

Equality Bill – Second Reading Briefing

May 2009

Main concerns

1. Public Sector Single Equality Duty
2. Procurement
3. Harassment
4. Exemptions

Introduction

The Bill combines all previous equality legislation, plus a range of new provisions. It is already controversial. The new duty on public authorities to consider ‘socio-economic inequalities’ is being criticised as ‘class warfare’.

The Bill comes at a time when the equality and diversity agenda, which this Bill epitomises, can be seen to have created a culture in which religious believers are coming under serious pressure in many walks of life (see Appendix for recent examples).

Businesses are unhappy too. In March the Confederation of British Industry told the Financial Times that ministers should not be contemplating introducing a “regulatory big stick” in the middle of a recession.¹ In January the Institute of Directors said the Government estimated the cost of its planned new employment laws at £1 billion per year, with £70.9 million spent annually on implementing the Equality Bill. The IoD said this is an underestimate, and says the Government has also exaggerated the potential benefit to the economy.² Any burden that falls on businesses as a result of the Bill can be expected to weigh still more heavily on small charities, which will have to comply with red tape instead of being able to focus on their beneficiaries.

1. Public Sector Single Equality Duty

A new Equality Duty will be placed on all public authorities and bodies exercising public functions. Currently, there are three separate duties covering the grounds of race, disability, and ‘gender’. The new combined duty will apply to eight protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Councils are already over-zealous in applying equality laws. (Witness Brighton & Hove Council’s withdrawal of funding from a Christian care home for refusing to question elderly residents quarterly about their sexual orientation – the funding was subsequently restored.³ Numerous councils have “banned” Christian symbols and even Christmas.⁴) Applying the single equality duty to religion or belief and sexual orientation will make this worse.

There is also concern that religion or belief might be treated as a poor relation. The Bill provides that specific duties may be imposed on public authorities by regulations, to ensure ‘better performance’ of the Equality Duty. The Government is planning to consult on these specific duties over the summer.⁵ This may lead to religion or belief being inadequately covered by specific duties when compared to the other grounds. The consultation will certainly include considering specific duties relating to procurement (see below).

Religious believers would *not* find it helpful to have the proposed new duty covering religion and sexual orientation. Equality grounds such as these are already over-regulated. However, if such legislation is insisted upon, sexual orientation and religion must be treated equally. Concerns raised by religious organisations include the relationship between sexual orientation and religious conscience, issues with regard to faith schools, undermining the established position of the C of E and concerns about requiring the promotion of homosexuality, even in the school curriculum. The practice must

reflect the theory of equality. At the moment, if there is any conflict between atheism and Christianity, atheism seems to win out. Similarly, there is a tendency for gay rights to trump religious rights.

Two publicly funded broadcasters, the BBC and Channel 4, have expressed concern that the Equality Duty could interfere with their editorial independence by imposing politically correct quotas of actors and presenters.⁶

The public sector equality duty also includes reducing 'social inequality'. Clause 1 of the Equality Bill states that when considering how to exercise its functions a public authority should "have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage". This is controversial politically, as the new proposals have been criticised as being "class war attacks".⁷

2. Procurement

Around £175 billion is spent annually by the public sector on private or voluntary sector contracts.⁸ According to the Government, 30 per cent of British companies are contracted by the public sector.⁹ The Government intends to use this influence to advance its equality agenda by ensuring that contracts are only arranged with those who comply with that agenda.

Concerns have been raised about how this will restrict the market. The Government has to abide by the 2004 EU Directives on procurement which may well limit the scope of the Equality Bill. *Current* Government Equality Office guidance states that purchasers must "make sure 'Equality issues that are addressed in procurement are *relevant to the subject or performance of the contract*'" [emphasis added].¹⁰ Presumably this means a paperclip supplier does not have to have a 5-star equality and diversity policy, but an agency supplying staff might.

Procurement will affect the charitable sector too. Many charities have contracts with public authorities. Religious organisations in receipt of public funding are already coming under increasing pressure to abandon their religious ethos. Roman Catholic adoption agencies are being closed by the Sexual Orientation Regulations and care homes are being threatened with withdrawal of funding because of diversity policies. The new Equality Duty may mean public authorities will put an even tighter squeeze on faith-based welfare providers, particularly once the specific duties are introduced. The result could be the exclusion of religious organisations from an area they are very successful in, to the detriment of the public generally.

3. Harassment

The definition of harassment used in the Bill has a remarkably low threshold. It prohibits unwanted conduct that has the purpose or effect of "violating another's dignity" or creating an "intimidating, hostile, degrading, humiliating or offensive" environment for them. So it is sufficient to show that conduct was "offensive".

The Equality Bill will for the first time prohibit harassment on grounds of gender reassignment by service providers exercising public functions. No religious exceptions have been included in this area, and this therefore will put faith-based service providers at risk of claims of harassment.

It is a great relief to many that, despite strong pressure from lobby groups, the Government is *not* introducing harassment on grounds of sexual orientation or religion or belief outside the employment sphere. The consequences for free speech and religious liberty if harassment on these grounds had applied to provision of goods and services could have been severe. It could have led to claims of harassment against a Christian shopkeeper who, in a debate with a Muslim customer, said that Christ is the only way of salvation. However, the Government says it was not provided with evidence showing a need to extend the scope of the harassment provisions.

The House of Lords rejected Government proposals to introduce a similar religious harassment law in the 2005 Equality Bill. Peers rightly raised the alarming consequences of such a move. For example, the use of church buildings as polling stations would be put at risk, because an atheist could claim the environment was "offensive". The Christian owner of a block of flats could find himself unable to put up a poster in a corridor advertising his own church for fear of a harassment claim from a Muslim resident.

The Government is aware that religious groups are alarmed that they would have fewer legal rights than gay groups. Religious groups would prefer no harassment law but if sexual orientation harassment is outlawed, religious harassment must be outlawed too, or there will be a disparity in legal rights.

4. Exemptions:

- **Loss of existing protections provided by exemptions/religion or belief discrimination provisions;**

Political parties want the freedom to appoint staff who are card-carrying members of the party. In the same way, churches and religious organisations want to require that their staff personally hold the relevant faith. Exceptions to discrimination law currently allow for this. Protections also apply on the grounds of sexual orientation so that, for example, a church does not have to employ a practising homosexual minister. Exemptions also allow religious groups to limit service provision to co-believers e.g. church membership or use of the church hall. However, many religious believers are alarmed that Stonewall and the British Humanist Association have called for the limitation or removal of these protections.¹¹ This would force churches to employ atheists and practising homosexuals. Churches would also be required to open up membership to non-believers and Christian old people's homes would have to provide married couple's accommodation to homosexual couples.

- **Introduction of new conscience protections for individual believers at work, in business, or acting as service providers under contract with public authorities**

The religious exceptions within the Bill follow existing law by failing to protect religious organisations which operate under contract with a public authority. Adoption agencies were given no specific exception to the Sexual Orientation Regulations, causing many Roman Catholic agencies to close or discard their religious ethos.¹² This has reduced provision for vulnerable children. The net result will be that fewer children are adopted.

The religious exceptions do not apply to commercial organisations either. There are therefore many areas of business in which existing discrimination law provides inadequate freedom of conscience:

- a Sikh architect could be required to design a mosque
- a Muslim web designer could be forced to do work for a gay rights organisation
- a Christian conference centre run on a commercial basis could be forced to host a Satanist convention
- a Jewish printing firm could be forced to print an Islamic tract denouncing other religions, including Judaism

In a judicial review of the Sexual Orientation Regulations for Northern Ireland, the High Court said the fact that a person is carrying out commercial activity is not a total bar to religious conscience rights under the Human Rights Act. It ruled that the orthodox Christian belief that the practice of homosexuality is sinful is one that is worthy of recognition and suggested that a businessman should not be required to act in a way that would be in direct conflict with the core elements of his religious belief or creed.¹³ The Equality Bill should be amended to reflect this.

Christian registrar Lillian Ladele was told by the Employment Appeal Tribunal that the mistreatment meted out to her by Islington Council was justified because the Council was trying to promote gay rights.¹⁴ This demonstrates that religious conscience is not sufficiently protected in law. (The case is being appealed to the Court of Appeal.)

¹ *Financial Times*, 31 March 2009

² Institute of Directors, Press Release, *IoD condemns Government over £1 billion regulation 'bombshell'*, 19 January 2009

³ *The Sunday Telegraph*, 8 February 2009

⁴ See, for example: *Daily Mail*, 9 June 2005; *The Daily Telegraph*, 29 August 2008

⁵ *A Fairer Future – The Equality Bill and other action to make equality a reality*, Government Equalities Office, April 2009, page 12

⁶ *Guardian.co.uk*, see <http://www.guardian.co.uk/media/2009/apr/29/bbc-channel-4-equality-bill> as at 1 May 2009

⁷ *BBC News Online*, 13 January 2009, see http://news.bbc.co.uk/1/hi/uk_politics/7827032.stm as at 30 April 2009

⁸ *A Fairer Future – The Equality Bill and other action to make equality a reality*, Government Equalities Office, April 2009, page 12

⁹ *Framework for a Fairer Future – The Equality Bill*, Government Equalities Office, June 2008, page 22

¹⁰ *Make Equality Count*, Office of Government Commerce, December 2008, page 21

¹¹ Stonewall's response to the *Discrimination Law Review*, September 2007, pages 5-6; British Humanist Association, *New Bill fails to promote real equality for non-religious people*, 28 April 2009, see <http://www.humanism.org.uk/news/view/273> as at 30 April 2009

¹² *Daily Mail*, 12 April 2009

¹³ The Christian Institute and others, re: Judicial Review [2007] NIQB 66, at paras 50, 88-89

¹⁴ *London Borough of Islington v Ladele* (2008) UKEAT/0453/08

Appendix

Pilgrim Homes, care home for the elderly

A Brighton care home for elderly Christians lost £13,000 of funding from the local council because of its religious beliefs on homosexuality. Brighton & Hove Council wanted the home to ask its elderly Christian residents about their sexual orientation every three months, use images of homosexuals in its promotional literature and show a Stonewall presentation on 'gay rights' to staff. Managers at the care home explained that to comply with the demands would unduly distress the elderly residents and undermine the home's Christian ethos. But council officials accused the home of "institutionalised homophobia" and withdrew the funding, which was only restored after the home initiated legal action. See:

Christian care home loses funding over 'gay rights' (29/12/2008)

<http://www.christian.org.uk/news/20081229/christian-care-home-loses-funding-over-gay-rights/>

Funding restored to Christian care home (07/02/2009)

<http://www.christian.org.uk/news/20090207/funding-restored-to-christian-care-home/>

Caroline Petrie, nurse

The National Health Service suspended nurse Caroline Petrie for breaching "equality and diversity" rules by offering to pray for a patient. Mrs Petrie was invited back to work after a massive public backlash. See:

'Diversity' rules see nurse suspended for prayer offer (02/02/2009)

<http://www.christian.org.uk/news/20090202/diversity-rules-see-nurse-suspended-for-prayer-offer/>

Prayer nurse returns to work after suspension (24/02/2009)

<http://www.christian.org.uk/news/20090224/prayer-nurse-returns-to-work-after-suspension/>

Christian foster carer

A highly-experienced foster carer was de-registered by her local council when it discovered that a girl from a Muslim background in her care had converted to Christianity. The carer has suffered a major loss in income and is challenging the council's decision. See:

Christian carer struck off after Muslim girl converts (08/02/2009)

<http://www.christian.org.uk/news/20090208/christian-carer-struck-off-after-muslim-girl-converts/>

Jennie Cain, school receptionist

Mrs Cain's five-year-old daughter Jasmine was publicly reprimanded and left highly distressed by a teacher who overheard her tell a classmate that you can only get to heaven if you believe in Jesus. Mrs Cain works as a receptionist at Jasmine's school and sent an email to some friends asking for prayer that she would know how best to respond to the situation. School governors are now investigating Mrs Cain on a misconduct charge levelled by the school headmaster after the email fell into his hands. See:

School receptionist faces sack over prayer request (12/02/2009)

<http://www.christian.org.uk/news/20090212/teacher-scolds-girl-5-for-talking-about-jesus/>

Archbishop backs mum Jennie Cain (13/02/2009)

<http://www.christian.org.uk/news/20090213/archbishop-backs-mum-jennie-cain/>

Children 'must not state faith as fact' (13/02/2009)

<http://www.christian.org.uk/news/20090213/children-must-not-state-faith-as-fact/>