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Despite HHJ Murphy's decision not to go behind the sincerity of the defendant's belief in wearing the niqab, it should not be assumed that wearing a face veil is uncontroversial in Islam. This is perhaps evidenced by the number of Muslim women who elect to wear the hijab rather than the niqab or burka. The verse of the Qur'an from which scholars suggest the need for veils is 33:59: "O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested. And Allah is Oft- Forgiving, Most Merciful."

There is no specific reference to covering the face and therefore any interpretation of the meaning of this verse is heavily reliant on the construction of the preaching imam. Some find the covering of the face offensive. The liberal Imam Dr Hargey, from the Muslim Educational Centre of Oxford wrote to *The Times* stating: "[The face veil] is an archaic aristocratic custom originating in ancient Persia... and was adopted by misogynistic Muslim society... Many ill-informed Muslims have, however, been conditioned to conflate culture with religion and befuddle liberal Britain that this is a principle of religious freedom and human rights when it is neither."

The Muslim Council of Britain recently said: "There are few people who wear the niqab, and they should be allowed to wear this veil if they freely decide to do so. All Islamic junctions make provision for necessity and exceptional circumstances."

Interestingly, the Muslim Council of Britain allows room for negotiation by suggesting that the Islamic faith makes exceptions in certain circumstances. While understandably HHJ Murphy did not want to engage in a theological debate, it should not be assumed that those that wear the niqab are forbidden from removing the face veil in a court room.

Nebulous guidance

Sympathy has to be given to any judge who attempts to follow the somewhat nebulous guidance of 2007 from the Equal Treatment Advisory Committee (ETAC) and the Judicial Studies Board (JSB). The press release which accompanied the guidance said in relation to witnesses and

defendants: "Whilst it may be more difficult in some cases to assess the evidence of a woman wearing a niqab, the experiences of judges in other cases have shown that it is possible to do so." No doubt this leaves many judges feeling completely at sea.

Irrespective of this, the law has been crystallised by the House of Lords in *R (on the application of Begum) v Headteacher & Governors of Denbigh High School* [2006] UKHL 15 and the conjoined appeals in the European Court of Human Rights (ECtHR) in *Ewieda and others v UK (App Nos 48420/10, 59842/10, 51671/10 and 36516/10)*. Notably in the ECtHR it was clear that the UK was entitled to a margin of appreciation when deciding how the qualified Art 9 rights interacted with other concerns.

HHJ Murphy was eloquent in his expression of a fair contested trial requiring an assessment, including visual cues, of how the defendant gives their evidence and reacts to the evidence of others. It is therefore odd that having set out these principles he opted to draw the line at asking the defendant to unveil during her evidence only and not for the remainder of the trial. This seems at odds with the law which makes the administration of justice paramount and therefore above the qualified Art 9 right. In my view the emphasis was wrongly drawn in the context of UK and ECtHR case law.

Instructive decisions

Although not binding on other courts, the decisions made in the Employment Appeal Tribunal (EAT) are often instructive as they are engaged with questions of weighing the rights of the employee against the interests of the employer. In particular, the decision of the EAT in *Azmi v Kirklees Metropolitan Borough Council* [2007] IRLR 484 is useful. The school where Ms Azmi was employed as a teaching assistant found that facial expressions needed to be discerned by the children when she interacted with them. Her wearing of the niqab interfered with this. A range of adjustments were investigated including the use of a screen or teaching with only female teachers. When these adjustments were found to be impractical, the conclusion was Ms Azmi should remove the face veil or her employment would end. The decision to terminate was found to be non-discriminatory by the EAT.

Ultimately the case law suggests that where there is an important reason to see the unveiled face of a person that this trumps the qualified Art 9 right. If seeing the uncovered face of a defendant (or witness for that matter) is required for the administration of justice, then the law is clear.

The irony of the situation? Well if the author of *Born Liars*, Ian Leslie, is to be believed, then we are far better at assessing audible as opposed to visual lies. Being able to see someone's face may not be as helpful as we think, irrespective of the law.

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