

BHA BRIEFING 2009: Equality Bill Commons Report Stage

Briefing from the British Humanist Association:

Schedule 23 – Organisations relating to religion or belief

Amendment

In schedule 23, page 213, line 9, after 'orientation', insert 'or religion or belief'.

This amendment would prohibit discrimination on grounds of religion or belief if it is done on behalf of a public authority, and under the terms of a contract with the public authority.

Schedule 23, Paragraph 2, subparagraph 10, provides an exception for religion or belief organisations from the provisions in the Bill relating to services and public functions, premises and associations. The exception allows an organisation (or a person acting on its behalf) to impose restrictions on grounds of religion or belief or sexual orientation on membership of the organisation; participation in its activities; the use of any goods, facilities or services that it provides; and the use of its premises.

Religious organisations working under contract with public authorities to provide services are already barred from discriminating on grounds of sexual orientation (see 2(10)). Parliament voted decisively in favour of this prohibition in order to ensure that service users, whatever their sexual orientation and whoever their public service provider, were guaranteed equality of access to and an equal level of service in vital areas, such as adoption services.

We believe the same prohibition should apply to discrimination on grounds of religion or belief. The law currently allows religious organisations to discriminate against service users on grounds of religion or belief, even when working under contract with a public authority. The amendment would prohibit this discrimination when a religious organisation is acting under a contract with a public authority to deliver a public service on behalf of that authority.

In practice this would mean that (for example) a Catholic adoption agency would not be permitted to discriminate against prospective adopters because they were atheist, or humanist, or Muslim, or Jewish etc. just as already it may not discriminate against gay couples.

Without the amendment:

- (a) service users with the 'wrong' or no religion will risk suffering discriminatory treatment**
- (b) services available may be restricted in line with religious doctrine**
- (c) services risk 'balkanisation' as different religious groups each claim the right to 'their own' service -**
- (d) thereby reinforcing religious divisions in society.**

(a) Religious discrimination: Unless the amendment is adopted, service users face real risks of discrimination, against which they will have little or no remedy. When public authorities contract out provision of services, service users are placed in a lottery as to whether their new service provider is a religious organisation or not. This means that service users are arbitrarily put at risk of discrimination on the basis of their religion or belief, either through having the 'wrong' religion or none.

There can be no rationale for this. Public services, whether they are delivered directly by the public authority or by a contracted organisation, should be open and accessible to all, and on an equal basis. If religious organisations choose to enter a contract to provide such services they should make them available and accessible to all.

Some local or other authorities might seek to use contractual provisions to debar religious discrimination but this piecemeal remedy would lack consistency across providers and, in any case, would provide no direct redress for service users since they would not be parties to the contract.

The risk is real. Some organisations bidding for and being awarded public service contracts, such as the Salvation Army, are clear that they do not intend to provide services in an open and inclusive way. For example, in written evidence to the Joint Committee on Human Rights, the Salvation Army stated, 'Whilst it is appropriate for the state to be religiously neutral, *this is impossible* for an organisation such as The Salvation Army, which delivers its services as a direct outworking of the Christian faith'. (*our emphasis*)¹.

Some results of this discrimination may, however irksome, be relatively trivial, but in other cases (for example, in residential care) an oppressively religious atmosphere may be unbearable.

As far as we are aware, most local authorities and central government departments keep no record of whether their contractors are religious organisations. It is therefore difficult to assess the extent of religious discrimination that may already be occurring against service users by religious providers of public services. But even if the damage at present is limited, with the policy of expanding contracting out to religious and other organisations it will grow – especially given the tendency of religious bodies to exceed what is legally permissible². An Equality Bill should not be the vehicle for expanding religious discrimination.

(b) Restriction of Services: Less immediately there would be a risk that religious contractors might restrict the service they provided in compliance with religious doctrine. There are many examples of this abroad: for example, hospitals run by Catholics do not provide family planning or abortion services; or religious residential homes do not allow gay couples to have private time together.

(c) Balkanisation: Particularly if the Bill introduces a public sector duty to advance equality on grounds of religion or belief (which we strongly oppose), the clause as it stands risks a balkanisation of public services. 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 religion (which a Home Office study has shown is barely in the top ten features of their identity people would choose to characterise themselves³) would be expected to rely on separate services.

(d) Divisiveness: Such parallel provision is inherently undesirable. We are already on the brink of having parallel Anglican, Catholic, Muslim and other religious school systems and should have learnt the lesson of how this approach damages social cohesion and exacerbates inequalities⁴. Further, discrepancies in levels of service between parallel religious and secular services would aggravate any ill-feeling between religiously (and hence often ethnically) defined groups.

¹ Salvation Army, memorandum to the Joint Committee on Human Rights for its inquiry on The Meaning of Public Authority under the Human Rights Act. Printed March 19th 2007.

² See judgment in *Sheridan v Prospects employment tribunal*, May 2008.

<http://www.humanism.org.uk/news/view/104>

³ Home Office (2004) *Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey. Home Office Research Study 274, March 2004*. London: Home Office

⁴ There is growing academic evidence to support this. See, for example: Institute for Public Policy Research (ippr) (2007) *School Admissions: Fair choice for parents and pupils*. London: ippr; and Allen, R. and West, A. (2007) 'Religious schools in London: school admissions, religious composition and selectivity?' Paper presented at the British Educational Research Association Conference, London.

Not only would this be socially divisive: it might also drive people (or lead to people being driven by communal pressure) to stay even more within their own religious groups. Even those seeking to give themselves a wider identity than their religious affiliation would be driven back on it to access services from the “right” organisations⁵.

It cannot be right for a Bill designed to reinforce equality and non-discrimination to be the means of introducing religious discrimination into public services.

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:

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⁵ British Humanist Association (2007) *Quality and Equality: Human Rights, Public Services and Religious Organisations*. London: BHA