

BHA BRIEFING 2009: Equality Bill Commons Report Stage

Briefing from the British Humanist Association:

Clause 145 – Public Sector Equality Duty – Advancing equality of opportunity in relation to religion or belief

Amendment

In clause 145, page 91, line 26, at end insert—
‘(2) Subsection (1)(b) does not apply in so far as it relates to religion or belief.’.

This amendment removes the duty on public authorities to have regard to promoting equality of opportunity between religious people.

The Bill extends the public sector duty to promote equality to age, religion or belief, sexual orientation and gender reassignment.

Clause 145 imposes the public sector equality duty on public authorities to have due regard to three specified matters:

- eliminating conduct that is prohibited by the Bill;
- advancing equality of opportunity between people who share a protected characteristic and people who do not share it; and
- fostering good relations between people who share a protected characteristic and people who do not share it.

For religion or belief, as for the other protected characteristics, we believe that a public duty (a) to eliminate unlawful discrimination and (c) to foster good relations should be supported.

However, for the reasons given below we do not believe that a duty to advance equality of opportunity should apply to the religion or belief strand.

In order to advance equality of opportunity public authorities would need to ‘remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic’; ‘meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it’; and ‘encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low’. We believe that all these actions are problematic in the context of ‘religion or belief’, even if they are theoretically desirable, which they may not be. There would inevitably be unintended consequences.

Religion or belief is already treated differently from the other equality strands in legislation, such as in the Racial and Religious Hatred Act 2006, where a different approach from that taken to race is deemed appropriate and necessary. A slightly different approach in the context of the public sector duty will be similarly appropriate and justified.

The reasons for different treatment are evident:

- Religions and beliefs are not fixed or innate, unlike other protected characteristics.
- Religions and beliefs make extensive and often mutually incompatible claims about the nature of life and the world – claims that can legitimately be appraised and argued over.
- Religions and beliefs set out to and often do influence their followers’ attitudes and behaviour, many times in ways which can be similarly controversial.

- Religions and beliefs are in principle and often in practice in competition with each other.
- Religions and beliefs are expressed through organisations that are often wealthy and powerful. They exercise that power in the name of their faith far outside the realm of religion or belief – in influencing social attitudes and national and international policies (e.g. on contraception).
- Religious believers often feel under a duty to react strongly to any criticism or insult offered to their deities, prophets or beliefs, however mild or reasonable.

These features are all to a large degree peculiar to the religion or belief strand and fully justify the slightly different treatment in law it already receives.

The actions required of public authorities in promoting equality of opportunity (referred to above), would lead them to treat people not as individuals but as if they were part of fixed, identifiable groups defined by religion or belief, each with its clear, identifiable needs. This is extremely undesirable. It is not for government or other public authorities to assign and treat people as part of a number of “identity communities”, nor to encourage people to organise themselves in terms of religion or belief identities in order to receive differentiated or special treatment, services or assistance.

Infringement of human rights

We see such treatment as against principles of human rights, which require that people be assisted in terms of their individual circumstances and needs (needs arising from religious practice included) and not on assumed needs of a group with which they may or may not identify – needs which cannot at all safely be assumed, given the wide diversity of beliefs, practice and associated needs within every belief-based group.

Further, the duty would undoubtedly involve public authorities collecting data on people’s religious or non-religious beliefs, which raises both principled and practical difficulties:

1 Invasion of privacy

It is an invasion of privacy – for many, religion or belief is a private matter and putting pressure on people to declare a ‘religion or belief’ publicly and express it more openly than they may wish is undesirable. This is especially detrimental for those individuals who may be perceived by their peers as having a particular belief when they have in fact rejected that belief, but feel unable to tell anyone, including their family. Alternatively, an individual’s beliefs may be hybrid or composite and the rigid categorisation of them impossible.

2 No reliable statistics on religion or belief

The Government itself recognises that reliable statistics on religion or belief ‘are not available’¹. This is scarcely surprising. For example, religion or belief can be measured in many ways – in terms of practices, in terms of beliefs or convictions or in terms of affiliation or identity. Each produces hugely different results. Even within each of these indicators, the results will vary significantly with quite subtle variations in the wording of the questions asked. If unreliable data – such as 2001 census – are used by public authorities as the basis for action in the area of religion or belief, they may well take inappropriate actions. Since census data are the most likely to be used, we are very concerned – the more so as the non-religious were seriously undercounted in the Census (and Christians over-counted).

3 Not reliable indicator of disadvantage

Besides, there is insufficient evidence that religion or belief specifically, rather than race or ethnicity, is a useful marker of disadvantage. This is true to such an extent that the religion question in the Census is explicitly treated by the ONS as a proxy for ethnicity².

¹ *The Equality Bill – Government Response To The Consultation*, 7.25

² Office for National Statistics (ONS) *Information Paper. Recommended questions for the 2009 Census Rehearsal and 2011 Census. Religion*. March 2009

Disproportionate influence of religion

There is, besides, a huge difference in the importance individuals assign to their religion or belief. For a very few it is all important, for most it is a minor aspect of their identity³. Extending the duty to religion or belief may lead to particular stridently religious minorities being given too strong a voice, and so may lead to some prominent and perhaps unrepresentative individuals getting disproportionate influence, creating resentment on the part of others and damaging social cohesion.

This effect may, in practice, lead to the advancement of particular religions or beliefs – not least those groups which are most vociferous and vocal in their claims of underrepresentation and discrimination. It would be wrong for a public sector equality duty on religion or belief to facilitate a state-sponsored promotion of religion, or any particular religion, as opposed to tackling unlawful discrimination.

Disproportionate response to meeting needs

The argument that the extension of the public sector duty is the best way to meet needs arising from a person's religion is fallacious. Even if it were not, it would be an entirely disproportionate response to meeting 'needs'. No good evidence has been produced that people are severely restricted from accessing services and facilities, such as swimming pools and gynaecological services⁴, because of their religion. Many of those preferences would be shared by many women, whether they are religious or not (and equally not shared by all women of the religion intended) – but in any case, public authorities should not seek to promote or encourage gender segregation on a *presumed* religious preference. The gender and race equality duties already require public authorities to have regard for meeting needs, and accommodation is often and routinely made of those kinds of requirements which are objectively for the benefit of individuals, where that does not encroach on the rights of others.

In fact, there are deep concerns that the extension of the equality duty to religion or belief, far from meeting supposed religious needs, will further increase inequality for those it is perceived to help most. As well as the BHA, the women's organisations Southall Black Sisters (SBS), Women Against Fundamentalism (WAF) and the End Violence Against Women coalition (EVAW), have all made representations to the Government warning against the extension of the duty to religion or belief. There are real dangers of institutionalising, legitimating and advancing unequal, patriarchal and often very conservative interpretations of religion through the public duty which would in turn entrench discrimination against vulnerable women within minority religious communities.

Requiring public authorities to advance equality of opportunity in relation to religion or belief may also encourage the separate provision of public services according to religious affiliation. As has been said, 'A duty to promote equality of opportunity among believers and non-believers might cause central or local government or statutory bodies to provide funding to all religious service providers, thus increasing the areas of life touched by religion, or to withdraw funding from all religious organisations. Neither outcome is desirable.'⁵

We are further concerned that exceptions provided for religion in the Equality Bill would exacerbate the potentially unequal position of humanists within the general public sector duty. The exceptions currently permitted in the law on religion or belief are very wide and largely guarantee inferior treatment of the non-religious and often also of minority religions. Other laws, such as the Education Acts, effectively prevent any positive impact for the non-religious and those of minority religions of an equality duty in precisely the areas where discrimination against non-believers is most common.

³ Home Office Research Study 274: *Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey*

⁴ Two examples the Government gave during discussions at Committee Stage of the Equality Bill, June-July 2009

⁵ Lester, A. and Uccellari, P. (2008) *Extending the Equality Duty to Religion, Conscience, and Belief: Proceed with Caution*. European Human Rights Law Review, 5

About us

The British Humanist Association (BHA) is the national charity representing and supporting the non-religious and campaigning for an end to religious privilege and discrimination based on religion or belief. Our expertise lies in the 'religion or belief' equality strand, which includes non-religious beliefs such as Humanism, and how that strand relates to and intersects with other protected characteristics.

For more detail and evidence on our position on the below amendments, please contact us:

Naomi Phillips
British Humanist Association
020 7079 3585
07540 257101
naomi@humanism.org.uk
www.humanism.org.uk