

BHA BRIEFING 2010: Equality Bill: Discrimination in employment exceptions for organisations with a religious ethos

Lords Committee, January 2010

Briefing from the British Humanist Association (BHA):

Schedule 9, Paragraph 3 – employment by organisations based on religion or belief working under contract with public authorities

The BHA supports the below amendments to the Equality Bill, which would prevent organisations with a religious ethos that are working on behalf of public authorities using the exception under paragraph 3, which allows discrimination in employment.

These amendments would protect current staff, employees transferred from the public sector and job applicants from discrimination against them on religious grounds by religious organisations working under contract to a public authority to provide a public service on its behalf.

BARONESS TURNER OF CAMDEN

101A Page 165, line 31, at end insert—

"(d) A is not operating as a public authority, on behalf of a public authority or operating in relation to a contract with public authorities."

LORD LESTER OF HERNE HILL

101B Page 165, line 31, at end insert—

"Paragraph 3 does not apply when A is operating—
(a) on behalf of a public authority, and
(b) under the terms of contract between the organisation and the public authority."

As the Equality Bill is drafted, the Schedule 9 (3) exceptions that permit organisations with a religious ethos to discriminate in employment apply even when a religious organisation was working under contract to a public authority to provide a public service on its behalf. The BHA sees this as totally unacceptable and we are convinced that the Equality Bill should be amended.

As the Bill is drafted, it could potentially subject a large number of posts currently in the public sector to religious tests. This would:

- (a) provide favourable employment prospects (in promotion, training etc) to small numbers of religious believers
- (b) rule out large numbers of posts for those with the 'wrong' religion or none (by putting religious requirements on those directly providing services, from welfare advisers to care staff)
- (c) threaten the employment and/or promotion of staff transferred under a contract from a public sector employer to a religious one (and there is nothing to stop religious organisations from putting religious requirements on previous secular positions).

Our concerns are widely shared, including by trade unions, progressive religious groups and the Parliamentary Joint Committee on Human Rights (JCHR).

In its report on its legislative scrutiny of the Equality Bill, the **JCHR expressed its concerns about the extension of the exception to religious organisations working under contract:**

‘We are concerned about the status of employees of organisations delivering public services who find themselves as employees of organisations with a religious ethos who have been contracted to provide the public service. *They have a right not to be subjected to religious discrimination on the basis of the ethos of the contracting organisation if they are otherwise performing their job satisfactorily* (our emphasis). We are concerned that the widespread use of the “religious ethos” exception set out in Schedule 9(3) by organisations based on a particular religion or belief who are contracted to deliver services on behalf of public authorities could result in public functions being discharged by organisations in receipt of public funds who are nevertheless perceived to discriminate on the basis of religion or belief’¹ (para 176).

The Government intends to allow this discrimination. During Commons Committee Stage, Vera Baird QC MP, speaking on behalf of the Government regarding this section, said, *‘the Government do not want to interfere with the religious ethos of the organisations, even though they deliver public services.’*²

This ‘non-interference’ which in effect permits potentially wide discrimination of the sort that the JCHR warns, is already happening. The policy of non-interference has been adopted without any examination of or intent to monitor the extent of such religious discrimination in the public service.

There is no set definition of what constitutes an organisation with a religious ethos but the term is broad and encompasses a wide range of organisations³. Organisations with a religious ethos are not solely churches or mosques for example, but the term refers to a whole range of organisations with different functions, such as charities and service providers. This means that the exceptions in law to allow discrimination in employment by organisations with a religious ethos can potentially apply to a wide range of positions, including to frontline staff such as care workers and employment advisers.

In 2008 an employment tribunal found that an employer’s religious ethos was not necessarily determined by the religious beliefs of its staff⁴. Although the Tribunal ruled comprehensively against the employer, a Christian charity called this was the first (and so far only) time an employment tribunal has been called on to decide the extent to which an organisation with a religious ethos is allowed to discriminate on grounds of religion or belief.

When religious organisations take on public service contracts, this means that the number of jobs that are restricted to religious people is potentially very high.

It would never be legitimate for a public authority to place a religious requirement on the post of employment advisor in a job centre, or porter in a nursing home, or NHS dental nurse. If a religious organisation is to provide such services on behalf of a public authority how can it suddenly become legitimate to place a religious requirement on those jobs? It does not. **There can be no justification for allowing religious organisations performing public functions on behalf of and under contract to a public authority to apply religious tests to their jobs.**

¹ Joint Committee on Human Rights (2009) *Legislative Scrutiny: Equality Bill. Twenty-sixth Report of Session 2008-09*. HL Paper 169, HC 736.

² 12th Sitting of the Commons Equality Bill Committee, 23/06/2009

³ Ministers from the Cabinet Office, the Home Office and the Department for International Development all stated in response to PQs from Graham Allen MP asking ‘with how many faith-based organisations [the] Department has contracts to provide public services’, that ‘the extent to which such organisations are faith-based is not evident in every case’, hence ‘an accurate total or comprehensive list could therefore be provided only at disproportionate cost’. Commons Hansard, 12th and 13th January, Written Answers.

⁴ Judgment in the Employment Tribunal of Mr Mark Sheridan and Prospects for People with Learning Disabilities, May 2008 – a case involving religious discrimination by a religious employer working under contract with the local authority to provide health and social care services. See in particular, ‘Stage 3 – proportionality’.

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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