

## COMMENT

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# A Critique of the Decision in *Conisbee* that Vegetarianism Is Not ‘A Belief’

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*Mr G Conisbee v Crossley Farms Ltd & Ors* [2019] ET 3335357/2018 was a preliminary hearing to determine whether or not vegetarianism was ‘capable of satisfying the requirement and definition of being a philosophical belief (protected characteristic) under the Equality Act 2010’.<sup>1</sup> Employment Judge Postle held that vegetarianism did not amount to a philosophical belief, comparing it to veganism. The case is the latest in the confusing and contradictory case law on the meaning of the term ‘religion or belief’ under English law.<sup>2</sup>

This comment contends that not only was the application of the law by the Employment Tribunal suspect but that, at times, the articulation of the law was also questionable. It falls into three sections, closely analysing and critiquing three parts of the judgment in turn. The first and second sections examine the arguments for both sides (as articulated in the judgment), since these explain the approach taken by the tribunal. The final part then explores the conclusions reached by Employment Judge Postle. Because this section of the judgment is rather cursory, detailed analysis of what the tribunal says about the arguments of counsel for both sides is needed in order to understand the

1 *Mr G Conisbee v Crossley Farms Ltd & Ors* [2019] ET 3335357/2018, para 1.

2 See R Sandberg, ‘Clarifying the definition of religion under English law: the need for a universal definition?’, (2018) 20 Ecc LJ 132–157.

decision given. All three parts of the judgment contain questionable statements of law and the applications of law. This suggests that the decision needs to be appealed, because it has the potential to create further confusion in an area of the law which is already mired with uncertainty.

Before exploring the relevant parts of the judgment, a few words are appropriate on the background of the case. The respondents did not dispute that Mr Conisbee was a vegetarian, nor that he had a genuine belief in his vegetarianism; however, they argued that simply being a vegetarian could not in itself constitute a protected characteristic.<sup>3</sup> Mr Conisbee had been employed by Crossley Farms as a waiter/barman from April 2018 until he resigned on 30 August 2018 complaining of discrimination on the grounds of religion and belief, together with a claim for notice pay.<sup>4</sup> The basis of his complaint was his allegation that in June or July 2018 the third respondent had called him 'gay' because he was a vegetarian.<sup>5</sup> There were also various contested procedural points. What follows, however, is concerned solely with the issue of vegetarianism as a protected characteristic – or not.

## THE ARGUMENTS FOR THE CLAIMANT

On the vegetarianism point, the first submission on behalf of Mr Conisbee was summarised by the tribunal as follows:

a finding to say that the Claimant's vegetarianism is not a protected characteristic would not defeat his claim. This is because, harassment merely needs to 'relate' to a protected characteristic (together with the other components of s.26) and as such the victim need not possess the protected characteristic to succeed. Miss Bewley submits this [is] made clear in the examples given at s.99 of the explanatory notes of the Equality Act 2010.<sup>6</sup>

The first sentence is ambiguous. The issue of whether vegetarianism is a protected characteristic was precisely what the case was about and would determine whether or not the claimant had a claim for discrimination. The second sentence is non-controversial but does not follow from the first. It is settled law that harassment merely needs to 'relate' to a protected characteristic and it is also settled law that the victim does not have to possess the protected characteristic in order to succeed.<sup>7</sup> This would be relevant if the claimant was alleging

3 *Conisbee*, para 2.

4 *Ibid*, para 7.

5 *Ibid*, para 56.

6 *Ibid*, para 14.

7 For example, in *Austin v Samuel Grant (North East) Ltd* [2011] ET/2503956/11, an employment tribunal found that the claimant had been harassed on the grounds of his sexual orientation when he was

discrimination on grounds of sexual orientation but it is difficult to see its relevance in relation to alleged religion or belief discrimination because the claimant was indeed a vegetarian. The examples given in the Explanatory Notes of the Equality Act, paragraph 99 make it clear that unwanted conduct which is related to a protected characteristic constitutes harassment where it creates an intimidating environment for those who do not share that protected characteristic.<sup>8</sup> Again, the relevance of this to this case is questionable. The definition of harassment under section 26 of the Act makes it plain that for harassment to have taken place there must be ‘conduct related to a relevant protected characteristic’. For harassment on grounds of religion or belief, therefore, a finding that vegetarianism is incapable of constituting a philosophical belief will defeat the claim. The same is true for a claim of discrimination: there needs to be a protected characteristic.

The arguments on behalf of the claimant continued with the assertion that the Explanatory Notes to the 2010 Act made it clear that a definition of philosophical belief under the Act was a broad one in line with the rights granted under the European Convention on Human Rights (ECHR); and paragraph 52 of the Notes clarified what amounted to a protected characteristic under the category of philosophical beliefs as having the following criteria:

- a. The belief must be genuinely held and not a mere opinion or viewpoint on the present state of information available;
- b. The belief must be a weighty and substantial aspect of human life and behaviour;
- c. The belief must attain a certain level of cogency, seriousness, cohesion and importance and be worthy of respect in a democratic society; and
- d. The belief must be compatible with human dignity and not conflict with the fundamental rights of others.<sup>9</sup>

These statements of law are correct, though the quasi-legal authority bestowed upon the explanatory notes is troubling, especially since neither the explanatory notes nor the tribunal noted that these four tests actually originated in the Employment Appeal Tribunal’s judgment in *Grainger*.<sup>10</sup>

referred to as ‘homosexual’ and ‘gay’ by colleagues – even though he was not – after he had told them that he did not like football. It held that, despite him not being homosexual, that was not required under the Equality Act 2010 and that his ‘perceived’ homosexuality meant that the Act protected him. Similarly, in *Otomewo v The Carphone Warehouse Ltd* [2011] ET/2330554/2011, when two of the claimant’s work colleagues used his iPhone without his permission and updated his Facebook page to read, ‘Finally came out of the closet. I am gay and proud’, an employment tribunal held that their action amounted to harassment on grounds of sexual orientation.

8 So, ‘a white worker who sees a black colleague being subjected to racially abusive language could have a case of harassment if the language also causes an offensive environment for her’: Equality Act 2010, Explanatory Notes, para 99.

9 *Conisbee*, para 15.

Counsel for the claimant argued that vegetarianism was clearly a weighty and substantial aspect of human life and behaviour, for several reasons. Many vegetarians – including the claimant – were genuine in their belief and there was no sensible argument to suggest that the belief system behind vegetarianism was made up or fanciful. Equally, no-one could sensibly deny that many vegetarians based their genuine belief on the premise that it was wrong and immoral to eat animals and to subject them and the environment to cruelty and perils of farming and slaughter; and that that was not a mere opinion or viewpoint based on the present state of information available but a serious belief integral to their way of life. Finally, a fifth of the world’s population was vegetarian. The belief therefore attained a high level of cogency, seriousness and importance and was certainly worthy of respect in a democratic society – and no-one could sensibly argue that it was incompatible with human dignity or conflicted with other fundamental rights.<sup>11</sup>

Three cases were cited in support of that contention:<sup>12</sup>

- i. *Williamson*,<sup>13</sup> in which the issue was whether or not Christian parents could delegate their right to inflict corporal punishment on their children to their children’s teachers – in particular, Lord Walker of Gestingthorpe’s statement at paragraph 55 that ‘Pacifism and vegetarianism and total abstinence from alcohol are uncontroversial examples of beliefs which fall within Article 9’;
- ii. *Grainger*, in which a belief in human-made climate change was held to be capable of qualifying as a philosophical belief; and
- iii. *Redfearn*,<sup>14</sup> in which the European Court of Human Rights held that the UK was obliged to provide for the protection of political beliefs – in Mr Redfearn’s case, his dismissal after being elected as a Bradford City Councillor for the British National Party – regardless of how shocking or disturbing those beliefs might be.

Although counsel for the claimant was correct to assert, citing *Eweida v UK*,<sup>15</sup> that employment tribunals have drawn on jurisprudence from the European Court of Human Rights on the issue,<sup>16</sup> the assertion that ‘the definition of S.4 characteristics is aligned with the rights guaranteed under the ECHR’ is not quite right. While the Equality Act 2010 defines ‘belief’ as ‘any religious or

10 *Grainger PLC v Nicholson* [2009] UKEAT 0219/09/0311 at para 24. In *Grainger*, they were articulated as five tests, with the first test given here split into two.

11 *Ibid*, para 16.

12 *Ibid*, paras 20 and 21.

13 *R (Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15.

14 *Redfearn v The United Kingdom* App no 47335/06 (ECtHR, 6 November 2012).

15 *Eweida v UK* App nos 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 15 January 2013).

16 *Conisbee*, para 19.

philosophical belief' or lack of such belief and therefore requires non-religious beliefs to be philosophical, by contrast, Article 9 of the ECHR does not distinguish between philosophical and non-philosophical beliefs. Moreover, it is now unclear as to when political beliefs are protected under discrimination law.<sup>17</sup> In *Kelly v Unison* it was suggested that a distinction could be drawn between 'political beliefs which involve the objective of the creation of a legally binding structure by power or government regulating others', which are not protected, and beliefs that 'are expressed by his own practice but where he has no ambition to impose his scheme on others', which may be protected.<sup>18</sup> Possibly to confuse matters even further, an employment tribunal held recently in *McEleney*<sup>19</sup> that the claimant's belief in Scottish independence amounted to a philosophical belief within the meaning of section 10(2) of the Equality Act 2010 and could be relied upon as a protected characteristic for the purposes of claiming direct discrimination under section 13.

#### THE ARGUMENTS FOR THE RESPONDENTS

On behalf of the respondents, counsel proceeded to elucidate the legal definition of a philosophical belief and here expressed it as requiring nine tests. They were as follows:

- a. The belief must be genuinely held;
- b. It must be a belief, not an opinion or viewpoint;
- c. It must be a belief as to a weighty and substantial aspect of human life and behaviour;
- d. It must attain a certain level of cogency, seriousness, cohesion and importance;
- e. It must be worthy of respect in a democratic society and not be incompatible with human dignity and not conflict with the fundamental rights of others;
- f. It must have a similar status or cogency to religious belief;
- g. It need not be shared by others;
- h. Whilst support of a political party does not in itself amount to a philosophical belief, a belief in a political philosophy or doctrine might qualify;
- i. A philosophical belief may be based on science.<sup>20</sup>

<sup>17</sup> See further R Sandberg, 'Are political beliefs religious now?', (2015) 175 *Law and Justice* 180–197.

<sup>18</sup> *Kelly v Unison* [2009] ET 2203854/08 (22 December 2009) at para 114.

<sup>19</sup> *Mr C McEleney v Ministry of Defence* [2018] ET S/4105347/2017.

<sup>20</sup> *Conisbee*, para 25.

The first four tests are as laid out in *Grainger*, while the remainder seek to distil sentiments expressed in the case law – but the extent to which some of these have become firm requirements may be questioned.

The most objectionable test is (f). It is true that the Strasbourg case law on Article 9 and various domestic courts and tribunals have said that a belief needs to be cogent.<sup>21</sup> Indeed, in this respect (f) repeats (d). However, there is no legal requirement that a philosophical belief must have a ‘similar status’ to a religious belief.<sup>22</sup> For the purpose of discrimination law, the requirement that philosophical beliefs must be similar to religious ones has been removed: it had been included in the Employment Equality (Religion or Belief) Regulations 2003 but was removed by the Equality Act 2006. The only evidence to the contrary can be found in a House of Lords debate in which the then Minister of State for Home Affairs, Baroness Scotland of Asthal, said that

the term ‘philosophical belief’ will take its meaning from the context in which it appears; that is, as part of the legislation relating to discrimination on the grounds of religion or belief. Given that context, philosophical beliefs must always be of a similar nature to religious beliefs.<sup>23</sup>

Counsel for the Respondents contended that the claim that vegetarianism is a belief ‘fails on one or some of all of b, c, d and f above’.<sup>24</sup> In respect of (b), it was argued that Mr Conisbee’s assertions in his witness statement that it was his belief that ‘animals should not be bred, caged or killed for the purposes of food’ and that ‘I happen to believe that the environment would be a better place without slaughtering animals for food’ were merely an opinion or viewpoint.<sup>25</sup> *McClintock*<sup>26</sup> was quoted as holding that, where a Justice of the Peace objected to adoption by same-sex couples but ‘had not as a matter of principle, rejected the possibility that such adoptions could ever be in a child’s best interest’, then that amounted to an opinion rather than a belief. However, the facts in *McClintock* seem distinguishable from the witness statement; as quoted, it does not support the contention that Mr Conisbee’s convictions on vegetarianism were not principled, nor was there any evidence that he had even hinted that his mind was not completely made up and that he had conceded that there was a rationale for eating meat.

21 For instance, in *Williamson*, Lord Nicholls said at para 23 that ‘the belief must also be coherent in the sense of being intelligible and capable of being understood’.

22 Lord Nicholls in *Williamson* said that in relation to Article 9 a non-religious belief ‘must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs’: *ibid*, para 24.

23 HL Deb 13 July 2005, vol 673, col 110.

24 *Conisbee*, para 26.

25 *Ibid*, para 28.

26 *McClintock v Department of Constitutional Affairs* (2007) UKEAT/0223/07/CEA.

In respect of (c), counsel argued that vegetarianism failed the ‘weighty and substantial aspect of human life’ test because it was not about human life and behaviour but about preserving the life of animals and fish.<sup>27</sup> This also seems to miss the point. Both religious and philosophical beliefs can be about things other than human life. This requirement relates not to the content of a belief but to the importance of the conviction to humans. A belief about the environment, nature or animals should not fail the test simply because the content of the belief does not directly concern humans. That would be absurd. Indeed, vegetarianism does concern humans: it is the conviction that humans should not eat meat. The recent report of the Intergovernmental Panel on Climate Change stated that ‘Livestock on managed pastures and rangelands accounted for more than one-half of total anthropogenic N<sub>2</sub>O emissions from agriculture in 2014’ and that:

Balanced diets, featuring plant-based foods, such as those based on coarse grains, legumes, fruits and vegetables, nuts and seeds, and animal-sourced food produced in resilient, sustainable and low-GHG emission systems, present major opportunities for adaptation and mitigation while generating significant co-benefits in terms of human health.<sup>28</sup>

In respect of (d), counsel contended that it also failed the test of cogency, seriousness and importance. Here a distinction was drawn between vegetarianism and veganism. Counsel submitted that while

such arguments might be advanced for veganism (where the belief held by each vegan is fundamentally the same) there are many different reasons for why one might be a vegetarian. Accepted reasons might be, a respect for sentient life, moral concern about the raising and slaughter of animals, health/diet benefits, environmental concerns, economic benefit and/or personal taste. Therefore, as there are at least six different reasons for why one might be a vegetarian there is no cogency or cohesion in that belief. Furthermore, many people might practice [*sic*] vegetarianism at some stage in their life but not maintain the practice. For many, the practice is neither serious nor important.<sup>29</sup>

<sup>27</sup> Ibid, para 29.

<sup>28</sup> Intergovernmental Panel on Climate Change, ‘Climate change and land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems’, 2019, pp 11 and 26, available at <[https://www.ipcc.ch/site/assets/uploads/2019/08/Edited-SPM\\_Approved\\_Microsite\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2019/08/Edited-SPM_Approved_Microsite_FINAL.pdf)>, accessed 10 October 2019.

<sup>29</sup> Ibid, para 30.

Counsel for the respondents had recited the *Oxford English Dictionary* definition of a vegetarian as ‘a person who does not eat meat or fish and sometimes other animal products especially for moral, religious or health reasons’, contrasting this with a vegan, a ‘person who does not eat or use animal products’.<sup>30</sup> This led counsel to summarise the difference like this: ‘vegetarianism is genuinely accepted to be the practice of not eating meat or fish’ while ‘veganism is a practice of abstaining from both the consumption of and use of animal products’.<sup>31</sup> Although such a distinction can be made, it is questionable whether there is a need to distinguish the two in defining vegetarianism.<sup>32</sup> Moreover, it can be questioned whether this distinction means that veganism meets the test, but vegetarianism does not. It is difficult, though not impossible, to see why it might be thought intellectually inconsistent to be against the slaughter of animals for food but to drink milk and eat butter. The objection of vegetarians is, surely, to raising animals specifically for slaughter, and dairy cattle are raised for milk, not for meat; but, as every listener to *The Archers* knows, regular calving is necessary for continued annual lactation and most of the bull calves from a dairy herd go to the abattoir.

This reasoning also applied to (f), in which counsel arguing that vegetarianism was ‘some way removed from veganism’ and was a far less serious belief – and therefore fell short of attaining the level of cogency or seriousness similar to a religious belief.<sup>33</sup>

Finally, counsel argued that Parliament had not intended that vegetarianism should be a protected characteristic. In spite of the opinion of the Equalities and Human Rights Commission to the contrary, the Government Equality Office had issued a statement to the effect that the Government did not share the view that climate change or veganism were religious beliefs, while conceding

30 Ibid, para 24. It is not stated which edition of the *OED* was used to provide these definitions. The definitions in the online version are slightly different but come to the same conclusion: vegetarianism is ‘the principles of practice of vegetarians; abstention from eating meat, dish, or other animal products’; a vegetarian is ‘a person who abstains from eating animal food and lives principally or wholly on a plant-based diet, esp, a person who avoids meat and often fish but who will consume dairy products and eggs in addition to vegetable food’. Veganism is ‘the beliefs of practice of vegans; abstention from or avoidance of all food or other products of animal origin’; a vegan is ‘a person who abstains from all food of animal origin and avoids the use of animal products in other forms’. It is interesting that the *OED* online refers to vegetarianism as a practice and veganism as a belief.

31 *Conisbee*, para 24.

32 According to the Vegetarian Society and the European Vegetarian Union, a vegetarian is someone who does not eat any meat, poultry, game, fish, shellfish or by-products of animal slaughter. Some vegetarians avoid all animal flesh but consume dairy products and eggs; some avoid animal flesh and eggs but consume dairy products; and some avoid all animal products except eggs. Vegans, on the other hand, avoid *all* animal and animal-derived products. For further details, see European Vegetarian Union, ‘EVU position paper: definitions of “vegan” and “vegetarian” in accordance with the EU Food Information Regulation’, 2018, available at <[https://www.euroveg.eu/wp-content/uploads/2018/08/EVU\\_PP\\_Definition.pdf](https://www.euroveg.eu/wp-content/uploads/2018/08/EVU_PP_Definition.pdf)>, accessed 10 October 2019.

33 *Conisbee*, para 31.



that interpretation was a matter for the courts;<sup>34</sup> further, Baroness Warsi had said in the House of Lords that ‘To include cults and other lifestyle choices such as vegetarianism and veganism is to make something of a farce of the debates that we had.’<sup>35</sup> It is worth comparing this with Lord Walker’s remarks in *Williamson* that vegetarianism was an uncontroversial example of a belief that attracted the protection of Article 9 ECHR<sup>36</sup> – though, admittedly, his comment was *obiter* and not central to the issue before the court: the right or otherwise of parents to give permission for teachers to beat their children for misbehaviour. We would contend that neither the asides of Lord Nicholls nor the views of Baroness Warsi quoted above are definitive in dealing with this issue.

### THE TRIBUNAL’S CONCLUSIONS

In deciding that vegetarianism was not ‘capable of satisfying the requirement and definition of being a philosophical belief under the Equality Act 2010’, the employment tribunal applied the four tests provided by counsel for the claimant as outlined in paragraph 52 of the Explanatory Notes to the Equality Act (and as originally laid out in *Grainger*). However, the tribunal also applied test (f) as put forward by the respondents.

It was accepted that Mr Conisbee was a vegetarian and that he had a genuine belief in his vegetarianism.<sup>37</sup> However, the tribunal considered that his ‘viewpoint that the world would be a better place if animals were not killed for food ... does not seem to be a belief capable of protection’. Employment Judge Postle stated that ‘it is simply not enough to have an opinion based on some real, or perceived, logic’. It is unclear what was meant by this. As discussed above, Mr Conisbee seems to be in a different position from that of Mr McClintock in the case which distinguished opinions from beliefs. There is no suggestion here that Mr Conisbee was continuing to weigh up the evidence. Rather, Employment Judge Postle seems to be questioning and critiquing the logic of Mr Conisbee’s conviction and deeming it not worthy of protection.

That is improper. It has long been established that, while courts may be concerned with whether or not the claim of religious belief was made in good faith, they are not concerned whether the religious belief professed is ‘good’ or ‘bad’ in terms of judging its validity.<sup>38</sup> As Lady Hale put it in *Williamson*, it is not the role of the court

<sup>34</sup> *Ibid*, para 33.

<sup>35</sup> HL Deb 23 March 2010, vol 718, col 853, cited in *Conisbee*, para 34.

<sup>36</sup> *Williamson*, para 55.

<sup>37</sup> *Conisbee*, para 39.

<sup>38</sup> R Sandberg, ‘Controversial Recent Claims to Religious Liberty’ (2008) 124 LQR 213, 214.

to consider the nature of religion, still less is it required to consider whether a particular belief is soundly based in religious texts. The court's concern is with what the belief is, whether it is sincerely held, and whether it qualifies for protection under the Convention.<sup>39</sup>

Employment Judge Postle then found that the requirement that a belief must be a weighty and substantial aspect of human life and behaviour was not met:

The Tribunal asks itself, is the belief weighty and a substantial aspect of human life and behaviour? Here the Tribunal endorses ... the Respondent's argument that vegetarianism is not about human life and behaviour, it is a lifestyle choice and in the Claimant's view believing that the world would be a better place if animals were not killed for food. Clearly an admirable sentiment, but cannot altogether be described as relating to a weighty and substantial aspect of human life and behaviour.<sup>40</sup>

As discussed above, the respondent's argument that this test was not met because the belief related to animals rather than to humans is nonsensical. The articulation here of Mr Conisbee's conviction as 'believing the world would be a better place if ...' seems to go beyond being an 'admirable sentiment' and is, rather, the type of expression one would find in most beliefs. It very much sounds like a 'world-view': the very thing that courts have used as a synonym for a belief.

The tribunal concluded that the requirement that the belief had a certain level of cogency, seriousness, cohesion and importance was similarly not met, even though it was worthy of respect in a democratic society:

The Tribunal asks itself, does the Claimant's belief attain a certain level of cogency, seriousness, cohesion and importance? Here the Tribunal reminds itself it must guard against applying too stringent standards, that is to say, set the bar too high. The Tribunal do accept there are many vegetarians across the world, however, the reason for being a vegetarian differs greatly among themselves, unlike veganism, where the reasons for being a vegan appear to be largely the same. Vegetarians adopt the practice for many different reasons; lifestyle, health, diet, concern about the way animals are reared for food and personal taste. Vegans simply do not accept the practice under any circumstances of eating meat, fish or dairy products, and have distinct concerns about the

39 *Per* Lady Hale, at para 75.

40 *Ibid*, para 40.

way animals are reared, the clear belief that killing and eating animals is contrary to a civilised society and also against climate control. There you can see a clear cogency and cohesion in vegan belief, which appears contrary to vegetarianism, i.e. having numerous, differing and wide varying reasons for adopting vegetarianism.<sup>41</sup>

This seems uncritically to adopt the respondent's questionable distinction between veganism (which, it was argued, does meet this requirement) and vegetarianism (which, by contrast, it was argued does not). The tribunal's contrast between the 'clear cogency and cohesion in vegan belief' and the 'numerous, differing and wide varying reasons for adopting vegetarianism' are far from conclusive. Peter Edge suggests that Postle's 'monolithic view of veganism is odd' and points out that, in reality, people hold vegan beliefs for a variety of reasons:

there are atheist vegans and Buddhist vegans, for instance – both are vegans, but the atheist vegan probably would not understand their veganism on the basis of the Buddhist teachings around *dukkha* and *samsara* that a Buddhist vegan might. The specifics of vegan practice may also differ very widely between individuals – as a cursory consideration of honey consumption reveals.<sup>42</sup>

The same could be said of other philosophical beliefs. Very few would suggest that Marxism as expounded in *Das Kapital*, for example, does not 'attain a certain level of cogency, seriousness, cohesion and importance' and many Marxists hold their views tenaciously. However, they also have a history of disagreeing among themselves about exactly what their philosophy is about and what it entails in policy terms. The same can also be said for Conservatism in its British manifestation: as to its current internal disagreements, *lector, si monumentum requiris, circumspice*.<sup>43</sup> Or compare and contrast Christianity as espoused by the Orthodox Church with Christianity as taught by the Strict and Particular Baptists.

Furthermore, 'seriousness' is at least to some extent in the eye of the beholder. When the Supreme Court held in *Hodkin*<sup>44</sup> that Scientology was a religion for the purposes of registering its chapels as places of worship under section 2 of the Places of Worship Registration Act 1855, it was surely correct to do so. To

41 Ibid, para 41.

42 P Edge, 'Vegetarianism as a protected characteristic: another view on *Conisbee*', *Law & Religion UK*, 21 September 2019, <<http://www.lawandreligionuk.com/2019/09/23/vegetarianism-as-a-protected-characteristic-another-view-on-conisbee/>>, accessed 10 October 2019.

43 'Reader, if you seek his memorial, look around': inscription on the monument to Sir Christopher Wren in the crypt of St Paul's Cathedral.

44 *R (Hodkin & Anor) v Registrar-General of Births, Deaths and Marriages* [2013] UKSC77.

most non-Scientologists, however, its core doctrines do not appear to be ‘serious’ at all.

Finally, while the previous reasons given by the tribunal are questionable interpretations and applications of the law, the issue with the final test applied is whether it is a legal requirement at all. The tribunal found that

The belief must have a similar status or cogency to religious beliefs. Clearly, having a belief relating to an important aspect of human life or behaviour is not enough in itself for it to have a similar status or cogency to a religious belief.<sup>45</sup>

As discussed above, it is questionable whether a philosophical belief must be similar to a religious one in order to be protected. Even ignoring this, the second sentence seems confused. Here Employment Judge Postle seems to be conceding that vegetarianism does relate to an important aspect of human life. This contradicts his findings in relation to weightiness. Moreover, one might reasonably ask this: if a belief about an important aspect of human life is not sufficiently similar to a religious belief in terms of status or cogency to attract protection, what non-religious belief could possibly satisfy that requirement?

## CONCLUSION

At best, *Conisbee* could be described as a muddled judgment; at worst, it is seriously flawed. There is a debate to be had over whether vegetarianism should be protected as a belief under equality laws. Our concern here has not been to argue this one way or the other but rather to show that the way in which the law was articulated, interpreted and applied in this decision is deeply suspect. There was arguably no need to distinguish between vegetarianism and veganism at all in this case; but, even if there were, the casting of veganism as being ideologically certain against the alleged haphazard nature of vegetarianism is a caricature. Moreover, the notion that disagreement among adherents means that their convictions cannot be protected as a belief is both ludicrous and dangerous since it invites courts and tribunals to assess questions of doctrine.

As Edge points out, other decisions, particularly at employment tribunal level, have held comparatively narrow beliefs to be protected.<sup>46</sup> He suggests that, although a belief that animals should not be killed and eaten is definitely narrower than ethical veganism, it is wider than the belief that animals should not be hunted for recreational purposes. In *Hashman*,<sup>47</sup> for example, in which

<sup>45</sup> *Conisbee*, para 43.

<sup>46</sup> Edge, ‘Vegetarianism as a protected characteristic’.

the vegan claimant had emphasised his philosophical objections to blood sports on the basis that he opposed taking pleasure from the killing of animals, the employment tribunal had concluded that a principled objection to blood sports was a protected belief.<sup>47</sup> And climate change, it should be remembered, was accepted in *Grainger* as a philosophical belief that met the test of cogency, seriousness and importance. *Conisbee* is therefore yet another addition to a very inconsistent jurisprudence. It is to be hoped that it is appealed and that it results in this area of law having, at long last, a degree of cogency.

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47 *Hashman v Milton Park (Dorset) Ltd* [2011] ET 310555/2009.

48 Edge, 'Vegetarianism as a protected characteristic'.