

Communities and Local Government: Third Sector Strategy Response from the British Humanist Association

About Us

The British Humanist Association (BHA) is the national charity supporting and representing the UK's large and growing proportion of non-religious ethically concerned people. It has a long history of concern for the common good and for the development of an open and inclusive society, and of commitment to equality, human rights and social cohesion. The BHA's chief executive was a member of the steering group for the Commission for Equality and Human Rights and is a member of the reference group for the Equalities and Discrimination Law Reviews. The BHA itself regularly participates in campaigns, working parties, committees and consultations (Government and other) on these issues as they affect the interests of those we seek to represent. With the launch of our Local Development Project, part-funded by CLG, we are beginning to extend the work we do in supporting humanists engaged in equalities and diversity work locally.

The BHA has always engaged fully with society, in different ways at different times according to our resources and the needs of non-religious people. At one time we founded and ran a housing association providing 'part 3' accommodation for elderly people and later a broader range of housing, providing for non-believers at a time when provision of such accommodation was largely in the hands of housing associations with religious foundations. For similar reasons, we started the Agnostics (later Independent) Adoption Society. Both organisations were merged with larger players in their fields when the need for special provision for the non-religious passed. Currently we are the largest provider of non-religious ceremonies – mainly funerals, weddings and baby-namings – with a national network of trained and accredited ceremonies officiants.

1 – How effectively do we implement Compact principles?

Key Compact Principles¹

- Voluntary action is an essential component of a democratic society.
- An independent and diverse voluntary and community sector is fundamental to the well-being of society.
- In the development and delivery of public policy and services, the Government and the voluntary and community sector have distinct but complementary roles.
- There is added value in working in partnership towards common aims and objectives. Meaningful consultation builds relationships, improves policy development and enhances the design and delivery of services and programmes.
- The Government and the VCS have different forms of accountability and are answerable to a different range of stakeholders, but common to both is the need for integrity, objectivity, accountability, openness, honesty and leadership.
- VCS organisations are entitled to campaign within the law in order to advance their aims.

¹ http://www.thecomcompact.org.uk/information/100020/about_the_compact/

- The Government plays a significant role, among other things, as a funder of some VCS organisations. Funding can be an important element of the relationship between the Government and the VCS.
- Both Government and VCS acknowledge the importance of promoting equality of opportunity for all people regardless of race, age, disability, gender, sexual orientation or religion and or belief.

Overall, since the Compact was implemented in 1998, there has been a much more visible, active relationship between the Government and the third sector. This is seen, for example, through the establishment of the Office of the Third Sector within the Cabinet Office and the general desire by the current Government to build the capacity of third sector organisations, and increase their voice in terms of public policy and services. Much of this is to be welcomed. However, there are a number of areas where we do not feel that the Government is implementing the Compact principles as effectively as it might.

A point worth making initially is about terminology. In the summary of ‘Key Compact Principles’², found on the main Compact website, the final Principle is written thus:

Both Government and VCS acknowledge the importance of promoting equality of opportunity for all people regardless of race, age, disability, gender, sexual orientation or religion and or belief.

However, in the actual Compact, it does not have ‘and or belief’, so it states that the Government and VCS acknowledge the importance of promoting of equality of opportunity for all people regardless of ‘religion’. The inclusion of ‘belief’ in the summary is to be welcomed, and we would now urge the Government to change the wording in the Compact to match the wording in the summary of key principles. The law is clear that the correct equalities terminology is ‘religion or belief’ and not ‘religion’ alone³ and so amending the Compact in this area would bring it in line with the most recent changes to rights and equality laws.

Terminology is important, getting it right changes the way people think, and this applies to Government ministers and officials no less than anyone else. Far too often in speeches and papers the lazy shorthand of ‘religion’ or ‘faith’ is used in assurances of inclusivity, when both words automatically exclude a large and growing proportion of the population who are not religious. Not only that, but such lazy thinking also leads to real discrimination in policy. This is not the place to go into detail, but examples such as the provision at public expense of religious but not humanist chaplains in hospitals, the armed services, prisons and colleges comes to mind, as well as matters closer to home in the CLG such as the exclusion of humanists from the Working Together working party and its continuing manifestations and the near-complete failure to respond to our comments and representations on the report. In fact, the CLG was heavily criticised by the Communities and Local Government Committee (CLGC) in its report on its Inquiry into Equality (2nd August 2007), for using incorrect and outdated terminology:

‘The British Humanist Association questioned the Government’s commitment to tackling discrimination on non-religious grounds. It told us that the Government and its agencies too often use the word ‘faith’ in preference to the more inclusive term ‘religion or belief’. Indeed, the former Prime Minister’s

² Ibid

³ See appendix on legislation and case law.

letter to Ruth Kelly MP on her appointment as Secretary of State for Communities and Local Government in May 2006 uses the word 'faith'. Our concern is not based merely on principled or abstract grounds but raised in the context of the continuing societal discrimination against people on the grounds of their beliefs whether they are religious beliefs or not. As the BHA said, this needs to be reflected in the work of Government. The Minister explained that the DCLG's work was not confined to faith. This was not, however, reflected in the information presented to the public on the department's website. Any mention of 'belief' was buried deep within information on faith in the section on the Race, Cohesion and Faiths Directorate.

We recommend that the Government's language reflects the broad nature of its responsibility for tackling discrimination on the grounds of belief, including nonreligious beliefs.' Para 52.

Even the Charity Commission has a special 'faith' unit. This seeming refusal across Government to accord 'belief' the same status as 'religion' is not merely insulting to those who are not religious, it is a clear expression that religion and religious beliefs are privileged and accorded a much higher status than other beliefs by the Government, not least in its work with the third sector. Given this, we are very concerned that the principle to recognise the importance of equality of opportunity of all individuals cannot be fully or effectively implemented, when half of an equality strand is simply excluded from the detail of the Compact, and from much of the Government's work with the third sector more generally.

Further, it seems difficult to imagine how the Government and parts of the third sector can really acknowledge the importance and equal worth of every individual, regardless of his/her religion or belief, when religious organisations (most of whom are third sector organisations), have special privileges and are often afforded differential treatment by the Government to other third sector organisations. For example, exemptions in legislation, such as the Equality Act 2006 and the Employment Equality (Religion or Belief) Regulations 2003 and Employment Equality (Sexual Orientation) Regulations 2003, allow religious organisations to discriminate in very exclusive and detrimental ways that others are not (and certainly should not be), on grounds of their religious convictions.

The second key principle of the Compact is, 'An independent and diverse voluntary and community sector is fundamental to the well-being of society'. This is a principle which we certainly endorse, but when the Government does work with the third sector, it must do so on the basis of complete non-discrimination. For example, when contracting out services, where the Government protects the independence and diversity of third sector organisations, this will often be particularly in relation to religious third sector organisations, allowing them to discriminate in their employment practices on grounds of religion or belief and on sexual orientation and to provide services in religious settings. The idea behind this differential and privileged treatment is to protect the religious ethos of an organisation. We agree that it is a vitally important part of the Compact that the Government should seek to respect and help to maintain the independence and diversity of the third sector, but this must be done on an equal basis, treating all organisations fairly and applying the same rules to each, even if this means that religious organisations prefer not to take on such contracts if they would entail treating gay people, atheists and so on without discrimination.

The points above also apply to the third Compact principle: ‘In the development and delivery of public policy and services, the Government and the voluntary and community sector have distinct but complementary roles’. It does seem that the Government and the third sector will have increasingly less distinct roles in terms of the supply and provision of public services. In terms of public policy more specifically, it is worth noting that the role of the third sector is to advise and not dictate policy. But from whom in the third sector the Government seeks advice is important, or it risks getting biased advice and so making unrepresentative and ineffective policy.

The fourth Principle states that, ‘There is added value in working in partnership towards common aims and objectives. Meaningful consultation builds relationships, improves policy development and enhances the design and delivery of services and programmes’. This is certainly something we would agree with but a principle that, again in relation to the differential treatment afforded to religious organisations, we do not consider the Government is implementing totally effectively.

The Government’s record of consulting with representatives (such as ourselves) from the ‘belief’ half of the religion or belief equality strand, is patchy although improving. The pattern is different from department to department, and the CLG could certainly do better. For example, the DCLG routinely consults with the Inter Faith Network – there is even a direct link on the DCLG website to the Network. The Inter Faith Network, while claiming to be representative of a wide range of ‘faiths’, is certainly unrepresentative of humanists and other non-religious representatives and, indeed, is not comprehensive of all faiths either. So, by consulting with this Network, the Government is excluding the viewpoint of third sector organisations working within the ethos of non-religious beliefs. Therefore, in order to more effectively implement the fourth Compact principle, we would recommend that the Government seeks to consult with third sector organisations across the religion and belief strand and involves the BHA at an early stage in any consultation process.

2 – In what other ways could we help to improve the effectiveness of engagement with the third sector at the:

- i) regional and sub-regional levels**
- ii) local level?**

At the regional, sub-regional and local levels, there is little history of engagement with humanist partners for consultation, and hence little experience amongst potential partners. This, together with the dearth of specifically humanist third sector organisations (as opposed to secular third sector organisations that include humanists), means that we may well not be engaged with fully. This situation in part prompted us to begin our CLG-funded Local Development Project in May 2007, which aims to increase participation of humanists at a local level. The local development volunteers represent the BHA to local authority structures, particularly those involving equality and diversity. This Project will enable local governments to engage more fully with the BHA and, so, more fully with the religion or belief part of the third sector. We would commend any guidance that recommended fuller engagement with local humanist groups and individuals.

3 – Would your organisation wish to be considered to become strategic partner?

Yes.

4 – Do you agree with our focus on community anchors?

We do not have experience in this area, although it does seem to be a reasonable focus. The definition of a ‘community anchor’ given by Community Alliance, is that they are: ‘independent community-led organisations. They are multipurpose and provide holistic solutions to local problems and challenges, bringing out the best in people and agencies. They are there for the long term, not just the quick fix. Community anchors are often the driving force in community renewal’⁴. For change to be effected, it needs to be sustained and long-lasting, and so community anchors could be a good way of working to improve communities at a grass-roots level.

However, we would make the point that community anchors must be totally inclusive of the whole community, and not just parts of a community. To promote inclusion, it is important that shared spaces are held in non-denominational settings, for example that halls used for community activities should be owned by the community rather than by a church or other religious body. This is especially important if a role of a community anchor is to provide local services and to act ‘as a gateway to helping people get access to the other services they need’⁵. Community anchors should be in non-religious settings, to ensure that all members of a community, of all faiths and none, are able to participate in it and use the services it provides without discrimination or harassment.

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⁴ Community Alliance (undated) ‘Transformation through community anchors’.

<http://tinyurl.com/2z7hld>, p1

⁵ Ibid, p2

APPENDIX

HUMAN RIGHTS ACT 1998

(a) Extracts

3. - (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section-

(a) applies to primary legislation and subordinate legislation whenever enacted;

6. - (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right. . .

(3) In this section "public authority" includes-

(a) a court or tribunal, and

(b) any person certain of whose functions are functions of a public nature . . .

(6) "An act" includes a failure to act . . .

Article 9 - Freedom of Thought, Conscience and Religion

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 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.

Article 14 - Prohibition of Discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(b) Relevant Court Cases under Article 9 of the ECHR

"As enshrined in Article 9, freedom of thought conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists,

sceptics and the unconcerned." - *Kokkinakis v Greece*: (1994) 17 EHRR 397, para 31

"The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate." - *Manoussakis v Greece*: (1996), EHRR 387, para 47

Belief means "more than just 'mere opinions or deeply held feelings'; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content." - *McFeekly v UK*: (1981), 3 EHRR 161

"The term 'beliefs' . . . denotes a certain level of cogency seriousness cohesion and importance" - *Campbell and Cosans v. UK*: (1982), 4 EHRR 293 para 36 – (this case related to Article 2 - right to education).

[T]he difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious . . . will seldom, if ever, arise under the European Convention. . . it does not matter whether the . . . beliefs . . . are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. - *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15 Per Lord Nicholls at paragraph 24ⁱ

Lord Walker added that it was "unnecessary for the House to grapple with the definition of religion" because "Article 9 protects, not just the *forum internum* of religious belief, but 'freedom of thought, conscience and religion'. . . Plainly these expressions cover a wider field than even the most expansive notion of religion. Pacifism, vegetarianism and total abstinence from alcohol are uncontroversial examples of beliefs which would fall within article 9." - *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15 Per Lord Walker at paragraph 55.ⁱⁱ

In *Arrowsmith v United Kingdom* (1981) 3 EHRR 218, 'convictions' were defined as "those ideas based on human knowledge and reasoning concerning the world, life society etc, which a person adopts and professes according to the dictates of his or her conscience. These ideas can more briefly be characterised as a person's outlook on life including, in particular, a concept of human behaviour in society".

In *re Crawley Green Road Cemetery, Luton* - St Alban's Consistory Court: Dec. 2000 - it was taken held without argument that Humanism was a belief within the meaning of the Human Rights Act.

(c) Commentary

From the UN Human Rights Committee on Article 18 of the International Covenant on Civil and Political Rights (*which is essentially similar to Article 9 of the European Convention*):

"Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions." - *Human Rights Committee, 1993 (General Comment no 22(48) (Art. 18) adopted on July 20th 1993, CCPR/C/21/Rev.1/Add.4, September 27th 1993, p1.)*

The "belief" aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. - *The Office for Democratic Institutions and Human Rights: Guidelines for Review to Legislation Pertaining to Religion or Belief (2004) Section A, Paragraph 3*

A broad interpretation of the English word belief is inconsistent with the meanings of the corresponding words in the French and German versions of the Universal Declaration and the European Convention on Human Rights. The French term is *conviction* and the German is *Weltanschauung*. The use of conviction in English is problematic because it has penological associations, which the French word lacks, but the word conviction without this unfortunate association expresses a significant aspect of what is required. Both conviction and *Weltanschauung* suggest deep or ultimate beliefs which are parallel to those of a religion. It is proper, therefore, that religion or belief should be so interpreted. We ourselves use the term *lifstance* - a concept that encompasses both religious and non-religious beliefs.

Organization for Security and Co-operation in Europe (OSCE) documents

"GUIDELINES FOR REVIEW OF LEGISLATION PERTAINING TO RELIGION OR BELIEF" http://www.osce.org/documents/odihr/2004/09/3714_en.pdf

3. *Religion or belief.* International standards do not speak of religion in an isolated sense, but of religion *or* belief. The belief aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. **Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all to) rights of non-believers. Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers.**

6. *Rights of parents and guardians.* States are obliged to respect the liberty of parents and, when applicable, legal guardians of children to ensure the religious and moral education of their children in conformity with their own convictions, **subject to providing protection for the rights of each child to freedom of religion or belief consistent with the evolving capacities of the child.** This protection is spelled out with particular clarity in Article 5 of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief and Article 14 of the Convention on the Rights of the Child. Legislation should be reviewed to assure that the appropriate balance of autonomy for the child, respect for parents' rights, and the best interests of the child are reached. **Problematic in this regard are provisions that fail to give appropriate weight to decisions of mature minors, or that interfere with parental rights to guide the upbringing of their children. There is no agreed international standard that specifies at what age**

children should become free to make their own determinations in matters of religion and belief. To the extent that a law specifies an age, it should be compared to other State legislation specifying age of majority (such as marriage, voting, and compulsory school attendance).

3. Religious, ethical, or humanist education in State and community schools. There is a wide variety of State practices regarding religious, ethical, and other forms of ideological education in State and community schools. When considered in conjunction with the rights of the parents (see Section II.B.6 above), it is presumably the case that children cannot be required to take instruction in denominational or ideological education against their parents' wishes, though general education about religions, beliefs, and ethics generally is permissible. . . .

Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe (1989)

Principle 11 Questions Relating to Security in Europe

[The participating States] confirm that they will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They also confirm the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and security necessary to ensure the development of friendly relations and co-operation among themselves, as among all States.

Principle 13 Questions Relating to Security in Europe

(13.7) [The participating States will] ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

Principle 16 Questions Relating to Security in Europe

In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, *inter alia*,

(16.1) - take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) - foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) - grant upon their request to community of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

(16.4) - respect the right of religious communities to

- establish and maintain freely accessible places of worship or assembly,
- organise themselves according to their own hierarchical and institutional structure,
- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,
- solicit and receive voluntary financial and other contributions;

- (16.5) - engage in consultations with **religions faiths, institutions and organisations** in order to achieve a better understanding of the requirements of religious freedom;
- (16.6) - respect the right of everyone to give and receive **religious education** in the language of his choice, whether individually or in association with others;
- (16.7) - in this context respect, inter alia, the liberty of parents to ensure the **religious and moral education** of their children in conformity with their own convictions;
- (16.8) - allow the training of **religious** personnel in appropriate institutions;
- (16.9) - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of **religion or belief**;
- (16.10) - allow **religious faiths, institutions and organizations** to produce, import and disseminate **religious publications and materials**;
- (16.11) - favourably consider the interest of **religious communities** to participate in public dialogue, including through the mass media.

As far as international human rights are concerned, religious beliefs present competing universalist ideologies which, by posing alternative approaches, do indeed threaten the universalist of the idea of human rights. Religious belief must therefore be made subordinate to the human rights framework. - *Evans, M.D., Human Rights, Religious Liberty and the Universality Debate in Dair, R., and Lewis, A., (eds) Law and Religion (2001, Oxford) 226*

ⁱ Comment 1 - This leaves on one side the difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious. This question will seldom, if ever, arise under the European Convention. It does not arise in the present case. In the present case it does not matter whether the claimant's beliefs regarding the corporal punishment of children are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under Article 9, a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected under Article 9, a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. Article 9 is apt, therefore, to include a belief such as pacifism: *Arrowsmith v United Kingdom* (1978) 3 EHRR 218. The position is much the same with regard to the respect guaranteed to a parent's 'religious and philosophical convictions' under Article 2 of the First Protocol: see *Campbell and Cosans v United Kingdom* 4 EHRR 293.

www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050224/will-1.htm

ⁱⁱ Comment 2 - There are two reasons why it is unnecessary for the House to grapple with the definition of religion. One is that Article 9 protects, not just the *forum internum* of religious belief, but 'freedom of thought, conscience and religion.' This is coupled with the individual's (qualified) freedom 'to manifest his religion or belief, in worship, teaching, practice and observance.' Similarly, Article 2 of the First Protocol refers not just to religious beliefs but to 'religious and philosophical convictions.' Plainly these expressions cover a wider field than even the most expansive notion of religion. Pacifism, vegetarianism and total abstinence from alcohol are uncontroversial example of beliefs which would fall within Article 9 (of course

pacifism or any comparable belief may be based on religious convictions, but equally it may be based on ethical convictions which are not religious but humanist: this was the sort of problem which confronted the ethical convictions which confronted the United States Supreme Court in *United States v Seeger* 380 US 163 (1965), where the relevant statute recognised conscientious objection to military service only if it arose from 'religious training and belief', which was elaborately defined as requiring belief in a Supreme Being and not including 'essentially political, sociological, or philosophical views or merely a personal moral code.' It is to be noted that Section 13 of the Human Rights Act 1998 is more restricted, referring to the exercise of Article 9 rights 'by a religious organisation (itself or its members collectively).' But little reliance was placed, in argument, on Section 13.

www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050224/will-2.htm