

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

NC13

- (1) Nothing in section 145 shall require a public authority in exercising its functions to restrict lawful free expression.
- (2) In relation to religion or belief, in having regard to the need to meet the needs of persons who share a protected characteristic, a public authority shall have regard to the principle of inclusiveness.
- (3) The principle of inclusiveness means that where a public authority could meet the needs of persons who share a relevant protected characteristic (a “group”), by either—
 - (a) providing a single service that is capable of meeting the needs of all individuals, or
 - (b) providing separate services for different groups, it shall prefer the former.
- (4) In fulfilling its duties under section 145(3)(b) in relation to religion or belief, a public authority shall have regard only to those needs which are reasonable.’.

This amendment makes clear that in ‘meeting the needs’ of people in the context of advancing equality of opportunity on grounds of religion or belief, public authorities should only seek to meet those needs which are reasonable and should always prefer not to provide separate services to or for groups based on a religion or belief.

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

Meeting the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it is problematic in the context of ‘religion or belief’, even if it were theoretically desirable to do so, which they may not be. To do so 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.

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 services¹, 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.

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.

¹ Two examples the Government gave during discussions at Committee Stage of the Equality Bill, June-July 2009

Separate services

Together with a wide exception under Schedule 23² to allow religious organisations to discriminate widely on religious grounds in service provision, even when working under contract (which we strongly oppose), a requirement on public authorities to advance equality of opportunity through meeting the needs of persons who share a religion or belief, risks a balkanisation of public services.

In its report on its legislative scrutiny of the Equality Bill, the **Parliamentary Joint Committee on Human Rights (JCHR)** expressed its concerns that the duty to meet needs could lead to the undesirable situation of parallel, separate services for different religious groups:

‘However, we remain concerned that the duty may be understood by public authorities as requiring separate provision to be made for the “needs” of faith communities, even in the absence of a pressing justification for such separate provision. The absence of a purpose clause means that the main thrust of the Bill taken as a whole and of the positive duty in particular may be misunderstood or misinterpreted. *We recommend that Clause 145 be amended to clarify the nature of a public authority’s obligations under the duty with regards to religion or belief* (our emphasis). Clear guidance from the EHRC should also emphasise that public authorities may be required under the duty to give due regard to ensuring that individuals from different faith communities have equal access to common public services, but not to provide separate services for each different faith group’³ (para 269).

The Government may claim that needs arising in particular communities can be better addressed by religious organisations that it claims represent ‘their’ communities than by public bodies. But if one religion is so favoured, others may demand the same special treatment – especially if the proposed new equality duty is imposed. For most services – health, for example – it would be hugely inefficient to have overlapping and duplicated services. It would lead to unavoidable discrepancies in provision: different groups of people, demarcated irrelevantly by would be expected to rely on separate services.

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.’⁴

We recommend that New Clause 13 is supported.

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

² See BHA Briefing for Commons Report Stage on Schedule 23 for more detail

³ Joint Committee on Human Rights (2009) *Legislative Scrutiny: Equality Bill. Twenty-sixth Report of Session 2008-09*. HL Paper 169, HC 736.

⁴ Lester, A. and Uccellari, P. (2008) *Extending the Equality Duty to Religion, Conscience, and Belief: Proceed with Caution*. *European Human Rights Law Review*, 5