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UK Consultation on the European Commission Proposal for an Equal Treatment Directive

A response from the National Secular Society

Submitted on 28 July 2009 to EUDirective@geo.gsi.gov.uk

This submission is a response to a consultation document dated 5 May 2009 seeking views to inform the UK Government's further consideration of a proposed European Commission (EC) Directive to prohibit discrimination on the grounds of religion or belief, disability, age and sexual orientation outside the areas of employment and vocational training.

Consultation http://www.equalities.gov.uk/international/eu_directive.aspx

Consultation document

http://www.equalities.gov.uk/pdf/GEO_EqualTreatment_final.pdf

The National Secular Society (NSS) response will focus on Articles 2 and 3 of the consultation. The response should be read in the light of the following statistics:

Context

The percentage of people claiming they belong to Christianity was 52.8% in 1996, dropping to 47.6% in 2006. This was mirrored by an increase in people not belonging to any religion (increasing from 42.6% to 45.8%) who by 2009 will outnumber those who belong to Christianity¹.

Even research done by religious groups finds both a loss of interest in religion and a steep decline in attendance².

A Home Office Study in 2001 showed that religion ranked only ninth in characteristics important to people's identity, although it figured higher in the identity of Jewish and Muslim respondents³.

Article 2: Harassment

We take the view that it is not necessary to have harassment provision in goods and services - and even in schools – because any behaviour that is sufficiently serious to count as harassment would also count as discrimination. Case law suggests that in race cases, harassment has been brought successfully under discrimination anyway. There are also already public order offences and the Racial and Religious Hatred Act, both of which will assist in targeting unwelcome behaviour.

Moreover, an extension of the protection to religion or belief raises issues of free speech. An individual's right to protection from harassment is a basic right in a civilized society. Issues of religion and belief are fundamentally different and any extension of duty needs to be considered with caution. It is desirable to protect people from threatening, intimidating or abusive behaviour for any reason, including their religion or belief, through public order offences. However, protecting the belief itself is another matter as beliefs are not individuals and therefore have no rights.

It is absolutely essential that the right to free expression be protected, including the right to question and criticise beliefs. Too often, religious groups want protection afforded their beliefs while retaining the right to criticise and

¹ Office of National Statistics, Social Trends 38 - published 2008 **Table 13.18**
http://www.statistics.gov.uk/downloads/theme_social/Social_Trends38/Social_Trends_38.pdf

² <http://www.tearfund.org/webdocs/Website/News/TAM%20Final%20Version%208.5.07.pdf>

³ <http://www.homeoffice.gov.uk/rds/pdfs04/hors274.pdf> [Home Office Research Study 274 Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey Table 3.1: *Which of the following things would say something important about you, if you were describing yourself?* Religion was ranked as the ninth factor out of 15 with only 20% of respondents claiming it to be a factor at all.

even condemn those of others, including lack of belief. Any guidance issued must emphasis the importance of freedom of expression as a human right.

Article 2.8 Exceptions

As noted in pp14-15 of the consultation document:

Current UK legislation is subject to a number of exceptions which have been considered necessary in order to balance the potentially conflicting fundamental rights of different groups. For example, domestic legislation has been constructed in order to achieve a balance between the European Convention on Human Rights (ECHR) Article 8 rights (the right to respect for private and family life) of gay, lesbian and bi-sexual persons with the Article 9 rights (freedom of thought, conscience and religion) of others, including service providers with a religious ethos, together with the Article 10 rights (freedom of expression) of both groups. (our underlining)

The NSS opposes discrimination against people on the grounds of their sexuality but acknowledges the freedoms currently accorded organised religions to discriminate – but these should be limited to the most restricted circumstances possible. In this respect we applaud the insertion made into the Equality Bill (Schedule 9) at Commons Committee stage:

*(8) Employment is for the purposes of an organised religion only if the employment wholly or mainly involves—
(a) leading or assisting in the observation of liturgical or ritualistic practices of the religion, or
(b) promoting or explaining the doctrine of the religion (whether to followers of the religion or to others).⁴*

Just as race discrimination is not permitted under any circumstances, so doctrines of faith can be permitted only in the most limited circumstances, as shown in italics above, to justify discrimination or prejudicial treatment on the basis of sexual orientation or against transsexual persons.

In particular, religious groups or bodies should have no exemptions if they receive public funding and/or they are working for public authorities.

The NSS endorses the following comments on this subject made by Dr Evan Harris MP and wishes them to form part of our submission:

Firstly:

‘Tackling inequality relating to religion may actually increase religious sensitivities. People may feel that they are not being given what someone else is being given because of historic service provision in that area, and may want the same for themselves. An example is the demand for it to be

⁴ <http://www.publications.parliament.uk/pa/cm200809/cmbills/131/09131.159-165.html#i010s>

considered that sharia law might be given more status in relation to other religious laws'.⁵

And secondly:

'I think that religious organisations (...) show too great a willingness to want to discriminate against other people. They accept the protections that they have been given, but want the scope to discriminate against other people—for example, on grounds of sexual orientation or religion'.⁶

It is important to note that not all members of a particular group have the same needs so it is neither useful nor equitable to portray a group as a homogenous entity, especially when the spokespeople for a religion tend to follow the hard-line doctrine. For example, only around only a quarter of Roman Catholics agreed or strongly agreed with the Catholic bishops' position on abortion law. We expect that a lower percentage still will agree with the bishops' position on homosexuality and even less on contraception.⁷

It is also often the case that these spokespeople are older male members of the community and their diktats may well not be in the interest of female members in particular. Support is needed for people – especially women, young people, those from sexual minorities or of another faith – who may not conform in all respects to their peers but may be frightened or unable to declare this.

Even among members of the same religious group, it is typical that some welcome free debate while others, often the more extreme, seek to restrict it using any means possible. Harassment provisions are likely to provide them with a mechanism. The restriction of free debate is likely to foster extremism by driving it underground.

Allowing exemptions could particularly lead to problems for women, children and non-heterosexuals within a community if services are targeted at or run by a religious group. This may deter some from using them or may restrict their freedom of choice – for example in areas of women's sexual health – abortion, contraception etc and the treatment of non-heterosexuals. There may also be room created for discrimination against employees.

We particularly oppose the concept of voluntary charters, for example the proposed Charter for Excellence as a substitute for robust equality laws. Charters are unenforceable and those most likely to discriminate will be the ones who will either refuse to sign up to one, or having done so – and having gained the kudos – will break it.

There should also be an active, transparent, accountable system to police groups who receive public funding to serve a community to ensure that the *whole* community is being served, that there is no active promotion of religion

⁵ <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090511/debtext/90511-0017.htm>

⁶ <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090511/debtext/90511-0017.htm>

⁷ http://www.catholicsforchoice.org/news/pr/2007/documents/YouGovPoll_16-Nov-2007.pdf

and that there is no discrimination against people not of the faith of the group (whether of other religions or none), or against minorities covered in equality legislation. Both employment and service delivery discrimination should be outlawed. Faith-based welfare groups must be held accountable to the same standards of provision as secular groups, particularly if in receipt of public funds.

We are also concerned that, historically, the needs of the non-religious as a group are not generally considered when assessing disadvantage.

Article 3:Scope

The consultation shows in Annex A, p30:

(21) The prohibition of discrimination should be without prejudice to the maintenance or adoption by Member States of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation. Such measures may permit organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons. (our underlining)

The majority of exemptions to Equality regulations are made to accommodate religious doctrine or dogma. This significantly undermines equality law, particularly as those successfully demanding the exemptions are those most likely to want to discriminate. It is claimed that it is a matter of religious liberty to be able to discriminate against others. We oppose such exceptions in principle except where they are directly related to the doctrine and practice of religion. To paraphrase the wording of the Equality Bill Schedule 9 para 2(8) (post Commons Committee stage)⁸, which is:

(8) Employment is for the purpose of an organised religion only if the employment wholly or mainly involves –
(a) leading or assisting in the observation of liturgical or ritualistic practices of the religion, or
(b) promoting or explaining the doctrine of the religion (whether to followers of the religion or to others)

The NSS requires that religious exceptions be granted:

Only if the services wholly or mainly involve –
(a) leading or assisting in the observation of liturgical or ritualistic practices of the religion, or
(b) promoting or explaining the doctrine of the religion (whether to followers of the religion or to others).

⁸ <http://www.publications.parliament.uk/pa/cm200809/cmbills/131/09131.159-165.html#j010s>

Even if the requirements for legitimacy of objective and proportionate nature were sufficiently incorporated into the legislation, we still have reservations about this approach. It would provide opportunities for those exercising public functions to introduce otherwise illegal discrimination. This could also have a disproportionate impact on the non-religious or those deemed to be of the 'wrong' religions.

It is also important to note, again, that not all special needs are equal and that not all members of a particular group have the same needs so it is neither useful nor equitable to portray a group as a homogenous entity. For example, disability and religion/belief are not the same.

Age and sexual orientation share the same characteristics as gender, race and disability in that they are the qualities of groups in need of protection for reasons outside their own control.

By contrast, religion or belief is a private matter, and often one of choice. Hard-line religious doctrines encourage discrimination against others. The State should have no part in promoting the interests of religious groups or interests particularly as degrees of orthodoxy vary and it is often the most hard line minority who are the most vocal in demanding exemptions and special treatment. Allowing exemptions beyond the very limited range we refer to above could also make it harder for individuals to exercise free choice and leave or challenge their religious community without suffering discrimination in employment or services.

Such a measure would be divisive, leading to lobbying of local authorities and councils by different groups (possibly within the same religion) competing for funding to promote their interests. A public sector duty to promote *apparent* equality between different groups would lead to increased segregation and lack of cohesion. There is potential here for parallel systems of service provision to be created, leading to funds being diluted and a kind of ghettoisation being sanctioned.

There is also often direct conflict between the claimed rights of religion and other areas of equality, for example those related to sexuality (both sexual orientation and sexual health). It is important that there is not a hierarchy of needs or the demand for exemptions for religion and belief attempting to trump others.

We agree with Dr Evan Harris MP, who said that:

'Religion is different from the other strands. For example, it is not essential or immutable in the same way as race or gender. Religious beliefs give rise to policies and practices that are highly contested, unlike the other strands. Representatives of religions —rightly, in many cases—feel the need to proselytise in order to secure new followers, unlike representatives of other strands. Some religions campaign actively against equal treatment in relation to other strands, as they have a right to do. They are unique in that respect'.
(*op cit*)

About the NSS

The National Secular Society campaigns for a society in which everyone is free to practise their faith, change it or not have one, according to their conscience. Beliefs or lack of them should not put anyone at an advantage or a disadvantage. Religion should be a matter of private conscience, for the home and place of worship; it must not have privileged input into politics, legislation, education or healthcare.

We fight to protect freedom of expression from attacks by religious groups, who often want protection for themselves that they are not prepared to allow others.

We want to ensure that Human Rights always come before religious rights, and to minimise the exemptions religious bodies are granted or try to demand from discrimination laws.