



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE

Directorate D: Equality
Unit D.1: Equal treatment legislation

Brussels, 20.10.2014
JUST/D1/PL

Mr Keith Porteous Wood
National Secular Society
25 Red Lion Square
London WC1R 4RL

**Subject: Your complaints CHAP (2011) 733, CHAP (2011) 1061 and
CHAP (2011)2671 - EU Pilot 3800/12/JUST**

Dear Mr. Porteous Wood,

I refer to your complaints, which concern conformity of different aspects of UK legislation with Article 4 of Directive 2000/78/EC on Employment Equality. These complaints were originally registered under reference numbers CHAP (2011) 733, CHAP (2011) 1061 and CHAP (2011)2671 and subsequently under EU Pilot number 3800/12/JUST for contacts with the UK authorities in the matter.

The three complaints at stake are the following:

- CHAP(2011) 733 – Protection from discrimination on the basis of religion or belief for school staff in employment under the Education Bill.
- CHAP(2011) 1061 – School Standards and Framework Act 1998 (SSFA) – discrimination of staff employed in state funded faith schools.
- CHAP(2011) 2671 – Education (Scotland) Act 1980 – discrimination of staff employed in the so called denominational schools.

As previously mentioned, our initial assessment was that these complaints raised questions about conformity of UK laws at stake with Article 4 of Directive 2000/78/EC. These questions required us to take contact the UK authorities to ask for clarifications in the matter to be able to assess whether any breach of the Directive is at stake.

I regret the delay in providing you with our final assessment in this matter. This is a complex issue in which the Commission has exchanged two rounds of letters with the UK authorities.

After careful analysis of all relevant elements, we have come to the following conclusion:

- **CHAP(2011) 733 – Protection from discrimination on the basis of religion or belief for school staff in employment under the Education Bill:** This complaint concerned the fact that Section 55 of the Education Act 2011 amends Section 4 of the Academies Act 2010. In doing so it set specific limitations to the number of staff, which can be appointed on religious grounds in these academies (so called "reserved teachers"). However, Section 62 of the Education Act inserting Section 124 AA in the School Standards and Framework Act 1998 (SSFA) then allows a derogation to this Section by stating that "*The Secretary of State may by order provide that this section does not apply to a school specified in the order*". In your complaint it was claimed that this discretionary power by the Secretary of State was intended to be used widely. In its reply, the UK was able to clarify that in practice this is not the case and no orders had been made under Section 124AA and none were in the pipeline. Consequently, there is no evidence of the use of this derogation in practice in breach of the Directive.

- **CHAP(2011) 1061 – School Standards and Framework Act 1998 (SSFA) – discrimination of staff employed in state funded faith schools:** this complaint concerned the fact that the SSFA appears to permit religious conditions to be applied to a wide range of teaching posts in connection with the appointment, remuneration, promotion and dismissal of teachers and other staff in the schools without providing them with any safeguards against discrimination. As regards this Act, we have come to the conclusion that the UK has provided sufficient clarification as regards its narrow interpretation of Sections 58 and 60, which merely enables the faith-based education and is limited to ensure the maintenance of the religious character of the school. We consider that such an interpretation is in line with Article 4 of the Directive.

- **CHAP(2011) 2671 – Education (Scotland) Act 1980 – discrimination of staff employed in the so called denominational schools:** this complaint concerned the fact that Section 21(2A) of the Education (Scotland) Act 1980 concerns "*Management of denominational schools*" and states that "*A teacher appointed to any post on the staff of any such school by the education authority shall. . . satisfy the [Scottish Ministers] as to qualification, and shall be required to be approved as regards his religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted;*" Following clarifications received from the Scottish Government, we have come to the conclusion that this provision is applied and given effect in a narrow manner compatible with the Directive.

We have come to the conclusion that, following the UK clarifications, the interpretation and application of the Acts at stake can be considered to be in line with the Directive.

On the basis of the above, I regret to inform you that we are not planning to take any further action as regards these complaints, since we have not been able to identify any breach of EU law by the UK on the basis of these complaints.

If we do not receive any further elements from you which could indicate a breach of EU law within four weeks of sending this letter, we will close the handling of your complaints.

EU Pilot file 3800/12/JUST concerning conformity of various UK laws with Article 4 of Directive 2000/78/EC remains open, since it concerns a number of UK laws in a more horizontal way and did not deal with only the issues raised in your complaints. We are currently waiting for the UK to notify a legislative amendment as regards another matter, which is not related to your complaints.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Stein', written in a cursive style.

Andreas STEIN
Head of Unit