



## **‘RELIGION OR BELIEF’**

*Submission by the British Humanist Association to  
the Discrimination Law Review Team*

January 2006

### *The British Humanist Association (BHA)*

1. The BHA is the principal organisation representing the interests of the large and growing population of ethically concerned but non-religious people living in the UK. It exists to support and represent such people, who seek to live good lives without religious or superstitious beliefs. Humanism is a 'belief', within the meaning of the ECHR, the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Bill and legally equivalent to any religious belief in qualifying for protection.
2. The BHA is committed to equality, human rights and democracy, and has a long history of active engagement in work for an open and inclusive society, and an end to irrelevant discrimination of all sorts. In recent years the BHA has participated in consultations and prepared submissions on such issues as the Employment Equality Regulations 2003 on Religion or Belief and Sexual Orientation, and the Equality Bill, and our Executive Director currently serves on the Commission for Equality and Human Rights Steering Group and the Reference Group for the Equalities Review and Discrimination Law Review.
3. We welcome this opportunity to submit a short note of our priorities and concerns for the Discrimination Law Review. **We look forward to contributing further as the review proceeds, and are happy to be contacted at any time.**
4. Although we concentrate in this submission on those issues of the most importance to our members, we look forward to the review team considering other issues in which we have an interest, and commenting on them in due course. In particular we urge: consideration of 'equality officers' on the Northern Irish model as a method of enforcement; exploration of the possibility that emerging or future strands (for example, genetic predispositions etc) can be encompassed in a flexible Single Equalities Act; consideration of how the rights of children can be embedded in a Single Equalities Act, perhaps through some legal concept of the accretion of rights with growing maturity.

### *Single Equality Act*

5. We would welcome the introduction of a single and integrated Equality Act. Such an Act will not only make all law as it relates to discrimination and equality readily accessible to service providers and employers, it will also represent a single charter for equal treatment which is better understood by people and around which a new culture of equality can cohere. It should include one overarching definition of equality and, except where there are genuine reasons for maintaining differences between grounds, we are in favour of harmonising protection 'upwards' with no regression of the protection enjoyed by the individual citizen on any of the current grounds.

### *Positive duty*

6. Such a harmonising upwards would obviously include positive duties but here we add a proviso in the area of religion or belief. Although we believe that a duty not to discriminate is essential and that positive duties to promote equality are an important tool, we have concerns about how a duty to promote equality of opportunity would work for religion or belief in practice. Benchmarks for public authorities such as are used for race or gender, derived from the census, do not exist in any meaningful sense for religion or belief, not least because wildly differing answers will be given to the question of an individual's religion depending on how it is asked, and we do not see religion or belief as a characteristic that can be meaningfully treated as analogous to race or gender in this regard.
7. The mutability of religion or belief contrasts with the immutability of gender and race. In addition, religions and beliefs are almost impossible to categorise. Will we use 'Christian' as our category of choice, or 'Protestant', 'Methodist' etc (there are thousands of Christian denominations in the UK), 'Muslim' or 'Sufi', 'Shia' etc?

### *Employment*

8. We would like the review team to examine some aspects of the UK's implementation of EU Directives on employment in particular.
9. We believe the scope given by the Employment Equality (Sexual Orientation) Regulations 2003 for discrimination by organised religion is too wide compared with that provided for in article 4 of the Employment Framework Directive<sup>1</sup>. We would urge its narrowing, at the very least through the addition of the word 'determining' to the text of the regulation. This approach

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<sup>1</sup> 1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground. Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

would be consistent with a process of leveling-up of equality law as it relates to sexual orientation.

10. We believe the fact that there is no provision in the Employment Equality (Religion or Belief) Regulations 2003 allowing NGOs to initiate proceedings on behalf of a complainant is inconsistent with the directive.
11. The test in the Employment Equality (Religion or Belief) Regulations 2003 to justify genuine occupational requirement is less rigorous than in the Directive and legislation on race and other grounds. We believe this is a serious infringement of the rights of people not to be discriminated against on the grounds of their religion or belief, particularly in view of the fact that large religious organisations are the most likely discriminators. Already there is DTI funded guidance from the Christian organisation Faithworks which advises organisations how even their coffee shop manager post can be reserved for a Christian. In our view, this is not what was intended by the law<sup>2</sup>.
12. We believe that the fact that the law prohibiting discrimination on grounds of religion or belief in Great Britain is subject to ss. 58 – 60 School Standards and Framework Act 1998<sup>3</sup> is a serious infringement of the rights of people not to be discriminated against on the grounds of their religion or belief and is arguably inconsistent with the EU Employment Directive. We note that it is also not very good for schools – the most re-advertised headteacher posts are those with a religious requirement attached.

#### *Goods, facilities, services*

13. We have serious concerns about the law on religion or belief discrimination in the area of the provision of goods, facilities and services.
14. The prohibition of harassment was excised from part 2 of the Equality Bill in the Lords. While we were thoroughly opposed to the wide exemptions from duties not to harass that were proposed for religion or belief organisations, we do see a need for anti-harassment provisions to be a feature of the law on religion or belief. In particular, it is important that public authorities are prohibited from harassing individuals on these grounds – complaints from parents who have experienced such harassment in schools are frequently received by the BHA. Likewise, in prisons or in health and care services, where audiences are ‘captive’ and cannot easily find another provider, it should not be allowed to harass on any grounds. If religious charities or organisations increasingly provide such services under contract, the incidence of harassment, often of very vulnerable people, on religion or belief

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<sup>2</sup> See again art 4 above, and see also Opinion no. 4-2005 of the EU Network of Independent Experts on Fundamental Rights: “Churches or religious organisations may not require from an individual working for them, but whose occupation presents no relationship to his or her religion or belief (for instance, a doctor in a catholic hospital), that he or she shares that religion or belief.”

<sup>3</sup> <http://www.opsi.gov.uk/acts/acts1998/80031--m.htm#58>

grounds will increase.<sup>4</sup> We do not see any scope for exemptions from any future law on harassment in this area.

15. We are also very concerned about the exemptions from prohibitions on discrimination granted to religion or belief groups in part 2 of the Equality Bill (which were, in fact, hard-fought in both the Commons and the Lords). We would direct the review team's attention in particular to sections 50, 57, 58, 59 and 60 of the Bill<sup>5</sup>. The exceptions from the general prohibition that appear in these clauses, in our view, allow unacceptable discrimination against individuals to continue.
16. We urge that the review looks at the possibility of developing the idea of a 'genuine service requirement'<sup>6</sup> in this area, rather than exempting whole classes of organisation from what should be universally applied principles of equality. A 'genuine service requirement' could provide a test that depended on the nature of what was being done rather than the identity or beliefs espoused by the organisation providing it or the individual doing it, and so minimise the risk that too-wide an exception was being created.
17. We urge that the review looks at clarifying the law as it relates to public authorities, and specifically counter the decision of the courts in the *Leonard Cheshire* case<sup>7</sup>, which has undermined the intentions of parliament.

#### *The Human Rights Act and resolution of conflicts of rights*

18. We are very keen to see any Single Equality Act premised on universal human rights, and the concept of equal treatment as a human right.
19. We urge the ratification of protocol 12 as a means of extending UK law on equality, and hope that the review will consider the benefits of ratification.
20. It is widely agreed that there are tensions between 'religion and belief' and some other equality strands. There are also tensions within the strand, especially where organisations, charities, or schools connected with a particular religion or belief, operate to exclude or disadvantage individuals of different religions or beliefs. In both cases, these tensions or conflicting rights arise when organised religions, organisations with a religious ethos and/or religious individuals claim a right to discriminate against others on the basis of religious doctrine and/or the need to ensure that their followers are not offended. Art. 9.2 of the ECHR<sup>8</sup> is often quoted to justify this.

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<sup>4</sup> See also para. 17 for how the status of such contracted out services may be affected by case law on the meaning of 'public authority'.

<sup>5</sup> See annex at the end of this document.

<sup>6</sup> Perhaps on the Northern Irish model.

<sup>7</sup> In which the definition of public authority was narrowed in a way that is arguably inconsistent with the wishes of Parliament.

<sup>8</sup> '1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such

21. We see the promotion of non-discrimination as being an integral feature of our modern democracy and we note that religious freedom in the *forum externum*<sup>9</sup> of art. 9.2 of the ECHR can be limited to protect ‘the rights and freedoms of others’. We would recommend to the review team that the application of this principle may provide resolution in a number of cases where rights across strands, or indeed rights within the religion or belief strand, can appear to conflict. In particular we draw the review team’s attention to recent comments by Lord Nicholls:

But under article 9 there is a difference between freedom to hold a belief and freedom to express or “manifest” a belief. The former right, freedom of belief, is absolute. The latter right, freedom to manifest belief, is qualified. This is to be expected, because the way a belief is expressed in practice may impact on others...The manner in which children should be brought up is another subject on which religious teachings are not silent. So in a pluralist society a balance has to be held between freedom to practise one’s own beliefs and the interests of others affected by those practices.<sup>10</sup>

22. We believe that limitation of the right to put into practice a belief that violates the right to non-discrimination of an individual on a protected ground will often be found to be legitimate in the context of art. 9.2.
23. We would also recommend that, in drafting law to further equality and where rights may appear to conflict, some attention could be paid to where the historic disadvantage lies in any given conflict. Such an approach, we believe, could also be of potential value in resolving such conflicts.

### *General Remarks*

24. We are frequently disappointed by the use of the word ‘faith’ in preference to the more inclusive ‘religion or belief’ and this has even been a problem during the course of debate on the Equality Bill. We hope that the review team will keep in mind the need to emphasise the legal equivalence of religious and non-religious beliefs.
25. Another source of frustration is the tendency, when discussing or legislating on issues of religion or belief, to focus on the needs of organised religion, and not the rights of the individual (religious or non-religious) not to be discriminated against. Though rights will obviously accrue to individuals who gather together to express their religion or belief, we would emphasise the need in the present review for an approach that places at the centre of

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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.’

<sup>9</sup> ‘public space’

<sup>10</sup> Lord Nicholls at paragraphs 16-17 in *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15

enquiry the rights of the individual not to suffer discrimination.  
Discrimination by religious organisations is not a victimless crime.

26. It has also to be remembered that there may be conflicts of rights within a community, for example between rights of women belonging to that community and the religious beliefs of leaders of that community. It is therefore of great importance that the SEA protects and promotes the rights of each individual.

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27<sup>th</sup> January 2006

To discuss the detail of this submission, or for more information about BHA policy in this area, please contact Hanne Stinson, a member of the reference group for the Review, or Andrew Copson on 020 7079 3580 or on email at [andrew@humanism.org.uk](mailto:andrew@humanism.org.uk)

**Annex: Part 2 of the Equality Bill – Exceptions from duties not to discriminate.**

*Clause 50 – Section 49: Exceptions*

Allows religious schools to discriminate against their pupils in the way they allow them access to benefits, facilities, or services.

*Clause 57 – Organisations relating to religion or belief*

Allows organisations to discriminate without a sufficient test – we argue for a test of necessity or reasonable justification. 57(5)(b) also provides a ground for discrimination that is far wider than the comparable ground found in the Employment Equality Regulations 2003.

*Clause 58 – Charities relating to religion or belief*

Allows charities to discriminate without a sufficient test – we argue for a test of necessity or reasonable justification.

*Clause 59 – Faith schools &c.*

Allows educational establishments to discriminate without a sufficient test – we argue for a test of necessity or reasonable justification. 59(2)(b) also provides a ground for discrimination that is far wider than the comparable ground found in the Employment Equality Regulations 2003.

*Clause 60 – Membership requirement*

This clause was introduced specifically to allow the Scouts and Guides to continue their discrimination against those with non-religious beliefs. We see no justification for this.