological point of view, there are a number of distinct issues in this case which are worth disentangling from one another for the sake of analytical clarity. I should also emphasise that I have set about this disentangling exercise as a social anthropologist rather than as a lawyer, although in doing so I have sought to keep the relevant legal issues – as I understand them – firmly in mind as I have set about my analysis.

3.2 Concepts and terms of reference

Current discussions of issues of religion, ethnicity and race are regularly bedevilled by lack of clarity as to how these concepts should be understood. I shall therefore begin by setting out ways in which I understand and interpret these terms as an anthropologist, and the way in which I would apply them to this case.

In biological/genetic terms Sarika is clearly of mixed origins, since her biological father – her genitor – was white, whilst her mother was not. Nevertheless her colour of her skin is such that other children in the school were readily able to identify her as racially other than themselves, and hence to call her 'nigger', 'black cunt' and other names. These terms are clearly far more than mere descriptors of otherness: they are terms of racial abuse. In other

words if Sarika's assertions are true – and I can see no obvious reason to doubt her veracity on this point – she found herself a target of *racial* abuse.

However, this process of targeting was carried out by others, not by Sarika herself. Like most other people of colour in the UK Sarika defines herself in *ethnic* terms, and does so along two inter-connecting vectors: culturally as a Punjabi, and religiously as a Sikh. From this perspective the fact that she is biologically mixed is of little significance. Although she is well aware that Craig Watkins (of whom she has no memories as a result of his premature death) was her genitor, she regards her mother's husband, Satnam Singh, as her *pater*. Hence the cultural and religious conventions in terms of which she orders her personal and domestic behaviour are those commonly found within a specific *ethnic minority*: the Welsh Punjabi Sikh community.

So far as I am aware she was the only pupil drawn from that particular minority community attending Aberdare Girls' High School, although a small number of pupils of other minority origins also attended the school.

With all this in mind I have found it convenient to address the issues under two main headings: firstly that of 'race', and secondly that of 'religion'. With respect to the former I have initially considered Sarika's experiences issues within the frame of reference provided by Sir William McPherson's concept of 'institutional racism' as a prelude to considering the issues with reference to the duty laid on public authorities under section 71 of the Race Relations Act 1976 to have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups in carrying out their functions. With respect to the manifestation of religion my principal frames of reference are Article 9 European Convention on Human Rights and Article 18 of the International Covenant on Civil and Political Rights, supplemented by the judgment of the House of Lords in *Shabina Begum*.

3.3 Race, Ethnic Group, and Religion

The Race Relations Acts opened a new chapter in English Law by making discrimination on racial grounds unlawful. But in doing so they also opened a conceptual debate. Just how was the term 'racial grounds' and/or 'racial group' to be defined in law. The 1976 Act indicated that the terms should be relatively generously interpreted, providing that they referred to

'colour, race, nationality or ethnic or national origins'

Since the legislation was introduced the courts have spent a good deal of time debating, and attempting to define precisely how the terms 'race', 'ethnic' and 'national origins' should be understood and interpreted in English Law. Now that Article 9 of the European Convention on Human Rights has been formally incorporated into English Law, related debates have also begun to spring up with respect to the term 'religion'.

Indeed issues of this kind have already been raised at several points in the present proceedings.

3.3.1 Mr Justice Ouseley's observations

In the course of granting permission to proceed to judicial review, Mr. Justice Ouseley observed that in his view this case could be distinguished from *Mandla v. Dowell Lee* by saying that

This case is about a religious requirement of Sikhism. I have real difficulty in seeing that that could be regarded as comparable in relation to ethnic identity in the way that the turban was in that case. Otherwise, uniquely, all aspects of this particular religion would become matters of racial discrimination. That is particularly evident in relation to a Claimant who is a Sikh by conversion and not ethnic origin

It is not a part of my role to contest the judge's legal reasoning on this matter. However, I would note as an anthropologist that the learned judge – in common with commentators from many other scholarly disciplines – may well have been tempted into deploying terms which have acquired an exceptionally powerful conceptual load as a result of their widespread and sometimes tendentious use in popular discourse. As a result I fear he may well have fallen into pitfalls which those with a more specialised analytical interest in this field might have enabled him to avoid.

With such considerations in mind it is worth noting that in *legal* terms the House of Lords' judgment in *Mandla* set out a much more detailed definition of an 'ethnic group':

First it had to have a long shared history, of which the group was conscious as distinguishing it from other groups, and the memory of which it kept alive, and second it had to have a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. In addition, the following characteristics could also be relevant, namely

- a. either a common geographical origin or descent from a small number of common ancestors,
- b. a common language, which did not necessarily have to be peculiar to the group,
- c. a common literature peculiar to the group,
- d. a common religion different from that of neighbouring groups or from the general community surrounding it, and

- e. the characteristic of being a minority or being an oppressed or a dominant group within a larger community.

Applying those characteristics, the Sikhs were a group defined by reference to 'ethnic origins' for the purpose of the 1976 Act even though they were not racially distinguishable from other people living in the Punjab

In doing so their Lordships identified 'having a common religion' as factor which 'could also be relevant' rather than as a *necessary* feature of an ethnic group; and in referring to a cultural tradition of the group, they accepted that this might be associated with religious observance. Moreover it is also worth noting that their Lordships' purpose in defining the concept thus was to bring the Sikhs within the scope of the *Race* Relations Act, such that discrimination against them could legally be identified as 'racial' discrimination even where the condition or requirement in issue related to an aspect of their religious observance.

3.3.2 *The school's defence to the allegations raised by the claimants*

The school's defence indicate that there will be further debate about the way in which concepts of 'religion' and 'culture' intersect with those of 'race' and 'ethnicity'. They

- i. raise questions about Sarika's precise religious, racial and ethnic status;
- ii. assert that in Sarika's case wearing a Kara is not a religious requirement;
- iii. assert that there is no requirement that the Kara must be worn by anyone other than initiated Sikhs (which the Claimant is not);
- iv. assert that there is no requirement that it be worn on the wrist (as opposed to carried in a pocket or bag, to which the school has no objection).

I will address these issues later in this report.

3.4 *An anthropological perspective on race, culture, religion and ethnicity*

In view of the fact that I frequently utilise the terms of 'race', 'culture', 'religion' and 'ethnicity' in the course of my arguments and analyses in this report, and of the probability that the precise meaning of these terms and their various derivatives will be vigorously debated when this case comes to trial, I set out my own anthropological understanding of each of these concepts. I would not have the temerity to suggest that the court should of necessity read my definitions straight into legal terminology. Nevertheless I would respectfully suggest that in the course of its deliberations the court might find it useful to take careful cognizance of the reasoning behind the definitions I offer, if only to avoid falling into the pitfalls awaiting unwary wanderers in this challenging conceptual arena.

3.4.1 *Race*

'Race' is at once the simplest and the most complex concept in the list. Whilst modern genetic findings have show that there is an immense amount of variation in human

haplotypes, and that the frequency of their presence in local populations shows a great deal of spatial variation, there is far less correlation between the spatial distributions of specific haplotypes than late nineteenth and early twentieth century human biologists once assumed. Hence 'races' in the popularly accepted vision of clearly bounded populations groups whose members can readily be distinguished from one another on a biological grounds are simply a figment of misguided assumptions.

But however misguided those assumptions may be, they can be – and indeed *are* – routinely acted upon. So it is that in contemporary Britain, as in most of Euro-America, having a non-European facial appearance – most especially in terms of skin tone and hair colour and character – are routinely used as markers of 'racial' alterity (or otherness). Hence racial distinctions – and the prospect of racial discrimination and exclusion – arise as a result of 'white' people's perceptions of, and reactions to, the perceived alterity of people of colour. Hence even though biological race may be a fiction, if and when members of the white majority take exclusionary action on the basis of their *perception* of racial alterity, racially motivated marginalisation and exclusion can be expected to ensue.

In the analysis which I set out in this report I will use the terms 'race' and racial' in this sense.

3.4.2 *Culture*

From an anthropological perspective I find the following definition of culture to be concise as it is analytically illuminating

Human cultures are cognitive structures; each such culture is best understood as the set of ideas, values and understandings utilised within networks of social relationships as a means of ordering the inter-personal interactions between those involved. In fulfilling this role cultures provide the principal basis on which human beings give meaning and purpose to lives. (Ballard, Roger, "Race, Ethnicity and Culture", in *Developments in Sociology* Volume 18, 2002, at page 101)

Culture in this sense is not a matter of biological heredity: rather it is acquired as a result of processes of socialisation. And precisely because it is learned, individuals with the wish and opportunity to do so can as readily acquire the capacity to be multi-cultural as they can acquire the capacity to become bi- or indeed multi-lingual. Such navigational skills are most likely to be found in societies which are both linguistically and culturally plural, and are most elaborately developed amongst those who regularly move back and forth between differently ordered linguistic and cultural arenas.

Once understood as a *cognitive* structure, the concept of culture acquires something of the characteristics of an umbrella. To the extent that every expression of religion, dress, language, law and many other human activities are all underpinned by their own distinctive cognitive framework, all are at least in analytical terms sub-categories of the broader and more inclusive category of culture.

In the analysis which I set out in this report I will use the terms ‘culture’ and ‘cultural’ in this sense.

3.4.3 Religion

It follows that in my terms religion is a sub-category of culture. Consequently at an analytical level, anything which holds good about the latter can also be expected to hold good for the former. It also follows that the boundary between religion and culture will tend to be fuzzy rather than clear-cut. Insofar as it can be identified at all, the religious sphere of culture tends to be more concerned with metaphysical matters – and most especially with the metaphysical dimensions of meaning and purpose – than are other dimensions of cultural activity.

3.4.4 Ethnicity

In many respects ethnicity is the trickiest term of all. It has only entered vernacular discourse very recently, often – and quite erroneously – as a euphemism for race. The most illuminating anthropologically inspired definition of ethnicity of which I am aware has been propounded by David Parkin, Professor of Anthropology at the University of Oxford as follows:

Ethnicity is best understood as i) the articulation of cultural distinctiveness in b) situations of mutual political and economic competition. (Parkin, David “Congregational and interpersonal ideologies in political ethnicity. (In Cohen, A. (ed.), *Urban Ethnicity*, A.S.A. Monograph 12, London: Tavistock, 1974, at page 119)

From this perspective ethnicity has nothing to do with race in a biological sense. It is an entirely social phenomenon. Nor is ethnicity merely a synonym for culture. Rather it is the product of interactions across cultural boundaries, leading those on both sides of that boundary to *articulate* – or in other words to highlight and/or reinforce – their sense of distinctiveness, the better to pursue their self-perceived rival interests. This does not mean that the resultant boundaries are impermeable: on the contrary individuals who have acquired the requisite cultural and linguistic competence regularly step across them. However the act of boundary crossing does not in itself lead to the elimination of the boundary in question.

France and England remain as different as they ever were despite the construction of the Channel Tunnel.

With these conceptual clarifications in place I will move on to consider the specific issues at stake in these proceedings.

4 Issues of Race relations

4.1 Sir William McPherson’s analysis of ‘institutional racism’

Although Sir William McPherson’s Report into the circumstances of the death of Stephen Lawrence does not have the force of law, the arguments which he set out are widely regarded as a useful guide for policy makers in this sphere. Moreover it seems to me that one useful way of bringing some of the issues in this case into closer focus is by examining Sarika’s account of her experiences through the lens provided by Sir William McPherson’s concept of institutional racism:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amounts to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

Although McPherson’s perspective is by no means the only lens available, it nevertheless provides a convenient starting point for analysis, not least because there can be little doubt that as a result of her exclusion from school, as well as being taught separately on what can only be described as an *ad hoc* basis, Sarika had a distinctly inferior educational experience during much of 2007. Whilst the school may argue that she brought these difficulties down on her own head by refusing to comply with the school’s uniform regulations, Sarika would doubtless take the view that this was the outcome of ‘unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantaged a minority ethnic person.’

What evidence is there to support this latter position? As ever in circumstances of this kind – and as McPherson’s approach directly recognises – racial and ethnic marginalisation is invariably best understood as the outcome of a process, rather than manifested in a single free-standing incident. Sarika’s statement sets out just such a process. It may arise even in the absence of overt racial prejudice.

4.1.1 The nose-stud issue

Sarika reports that she had regularly worn a *kara* since she first joined the school, and that no objection had been raised to her doing so. However in September 2007 she moved into the

upper school, and it was at this point that problems arose – although these did not initially focus on the *kara*, but rather on the fact that she had had her nose pierced over the holidays, and consequently returned to school wearing a nose-stud. The school took the view that this was contrary to their ‘no jewellery’ policy, so she was asked to remove it.

Before considering further developments, it is worth noting that the issue of the nose-stud had cultural dimensions. As far as the indigenous population of the UK is concerned, neither body-piercing nor the wearing of nose-studs is a long-standing cultural practice – although it has recently become fashionable amongst teenagers. By contrast the practice of piercing both the ears and the nose, and the wearing of earrings and a nose-stud is a normative cultural practice amongst adult South Asian women, and hence as far as young women are concerned, their adoption is a marker that they have put childhood behind them. Sarika’s statement suggests that she viewed having her nose pierced and a stud inserted from that perspective rather than as a fashion statement.

It appears that her mother took the same view, and that she wrote to the school arguing precisely this point. However the school rejected this argument, and asked Sarika to remove it in conformity with their no-jewellery policy. In due course she agreed to do so.

4.1.2 Racial abuse

It is unclear whether any of Sarika’s fellow pupils were aware of the arguments which developed over these issues, and/or whether the other girls took the view that she was seeking special privileges in so doing – a far from unusual outcome in circumstances such as these. In any event tensions between Sarika and some of her class-fellows erupted shortly afterwards, which led to Sarika being subjected to racial abuse. Just what Sarika has to say about the matter deserves close inspection:

I was racially abused by some of the girls at the school. They called me ‘nigger’, ‘black cunt’ and other names. I was really upset about this, particularly because it seemed to me that some of the teachers were not really on my side. On one occasion it seemed to me that a girl who called me ‘nigger’ in the classroom, Kelly, was given a lot of sympathy and treated as the victim (because she was crying), whereas I was simply expected to get on with it and go back to class (although I had been crying too).

Sad to say, racial abuse of this kind is all too commonplace in British schools. It should also go without saying that being subjected to such abuse is deeply hurtful. However in my experience teachers who have such incidents reported to them often find it very difficult to devise an appropriate response. Although well aware that racial abuse should not be tolerated,

they are often reluctant to acknowledge how deeply entrenched such attitudes are, not just in British society at large, but also amongst their own pupils. Hence as I noted in a recently published article

Once racism has formally been placed on the agenda everyone finds themselves driven to take sides; and as they do so it soon becomes obvious that ethnicity is a powerful determinant of these reactions. Whilst other people of colour who have been through the same mill quietly express their sympathy with the complainant, members of the indigenous majority equally invariably take the opposite view. They find it far easier to sympathise with the hurt feelings of an alleged perpetrator than with the person of colour who has been subjected to marginalisation.¹

There appear to be strong indications that Sarika’s teacher reacted in such a manner when faced with a case of racial confrontation amongst her pupils.

4.1.3 Miss Rosser’s position

I can only presume that a variety of discussions took place within the school between October 2007, when the incidents which Sarika describes took place, and her parents’ visit to the school in February 2007 to meet the head teacher, Miss Rosser. In her statement Sarika’s mother provides the following account of that meeting:

Towards the end of 2006, Sarika began coming home from school very upset because she was being called racist names by other girls. I had a number of conversations with the head of the lower school, Mrs. Woodrow, about this. Finally, in about February 2007, Satnam and I had a meeting with the headteacher, Ms Rosser to discuss the racist abuse and what could be done to prevent it. Mrs. Woodrow was present at the meeting to take notes, but I do not have a copy of these.

Ms Rosser kept referring to the programme ‘Big Brother’ which had been broadcast in October and November 2006. She appeared to be blaming the abuse on the programme because it included well publicised racist abuse of an Indian woman, Shilpa Shetty. Satnam and I were concerned about this.

We did not really believe that the abuse was a result of Big Brother (the abuse had started before the series began). Even if it was, we felt that the headteacher was making light of the matter and failing to take responsibility for addressing it. Simply pointing to Big Brother did not explain what was to be done about it. We were concerned that nothing was being done at the school to raise awareness of racism, and the headteacher did not seem to appreciate how degrading it was for our daughter to be called a ‘nigger’ in the classroom.

Ms. Rosser said that the school had an equal opportunities policy, so I asked for a copy of it. She said that she would post a copy but I have never received it. (I believe that the Valleys Race Equality Council (VALREC) also asked for a copy of the policy later in the year. The head teacher replied to VALREC by a letter of 5 November

¹ Ballard, Roger and Parveen, Tahira (2008) “Minority professionals’ experience of marginalisation and exclusion: the rules of ethnic engagement” in Eade, John (ed) *Advancing Multiculturalism, Post 7/7* Cambridge: The Scholar’s Press at page 79

2007 asking in what capacity they were requesting it, but failing to provide it.) The head teacher said that she would ask the girls to make an anti-racism poster and she would hold an assembly to raise awareness of the issues.

It would appear that Miss Rosser did indeed hold an assembly on the matter, but it is not clear whether she did so in a manner which addressed Sarika's parents' concerns. As Sarika recounts in her statement

I was not at school due to illness but understand from my friends that Ms Rosser held an assembly on tolerance, not on racism, in early February 2007. Following this meeting there were two further incidents when I was called racist names by other students.

If Sarika's and her mother's assertions are correct, it would seem that Miss Rosser, no less than her colleagues, found herself out of her depth when faced with suggestions that racist attitudes assumptions might be normatively embedded in her school. This is not to suggest that either she or her staff were consciously racist. Nevertheless in my view it does raise the question as to how far it was the case that, even at this early stage, those responsible for the organisation of this institution displayed a mixture of 'unwitting prejudice, ignorance and thoughtlessness' which precipitated a collective failure to provide an appropriate and professional response to both Sarika and her parents' complaints about teachers' and pupils' responses to her distinctive colour, culture and ethnic origin.

Moreover, if I am right in concluding that that was indeed the case, it also seems to me that if there had been an early intervention to nip these matters in the bud, there is every prospect that none of the subsequent developments which ultimately gave rise to these proceedings would have taken place.

4.1.4 *The issue of Sarika's kara*

So far as I can see Sarika's *kara* did not become an issue until April 2007, when a PE teacher noticed it on her wrist. When asked to remove it, Sarika refused, on the grounds that doing so would be against her religion. She consulted her mother when she got home, and a solution was devised: that Sarika should take it off or cover it for lessons which involved PE, design and technology, cooking or using machines, so that it could not harm her or other people. Her mother spoke to the school and the headmistress indicated that the matter would have to be referred to the Board of Governors. Meanwhile she continued to wear her *kara* to school.

4.1.5 *An issue of tolerance?*

However, it was not long before matters escalated. On 2nd May 2007 Sarika's parents were informed that if she continued to wear the *kara* the school could decide to educate her away from the other pupils. She also indicated that she would hold an assembly on tolerance on 4th May. However when the assembly took place – at which Sarika was present – it was apparent that Miss Rosser's perspective on the issues was far distant from that of Sarika and her parents. As she puts it in her statement

[Miss Rosser] did not mention racism once. She said the assembly was on "respect and tolerance" and that thankfully in this school we do not have to deal with anyone being disrespectful. She said that many Muslims were coming into the country now and the population is building up. She also said words to the effect that "We have to tolerate Muslims and other ethnic minorities coming into the country".

I found this quite upsetting because of the suggestion that I am something unpleasant to be tolerated. During the assembly I felt very visible, and different, and that all eyes were on me.

If Sarika's account of the assembly is anywhere near accurate, in my professional opinion Miss Rosser was ill-informed about the issues with which she was seeking to deal. Hence in responding to the matters raised by Sarika and her parents in the way she did, she managed to stand the issues on their head. Instead of focusing on her fellow pupils' negative reactions to Sarika's presence in the school – or in other words the issue of racism – Miss Rosser's preferred emphasis on tolerance reversed the whole argument: by doing so she implicitly suggested that Sarika herself, together with (presumably unmentioned) her penchant for behavioural alterity (i.e. the *kara*) were somehow the cause of the problem, which she urged Sarika's fellow-pupils to make more strenuous efforts to tolerate.

If this was indeed the case, Miss Rosser's approach would in my opinion have had the (no doubt unintended) effect of exacerbating the very problems which she was seeking to resolve, and yet further reinforcing an implicit further sub-text: that in order to earn a greater degree of tolerance, Sarika should also make more strenuous efforts to curb her convention-breaking commitment to alterity.

4.1.6 *An issue of health and safety?*

Indeed it was in precisely this context that the matter came to a head. As Sarika goes on to describe

On 10 May 2007 I asked Mrs. Marriott if I could cover the Kara with a wristband or something during games, so that it wouldn't move, or it couldn't hurt anyone or myself as it would be covered. She said "with that thing on you can't do games". I was upset

at the way she had spoken, so I did not take it off for that lesson, but sat out. On the two other times I did PE, I took the Kara off (on two other occasions the teacher was absent so we did not have PE). On 16 May 2007 the head teacher wrote to my parents banning me from physical education lessons whilst wearing the Kara on health and safety grounds.

4.1.7 Marginalisation

Sarika says in her statement

I continued to wear the Kara to school but I found the atmosphere increasingly upsetting and it was very difficult to concentrate on my work. I felt that most of the teachers were against me.

Whereas previously I would be called on to answer questions five or six times during lessons, once the wearing of the Kara had become an issue, I noticed that despite continuing to put my hand up, I would now only be allowed to answer once per lesson, usually towards the end. I also felt that teachers were less willing to help me when I was stuck with work.

They helped other students first. I felt like I was invisible. This was new to me as I had never experienced difficulties in obtaining help before. I often went home from school in tears and began to develop bad headaches from the stress. I was very worried that I would be taught in isolation, as Miss Rosser had threatened in her letter of 2nd May 2007.

In the light of the developing set of altercations between Sarika and her teachers, there can in my opinion as an anthropologist be little doubt of the character of situation which was eventually precipitated: because the school insisted that Sarika should follow the conformist prescriptions of what I have found it useful to describe as 'the rules of ethnic engagement' routinely demanded by liberal-minded members of the indigenous majority (see my footnote on page 15), her refusal to play along with those no doubt well-meaning expectations led over time to her finding herself progressively marginalised within the school, so much so that she found herself trapped in a position of structural disadvantage which Sir William McPherson identified as institutional racism.

4.2 Duties under section 71 of the Race Relations Act 1976

The statutory remedy to Sir William McPherson's model of institutional racism is provided by section 71 of the Race Relations Act 1976, which places a general duty on public authorities, in carrying out their functions, to have due regard to the need

- (a) to eliminate unlawful racial discrimination; and
- (b) to promote equality of opportunity and good relations between persons of different racial groups.

Whether and/or to what extent the school adequately fulfilled these duties is a matter for the court to decide. My role as an expert is also rendered yet more complex because the staff at

the school manifestly did make a sustained effort – on a basis which I can only presume that they considered to be right and proper in the circumstances – to resolve the issues which had been raised by Sarika and her parents.

In these circumstances I have come to the conclusion that my best approach to the issues at stake is simply to pose a series of open questions arising from the duties set out in section 71 which manifestly demand answers:

- i. Did the school make significant efforts to substantiate Sarika's claim that she had been subjected to racial abuse? If she was indeed subjected to such abuse, would the school have had a duty under the Act to eliminate it?
- ii. Regardless of whether or not this was the case, how far were the policies which the school deployed in the aftermath of the complaints lodged firstly by Sarika herself, and subsequently by her parents, consistent with its duty to have due regard to the need to promote equality of opportunity and good relations between persons of different racial groups?
- iii. As an anthropologist I would also note that this question opens up a further conundrum which is invariably present in situations of racial and ethnic polarisation: *from whose perspective* has the prospect of promoting good relations between persons of different racial groups been understood?

I have little doubt that in acting as they did Sarika's teachers, as well as the Governors of the school, honestly believed that they were doing their best to fulfil the duties set out in section 71. It would appear that they also took the view that the best way of doing so was to do assign no significance to any religious, ethnic or racial differences which might be present within the school community, and to insist that whatever individual students' personal proclivities and prejudices might be, they should also seek to do the same hence, amongst other things, their determined insistence that all pupils should follow the same uniform regulations.

But however reasonable this approach may seem from a majoritarian perspective, members of minority groups frequently beg to differ. As I have sought to demonstrate in my recent academic work, once rules of ethnic engagement based on premises of this kind are firmly established as the norm, those who differ are likely to find that they have been painted into a most uncomfortable corner. Race and ethnic relations would not be an issue in the absence of differences of these kinds.

The fact of the matter is that members of visible minority groups can be distinguished from members of the indigenous majority in both racial and ethnic terms, and that in current circumstances both these vectors of difference are assigned social significance. Having a distinctive physiognomy can all too easily attract racial abuse; meanwhile if members of

ethnic minorities are required to maintain a public appearance of comprehensive conformity with the behavioural norms of a hegemonic majority, there is every prospect that they will feel demeaned and insulted as a result of being required to suppress and devalue the cultural, religious and/or linguistic commitments which they regard as an intrinsic part of their ethnic being. In my experience Welsh nationalists (amongst many others) have little difficulty in sympathising with that sentiment.

Sarika is not Welsh – or English, for that matter. She is identifiably of South Asian ancestry on the basis of physical appearance (or so I presume); and in ethnic and religious terms she is a Punjabi Sikh. As we have seen in section 4.1 above, both these issues came actively into play in Aberdare Girls High School during the course of the past two years. However there is little sign that either the teachers or the Governing Body appreciated that the issue with which they found themselves confronted was two-sided, rather than one-sided in character. If so, it becomes easier to understand why it was that they appear to have found it so difficult to appreciate the intensity of both Sarika's and her parents' complaints and concerns, and why it was that both Sarika and her parents concluded that it was they themselves, rather than the issues which they were seeking to raise, which had become the principal targets of the school's response. If that was indeed the case – which is a matter which only the court can determine – all I can say is that such an outcome would be wholly congruent with the patterns of behaviour which Tahirah Parveen and I describe and discuss at much greater length in our Chapter entitled *Minority professionals' experience of marginalisation and exclusion: the rules of ethnic engagement* referred to in footnote 1.

5 Manifestation of religion

In this section I will focus primarily on the religious dimensions of this case, as opposed to those of race and ethnicity with which I was primarily concerned in the last section.

With that in mind I turned for guidance to *R (Shabina Begum) v. Denbigh High School* [2006] UKHL 15, for some guidelines with respect to the issues in this sphere, and also to enable me to set out how far the facts in this case appeared from my perspective as an anthropologist to run in parallel to, or to differ from, those in the leading case in this sphere.

5.1 *Parallels and differences between Shabina Begum and the current proceedings*

The parallels between the present case and *Shabina Begum* are as follows: both are concerned with the school uniforms, and both involve cases brought by or on behalf of young British-

born women of South Asian origin who are followers of non-Christian religions. Beyond that, however, there are a wide range of differences between them. I shall discuss each of the most significant differences separately and in turn.

5.1.1 *The local context*

In sharp contrast to the situation in Aberdare High School, their Lordships noted that Denbigh High School

3 has a very diverse intake, with 21 different ethnic groups and ten religious groupings represented. About 79% of its pupils are now Muslim, the percentage having fallen from 90% in 1993.

4 the governing body of the school always contained a balanced representation of different sections of the school community. At the time of these proceedings, four out of six parent governors were Muslim, the chairman of the Luton Council of Mosques was a community governor and three of the local education authority ("LEA") governors were also Muslim. The school makes a significant contribution to social cohesion in a catchment area that is racially, culturally and religiously diverse.

5 The head teacher, Mrs Yasmin Bevan, was born into a Bengali Muslim family and grew up in India, Pakistan and Bangladesh before coming to this country. She has had much involvement with Bengali Muslim communities here and abroad, and is familiar with the codes and practices governing the dress of Muslim women.

6 The head teacher believes that school uniform plays an integral part in securing high and improving standards, serving the needs of a diverse community, promoting a positive sense of communal identity and avoiding manifest disparities of wealth and style. The school offered three uniform options. One of these was the shalwar kameeze: a combination of the kameeze, a sleeveless smock-like dress with a square neckline, revealing the wearer's collar and tie, with the shalwar, loose trousers, tapering at the ankles. A long-sleeved white shirt is worn beneath the kameeze and, save in hot weather, a uniform long-sleeved school jersey is worn on top. It has been worn by some Muslim, Hindu and Sikh female pupils.

7 In 1993 the school appointed a working party to re-examine its dress code. The governors consulted parents, students, staff and the imams of the three local mosques. There was no objection to the shalwar kameeze, and no suggestion that it failed to satisfy Islamic requirements. The governors approved a garment specifically designed to ensure that it satisfied the requirement of modest dress for Muslim girls. Following the working party report the governors, in response to several requests, approved the wearing of head scarves of a specified colour and quality.

5.1.2 *The pupil's behaviour*

In sharp contrast to Sarika's behaviour as a long-standing wearer as of a *kara*, their Lordships noted that in *Shabina Begum's* case

9 For two years before September 2002 the respondent wore the shalwar kameeze happily and without complaint. It was also worn by the respondent's sister, who continued to wear it without objection throughout her time at the school.

10 On 3 September 2002, the first day of the autumn term, the respondent (then aged nearly 14) went to the school with her brother and another young man. They

asked to speak to the head teacher, who was not available, and they spoke to the assistant head teacher, Mr Moore. They insisted that the respondent be allowed to attend the school wearing the long garment she had on that day, which was a long coat-like garment known as a jilbab. They talked of human rights and legal proceedings. Mr Moore felt that their approach was unreasonable and he felt threatened. He decided that the respondent should wear the correct school uniform and told her to go home, change and return wearing school uniform.

11 On the same day the head teacher, who had been informed of the incident, wrote to the respondent's mother and brother. After setting out an account of the incident, she stated that the uniform had been agreed with the governing body, and that it was her view, and that of the LEA, that the school's uniform rules were more than reasonable in taking into account cultural and religious concerns. She noted that the respondent had not attended school because she had been removed by those representing her and stated that the respondent was required to attend school dressed in the correct uniform.

5.1.3 *The religious status of the Jilbab*

As I explain below, wearing of the *kara* is universally accepted as one of the obligations of Sikhs. By contrast, in *Shabina Begum's* case, their Lordships noted that there appeared to be no consensus amongst Muslim scholars that wearing the Jilbab was a *necessary* feature of Islamic dress:

15 The respondent's solicitor obtained opinions from three sources (two of them imams previously consulted by the appellants) to the effect that the jilbab was the appropriate dress for mature Muslim women. This advice was passed on to the appellants, who did not accept it but repeatedly urged the respondent to return to school. The chairman of the governors reviewed the matter and supported the action of the head teacher. In the same month there was forwarded to the school *a statement made by the Muslim Council of Britain on the "Dress code for women in Islam": there was no recommended style; modesty must be observed at all times; trousers with long tops or shirts for school wear were "absolutely fine".* (my italics)

18 ... according to the appellants, a number of Muslim girls at the school have said that they do not wish to wear the jilbab and fear they will be pressured into wearing it. ...Some pupils were resistant to wearing the jilbab as unnecessarily restrictive and associated with an extremist group.

5.2 *The grounds on which the appeal was rejected*

The grounds on which their Lordships rejected Shabina's appeal were heavily conditioned by the findings of fact outlined above. As Lord Bingham put it

33 The respondent criticised the school for permitting the headscarf while refusing to permit the jilbab, for refusing permission to wear the jilbab when some other schools permitted it and for adhering to their own view of what Islamic dress required. None of these criticisms can in my opinion be sustained. The headscarf was permitted in 1993, following detailed consideration of the uniform policy, in response to requests by several girls. There was no evidence that this was opposed. But there was no pressure at any time, save by the respondent, to wear the jilbab, and that has been opposed.

34 On the agreed facts, the school was in my opinion fully justified in acting as it did. It had taken immense pains to devise a uniform policy which respected Muslim beliefs but did so in an inclusive, unthreatening and uncompetitive way. The rules laid down were as far from being mindless as uniform rules could ever be. The school had enjoyed a period of harmony and success to which the uniform policy was thought to contribute. On further enquiry it still appeared that the rules were acceptable to mainstream Muslim opinion. It was feared that acceding to the respondent's request would or might have significant adverse repercussions.

Meanwhile in his speech Lord Hoffman went on to give explicit consideration to the Article 9 dimensions of the issues, and concluded that in this case

49 The first question is whether Shabina's right to manifest her religion was infringed. If it was infringed, the school would have to justify the infringement on one of the grounds listed in article 9(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."

On the other hand, if there was no infringement, no justification is required.

50 I accept that wearing a jilbab to a mixed school was, for her, a manifestation of her religion. The fact that most other Muslims might not have thought it necessary is irrelevant. But her right was not in my opinion infringed because there was nothing to stop her from going to a school where her religion did not require a jilbab or where she was allowed to wear one. Article 9 does not require that one should be allowed to manifest one's religion at any time and place of one's own choosing.

Baroness Hale also addressed the issue of proportionality, but in her speech drew a distinction (if I understand her argument aright) between necessary manifestations of one's religious commitment – for example a Sikh man who wears a turban or a Jewish man a *yamoulka* – and optional *cultural* variations in Islamic dress codes, for example wearing either a Punjabi-style *shalwar kameez* together with a headscarf (Denbigh school's preferred option) or the Arab-style *jilbab*, on which Shabina sought to insist

94 I am in no doubt that that interference was justified. It had the legitimate aim of protecting the rights and freedoms of others. The question is whether it was proportionate to that aim. This is a more difficult and delicate question in this case than it would be in the case of many similar manifestations of religious belief. If a Sikh man wears a turban or a Jewish man a *yamoulka*, we can readily assume that it was his free choice to adopt the dress dictated by the teachings of his religion.

95 But it must be the woman's choice, not something imposed upon her by others. It is quite clear from the evidence in this case that there are different views in different communities about what is required of a Muslim woman who leaves the privacy of her home and family and goes out into the public world. There is also a view that the more extreme requirements are imposed as much for political and social as for religious reasons.

98 In this educational context, implementation of the right to equality is a complex matter, and the determination of the way it should be achieved depends upon the

balance between these two conflicting policy priorities in a specific social environment."

It seems to me that that was exactly what this school was trying to do when it devised the school uniform policy to suit the social conditions in that school, in that town, and at that time. Social cohesion is promoted by the uniform elements of shirt, tie and jumper, and the requirement that all outer garments be in the school colour.

But cultural and religious diversity is respected by allowing girls to wear either a skirt, trousers, or the shalwar kameez, and by allowing those who wished to do so to wear the hijab. This was indeed a thoughtful and proportionate response to reconciling the complexities of the situation.

This is demonstrated by the fact that girls have subsequently expressed their concern that if the jilbab were to be allowed they would face pressure to adopt it even though they do not wish to do so.

6 A commentary on developments in Aberdare in the light of *Shabina Begum*

6.1 *The context*

Whilst South Asian children, and amongst them children who are Muslim by faith, formed a clear majority of the school population in Denbigh High, the South Asian presence in Aberdare Girls' High School is miniscule. Denbigh had recruited a Muslim headmistress, and had conducted extensive consultations with parents of all faiths to agree a set of uniform rules with which the vast majority of parents of all faiths could feel comfortable. By contrast, so far as I can see Aberdare Girls' High School had taken few if any concrete steps to develop policies with respect to these issues when the current disagreement began, and instead appears to have sought to address the issues raised by Sarika on an *ad hoc* basis. With hindsight it may well be that the headmistress and members of the Governing Body may now well have concluded that this stance was unwise.

That said, so far as I can see the policy framework which Sarika and her parents found themselves confronting in Aberdare is one which had hardly begun to consider the knotty policy issues which are regularly thrown up in conditions of religious and ethnic plurality. Hence the school appears to have taken a stance based on the premise that aiming for a condition of homogeneity was the best way of resolving any tensions which might arise in the face of the steadily rising – but still miniscule – presence of pupils of diverse racial, religious and ethnic diversity in the school, was by sticking fast to its principles of uniformity. Hence in order to sustain the 'generally harmonious nature of the school' (paragraph 17, Defendant's Summary Grounds) it sought to insist that everyone should obey the same rules.

However this approach to this matter, which is by no means unique to Aberdare Girls School, overlooks two key issues. Firstly however 'generally harmonious' the teachers and the

Governors may have considered the atmosphere of the school to be, it was nevertheless one in which girls of visible minority backgrounds could find themselves exposed to vicious racial insults from fellow pupils. Secondly, and just as importantly, precisely because the uniform rules were designed with indigenous behavioural and dress conventions in mind, there was a very real prospect that pupils of minority backgrounds might find demands that they should conform to those requirements come what may deeply uncomfortable. So far as I can see Aberdare Girls' School's commitment to uniformity largely overlooked that possibility.

By contrast, as their Lordships made clear in *Shabina Begum*, Denbigh High School had taken active steps to develop a uniform policy which was sufficiently pluralistic to accommodate the diverse backgrounds of pupils attending the school, and most especially those following the same faith-tradition as Shabina herself. Indeed the fact that the school had taken active steps to respond to the concerns of Muslim children and their parents was one of the central planks of their judgment that the school's appeal should be allowed.

6.2 *Sarika's behaviour*

In contrast to Shabina Begum's unilateral decision to switch from wearing *shalwar-kameez* to adopt the *jilbab* (which she appears to have done with the encouragement, and indeed at the instigation, of a group of young neo-fundamentalist activists who accompanied her to the school), apparently to make a deliberate challenge to the school's established but ethno-sensitive uniform rules, Sarika had worn her *kara* ever since she joined Aberdare Girls' High School. It took two years before the school reached the view that that wearing a *kara* was unacceptable.

But if Sarika was responsible for starting the ball rolling, she did so not by challenging the no-jewellery rule, (with which she had agreed to comply by removing her nose stud), but rather by bringing her teacher's attention to the racial abuse to which she had found herself subjected by her fellow pupils. Had the school made what Sarika and her parents considered to be an adequate response to their concerns, it seems quite possible that the matter might have ended there. However that was not to be. Although there is no way of demonstrating whether or not the two incidents were causally connected, it was only in the aftermath of her parents' visit to the school to reiterate their concerns about the school's response to their daughter's complaints about racial abuse – not that they appear to have achieved much by way of success – that the issue of Sarika's *kara* came to the fore.

Furthermore the grounds on which wearing a *kara* was ruled to be unacceptable appear to have been far from stable: at different times it appears to have been regarded as contravening the school's no-jewellery policy, its uniform policy (which may have been the same thing) and finally and perhaps most firmly its health and safety policy. In the face of these pressures Sarika appears to have done her best to conform. Hence in response to health and safety arguments she proposed what appears to have been a sensible solution: those in situations where wearing her *kara* might indeed raise significant issues of safety, that she should cover it with tape. However Sarika's proposed solution for coping with what her PE teacher had described as 'that thing' was rejected by the school.

By contrast when she was required to remove her nose stud Sarika agreed to comply – although with no little regret on her part. Nevertheless she is quite clear as to why she was prepared to concede on the nose-stud but not the *kara* (which she had, of course been wearing all along): namely that whilst wearing a nose-stud was merely a cultural convention, wearing a *kara* was part and parcel of her commitment to the Sikh religion. That was her sticking point.

6.3 *The religious status of the kara*

As was correctly noted in *Shabina Begum*, wearing a *jilbab* is not a necessary feature of Islamic dress: wearing *shalwar kameez* is equally acceptable. In other words the *jilbab* and the *shalwar kameez* are simply cultural variations on a theme, in that both adequately fulfil the religious requirement that post-pubertal Muslim women should take care to dress modestly when appearing in public. Except perhaps in the eyes of some neo-fundamentalist enthusiasts, the specific way in which this requirement is fulfilled has no theological significance whatsoever.

By contrast the status of the *kara* is quite different. A simple iron or stainless-steel bangle worn on the right wrist, it is one of the five distinctive bodily symbols which Guru Gobind Singh – the 10th and last of the Sikh Gurus – set down as symbols of membership of the *Khalsa*, an initiated body of devotees which he created on *Vaisakhi* day in Anandpur in 1699. All initiated Sikhs today wear five articles of faith, five *kakaars* or 5 Ks for short.

The subsequent somewhat tangled history of the *Khalsa* need not detain us here: all that we need to note is that these five symbols (*kes* - *uncut hair*, *kanga* - a wooden comb with which to groom and restrain the uncut hair, *kirpan* – a sword with which to act in the name of upholding social justice, by force if necessary, together with a *kara* – a bangle with which to

remind its holder that his or her actions should be restrained by a commitment to the maintenance of moral righteousness, and *kachhera* – a pair of shorts to similarly to restrain sexual activity) continue to be regarded as external signs of comprehensive inward commitment to the Sikh faith. It is also worth noting that the item of dress which external observers tend to regard as a key attribute of the Sikh faith, the turban (*pagri*) which is invariably worn to cover their uncut hair, is missing from this list. There are two reasons for this. First the *pagri* was a commonplace item of male dress in late seventeenth century Punjab; and secondly because the *pagri* is worn in order to provide protective cover for the *kes*, which Sikhs regard as particularly pure and sacred. It follows, therefore, that the *Kara* is one of the external symbols of *Khalsa* membership.

7 **The behavioural consequences of *Khalsa* membership**

7.1 *The roots of the Sikh Tradition*

The Sikh tradition traces its origin to Guru Nanak (1469 – 1539), a spiritually inspired charismatic poet and preacher who whose teachings are best understood as located in the devotional Sant tradition of *nirguna bhakti*, further influenced by the longstanding North Indian *sahajiyya* tradition of pantheistic mysticism, and last but not least the Sufi tradition of devotional Islam. The *nirguna bhakti* and *sahajiya* dimensions of Nanak's teachings have roots in indigenous Hindu tradition of India, whilst the Sufi tradition is primarily associated with Islam. Whilst Nanak deliberately placed himself outside any kind of formal religious classification, his followers identified themselves as Sikhs (the term is derived from the verb *sikhna*, to learn) and/or as Nanak *Panthis*. The followers of all of the many charismatic teachers within the Sant traditions of northern India likewise identify themselves in a similar fashion (e.g. Kabir Panthis, Dadu Panthis etc) and are commonly regarded as examples of the multiplicity of sectarian movements of which the Hindu tradition is composed. Up until the creation of the Sikh *Khalsa* by Guru Nanak's tenth and last successor Guru Gobind Singh (1666 – 1708), Sikhs were routinely referred to as Nanak Panthis. The ancestral heritage of the great majority of Sikhs is Hindu.

7.2 *The origins of the Khalsa*

The brotherhood of the *Khalsa* was created by the 10th and last Sikh Guru Gobind Singh in 1699 as a warrior elite within the Nanak Panth. The five initial recruits into the *Khalsa* were all male. Having been initiated into the brotherhood by drinking the *amrit* which had been prepared by Gobind Singh, the Guru instructed them give overt expression to their new

commitment by adopting the five *kakaars*, all of which were appropriate items of dress for those fulfilling their role as *sant sipahi*, warrior-saints.²

Times have changed greatly since the Khalsa was initially brought into being. Although its origins are still well remembered, the vast majority of contemporary members of the Khalsa regard themselves as spiritual rather than as physical warriors, with the result amongst other things that this elite section of the Sikh tradition has long been open to women as it is to men. But whilst some Sikh women who have taken *amrit* (and have thereby been initiated into the Khalsa) wear turbans tied in exactly the same way as male initiates, the vast majority do not. This does not mean that they regard their *kes* as any less sacred; they simply continue to follow standard female practice and keep their heads covered with a *chuni* (a loose headscarf).

However, by no means all followers of the Sikh faith feel able to maintain a comprehensive commitment to the high spiritual ideals demanded of those who have taken *amrit*, and of which five the external markers are a symbol of their faith and commitment. Indeed all but a small minority of Sikhs readily acknowledge that their commitment to the highest principles of the faith is less than comprehensive. Hence only a small minority of Sikhs are (or ever have been) fully initiated *amritdharis*.

The great majority of contemporary followers of the Sikh religion – and especially in the diaspora – do not fully conform to the strict requirements of Khalsa membership, not least by omitting one or more of these symbolic manifestations of their commitment to its principles laid down by Guru Gobind Singh. However, their failure does not mean that they have abandoned the Sikh faith, any more than those Christians who fail to fulfil the once-crucial requirement to replace meat with fish on Fridays are regarded as having placed themselves outside the Christian faith.

Regardless of whether or not they have taken *amrit*, the symbolism of the five Ks remains important to all Sikhs, no matter how they interpret his teachings. This stems from a belief that in the light of the persecution which their Gurus suffered, it is wholly inappropriate for them to hide their commitment to the faith. In sermons in the Gurudwara Sikh preachers regularly argue that in the light of the huge number of Sikh martyrs who were prepared to sacrifice their lives in defence of the Panth and its principles, the least that their

² McLeod, Hew (1989) *Who is a Sikh? The problem of Sikh identity*, Oxford: The Clarendon Press p.27 ff.

contemporaries can do is to remain unashamed of making a public expression of their commitment to the faith in defence of which so many of their predecessors were prepared to deliver the ultimate sacrifice. So it is that even the most unobservant of Sikhs invariably retain at least one of the Ks about their person, not just as a symbol of their inward and spiritual commitment to the teachings of the Gurus, but also as an explicit and *public* manifestation of their faith.

The most favoured vehicle through which to express that commitment is the *kara*. In my experience no-one in Britain who identifies themselves as a Sikh – no matter how lax their conformity with the most comprehensive behavioural precepts of the faith may be – fails to wear a *kara*. By contrast the majority of Sikhs resident in the UK have by now abandoned their beards, *kes* and turbans.

7.3 Observations of Joginder Singh, Jathedar of the Sri Akal Takht Sahib

Those instructing me have obtained an authoritative statement on these issues from the Jathedar (Leader, Custodian) of the Sri Akal Takht Sahib (the principal seat of Sikh religious authority) in Amritsar, which sets out the theological position of the Sikh tradition in considerable detail. I have attached his statement, both in the original Panjabi and in English translation as an appendix to this report.

The Jathedar's assessment of the theological significance of the *kara* is exceptionally clearly put:

It is normally worn on the right or dominant wrist Whenever a Sikh does something against the tenets of Sikhism, the Kara reminds him/her that he/she is a Sikh of the Guru and that his/her bad actions are prohibited. Hence, the Kara is a symbol that reminds a Sikh to undertake righteous action.

The Kara is an unbroken circle, which reminds a Sikh that the formless Supreme Being and is without a beginning or end. The Kara urges a Sikh to uphold truth and truthful action. It is for Sikh child to wear from childhood. As the Kara is a reminder of righteous action, it has to remain visible and worn at all times. It is against Sikh principles to remove the Kara, or to hide it instead of wearing it visibly. It is a counterproductive step towards a Sikh's spiritual and religious growth to not wear the Kara at all times.

The Kara is not a piece of jewellery or a fashion item. Instead, it symbolises the virtues and values of the Sikh religion.

In the light of the contents of the Jathedar's statement, as well as the analysis which I have set out above, it follows that it would be no more possible for Sarika (or any other Sikh) to comply with the school's requirement to remove her *kara* than it was for the Plaintiff in *Mandla's case* to remove his turban, and for very similar same reasons.

7.4 *In what sense is Sarika a Sikh? Arguments put forward by the school*

The defendant in these proceedings takes a different position on these issues, and seeks to argue that

- i. That unlike the turban the *kara* is not of religious significance, but merely a sign of cultural identity
- ii. There is no requirement that it be worn on the wrist (as opposed to carried in a pocket or bag, to which the school has no objection).
- iii. That Sarika's decision to wear the Kara was a matter of choice, and that since she is an uninitiated Sikh, no particular adverse consequence followed from her not being allowed to wear the *kara*.

In further defence of their position the governors have gone on to argue that they based their decision on their finding that the Kara is not a compulsory item for uninitiated Sikhs. It followed, in their view, that Sarika's decision to wear the Kara was a matter of choice, and that since she is an uninitiated Sikh, no particular adverse consequence followed from her not being allowed to wear the Kara.

Given that the school has raised these arguments, it becomes necessary to explore a number of interconnected conceptual and theological issues, including

- i. What is the distinction between an initiated and an uninitiated Sikh?
- ii. Who is a Sikh? In what sense, if any, are uninitiated Sikhs 'not Sikhs'?
- iii. In what sense is the adoption of all five *kakaars* a compulsory feature of the Sikh religion?
- iv. In a Sikh context, how far is it meaningful to argue that the freedom to manifest one's religion can reasonably be restricted to those actions which are deemed to be compulsory?

Although none of these questions allows an easy answer, I will nevertheless seek to respond to them as succinctly as possible.

7.5 *What is the difference between an initiated and an uninitiated Sikh?*

At one level the answer to this question is quite straightforward. Initiated Sikhs are those who have participated in the ritual of *amrit pahul*, which replicates the ritual performed by Guru Gobind Singh in 1699, when the *panj pyare* (five beloved) voluntarily stepped forward and offered to sacrifice their very beings to the wishes of the Guru. As indicated above the *amritdhari* (those who have consumed the *amrit*) form an elite within the Sikh community; and whilst once members of the Khalsa formed a military elite amongst the broader *Panth* (i.e. followers of the teachings of Guru Nanak), they are now for the most part regarded as a

spiritual elite. Membership of this elite has weighty consequences, since *amritdharis* are expected devote the totality of their beings to advancing the interests of the Khalsa.

Given the consequences of taking *amrit*, the prospect of initiation is not taken lightly. Since it is such a serious business, becoming an *amritdari* is normally regarded as a step only suitable for adults. Even then devout Sikhs often hold back from taking *amrit* on the grounds that they are not sufficiently worthy or spiritually committed to accept the responsibilities associated with such a step.

As a result only a small minority of Sikhs are fully fledged *amritdharis*; whilst no accurate statistics are available, it is unlikely that the proportion of Sikhs who have taken this step is in excess of 5% of the population as a whole, whether in the UK, in Punjab, or indeed globally.

If this figure appears remarkably low, it is worth emphasising that this estimate is for fully-fledged *amritdharis*. A substantially greater proportion of Sikhs might be mistaken for *amritdharis*, given that they adopt – and to be precise *manifest* – some of the external symbols of Khalsa membership, such as the *keś* and the *kara*. Those who leave their hair uncut and covered by a turban are commonly identified as *keśdhari*; but whilst all *amritdhari* are by definition *keśdhari*, only a minority of turbaned *keśdhari* are in fact *amritdhari*.

7.6 *Who is a Sikh? In what sense, if any, are non-initiated Sikhs not Sikhs?*

The Sikh tradition has proved to be no more immune from the contemporary rise in the forces of neo-fundamentalism than the Islamic, Hindu and Christian traditions. Neo-fundamentalist influence has precipitated not only an ever-increasing concern to establish precisely where the boundaries of orthodoxy – and most especially of behavioural orthodoxy – should lie, but also an ever-greater willingness to declare that those who are deemed to have transgressed the limits of those ever-narrowing boundaries as apostates. This has had several consequences. During the course of the past century the question 'who is a Sikh?' has become a focus of increasing active debate among Sikh socio-political activists, and this has in turn precipitated a huge volume of scholarly debate, not all of which is of the highest quality.

In 1986 – two years after the martyrdom of Sant Jarnail Singh Bhindranwale (the contemporary icon of Sikh neo-fundamentalism) in the course of the Indian Army's assault on the Golden Temple in Amritsar – Professor Hew McLeod was brave enough to accept an invitation to deliver the Radhakrishnan Memorial Lectures at the University of Oxford. Although illness prevented Professor McLeod from giving the lectures in person, they were in due course published by the Clarendon Press under the title *Who is a Sikh? The problem of Sikh identity*.

Whilst it should come as no surprise that Professor McLeod was still unable to resolve the question fully despite his lengthy discourse on the subject, his exploration of the issues – of which I will only attempt to give the baldest summary here – is most illuminating.

McLeod sets out the core of the problem in the opening pages of his analysis thus:

'What is Sikhism?' I asked a Sikh gentleman many years ago. 'How would you define it?' 'Sikhism', he replied, 'can be defined as the fatherhood of God and the brotherhood of man.' The answer is a popular one and it is interesting for several reasons. One reason is that it so clearly evokes the memory of Adolf Harnack and his famous Berlin lectures published as *What is Christianity?* My informant was quoting the words which conventionally summarise Harnack's book and which were so commonly used to describe the essence of Liberal Protestant belief. Sikhism is scarcely the same as Liberal Protestantism, but one can easily understand why the vague formula should exercise such an appeal. Dogma is discarded and friendly benevolence retained.

He then turns to more indigenous formulations of what it means to be a Sikh:

Concise or mnemonic summaries have been extensively used in the Sikh tradition and one early example retains its popularity to the present day. The earliest of all goes back to Guru Nanak himself, a saying consisting of nothing more than the three nouns *nam*, [remembrance of the Name (of God)], *dan* [charitable works on behalf of others], and *isnān*. [righteousness and purity]. The *nam dan isnān* formula neatly expresses the essence of Nanak's message and is easily remembered by those who acknowledged him as their Guru. (McLeod 1989: 1)

Moving on through his analysis the next formulation which McLeod highlights is one which was prepared by Kahn Singh Nabha, an influential late nineteenth century Sikh activist, and set out in his encyclopaedic account of the Gurus' teachings. In the course of so doing Kahn Singh set out a list of ten articles which he considered to be essential components of the Sikh faith:

Individual

1. To achieve mystical union with God (*Wahiguru*) through meditation on the divine Name.
2. To read the sacred scripture (*gurban*) daily and to reflect on the doctrines which it imparts.
3. To view all men as brothers without concern for caste or race, bestowing love on all and performing service without expectation of reward.
4. To secure the benefits of religion (*dharm*) while continuing to live the life of an ordinary layman.
5. To spurn ignorant notions of untouchability, magic, idol worship, and superstition; and to accept only the teachings of the Guru.

Corporate

6. To observe the Sikh code of conduct (*rahit*) in the bonds of unity.
7. To accept the corporate community (*panth*) as Guru and to serve it with loyal devotion.

8. To proclaim the Guru's teachings to the world.
9. To accept with affection all *Nanak-panthis* as adherents of the Sikh religion, regardless of their outward appearance; and to treat people with respect and sympathy.
10. To observe in gurudwaras and other shrines the rituals enjoined by the Gurus (Quoted in McLeod 1989: 2- 3).

Other than observing that this list neatly generates a list of ten commandments, two items in this list are of particular significance with respect to the current proceedings. Firstly article 9, which indicates that all *Nanak Panthis* (those inspired by Guru Nanak's teachings) should be accepted as adherents of the Sikh religion, *regardless of their outward appearance*; and secondly the injunction in Article 6, indicating that Sikhs should follow the Sikh code of conduct, the *rahit maryada*.

As McLeod goes on to note, Kahn Singh is steering a very careful course in these two articles, given that he was a leading figure in the *Singh Sabha* movement, whose principal objective was to revive and reorganise the Khalsa, thereby the better to differentiate Sikhs from Hindus. Hence even though Kahn Singh indicates that Sikhs should observe the code of conduct set out in the *rahit maryada*, whose contents were at that time being hotly debated by the proponents of greater differentiation of Sikhs from Hindus, article 9 rows back in the opposite direction. The *Nanak Panthis* to whom Kahn Singh refers were at that time primarily composed of followers of Nanak who had not followed Gobind Singh's injunction to adopt the rule of Khalsa, with the result – amongst other things – that they continued to cut their hair. Kahn Singh makes it quite clear that non-*keśdari* followers of Nanak (who were at that time also frequently described as *sahajdhari*) should also be accepted as followers of the Sikh religion.

That said, what about the *rahit maryada*? In fact the greater part of McLeod's analysis is concerned with the development of the *rahit maryada*, of which there have been many versions. After decades of intense debate, an agreed upon version of the *rahit* was published under the aegis of the Shromani Gurudwara Prabhandak Committee (SGPC) in 1950.

As McLeod observes, the *Sikh Rahit Maryada* begins by identifying a Sikh as:

any person who believes in Akal Purakh; in the ten Gurus (Guru Nanak to Guru Gobind Singh); in Sri Guru Granth Sahib, other writings of the ten Gurus, and their teachings; in the Khalsa initiation ceremony instituted by the tenth Guru; and who does not believe in any other system of religious doctrine.

As he goes on to comment

The new element is at once obvious. Amongst the items established by earlier convention there now appears the requirement that to be a Sikh one must believe in the Khalsa initiation (*amrit*). Does this mean that the Khalsa circle has finally been closed, that to be a Sikh one must be a member of the Khalsa?

At first sight this would seem to be the obvious conclusion to draw. A closer scrutiny will suggest, however, that such an assumption is still premature. The wording has obviously been chosen with great care, although it is certainly saying that the Khalsa form should be the standard version of the Sikh identity, it does not yet disqualify those who are outside the Khalsa.

One is required to 'believe in' (*jo ... nisacha rakhda*) the need to take *amrit*. This form of words, strictly interpreted, can be construed to mean that, whereas a devout Sikh will certainly be expected to take *amrit* and assume the full range of Khalsa obligations, it is not an essential step.

The essential requirement is that one should affirm the value of so doing. This will imply an intention to seek initiation at some time in the future, but it will not automatically deregister all who refrain from taking that step.

The form of words thus used to express the Khalsa aspect of Sikh identity is one which should accommodate the Kes-dhari Sikh without serious difficulty.

The Kes-dhari demonstrates his or her attachment to Khalsa norms by maintaining its most conspicuous feature and for this reason can presumably be regarded as someone who believes in the virtue of proceeding to full Khalsa membership.

The wording may also be construed as approval of the Sahaj-dhari form, provided only that the 'slow-adopter' definition is upheld and that the Sahaj-dhari can accordingly be viewed as someone progressing towards full participation in the Khalsa.

Some stricter members of the Khalsa do indeed interpret the *amrit* reference as a mandatory obligation, one which allows no evasion or fudging.

It appears, however, that this was not the view of Professor Teja Singh while drafting Sikh Rahit Maryada, and it was certainly not the interpretation accepted by Kahn Singh Nabha. (McLeod 1989: 95 - 6).

7.7 *In what sense is the adoption of all five kakaars a compulsory feature of the Sikh religion?*

Bearing Professor McLeod's analysis in mind, the answer to this question seems clear. At least as far as the vast majority of those committed to the norms of the Khalsa are concerned, taking *amrit*, and with it a necessary commitment to the adoption of all five *kakaars*, is at best an *aspirational* objective for non-*amritdharis*. However failure to fulfil that aspiration in no sense disqualifies a follower of Guru Nanak's teaching from identifying him or herself as, and being identified by others as being a Sikh – either in Kahn Singh Nabha's understanding of the issues, or indeed in the view of the vast majority of contemporary Sikhs.

7.8 *In a Sikh context how far is it meaningful to argue that the freedom to manifest one's religion can reasonably be restricted to those actions which are deemed to be compulsory?*

Despite Guru Nanak's fierce opposition to institutionalisation of religious practice on the ground that external rituals of all kinds are an unwelcome and unnecessary diversion from internal spiritual awareness, the *Nanak Panth* to which his teachings gave rise became steadily more institutionalised in the hands of his successors. Hence whilst the essence of Nanak's teachings continues to illuminate Sikh spiritual practice to this day, the creation of the Khalsa by Guru Gobind Singh gave rise to a radical new dimension within the tradition: one which sought to provide a concrete institutional frame, as well an overt physical manifestation to its followers' spiritual commitments.

Nevertheless as the discussion above serves to demonstrate, there is – and always has been – a considerable degree of tension between those who have continued to be inspired by the undiluted essence of Nanak's teaching and those who insist that Nanak's injunctions have been superseded (or as they themselves would argue, have been further illuminated) by Guru Gobind Singh's subsequent injunctions. As in any theological debate, there is no objective way of determining which of these two perspectives – as well as those delivered by those standing at various points along a spectrum of opinions between these two extremes – is more correct. Believers believe what they believe.

The Sikh tradition is clearly not unique in this respect. However the issue of orthodoxy is rendered even more problematic in Sikh contexts, given that that the tradition has no formal priestly hierarchy to whom questions about matters of orthodoxy can reliably be addressed. Not only does each congregation (*sangat*) consider itself to be autonomous, but as far as spiritually-minded Sikhs are concerned, the ultimate goal of *sahaj* is by definition an inward and hence of necessity a *personal* quest. To be sure the contemporary Sikh tradition sustains an institutional structure – in the form of the SGPC and the Gurudwaras which it controls; however by common consent the operation of these institutions is politically rather than spiritually driven, and consequently marked by constant contestation and dissent.

To sum up: in the contemporary world the followers of Nanak's teachings – no less than those inspired by the teachings of Jesus, Mohammed or the Buddha – interpret the founders' message in a variety of different ways. In each case this precipitates a spectrum of behavioural consequences. Just where individual Sikhs place themselves along such a spectrum, and hence the extent to which they adopt the five *kakaars*, is of necessity a matter

of personal choice. Whilst the overt adoption of the full set is an aspirational ideal for many (but by no means all) of those inspired by Nanak's teachings, there is nevertheless one symbol which is virtually universally adopted by Nanak *Panthis* – and hence by all Sikhs – as an manifestation of their commitment to the Panth: wearing a *kara* on their right wrist at all times.

8 Conclusion

8.1 The Status of the Kara

In the light of all this I will bring this report to a conclusion by offering my opinion on the key points which the school has advanced in its defence:

- i. That unlike the turban the *kara* is not of religious significance, but merely a sign of Sikh cultural identity
- ii. That in Sarika's case, wearing a *kara* is not a religious requirement; there is no requirement that it *must* be worn by anyone other than initiated Sikhs (which the Claimant is not)
- iii. There is no requirement that it be worn on the wrist (as opposed to carried in a pocket or bag, to which the school has no objection).
- iv. That Sarika's decision to wear the Kara was a matter of choice, and that since she is an uninitiated Sikh, no particular adverse consequence followed from her not being allowed to wear the *kara*.

With respect to the first point I would argue that the status of the turban and the *kara* is for the Sikhs precisely the reverse of that advanced by the school. As far as the Sikhs are concerned their key *religious* symbols are the five *kakaars*, which include the *kara* but not the turban (*pagri*). The key religious symbols as far as the head is concerned are the uncut hair, *keś*, and its restraining comb (*kanga*), whilst the turban – which is tied in a distinctive style – is worn to afford protection to the inherently sacred *keś* which lies beneath it. Hence if distinctions are to be made, the *kara* is ultimately of greater religious significance to the Sikhs than the turban, even though the turban has come to be regarded by outsiders as the most overt mark of Sikh ethnic identity. To be sure the *kara* also serves a similar purpose, as the Jathedar makes clear; but as he also goes out of his way to emphasise, whilst the *kara* may at first sight a much less overt marker of ethnic alterity than the *keś*, it is in many ways of greater symbolic significance, since it reminds its wearer that in the course of every physical action they might make, they should maintain “constant vigilance against temptation, which is key in avoiding sin and maintaining an honest, productive life”. Hence if one looks back to *Mandla*, Lord Fraser was precisely right when he said that “the turban is

regarded by Sikhs as a sign of their *communal* identity” [my italics]. In doing so he carefully avoided using the term ‘religious’.

On the second point whilst Sarika may not have taken *amrit*, as is the case with the vast majority of Sikhs, the expectation of that vast majority is that they will and should continue at the very least to wear a *kara*, just as the Jathedar indicates. It is also worth noting in passing that since the turban is usually only worn by male Sikhs, it follows that even if Sarika had taken *amrit*, the *kara* would still have been the only overt sign of her additional level of commitment to the faith.

Thirdly the whole point of the five *kakaars* is that they are overt bodily symbols of the commitment of the entire being of the devotee to the faith. The placing of the *kara* on the right wrist is therefore part and parcel of the whole exercise. It is there as a visible reminder that all physical actions of its wearer should both be guided and restrained by *dharma* (morality); it cannot fulfil this role when tucked away in a bag or a pocket.

Fourthly, in the light of the analysis I have set out in Section 7, I would also take issue, with the school's assertions that since Sarika is not an initiated Sikh, her decision to wear the Kara was a matter of choice, and no particular adverse consequences followed from her not being allowed to wear a *kara*.

There is no dispute that the *kara* is one component of the five *kakaars* which all *amritdhari* Sikhs vow to wear at all times. Nevertheless it is equally clear that wearing a *kara* is also one of the most widely deployed manifestations of the Sikh faith. Wearing it is in no sense a monopoly of members of the *amritdari* spiritual elite. Rather it is equally routinely worn *keśdharis* and *sahajdharis*, and indeed by all those Sikhs – who in a UK context make up the majority of the locally-resident *Panth* – who make no other overt physical manifestation of their commitment to the Sikh tradition than keeping one on their right wrist.

They do not do so to make a fashion statement, but rather as both a manifestation of, and in remembrance of their commitment of the teachings of Guru Nanak. Hence as the Jathedar of the Shri Akal Takht Sahib puts it:

It is worn on the right or dominant wrist ... to remind him/her that he/she is a Sikh of the Guru and that his/her bad actions are prohibited. Hence, the Kara is a symbol that reminds a Sikh to undertake righteous action an unbroken circle, which reminds a Sikh that the formless Supreme Being and is without a beginning or end. The Kara urges a Sikh to uphold truth and truthful action.

It is for Sikh child to wear from childhood. As the Kara is a reminder of righteous action, it has to remain visible and worn at all times.

8.2 Health and Safety issues

Matters of health and safety are manifestly beyond the scope of my expertise as an anthropologist. Hence I only have two brief comments to make on this subject. First, I note that Sarika offered to place a tape over her *kara* in those lessons where an exposed bangle was in some way a demonstrable danger either to herself or to others in any kind of laboratory or experimental procedure. Secondly no matter how strongly one of Sarika's PE teachers may have objected to her wearing a *kara*, it is worth noting that Monty Panesar, the noted spin bowler, regularly wears a *kara*, and continues to do so even when playing for England in Test matches and, I have little doubt (although I do not know) continues to do so while training.

I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.



Roger Ballard
6th May 2008

ROGER BALLARD CV

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1. Qualifications

1966 B.A. in Social Anthropology, University of Cambridge
1970 Ph.D. in Sociology, University of Delhi.

2. Membership of Professional Bodies

Fellow of the Royal Anthropological Institute
Member, Association of Social Anthropologists
Member, Institute of Expert Witnesses

3. Appointments

2002 – Director, Centre for Applied South Asian Studies, University of Manchester
1989 – 2002 Senior Lecturer in Comparative Religion, University of Manchester
1975 – 1989 Lecturer in Race Relations, University of Leeds.
1971 – 1975 Research Associate, SSRC Research Unit on Ethnic Relations, University of Bristol.

4. Fieldwork Experience

India (District Jullundur): 1967-69 (18 months), 1972-73 (6 months), 1981 (6 weeks), 2000 (3 weeks)
Pakistan (District Mirpur) 1981 (6 weeks), 1984-85 (12 months), 2000 (3 weeks)
Bangladesh (District Sylhet) 2003 (1 week)
UK Continuous contact (although of varying intensity) with Punjabi communities throughout the Pennine region during the course of the past 20 years

5. Languages spoken

Punjabi, Urdu

6. Research Fellowships and Grants

1996 – 1997 *Reconceptualising race and ethnicity in Britain* Leverhulme Research Fellowship
1999 – 2002 *Kinship, entrepreneurship and the transnational circulation of assets*, supported by ESRC as a component of the Transnational Communities Programme

7. Recent consultancies

2003 *The Current Demographic Characteristics of the South Asian Presence in Britain: an analysis of the results of the 2001 Census* Foreign and Commonwealth Office
2003 *The economic impact of migrant remittances* Department for International Development
1999 Equal Treatment Advisory Committee, Judicial Studies Board (to contribute to second edition of the JSB's *Equal Treatment Benchbook*).

8. Professional activities

In 2003 I took early retirement from my teaching post in the University of Manchester in order to service an ever-growing number commissions to act as a Consultant Anthropologist. In doing so I have accepted instructions from a variety of central and local government agencies, but the bread and butter of my business has turned out to be the preparation of expert reports for use in legal proceedings in which members of Britain's South Asian minorities have found themselves caught up, and in which social, cultural, linguistic, familial and religious issues are in some way at issue. I have now prepared over 400 such reports for use in the criminal, civil, immigration and family courts. Much of the material in my current academic publications is now drawn from my experience of acting as an expert witness.

9. Selected Publications

- 2008 "Minority professionals' experience of marginalisation and exclusion: the rules of ethnic engagement" in Eade, John (ed) *Advancing Multiculturalism, Post 7/7* Cambridge: The Scholar's Press pp 73 - 96.
- 2007 "Common Law and Common Sense: Juries, Justice and the Challenge of Ethnic Plurality" in Shah, P. (ed) *Socio-Legal Perspectives on Ethnic Plurality*. Leiden: Martinus Nijhoff. p. 69 -106.
- 2007 "Living with Difference: a forgotten art in urgent need of revival?" in Hinnells, J.R. (ed) *Religious Reconstruction in the South Asian Diasporas: From one generation to another* London: Palgrave Macmillan p. 265 - 301
- 2006 "Ethnic diversity and the delivery of justice: the challenge of plurality" in Shah, Prakash (ed) *Migrations, Diasporas and Legal Systems in Europe* London: Routledge Cavendish p. 29 – 56
- 2003 "The South Asian Presence in Britain and its Transnational Connections" in Singh, H. and Vertovec, S. (eds) *Culture and Economy in the Indian Diaspora*, London: Routledge Pages 197 - 222
- 2002 "Race, Culture and Ethnicity" in Holborn, M. (ed) *New Developments in Sociology*, The Causeway Press.
- 2000 "Religious reconstruction in an alien environment: the Sikh tradition in Britain", in Coward, H. and Hinnells, J.R. (eds), *The South Asian religious diaspora in Britain, Canada and the United States* New York: SUNY Press. pages 193 - 124
- 2000 "Panth, Kismet, Dharm te Qaum: Four dimensions in Punjabi Religion" in Singh, Pritam and Thandi, Shinder (eds.) *Punjabi Identity in a Global Context* Delhi, Oxford University Press, p 7-37
- 1994 *Desh Pardesh: The South Asian Presence in Britain*. London: C. Hurst and Co., and Vancouver: University of British Columbia Press, pp. 297.
- 1994 "The Evolution of the Sikh Community in Britain", (review article) *International Journal of Punjab Studies*, Vol. 1, pp. 297 – 302
- 1993 "The Politicisation of Religion in Punjab", in Rohit Barot (ed.), *Religion and Ethnicity: Minorities and Social Change in the Metropolis*, The Hague: Kok Pharos pp. 80 – 95
- 1992 "New Clothes for the Emperor? The Conceptual Nakedness of the British Race Relations Industry", in *New Community*, Vol. 18 481 – 492
- 1990 "Migration and Kinship: the differential effect of marriage rules on the process of Punjabi migration to Britain", in Clarke, C. Peach, C. and Vertovec, S. (eds.), *South Asians Overseas: Contexts and Communities*, Cambridge: Cambridge University Press pp. 219 – 249
- 1984 "The Bitter Drama of the Sikhs", in *New Society*, 21st June pp. 464 – 4
- 1982 "South Asian Families: Structure and Process", in Rapaport, R. Fogarty, M. and Rapaport, R. (eds), *Families in Britain*, London: Routledge. pp. 179 - 204
- 1979 "Ethnic Minorities and the Social Services" in Khan, V.S. (ed.), *Minority Families in Britain*, London: Macmillan. Pp. 146 – 164
- 1977 (with Catherine Ballard) "The Sikhs", in Watson, J. L. (ed.), *Between Two Cultures: Migrants and Minorities in Britain* Oxford: Blackwell. pp. 21 – 56
- 1973 "Family Organisation amongst the Sikhs in Britain", in *New Community*, Vol. 2. pp. 12-23