

CORRESPONDENCE WITH MARTIN IGOE OF THE DFES ABOUT CATHOLIC SIXTH FORM COLLEGES

2 March 2004

Mr Martin R Igoe
FE Governance and Organisation Team
FE Strategy Division
Department for Education and Skills
Moorfoot
Sheffield
S1 4PQ

Dear Mr Igoe:

Catholic Sixth Form Colleges (“CSFCs”)

Thank you for your letter dated 23 February informing me that the Secretary of State has decided to make amending regulations to allow CSFCs to give priority to Catholic students on admission to non-vocational courses. Naturally, the National Secular Society is disappointed with this outcome to the consultation. A number of our Honorary Associates are concerned about this issue, particularly Michael Cashman MEP and Paul Holmes, MP (who is on the Education Select Committee). I am also sending a copy of this letter to Graham White MP of the JCSI who has raised concerns when that committee the original Employment Regulations were being scrutinised.

You will recall that, in addition to policy concerns, our submission to the consultation raised legal and practical difficulties, with the proposed amending regulations which I had understood that the Department wished to address. In particular, our submission queried how the proposed amendment was consistent with the advice of the Department of Trade and Industry of June 2003 (para 2.2). As stated in our submission, if this proposal has been made contrary to that DTI advice without countering it and placing the contrary legal advice on the record then that is objectionable.

I have seen no explanation of this point beyond the brief comments in your letter that the regulations “are compatible with the ECHR and HRA”. I consider that exemptions which exceed those permitted by Directive 2000/78/EC are likely to be the subject of serious legal challenge, and indeed referral to the Commission. In this regard, I refer to the Code of Practice on Written Consultation issued by the Cabinet Office which states at para. F that “...the results (sc. should be) made widely known, with an account of the views expressed, and reasons for decisions finally taken.” In all the circumstances, I invite you to share the legal analysis which in your view permits these amending regulations.

I note that the Secretary of State intends to lay the amending regulations before Parliament with a coming into force date of 1st April 2004. This is clearly a very short timetable. This, together with the reference to the fact that your Department “regards the regulations as compatible with the ECHR and HRA”, indicates that there are currently draft regulations already in existence. I would therefore be grateful for sight of the proposed amendment as soon as possible.

Although I note your reassurance that the amendment is limited in its effect, there are still a number of concerns regarding its implementation. In particular, I would be grateful if you would confirm that the following matters have been considered:

- Will the regulations (or any other source) define definitively which courses are rightly regarded as non-vocational to eliminate possible doubt or confusion? Given the difficulty in identifying these

courses (I refer to the DTI Memorandum suggesting each individual course may need an assessment), what provision has been made to scrutinise and monitor the categories attributed to courses to ensure compliance with the Directive?

- Will the regulations deal with the issue of students who apply for admission with a view to studying a mixture of vocational and non-vocational courses? This is particularly important in view of the clear prohibition of Article 3(1)(b).
- Since you say in your letter that the amendment “will not apply to **any** admission to a course of vocational training” (my emphasis), please confirm that the regulations will cover such circumstances as a student who was granted preferential admission on the basis of his/her religion subsequently seeking to change to or add a vocational course? Will, in practice, students be warned of this difficulty in changing courses when they apply to one of the CSFCs?

You will appreciate that the National Secular Society shares your desire to limit the impact of these regulations and I would be happy to assist with any drafting issues arising out of compliance with the Directive. I would be grateful if you would keep me informed throughout this process.

Yours sincerely,

Keith Porteous Wood
Executive Director

department foreducation and skills
creating opportunity, releasing potential, achieving excellence

Moorfoot

Sheffield S1 4PQ

tel: 0870 0012345

info@dfes.gsi.gov.uk

www.dfes.gov.uk

Direct Line 0114 259 3468

E-Mail : martin. igoe@dfes.gsi.gov. uk

Keith Porteous Wood
Executive Director
National Secular Society
25 Red Lion Square

LONDON WC1 R 4RL

Our ref: 2004/001935I DIRECT

24 March 2004

Thank you for your letter of 2 March 2004 concerning the Secretary of State for Education and Skills' amendment to the Employment Equality (Religion or Belief) Regulations 2003 SO 200311660.

These amending regulations allow Catholic Sixth Form Colleges (CSFCs) to give priority to Catholic students on admission to non-vocational courses in order to maintain sufficient Catholic students to preserve the Catholic character and ethos of the colleges. I enclose a copy of the regulations for your information.

I can assure you, that we have worked closely with the Department of Trade when preparing these regulations and that they are content with the action that has been taken.

We accept that this amendment departs from the general and preferred approach in regulation 20 of the main regulations in that it relies on differentiating between non-vocational and vocational courses at the point of admission rather than the institutional approach taken in those regulations. This departure, however, is limited as I explained in my letter of 23 February 2004 and is specifically intended to deal with the concerns raised regarding the potential effect of regulation 20 on these colleges which are the only faith institutions in the further education sector. The amendment does not provide a general exemption for the colleges from regulation 20. I should also point out that, as these colleges are principally concerned with providing 16 to 19 year olds with the education and qualifications that will equip them for further and higher education, they are less likely to provide vocational training as opposed to the further education sector as a whole.

You asked for our legal analysis which permits these amending regulations. As the amendment allows an exemption which will only apply to non-vocational courses it cannot exceed the derogations permitted by Directive 2000/78/EC as that Directive and its derogations only apply to employment and vocational training. If the Directive is not engaged it cannot be exceeded.

You commented on the timetable in relation to these regulations. The regulations were made on 20 February 2004, laid before Parliament on 26 February 2004 and will come into force on 1 April 2004. This

timetable complies with and is consistent with the normal rules which govern legal instruments of this kind.

Turning now to your bullet points:

0 The amending regulations do not define which courses are non-vocational but the onus will be on the CSFC's to ensure that they do not breach regulation 20 otherwise they will be acting unlawfully. It will be a question of fact for a court if there is a challenge as to whether regulation 20 or the exemption applies.

0 The regulations do not specifically deal with the issue of students who apply for a mixture of vocational and non-vocational courses but it is clear from regulation 3 that any course which includes vocational training will not be covered by the exemption.

0 I am happy to confirm that this exemption only applies to admissions. In all other circumstances regulation 20 will apply. Once admitted to a college, whether on a vocational or non-vocational course or a mixture of the two, regulation 20 will apply to any student seeking to change courses.

I hope I have addressed your concerns.

MARTIN R IGOE MBE, Chartered MCIPD
FE Governance and Organisation Team
FE Strategy Division

NSS

EMPLOYMENT DISCRIMINATION – RC 6TH FORM COLLEGES

AUGUST 2005

Prepared by Dr Anna Behan

The Issue

Background

The Framework Directive (Directive 2000/78/EC) gave a small measure of help to our campaign to create a secular system of public education, namely in respect of vocational training. The purpose of the Directive, set out in Article 1 is to combat discrimination on the grounds of religion or belief as regards employment and occupation. That this covers vocational training in educational establishments is made clear in Article 3 which deals with the Scope of the Directive :

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

- (a) ...
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

The relevant sections of the Directive were transposed into English law in the Employment Equality (Religion or Belief) Regulations 2003 (“RB Regs”), of which Regs. 17 and 20 dealt with provision of vocational training and Institutions of Further and Higher Education. The RB Regs came into force on 2nd December 2003.

Up to this point, the Catholic Sixth Form Colleges (“CSFCs”) had been able to regulate their admissions so as to preserve their ethos i.e discriminate in favour of Catholics. However, because of their designation as FE Colleges, they fall within the definition in Reg. 20 (4), and this made unlawful any discrimination in respect of admissions on the grounds of religion or belief regardless of whether the nature of the course applied for was vocational or academic.

The CSFCs campaigned for some form of exemption from the operation of Reg.20 which, as it stood limited their rights to discriminate in respect of all admissions. An exemption was made in The Employment Equality (Religion or Belief) (Amendment) regulations 2004/SI2004 No.437 which came into force on 1st April 2004 for sixteen named institutions i.e. the CSFCs. This exemption allowed the CSFCs to disapply reg.20(1)(b) of the RB Regs “in so far as it is necessary for an institution to give preference in its admissions to persons of a particular religion or belief in order to preserve that institution’s religious ethos”. s.3 of SI2004 No.437 sets out that this exemption does not apply to “any admission to a course of vocational training”.

It is worth noting that Reg.20(1)(a) of the RB Regs was *not* disappplied; this makes unlawful discrimination “in the terms on which it (sc the governing body) offers to admit him to the establishment as a student”. This requirement therefore still applies to the CSFCs, and operates regardless of whether an application is for an academic or vocational course.

NB What is the nature of “vocational training”; are the courses offered to 16-19 year olds covered by the Directive? It has been suggested that “Catholic colleges provide little genuinely vocational training, by which I mean courses and qualifications that lead directly to specific employment.”(Edward Leigh MP In the Report of the Fourth House of Commons Standing Committee on Delegated Legislation 17 June 2003 Col. 025). His definition of vocational training is not, however, as broad as EC Case law suggests it should be; we refer particularly to Case C-293/83 Gravier v. City of Liege in which the definition covers

“any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary skills for such a profession, trade or employment.” (our emphasis). Any suggestion that courses such as GNVQs and BTECs are not affected by this legislation needs to be considered but does not appear well founded. Article 3 seems comprehensive and makes no exceptions. (There is also the further question on which I would appreciate comments, namely if such courses are within the scope of the Directive, then aren't faith schools that provide them also in breach regardless of whether or not they are designated as FE Colleges? This could be a very useful argument if it holds water.

Practical Problem

In practice, it appears that the CSFCs, despite campaigning for this amendment, have ignored its terms. The following survey of admissions information from the web sites of sixteen named institutions shows that not one has made it plain on the face of it that different rules apply for admission to a vocational course or a choice of subjects which includes a vocational element.

In addition, there are further barriers for some non-believers; many of the CSFCs bar those who do not support the ethos of religious colleges, and others require attendance at compulsory RE classes. Often these are conditions of admission. There is also a case (no.5 Holy Cross Bury) where the College states that it may make seek higher grades from non-Catholic entrants in apparent breach of Reg.20(1)(a).

What to do?

I think that it is unlikely that we will be able to run a test case simply because I suspect that a trawl for illegally rejected candidates would fail. This type of discrimination is particularly pernicious precisely because it is so blatant and effective that non-believing students wishing to pursue a course which was at least partly vocational would probably not realise that they had suffered illegal discrimination. Since the CSFCs are to all appearances continuing their established (and previously legal) procedure of favouring Catholics, a candidate would need a greater degree of familiarity with the RB Regs and SI2004 No.437 than it is reasonable to suppose such an applicant would have in order to identify himself or herself as having a claim.

Is there any way of mounting a legal challenge other than by a test case? (I wondered about Article 17 of the Directive which provides that member states must lay down rules on sanctions for breaches of national provisions, and that these sanctions must be “effective, proportionate and dissuasive”. If we can't find a remedy because the discrimination persuades any potential claimant that they do not have a case, then perhaps it could be argued that the government has failed to provide adequate and dissuasive sanctions and hence failed to transpose effectively Article 17. Could this or any other shortcoming in transposition give rise to any “direct effect” rights for individuals?

It may be that our line of attack should be political rather than legal. I would appreciate help in identifying other routes. Clearly we can raise the matter with the DfES and possibly the Women and Equality Unit in the DTI, and if this fails, raise it direct with the European Commission. But what would be the most effective way to ensure compliance on the part of the CSFCs?

Chart of CSFCs

This chart is based solely on the information provided in the web sites of the sixteen named institutions on the assumption that this is a reasonable starting point for a would-be applicant to check out his or her eligibility. Although the CSFCs might give more detailed (and more accurate) information if pressed, it is unlikely that an applicant without specialist knowledge would contact the CSFC concerned to clarify the position if a misleading impression has been given on the web site. I have therefore concentrated on these web sites since, whether intentionally or not, they serve as illegal filters.

The information may well be incomplete since some is available on request only and also I may have missed some relevant matters since not all the sites are equally easy to navigate. For these reasons, although it appears that there are some clear breaches of law, this survey can only be a starting point for further investigation.

The colleges are considered under the following headings:

- (a) Are vocational courses offered?
- (b) What is the admissions policy?
- (c) Does the application form discriminate in favour of Catholics, or those of other religions?
- (d) Is there a requirement to sign up to a Student/College Agreement (or any other condition attached to entry) to which a non-believer or a secularist could not subscribe?
- (e) Does the College say anything about its ethos which would exclude a non-believer or secularist (references to secularists here include those who because of their views on the role of faith in public life cannot support an educational establishment's religious character) from attending?
- (f) Is there a compulsory Religious Education class for students on vocational courses?
- (g) Start date to which applications information refers and date website visited (and date site last updated, if available)

If the information is unavailable on site, this is indicated as u/a.

Summary of Results

The clearest indications of breaches are in nos. 1, 3, 4, 5, 8, 9, 10 and 12.

Mostly this is because of a clear indication that Catholics (or those of similar or sympathetic outlook) are given priority regardless of the nature of the course. Nos. 5 and 9 also have more stringent requirements for entry for non-Catholics.

Several SCFCs do not give full information and so a firm conclusion cannot be drawn. These include 2, 6, 15 and 16 which give no information on admissions criteria, and also 3, 5 and 11 which give only partial information in what seems a guarded way (although I think 3 probably has sufficient information to be in breach).

Only 7, 13 and 14 appear not to be in breach but these sites offer less information as a whole and any conclusion should remain under review in case additional information appears.

1. Aquinas Sixth Form College, Stockport (www.aquinas.ac.uk)

- Yes. The Prospectus states: "There is an exceptional range of academic and vocational study options on offer and we don't mind if you mix and match them".
- Priority given to Catholics. 5 categories: 1. Catholics from partner schools 2. Catholics from other schools 3. non-Catholics from Catholic schools 4. siblings 5. others in order of receipt of application form. Also states: "There is no selection of applicants on other grounds".
- u/a
- Admissions are welcome from "non-Catholic students who wish to continue their education in a Christian environment". Necessary conditions of entry include "commitment to college community" and "acceptance of Student/College Agreement" The SCA contains an obligation to "accept principles stated and implied in the Statement of Purpose, Values and Vision which in turn states "We also encourage a questioning stance towards the values of our increasingly secular society".
- See above
- u/a
- 28th February 2005 (copyright 2004); for entry Sept 05; inspected 28th Feb 05

2. Cardinal Newman College Preston (www.cardinalnewman.ac.uk)

- (a) Yes
- (b) u/a
- (c) u/a
- (d) u/a

- (e) none apparent
- (f) none apparent
- (g) site apparently undated; inspected 8th March 05

3. Carmel College, St Helens (www.carmel.ac.uk)

- (a) Yes, offers “business, ICT and Vocational Education”
- (b) If studying at a partner/associated school you will be given priority provided you meet application deadline date and entry requirements. If not then your application will be considered on an individual basis subject to availability of places.
- (c) Application Form requests Religious Denomination and applicant’s parish
- (d) Under “Chaplaincy”, it says: “Spiritual and moral education is integral to the teaching of all curriculum areas and the enrichment activities of the College. Personal and spiritual development are thus core values in the student experience.”
- (e) The College Charter says that students must respect the Christian values on which the College is based and attend all lessons including General religious Education
- (f) see above
- (g) for entry Sept 05; inspected 8th March 05

4. Christ the King Sixth Form College, Lewisham (www.ctksfc.ac.uk)

- (a) Yes
- (b) favours Catholics and excludes secularists. 3 categories : 1. students from partner schools 2. other Catholic students 3. other students who wish to pursue sixth form education in a Christian context and who support the ethos of the College.
- (c) u/a (appears to be a request form)
- (d) none apparent
- (e) Although the prospectus states that students from all religions, faiths and backgrounds are welcome, the Mission Statement expects students to show commitment to the Christian values of the College.
- (f) All students follow a general Religious Studies programme (Prospectus)
- (g) course info 2004/5; inspected 8th March 05

5. Holy Cross Sixth Form College, Bury (www.holycross.ac.uk)

- (a) Yes
- (b) “Because of its distinctive religious character, Holy Cross gives preference to Catholic students, but it welcomes student applications from all faiths.” Non-believers do not, therefore appear to be welcome. If application numbers are extremely high, non-Catholic students may be asked for higher grades to guarantee a place.
- (c) u/a
- (d) none apparent
- (e) see (b)
- (f) Yes, a compulsory General Religious Education Course which all students take for one lesson a week
- (g) © Holy Cross College 2004/5 Prospectus 2005; inspected 8th March 05

6. Loreto College, Manchester (www.loreto.ac.uk)

- Yes
- u/a
- Application Form requests religion, Catholic parish and church membership if any for non-Catholics
- None apparent
- It exists primarily to cater for the needs of young Catholics in 16-18 age range but it “also caters for young people of different faiths whose beliefs are consonant with our key values of Freedom, Justice, Sincerity, Truth and Joy”.

- u/a
- no date apparent; inspected 8th March 05

7. Notre Dame Catholic Sixth Form College, Leeds (www.notredamecoll.ac.uk)

- Yes
- In addition to the general entry requirements (i.e. exam grades) a student must have a commitment to study and to the College community
- u/a
- none apparent
- none apparent
- u/a
- no date apparent; inspected 8th March 05

8. St Brendan's Sixth Form College, Brislington, Bristol (www.stbrn.ac.uk)

(a) Yes

(b) The Admissions policy apparently excludes non-believers: "While priority is given to Catholics, the criteria should be interpreted and implemented in such a way as to encourage applicants from from other denominations and faiths who are supportive of the ethos." (3.11). Policy has two categories: 1. applicants from partner schools, siblings and those with special pastoral or academic needs. 2. those from supportive religious backgrounds and others happy to be educated in an environment which values and promotes Christian ideals. In addition, a fundamental condition of an offer of a place at the College is that all students will be expected to support the College's Christian ethos. (Equality Policy 1.2).

(c) asks "are you a baptised Catholic?" and for parish. If no, "what is your religion/denomination?"

(d) Yes, Equality Policy 1.2 cited above at (b)

(e) see (d)

(f) none apparent

(g) © St Brendan's SFC 2002-2004 Entry for Sept 05; inspected 8th March 05

9. St Charles Catholic Sixth Form College, London W10 (www.stcharles.ac.uk)

- Yes
- 3 Admission Criteria: 1. disabled 2. partner schools without sixth form provision These two categories have an open choice of subjects 3. others offered a place on the basis of a negotiated course programme. Students from Christian denominations or faiths outside the Catholic tradition will be asked to write a letter stating their reasons for wanting to study at a Catholic College. This is required as an expression of the applicant's commitment to support the ethos of the College and to participate in the RE programme.
- u/a
- see (b)
- "We believe that to develop the individual it is necessary to develop spiritual and ethical intuition as well". The college aims include to build a community based on explicitly Christian values and to create an educational environment where prayer and liturgy are integral to college life. These aims define the life of the College. (fr. Mission Statement and Aims)
- Students required to attend each week the general RE programme which is described as "located clearly within the Roman Catholic tradition".
- Gives 2005 term dates; inspected 8th March 05

NB This College cannot meaningfully claim that any breach is due to mere oversight since it boasts that "The 16-19 curriculum is currently under close review by the Government and is likely to change over the next few years. The College is proud of its responsiveness to new initiatives, especially when they are of obvious benefits to students, and any changes that do occur will be detailed in this site."

10. St David's Catholic College, Cardiff (www.st-davids-coll.ac.uk)

(a) Yes

(b) 9 Governors' Priorities for Admission: 1 present and past students of partner schools 2. Catholic students of Cardiff schools 3. other Catholic students in the region 4. siblings 5. special needs 6, 7 and 9. variations on students who look for the opportunity to develop religious and spiritual dimensions of life 8. students whose presence will contribute to the community or assist in making curriculum provision viable. Application under these priorities (?is any other sort of application possible?) "signifies the acceptance of attending the course in RE".

(c) App Form for entry Sept 04 but asks applicants to tick a box for religion, choice includes no religion, and asks for parish

(d) In the application form, students have to sign that they agree to abide by college rules and conditions as set out in the Prospectus. The prospectus refers to a Student Charter but this is u/a

(e) Prospectus: The spirit of the Gospel is at the heart of our way of life, relationships and community.

(f) Yes

(g) Prospectus relates to year 2004-5 and was "correct at the time of publication Dec.2003" i.e. out of date but in more extensive breach at that date since the Religion and Belief Equality Regulations (which allowed no religious selection, and of which the CSFCs were aware since they had begun lobbying for an amendment to exempt them some months previously) came into force on 2 Dec 2003 and the SI exempting CSFCs for academic applications was not in force till 1st April 2004. Inspected 8th March 05

11. St Dominic's Sixth Form College, Harrow (www.stdoms.ac.uk)

- Yes. Under Choices, it says that with Curriculum 2000 students will be encouraged to take both academic and vocational options.
- Details u/a but under Good Relations it says "St Dominic's welcomes students from all religions and races..." No welcome for atheists.
- Application forms should be accompanied by a religious reference.
- Under Values and Vision: "All members of the College are expected to play a full and active part in putting these values (sc. the Gospel values) into practice".
- "By worshipping and praying together we can all acknowledge our need of God". In "Welcome to St Dominic's": "It is a Catholic college and a strong religious ethos remains central to its overall mission".
- None apparent
- Applications for Sept 05; inspected 9th March 05

12. St Francis Xavier Sixth Form College, Clapham (www.sfx.ac.uk)

(a) Yes

(b) In the event of over-subscription on a particular subject or course, priority is given to students from the 8 Catholic secondary schools in Lambeth, Southwark, and Wandsworth. Applications are welcomed from students who wish to continue their education in a Christian environment and are prepared to support the ethos of the College.

(c) u/a

(d) A Charter for Student Entitlement is u/a

(e) "The ethos of the College is firmly based on the Roman Catholic faith and our way of life constantly strives to create a positive experience of a Christian community." Mission Statement: "We at SFX College aim to provide for the educational needs of our students in an environment and ethos that proclaim Jesus Christ, the Way, the Truth and the Life." "We ... aim to give all a positive experience of the Church."

(f) All take RE for 1 period per week. Its aim is to "enhance each student's awareness of her or his dignity as a human being and as a person loved by God"

(g) Prospectus: Curriculum Offer 2005-2006; inspected 9th March 05

13. St John Rigby Catholic Sixth Form College, Orrell, Wigan (www.sjr.ac.uk)

- Yes
- Entry requirements appear limited to stated exam grades

- Form neutral
- None apparent
- None apparent
- Enrichment – RE not named as compulsory
- App form for Sept 05; inspected 9th March 05.

14. St Mary's College, Blackburn (www.stmarysblackburn.ac.uk)

- (a) Yes
 (b) Entry requirements are exam grades
 (c) No
 (d) None apparent
 (e) None apparent
 (f) None apparent
 (g) last updated 7th March 05; inspected 9th March 05

15. St Mary's Sixth Form College, Middlesbrough (www.stmarys-sfc.ac.uk)

- Yes
- u/a "We offer a warm welcome to Catholics and non-Catholics alike"
- Requests "home parish"
- Under Chaplaincy, it is stated "A central feature of a Catholic Sixth Form College is the provision made for spiritual development and meeting the spiritual needs of all members of the College". Elsewhere: "In accepting a place at St Mary's College you must agree to co-operate with the guidelines as stated in the prospectus and the student learning agreement (not on website). Under Student Services it states "You will be expected to ... attend the Act of Worship"
- Prospectus: "Religion is not put forward dogmatically but we do proclaim loudly that we are catholic. Our faith is central to all that we do."
- All students follow Entitlement Programme which includes "a programme of general education which will lead to an AS in General Studies and an award in Religious Education.
- © 2005; inspected 9th March 05

16. Xaverian Sixth Form College, Manchester (www.xaverian.ac.uk)

- (a) Yes
 (b) "If you attend a Catholic or Trinity C of E school, or you are a Catholic studying at another school, your place is guaranteed. If you attend another school, we will reply very quickly to your application and do everything we can to arrange the right course for you."
 (c) asks for RC parish
 (d) none apparent
 (e) none apparent
 (f) all students have one RE lesson a week
 (g) App process for Sept 05; inspected 9th March 05

Additional CSFC

I deal with one further CSFC separately below. This is because it is not listed in the Schedule to SI 2004 No.437, and so on the face of it not entitled to benefit from the exemption contained therein. This is odd because Martin Igoe's (of the DfES) letter to us dated 24 March 2004 states that the CSFCs in the schedule are "the only faith institutions in the further education sector".

(Mind you, he also says that as the CSFCs "are principally concerned with providing 16-19 year olds with the education and qualifications that will equip them for further and higher education, they are less likely to provide vocational training as opposed to the further education sector as a whole." In fact, all the CSFCs offer vocational courses, and several encourage students to mix and match.)

The additional CSFC came to my attention via SI 2004 No.1160 (made on 19 April 2004) which designates it as having a religious character in accordance with s.69(3) of the SSFA 1998. This fails to provide *any* exemption from the RB Regs. If St Luke's is designated as an FE College (which will need to be confirmed), then it cannot operate any preference in admissions for Catholics.

It appears that St Luke's is new and arises from a reorganisation of Catholic schools. It shares a site with a school due to close in 2008.

St. Luke's Catholic Sixth Form College, Sidcup (www.bexley.gov.uk/service/schools/sixthform/stlukes6th.html)

- Yes
- Criteria: 1.special needs 2.students in public care 3.students from RC partner schools 4. remaining places allocated on basis of distance from school in following order (a) Catholics (b) others who wish to benefit from the ethos of a Catholic college.
- u/a
- none apparent
- St Luke's celebrates and maintains the richness of the Catholic tradition and our students learn how to apply their faith to the modern world.
- Core Curriculum includes General RE
- Date not apparent; inspected 9th March 05

The Issue

Background

The Framework Directive (Directive 2000/78/EC) gave a small measure of help to our campaign to create a secular system of public education, namely in respect of vocational training. The purpose of the Directive, set out in Article 1 is to combat discrimination on the grounds of religion or belief as regards employment and occupation. That this covers vocational training in educational establishments is made clear in Article 3 which deals with the Scope of the Directive:

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) ...

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

The relevant sections of the Directive were transposed into English law in the Employment Equality (Religion or Belief) Regulations 2003 ("RB Regs"), of which Regs. 17 and 20 dealt with provision of vocational training and Institutions of Further and Higher Education. The RB Regs came into force on 2nd December 2003.

Up to this point, the Roman Catholic Sixth Form Colleges ("RCSFCs") had been able to regulate their admissions so as to preserve their ethos i.e. discriminate in favour of Catholics. However, because of their designation as FE Colleges, they fall within the definition in Reg. 20 (4), and this made unlawful any discrimination in respect of admissions on the grounds of religion or belief regardless of whether the nature of the course applied for was vocational or academic.

The RCSFCs campaigned for some form of exemption from the operation of Reg.20 which, as it stood, limited their rights to discriminate in respect of all admissions. An exemption was made in The Employment Equality (Religion or Belief) (Amendment) Regulations 2004/SI2004 No.437 which came into force on 1st April 2004 for sixteen named institutions i.e. the RCSFCs. This exemption allowed the RCSFCs to disapply reg.20(1)(b) of the RB Regs "in so far as it is necessary for an institution to give preference in its admissions to persons of a particular religion or belief in order to preserve that institution's religious ethos". s.3 of SI2004 No.437 sets out that this exemption does not apply to "any admission to a course of vocational training".

It is worth noting that Reg.20(1)(a) of the RB Regs was *not* disapplied; this makes unlawful discrimination "in the terms on which it (sc the governing body) offers to admit him to the establishment as a student". This requirement therefore still applies to the RCSFCs, and operates regardless of whether an application is for an academic or vocational course. Further amendments were made to the RB Regs in SI 2007 No.2269 which amend the definition of "training" and references to "training provider" in respect of further education colleges. Training includes "all types and all levels of training which would help fit a person for any employment", "vocational guidance" and "any assessment related to the award of any professional or trade qualification". We do not understand the purpose and import of these amendments.

For example, what is the nature of "vocational training"; are the courses offered to 16-19 year olds covered by the Directive? It has been suggested that "Catholic colleges provide little genuinely vocational training, by which I mean courses and qualifications that lead directly to specific employment." (Edward Leigh MP In the Report of the Fourth House of Commons Standing Committee on Delegated Legislation 17 June 2003 Col. 025). His definition of vocational training is not, however, as broad as EC Case law suggests it should be; we refer particularly to Case C-293/83 Gravier v. City of Liege in which the definition covers "any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary skills for such a profession, trade or employment." (our emphasis). Any suggestion that courses such as GNVQs and BTECs are not affected by this legislation needs to be considered but does not appear well founded. Article 3 seems comprehensive and makes no exceptions.

Practical Problem

In practice, it appears that the RCSFCs, despite campaigning for this amendment, the maximum permissible under the Directive, have ignored the remaining obligations. The following survey of admissions information from the web sites of sixteen named institutions shows that not one has made it plain on the face of it that the discrimination permissible for non-vocational courses do not apply for admission to vocational courses or a choice of subjects which includes a vocational element.

In addition, there are further barriers for some non-believers; many of the RCSFCs bar those who do not support the ethos of religious colleges, and others require attendance at compulsory RE classes. Often these are conditions of admission. There is also a case (no.5 Holy Cross Bury) where the College states that it may make seek higher grades from non-Catholic entrants in apparent breach of Reg.20(1)(a).

What courses of action are open to us?

I think that it is unlikely that we will be able to run a test case simply because I suspect that a trawl for illegally rejected candidates would fail. This type of discrimination is particularly pernicious precisely because it is so blatant and effective that non-believing students wishing to pursue a course which was at least partly vocational would probably not realise that they had suffered illegal discrimination. Since the RCSFCs are to all appearances continuing their established (and previously legal) procedure of favouring Catholics, a candidate would need a greater degree of familiarity with the RB Regs and SI2004 No.437 than it is reasonable to suppose such an applicant would have in order to identify himself or herself as having a claim.

Is there any way of mounting a legal challenge other than by a test case? (I wondered about Article 17 of the Directive which provides that member states must lay down rules on sanctions for breaches of national provisions, and that these sanctions must be “effective, proportionate and dissuasive”. If we can’t find a remedy because the discrimination persuades any potential claimant that they do not have a case, then perhaps it could be argued that the government has failed to provide adequate and dissuasive sanctions and hence failed to transpose effectively Article 17. Could this or any other shortcoming in transposition give rise to any “direct effect” rights for individuals?

It may be that our line of attack should be political rather than legal. I would appreciate help in identifying other routes. Clearly we can raise the matter with the DfES (now DCSF) and possibly the Women and Equality Unit in the DTI, and if this fails, raise it direct with the European Commission. But what would be the most effective way to ensure compliance on the part of the RCSFCs?

Chart of RCSFCs

This chart is based solely on the information provided in the web sites of the sixteen named institutions on the assumption that this is a reasonable starting point for a would-be applicant to check out his or her eligibility. Although the RCSFCs might give more detailed (and more accurate) information if pressed, it is unlikely that an applicant without specialist knowledge would contact the CSFC concerned to clarify the position if a misleading impression has been given on the web site. I have therefore concentrated on these web sites since, whether intentionally or not, they serve as illegal filters.

The information may well be incomplete since some is available on request only and also I may have missed some relevant matters since not all the sites are equally easy to navigate. For these reasons, although it appears that there are some clear breaches of law, this survey can only be a starting point for further investigation.

The colleges are considered under the following headings:

- (a) Are vocational courses offered?
- (b) What is the admissions policy?
- (c) Does the application form discriminate in favour of Catholics, or those of other religions?

- (d) Is there a requirement to sign up to a Student/College Agreement (or any other condition attached to entry) to which a non-believer or a secularist could not subscribe?
- (e) Does the College say anything about its ethos which would exclude a non-believer or secularist (references to secularists here include those who because of their views on the role of faith in public life cannot support an educational establishment's religious character) from attending?
- (f) Is there a compulsory Religious Education class for students on vocational courses?
- (g) most recent date website visited

There may also be a compulsory worship issue, but have not yet seen any information on this. If the information is unavailable on site, this is indicated as u/a.

Summary of Results

The clearest indications of breaches are in nos. 1, 3, 4, 5, 8, 9, 10 and 12.

Mostly this is because of a clear indication that Catholics (or those of similar or sympathetic outlook) are given priority regardless of the nature of the course. No. 5 also has more stringent requirements for entry for non-Catholics. No.12 appears to exclude the possibility of error by stating its admission criteria are the same for academic and vocational courses.

Several RCSFCs do not give full information and so a firm conclusion cannot be drawn. These include 2, 6, 15 and 16 which give no information on admissions criteria, and also 3, 5 and 11 which give only partial information in what seems a guarded way (although I think 3 probably has sufficient information to be in breach).

Only 13 and 14 appear not to be in breach but these sites offer less information as a whole and any conclusion should remain under review in case additional information appears.

1. Aquinas Sixth Form College, Stockport (www.aquinas.ac.uk)

- Yes.
- Priority given to Catholics. 5 categories: 1. Catholics from partner schools 2. Catholics from other schools 3. non-Catholics from Catholic schools 4. siblings 5. others in order of receipt of application form. Also states: "There is no selection of applicants on other grounds".
- u/a
- A necessary condition of entry is "acceptance of Student/College Agreement" The SCA contains an obligation to "accept principles stated and implied in the Statement of Purpose, Values and Vision which in turn states "We also encourage a questioning stance towards the values of our increasingly secular society".
- See above
- A compulsory weekly Ethics class
- 6/11/07

2. Cardinal Newman College Preston (www.cardinalnewman.ac.uk)

- (a) Yes
- (b) u/a only exam requirements given
- (c) u/a
- (d) u/a
- (e) none apparent
- (f) none apparent
- (g) 6/11/07

3. Carmel College, St Helens (www.carmel.ac.uk)

- (a) Yes,
- (b) If studying at a partner/associated school you will be given priority provided you meet application deadline date and entry requirements. If not then your application will be considered on an individual basis subject to availability of places.
- (c) Application Form requests Religious Denomination and applicant's parish
- (d) Under "Chaplaincy", it says: "Spiritual and moral education is integral to the teaching of all curriculum areas and the enrichment activities of the College. Personal and spiritual development are thus core values in the student experience."
- (e) The College Charter says that students must respect the Christian values on which the College is based and attend all lessons including General religious Education
- (f) see above
- (g) 6/11/07

4. Christ the King Sixth Form College, Lewisham (www.ctksfc.ac.uk)

- (a) Yes
- (b) favours Catholics and excludes secularists. 3 categories : 1. students from partner schools 2. other Catholic students 3. other students who wish to pursue sixth form education in a Christian context and who support the ethos of the College. Catholics from partner schools invited to return their forms earlier than other categories, and are guaranteed an interview
- (c) u/a (appears to be a request form)
- (d) none apparent
- (e) Although the prospectus states that students from all religions, faiths and backgrounds are welcome, the Mission Statement expects students to show commitment to the Christian values of the College.
- (f) All students follow general RE lessons (Prospectus)
- (g) 6/11/07

5. Holy Cross Sixth Form College, Bury (www.holycross.ac.uk)

- (a) Yes
- (b) "Due to its distinctive religious character, Holy Cross gives preference to Catholic students, but it welcomes student applications from all faiths." Non-believers do not, therefore appear to be welcome. If application numbers are extremely high, non-Catholic students may be asked for higher grades to guarantee a place.
- (c) asks for religion, parish if RC and Baptismal certificate for Catholics from non-Catholic schools
- (d) none apparent
- (e) see (b)
- (f) Yes, a compulsory General Religious Education Course which all students take for one lesson a week
- (g) 6/11/07

6. Loreto College, Manchester (www.loreto.ac.uk)

- Yes
- u/a
- Past Application Form requested religion, Catholic parish and church membership if any for non-Catholics
- None apparent
- It exists primarily to cater for the needs of young Catholics in 16-18 age range but it "also caters for young people of different faiths whose beliefs are consonant with our key values of Freedom, Justice, Sincerity, Truth and Joy".
- u/a
- 6/11/07

7. Notre Dame Catholic Sixth Form College, Leeds (www.notredamecoll.ac.uk)

- Yes
- Category 1: pupils from named partner schools, Category 2A: pupils from other 11-16 Catholic schools, Category 2B: pupils at other Catholic institutions, Category 3: Catholic pupils at non-Catholic institutions, Category 4: non-Catholics
- Asks for parish and for applicants to tick a box corresponding to the selection criteria.
- none apparent
- none apparent
- u/a
- 6/11/07

8. St Brendan's Sixth Form College, Brislington, Bristol (www.stbrn.ac.uk)

(a) Yes

(b) The Admissions policy apparently excludes non-believers: "While priority is given to Catholics, the criteria should be interpreted and implemented in such a way as to encourage applicants from from other denominations and faiths who are supportive of the ethos." (3.11). Policy has two categories: 1. applicants from partner schools, other members of the Catholic community siblings and those with special pastoral or academic needs. 2. those from supportive religious backgrounds and any student who accepts and supports the Catholic ethos and wider aims of the College. In addition, a fundamental condition of an offer of a place at the College is that all students will be expected to support the College's Christian ethos. (Equality Policy 1.2).

(c) asks "are you a baptised Catholic?" and for parish. If no, "what is your religion/denomination?"

(d) Yes, Equality Policy 1.2 cited above at (b)

(e) see (d)

(f) Everyone studies Core Curriculum which includes "spiritual journey".

(g) 6/11/07

9. St Charles Catholic Sixth Form College, London W10 (www.stcharles.ac.uk)

- Yes
- 4 Admission Criteria: 1. disabled 2. partner schools without sixth form provision 3. Catholic students from other secondary schools and 4. students from outside the Catholic tradition at other schools. Categories 3 and 4 will be offered a place on the basis of a negotiated course programme. All students including those from outside the Catholic tradition will be asked to write a letter stating their reasons for wanting to study at a Catholic College. This represents an opportunity for applicants to acknowledge the religious nature of the college and how they could be supportive of it.
- u/a
- see (b)
- "We believe that to develop the individual it is necessary to develop spiritual and ethical intuition as well". The college aims include to build a community based on explicitly Christian values and to create an educational environment where prayer and liturgy are integral to college life. These aims define the life of the College. (fr. Mission Statement and Aims)
- Students required to attend each week the general RE programme which is described as "based on the Catholic tradition".

(g) 6/11/07

10. St David's Catholic College, Cardiff (www.st-davids-coll.ac.uk)

(unupdated because in Wales)

(a) Yes

(b) 9 Governors' Priorities for Admission: 1 present and past students of partner schools 2. Catholic students of Cardiff schools 3. other Catholic students in the region 4. siblings 5. special needs 6, 7 and 9. variations on students who look for the opportunity to develop religious and spiritual dimensions of life 8. students whose presence will contribute to the community or assist in making curriculum provision viable. Application under these priorities (?is any other sort of application possible?) "signifies the acceptance of attending the course in RE".

(c) App Form for entry Sept 04 but asks applicants to tick a box for religion, choice includes no religion, and asks for parish

(d) In the application form, students have to sign that they agree to abide by college rules and conditions as set out in the Prospectus. The prospectus refers to a Student Charter but this is u/a

(e) Prospectus: The spirit of the Gospel is at the heart of our way of life, relationships and community.

(f) Yes

(g) Prospectus relates to year 2004-5 and was “correct at the time of publication Dec.2003” i.e. out of date but in more extensive breach at that date since the Religion and Belief Equality Regulations (which allowed no religious selection, and of which the CSFCs were aware since they had begun lobbying for an amendment to exempt them some months previously) came into force on 2 Dec 2003 and the SI exempting CSFCs for academic applications was not in force till 1st April 2004. Inspected 8th March 05

11. St Dominic’s Sixth Form College, Harrow (www.stdoms.ac.uk)

- Yes.
- Details u/a.
- Application forms should be accompanied by a religious reference(unless a student at Sacred Heart Language College or Salvatorian College).
- u/a
-
- u/a
- None apparent
- 6/11/07

12. St Francis Xavier Sixth Form College, Clapham (www.sfx.ac.uk)

(a)Yes

(b) Criteria: 1. exam entry requirements, 2. attendance at Catholic partner schools, 3. attendance at Catholic non-partner schools, subject chosen, date of application and distance of travel. Applications are welcomed from students who wish to continue their education in a Christian environment and are prepared to support the ethos of the College. “We offer general vocational courses in a range of areas that enable progression to further/higher education or areas of employment; our admission criteria for these course in the event of over-subscription are the same as for our general academic courses. Admission of breach

(c) u/a

(d) A Charter for Student Entitlement is u/a

(e) “The ethos of the College is firmly based on Jesus Christ, the Way, the Truth and the Life and we constantly strive to create a positive experience of a Christian community.”

(f) All take RE for 1 period per week. Its aim is to “enhance each student’s awareness of her or his dignity as a human being and as a person loved by God”

(g) 6/11/07

13. St John Rigby Catholic Sixth Form College, Orrell, Wigan (www.sjr.ac.uk)

- Yes
- Entry requirements appear limited to stated exam grades
- Asks applicants to state their religion; only options “Catholic”, “other Christian” and “other faith”
- None apparent
- The College welcomes applications from students of all convictions who show respect for our mission.
- Enrichment – RE not named as compulsory
- 6/11/07

14. St Mary’s College, Blackburn (www.stmarysblackburn.ac.uk)

(a)Yes

(b) Entry requirements are exam grades

(c) No

(d) None apparent

(e) All students will be expected to support the College’s Christian ethos

(f) None apparent

(g) 6/11/07

15. St Mary's Sixth Form College, Middlesbrough (www.stmarys-sfc.ac.uk)

- Not apparent
- u/a "We welcome all students who wish to benefit from our special ethos whether they are Catholic, of other faiths or none.
- Requests "home parish"
- Under Chaplaincy, it is stated "A central feature of a Catholic Sixth Form College is the provision made for spiritual development and meeting the spiritual needs of all members of the College". Elsewhere: "In accepting a place at St Mary's College you must agree to co-operate with the guidelines as stated in the prospectus and the student learning agreement (not on website). Under Student Services it states "You will be expected to ... attend the Act of Worship"
- Prospectus: "Religion is not put forward dogmatically but we do proclaim loudly that we are catholic. Our faith is central to all that we do."
- All students follow Entitlement Programme which includes "a programme of general education which will lead to an AS in General Studies and an award in Religious Education.
- 6/11/07

16. Xaverian Sixth Form College, Manchester (www.xaverian.ac.uk)

(a) Yes

(b) "If you attend a Catholic or Trinity C of E school, or you are a Catholic studying at another school, your place is guaranteed. If you attend another school, we will reply very quickly to your application and do everything we can to arrange the right course for you."

(c) asks for RC parish

(d) none apparent

(e) none apparent

(f) all students have one RE lesson a week

(g) 6/11/07

Additional RCSFC

I deal with one further RCSFC separately below. This is because it is not listed in the Schedule to SI 2004 No.437, and so on the face of it not entitled to benefit from the exemption contained therein. This is odd because Martin Igoe's (of the DfES) letter to us dated 24 March 2004 states that the RCSFCs in the schedule are "the only faith institutions in the further education sector".

(Mind you, he also says that as the RCSFCs "are principally concerned with providing 16-19 year olds with the education and qualifications that will equip them for further and higher education, they are less likely to provide vocational training as opposed to the further education sector as a whole." In fact, all the RCSFCs offer vocational courses, and several encourage students to mix and match.)

The additional RCSFC came to my attention via SI 2004 No.1160 (made on 19 April 2004) which designates it as having a religious character in accordance with s.69(3) of the SSFA 1998. It is a voluntary aided school and therefore exempted from the RBRegs.

It appears that St Luke's is new and arises from a reorganisation of Catholic schools. It shares a site with a school due to close in 2008.

St. Luke's Catholic Sixth Form College, Sidcup (www.bexley.gov.uk/service/schools/sixthform/stlukes6th.html)

- Yes
- Criteria: 1.special needs 2.students in public care 3.students from RC partner schools 4. remaining places allocated on basis of distance from school in following order (a) Catholics (b) others who wish to benefit from the ethos of a Catholic college.
- u/a
- none apparent
- St Luke's celebrates and maintains the richness of the Catholic tradition and our students learn how to apply their faith to the modern world.
- Core Curriculum includes General RE
- Date not apparent; inspected 9th March 05

NSS – INTERNAL PAPER

REDUCTION OF EXISTING PROTECTION IN EQUALITY BILL

JUNE 2009

- Introduction

There is a reduction of protection in existing protection in Volume 2 Schedule 12 Part 2 s.5 of the Equality Bill. This section concerns “Institutions with a religious ethos”, and the current law on which this section is based on The Employment Equality (Religion or Belief) (Amendment) Regulations 2004/SI2004 No.437 (“SI No.437”). The Equality Bill in its current form reduces in protection in particular for non-Catholics applying to FE colleges.

- Legislative History

Reg. 20 of the Employment Equality (Religion or Belief) Regulations 2003 (“the Regulations”) made unlawful all discrimination by FE Colleges in respect of admissions on the grounds of religion or belief. The sixteen Roman Catholic sixth form colleges (“RCSFCs”), as FE Colleges were therefore unable lawfully to continue to give preference in admissions to Catholics as they had done up to this point.

The Regulations were, of course, the implementation of Directive 2000/78/EC, the Framework Directive, which concerned employment and training. The Directive, therefore, left no scope for any exemption for the RCSFCs in respect of vocational courses. There was, however, a successful campaign to exempt the RCSFCs from Reg.20 in respect of courses other than vocational courses. SI No.437, which came into force on 1st April 2004 was the statutory vehicle for the exemption to allow RCSFCs to discriminate on grounds of religion or belief in admissions to non-vocational courses.

The NSS campaigned against this exemption and in the course of correspondence with the DES (as it then was) received assurances concerning the limited nature of SI No.437. In addition, it was acknowledged by the DES that SI No.437 “departs from the general and preferred approach of the main regulations” (source: letter dated 23 February 2004 from Martin R Igoe, FE Governance and Organisation Team, FE strategy Division at the DES in Moorfoot, Sheffield to the NSS Executive Director (“the Igoe letter”)).

- The Substance and Impact of the Reduction in Protection

- Substance of Reduction in Protection

SI No.437 provided that Reg. 20 (1) (b) was disapplied “in so far as it is necessary (*our emphasis*) for an institution to give preference in its admissions to persons of a particular religion or belief in order to preserve that institution’s religious ethos”. This means that there must be a necessary causal link between preferential admissions and preservation of ethos.

The words in that extract from SI No.437 highlighted above do not appear in the equivalent passage at Schedule 12 Part 2 s.5. The Explanatory Notes does not comment on their absence let alone provide an explanation for their excision.

We maintain that the absence of those words constitutes a significant reduction in protection (and that this was recognised by the Government at the time SI No.437 came into force - see references to the Igoe letter below.

- Impact of Reduction in Protection

The words “only so far as it is necessary” effectively operate to ensure that RCSFCs must actively consider the level necessary to ensure ethos when deciding on their admissions policies so that that level is not exceeded. It is demonstrable from the Ofsted Reports (see section 6 below) that no assumptions can be made, not even that a majority of Catholic students is necessary for an RCSFC to retain an outstanding Catholic ethos. Clearly, under the present legislation, this issue must be considered by each RCSFC when deciding on its admissions policy, and those policies must be regularly reviewed to see that they are still lawful.

The loss of the words “in so far as it is necessary” from the Equality Bill, however, means that, so long as the intention of the RCSFCs is to preserve the institution’s religious ethos, they can give preference to Roman Catholic applicants even if they cannot demonstrate that there is any objective need to do so. This will permit discrimination on a wider scale than previously, and the RCSFCs may in practice decide to apply a blanket preference to Catholic applicants.

Since there is no longer a need to demonstrate a causal link between the preferential treatment and the preservation of ethos, there is a significant risk that non-Catholic applicants for non-vocational courses are more likely to be discriminated against in the admissions process than at present, and consequently less likely to gain admission to the RCSFCs

- The Public Rationale of the Exemption in SI No.437

The Igoe letter gives the rationale behind the decision to grant the exemption in SI No.437. It explains that the substance of the RCSFCs concerns was that they would be prevented from “being able to give preference to Roman Catholic applicants in cases of over-subscription. Such preferences are given to ensure a sufficient number of Roman Catholic students and thus maintain the Colleges’ Catholic character and ethos. Further to consideration and consultation the regulations make an amendment in response to the concerns.”

The Igoe letter argues that “the amendment is limited so that it goes no further than necessary to meet those concerns. It lists the limitations, and (after two which relate to features retained or intended to be retained in the Equality Bill) the final one is stated as “the test imposed is strict in that preferential admissions are necessary to maintain an institution’s religious ethos. This should ensure that any preferential admissions are justified and proportionate in the circumstances”.

The Absence of a Public Rationale behind the Reduction in Protection

No explanation is given in the Explanatory Note accompanying the Equality Bill for the reduction in protection. This in itself is worthy of comment; we consider that the Government should justify each occasion when a change in wording reduces existing protection. Our comments are therefore focused on the absence of an objectively demonstrable “problem” which needs to be addressed, and on the loss of justification and proportionality, but we reserve the right to return to this issue if a rationale is provided by the Government.

- NSS Objections to the Reduction in Protection
- Absence of Evidence of a Problem to be Addressed

There is no objective need to strengthen the RCSFCs ability to discriminate in favour of Catholic applicants because the RCSECs have no difficulty establishing a Catholic ethos under the current arrangements. The Ofsted Reports on the fifteen English RCSFCs all comment on the Catholic ethos and reveal no problems in this area. On the contrary, in six of the RCSFCs, the Catholic ethos is described as “outstanding”, in a further seven it is “strong”, and in two it is “vibrant”. (Other terms used are “living” and “distinct”; some are used of more than one institution). The “weakest” performer is reported as having made “significant progress in promoting and evaluating its Catholic ethos”.

Some of the Ofsted reports also record the percentage of Catholic students at the inspected RCSFC.

Significantly, there is no obvious correlation between the proportion of Catholic students and the strength of the Catholic ethos: St John Rigby Catholic Sixth Form College, Wigan, the college with the lowest recorded percentage of Catholic students (47%) has a Catholic ethos described as “outstanding”.

Clearly, ethos can be highly successfully maintained even when the majority of the students are not Catholic. There is no “problem” so there is no need to change the current level of protection.

- Loss of Justification and Proportionality

As the Igoe letter demonstrates, the government introduced the current requirement of a necessary causal link between discriminatory admissions and preservation of ethos to ensure that any preferential admissions were “justified and proportionate in the circumstances”. Those tests were clearly of considerable significance in 2004, especially since SI No.437 itself by Mr Igoe’s own admission represents a departure from the general and preferred approach of the Regulations. We are unaware of any reason why they are not equally significant today.

Furthermore, the Igoe letter states that SI No.437 was made in response to the concerns of the RCSFCs; those concerns had been the subject of a public consultation. We are aware of no further consultation in this area; if indeed there has been none, then the NSS (among others) has lost the opportunity to make the representations made in this document to the responsible government department. This could be seen as unfair and lacking in impartiality.

The absence of the relevant words suggests to us that the Schedule 12 Part 2 s.5 will fail these tests of justification and proportionality, and that this fundamentally vitiates the Equality Bill.

- Conclusion

The NSS submits that the absence of the words “in so far as it is necessary” from Schedule 12 part 2 s.5 constitute a reduction in existing protection and that no justification for this has been offered or is apparent. We formally request that those words be reinstated in the Equality Bill immediately.

**LETTER FROM DFES TO NSS ON 23 Feb 04 explaining the strict limitations to the exception to
Employment Equality (Religion Or Belief) Regulations 2003 Regulation 20(1)(b)**

**department for
education and skills
creating opportunity, releasing potential, achieving excellence**

**Moorfoot
Sheffield S1 4PQ**

**tel: 0870 0012345 info@dfes.gsi.gov.uk www.dfes.gov.uk
Direct Line : 0114 259 3468
E-Mail : martin.igoe@dfes.gsi.gov.uk
Our ref: 2004/0013193DIRECT**

23 February 2004

Keith Porteous Wood
Executive Director
National Secular Society
25 Red Lion Square
LONDON WC1 R 4RL

Thank you for your contribution to the recent consultation exercise on the Secretary of State for Education and Skills' proposal to amend the Employment Equality (Religion or Belief) Regulations 2003 SI 2003/1660.

This proposal is to allow Catholic Sixth Form Colleges (CSFCs) to give priority to Catholic students on admission to non-vocational courses in order to maintain sufficient Catholic students to preserve the Catholic character and ethos of the colleges.

The Secretary of State has now considered the response to the consultation exercise and I have enclosed a copy of the consultation report for your information. He has decided to make the amending regulations and lay them before Parliament with a coming into force date of 1st April 2004.

I said in our telephone conversation that I would reply to your response when the Secretary of State had made his decision and I will do that now.

The CSFCs raised concerns about the potential impact of regulation 20 of the main regulations on their 16 institutions (15 in England and 1 in Wales). These institutions were Voluntary Aided or Voluntary Controlled schools prior to being designated as FE institutions to take over all the 'sixth form education' responsibilities of Catholic schools in their areas. They form a very small part of, and are the only faith institutions within, the FE sector.

The substance of the concerns was that regulation 20(1)(b) would prevent the Colleges from being able to give preference to Roman Catholic applicants in cases of oversubscription. Such preferences are given to ensure a sufficient number of Roman Catholic students and thus maintain the Colleges' Catholic character and ethos. Further to consideration and consultation, the regulations make an amendment in response to the concerns.

The amendment is limited so that it goes no further than necessary to meet those concerns. First, whilst the substantive provision will itself be generic and could apply in principle to institutions of other relevant religions on an equal basis, it only applies to the named CSFCs set out in a Schedule to the regulations so the extent of its effect is minimised.

Second, it applies only in relation to regulation 20(1)(b), the ability to admit, and thus does not permit discrimination in the terms of, or post, admission. Finally, the test imposed is strict in that preferential admissions are necessary to maintain an institution's religious ethos. This should ensure that any preferential

admissions are justified and proportionate in the circumstances. The amendment will not apply to any admission to a course of vocational training, and is therefore consistent with the Directive.

It is accepted that this amendment departs from the general and preferred approach of the main regulations. The departure is, however, limited as set out above. Furthermore, the Department believes that, unlike the further education sector as a whole, the CSIFCs are likely to provide comparatively little vocational training within their main curriculum thus limiting potential practical difficulties and any vocational training in any event will continue to be covered by regulation 20(1)(b).

The Department believes that the regulations are compatible with the ECHR and HRA.

I hope I have addressed your concerns and thank you for your interest in this matter.

MARTIN R 1GOE MBE, Chartered MCIPD
FE Governance and Organisation Team
FE Strategy Division

EMPLOYMENT EQUALITY (RELIGION OR BELIEF) REGULATIONS 2003 **SI 200311660**

CONSULTATION EXERCISE REPORT

1 The consultation exercise and documentation made it clear that the Secretary of State proposes to make a narrow and focused amendment to The Employment Equality (Religion or Belief) Regulations 2003 to allow the 16 Catholic Sixth Form Colleges in England and Wales, subject to views expressed in the consultation exercise, to continue with their admissions policies unchanged. The consultation documentation is reproduced at the end of this report.

2. The consultation exercise was over a 6 week period and ended on 12 December 2003. Invitations to contribute to the consultation project were sent to organisations representing the Catholic faith and other faiths and beliefs and, in the catchment areas of the 16 Colleges, to MPs, Local Education Authorities, local Learning and Skills Councils, colleges and schools. The consultation documents encouraged recipients to seek to reflect the views of parents and pupils in the area and to involve other interested persons and organisations. The documents were made available on the Department's website and responses were accepted on the response sheet contained in the documents or by e-mail.

3. A total of 426 responses to the invitation were received before the deadline from a variety of individuals and organisations as summarised below. Three (0.7%) replies were received from organisations in opposition to the proposal. These were from The Odyssey Trust, the National Secular Society and the British Humanist Association.

4. This is a summary of the 423 responses received in favour of the proposal:

8 from Members of Parliament,

3 from LEAs,

2 from LLSCs,

1 from a Trades Union,

125 from individuals including parents and students,

189 from schools and colleges including individual staff members and governors,

46 from Catholic organisations and members of Catholic organisations,

39 from Catholic churches and members of Catholic churches and

13 from other organisation and beliefs.

5. 12 responses were received after the deadline. All were in favour of the proposal.

Martin Igoe 9 January 2004

3 November 2003

EMPLOYMENT EQUALITY (RELIGION OR BELIEF) REGULATIONS 2003
SI 200311660

The Secretary of State for Education and Skills proposes to amend the legislation detailed above and would like your views on his proposal as part of this consultation. Please find attached a leaflet describing the issue and the proposed action and a sheet which you can use to let us know your views. This information is also available on our website at www.dfes.gov.uk/furthereducation.

Please use the attached sheet to let us know your views and return it to me at the address shown on the sheet by 12 December 2003 or, if you prefer, you can e-mail your views to me at fe.consultation@dfes.qsi.gov.uk. If you choose to use e-mail it would be very helpful to know if you are replying as an individual or representing an organisation and, if an organisation, which one.

Thank you for your interest in this matter.

Yours faithfully,

MARTIN R 1G0E MBE, Chartered MCIPD
Governance and Organisation
FE Strategy Division

EMPLOYMENT EQUALITY (RELIGION OR BELIEF) REGULATIONS 2003
SI 200311660

The UK, together with the other member states of the European Union, has agreed the Employment Directive that outlaws discrimination on the grounds of religion or belief, disability, sexual orientation or age. The UK has passed new implementation Regulations for the religion or belief strand of this Directive, to take effect from 2nd December 2003.

The Employment Equality (Religion or Belief) Regulations 2003 prohibit discrimination on grounds of religion or belief in a number of areas across the fields of employment and vocational training. They extend to England, Wales and Scotland. They prohibit acts of discrimination on grounds of religion or belief by institutions of further and higher education in Great Britain. The scope of the prohibition includes the admissions policies of such institutions.

This has the effect that pupils who have completed their statutory education and are studying for AS/A levels can do so in a school sixth form, where the Regulations do not apply, or in a sixth form college or sixth form centre within an FE college, where they do. The 16 Catholic Sixth Form Colleges (15 in England and 1 in Wales) were designated as FE institutions when they were established to take over the 'sixth form education' responsibilities of Catholic schools in their areas.

The Catholic Sixth Form Colleges generally perform very highly and consequently are very popular in their localities, attracting significant numbers of non-Catholics as well as Catholics. This in turn leads in some cases to over-subscription, in which cases the colleges give preference to Catholic students applying for places on non-vocational courses. This is the same admissions policy that faith schools use and will be able to continue using because they are not within the scope of the Directive. Under the Regulations, Catholic Sixth Form Colleges will no longer be able to give preference to Catholic student applications for oversubscribed non-vocational courses. On undersubscribed non-vocational courses, the position will remain as now.

The Government has sympathy for the position of the Catholic Sixth Form Colleges and their wish to ensure their Catholic ethos is maintained. Consequently, we are seeking your views on a proposed amendment to the Regulations. This amendment would be very narrow and focused to allow the 16 named Catholic Sixth Form Colleges to give priority to Catholic students on admission to non-vocational courses in order to maintain a

minimum percentage of Catholic students and, thereby, maintain the Catholic character and ethos of the college.

We would be very grateful if you would add your views on this proposal to the consultation. If you are willing to do this please use the attached response sheet and return it to us at the address on the bottom by 12 December 2003 or, if you prefer, you can e-mail your views to us at fe.consultation@dfes.qsi.gov.uk. This information is also available on our web site at www.dfes.gov.uk/furthereducation. Please feel free to copy this information and request to other interested persons or organisations asking them to respond direct to us. It would be most helpful in all cases if the response could indicate whether it is from an individual or representing an organisation and, if an organisation, which one.

Thank you for your interest in this matter.