

## **Response of The Christian Institute to 'A Framework for Fairness'**

### **INTRODUCTION**

The Christian Institute is a non-denominational charity established for the promotion of the Christian faith. We have 20,000 supporters throughout the UK, including around 3,000 churches and church ministers from across the Christian denominations.

It is our concern in responding to this consultation to protect religious liberty. Christians have certain sincerely held beliefs on sexual ethics drawn from the Bible. Whether these views are agreed with by the majority or not, it is surely right that Christians should be entitled to hold and manifest their beliefs in any society that claims to be diverse. At the very least the discrimination law review must be about striking a balance between competing interests. There are concerns that in some areas covered by the review this has not been done.

### **OVERARCHING CONCERNS**

#### **Legitimising the discriminatory treatment of those with an orthodox, mainstream religious belief**

Evangelical Christians believe that the Bible clearly teaches that the only context for sexual activity is within lifelong monogamous marriage, meaning that fornication, adultery and homosexual practice are wrong ("the relevant belief"). The Christian holding this belief is obliged to act in specific ways when faced with a choice to accept, endorse or encourage practice which he believes is wrong or do otherwise. So acting is a manifestation of religious belief. There are serious concerns that unless there is adequate understanding of the nature of religious belief and provision for it in discrimination law, the rights of Christians under, *inter alia*, Articles 9 and 10 of the European Convention to hold, preach and explain the relevant belief will be violated.

It should be emphasised that Christians holding the relevant belief are not opposed to lesbians, gays and bisexuals as people – nor do they have any desire to be so considered or perceived. All Christians are under a moral duty to love them, and all their neighbours, which rules out any personal hatred or unloving conduct towards them. Nonetheless, Christians with the relevant belief believe that homosexual practice is wrong and are compelled by belief in Scripture to hold to that view.

Discrimination law provisions on sexual orientation could have a chilling and discriminatory effect on people holding the relevant belief. There are concerns that problems will arise in a number of areas:

- In the area of free speech through a conflict with the proposed harassment law;
- Through denying individuals, churches and charities the ability to make an essential religious distinction between orientation and practice in their employment of staff;

- Through ending a self-employed person's livelihood because of the goods and services regulations;
- Through making it easy for individuals hostile to the relevant belief to launch legal actions against charities holding to that belief;
- Through ending the public funding of bodies holding to the relevant belief, whilst continuing to fund charities which take a contrary view.

Without further exemptions, it is feared that the Single Equality Bill will promote the discriminatory treatment of religious believers holding to the orthodox belief. It is our contention that this is impermissible under the Human Rights Act 1998.

### **Distinctions not being understood or recognised in law**

#### *Temptation vs. practice*

Christians draw a fundamental distinction between temptation and practice. It is not wrong to be tempted in any particular way. Experiencing same-sex attraction by itself is not morally wrong unless acted upon.

If sexual orientation discrimination law prohibited discrimination on the grounds of same-sex attraction, then there would be little conflict with religious beliefs. A Christian holding the relevant belief as outlined above would not want to treat a celibate person who experienced same sex attraction differently to anybody else, because it is not orientation/attraction that is the problem, but practice.

The Christian desire to draw a line comes when people act on their temptations. The matter then becomes about a person's practice or behaviour, not their temptation or attraction.

There is no legal precedent on whether 'sexual orientation' discrimination law extends to prohibiting discrimination on the grounds of practice as well as attraction. There were remarks in *Amicus*<sup>1</sup> but these are not binding.

The concern of religious bodies is that even though there may not have been direct discrimination an indirect claim can be made by arguing that the majority of homosexuals are practising.

A Baptist care home could refuse a single room to a practising homosexual who claims to be a Baptist. The home would argue that homosexual practice is inconsistent with being a Baptist whereas celibate Baptists who experience same sex attraction would be admitted to the home. The homosexual Baptist could then bring an indirect claim arguing that most homosexuals are practising and that it therefore disproportionately affects homosexuals. If this claim ever succeeded the religious liberty of the home would be destroyed. Even if the home continued it would not be long before it faced a funding crisis. Baptists would feel unable to support a home without a Christian ethos and so withdraw their donations.

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<sup>1</sup> R (on the application of Amicus) v Secretary of State for Trade and Industry [2004] EWHC 860

If the Government fails to address this central question there are concerns that there will be some very significant and protracted legal conflicts. We fear that courts and tribunals will adjudicate on matters of theology and the Government will be seen as imposing a secular view on religious bodies. Some homes will close. Some homes will pay the fines, but they will not admit practising homosexuals as residents.

The distinction between temptation and practice is already enshrined in law in other areas. We do not criminalise someone for being tempted to steal but at the point they do something to try to follow this desire through. In a similar way, there is a distinction between experiencing same sex attraction and taking steps to act on that attraction. It is at the stage of practice that the Christian holding the relevant belief draws a line, and the law must recognise this distinction.

Furthermore, when a Christian holding the relevant belief wishes to discriminate it is not because he has any hatred of homosexuals. Christians are commanded to love all people. However, Christians with this belief do believe that homosexual behaviour is morally wrong. This links with the above, in that a Christian will not hate or reject a person because they experience same-sex attraction, i.e. have a homosexual orientation. They will reject the actions of a person as soon as they begin to act on that attraction, and it is this action they are discriminating against, not the person.

#### *Condoning vs. not condoning*

For Christians holding the relevant belief, the heart of the issue is conscience. As already said, they do not wish to discriminate against someone on the basis of temptation or who they are as people. Nor in every case would they actually discriminate on the grounds of practice: a Christian bookseller with the relevant belief will sell a Bible to a practising homosexual like any other person; a homeless person who is a practising homosexual will be provided with soup at a soup kitchen just like any other person; and a Christian bed & breakfast owner will provide a single room to a practising homosexual like any other person. There is no issue because there is no clash with the Christian's conscience: the issue of his sexual practice does not arise.

However, where the Christian is asked to do something that condones, endorses or facilitates homosexual behaviour, it becomes an issue of conscience and the Christian holding the relevant belief must draw the line. It is for this reason that a Christian running a B&B will decline to give a double room to a homosexual couple – he does not wish to allow immoral behaviour to occur under his roof. In the same way, the Christian with the relevant belief would refuse a double room to any couple who were not married to each other, because the same concern over sexual immorality would arise.

This is not to say that Christians will necessarily launch into an interrogation of the guests upon arrival. They need not do so, because what they are not aware of cannot give rise to an issue of conscience. If a heterosexual couple appears and the owner has no reason to doubt that they are married then of course they will be given a double room without a problem. If, however, the Christian owner becomes aware that they are not married to each other, then he would want to refuse to give them a double room because to do so would facilitate immoral behaviour. Likewise, we fully accept that a woman may go to a B&B with her sister, and would not expect to be asked about the nature of their relationship. However, if in the course of conversation it emerges that they are not sisters but civil partners, then the owner

has come into possession of knowledge which changes the situation. Due to holding the relevant belief, he would feel that his conscience compels him to refuse a double room on the grounds that he would be assisting immoral conduct. The current law makes no allowance for this situation in the form of a conscience exception. This must be rectified as part of the Discrimination Law Review

### **Church membership**

Strong exceptions must be included in any discrimination laws on the grounds of sexual orientation, gender reassignment, religion or belief and sex so that churches can continue to restrict membership to those who share their religious beliefs. It must be appreciated how fundamental beliefs on these grounds are, and the consequences this must have for the practices of religious organisations. Just as a conscientious objector is never going to be persuaded to fight in a war regardless of the law, so it is inconceivable that a church holding the relevant belief, for example, will accept an unrepentant practising homosexual into membership. It would be an unworkable law, as well as an unjust law which breached Convention rights. Exceptions must be in place to ensure that Christians with the relevant belief are not put into a position where they have a choice between their faith and obeying the law.

## **RESPONSES TO SPECIFIC CONSULTATION QUESTIONS**

### **Direct Discrimination**

- Q1 Do you have any comments on our intention to keep the existing requirement for a comparator in direct discrimination claims?**
- Q3 Do you agree that we should largely keep the existing approach in relation to discrimination on the basis of perception and association, except for an extension to protect against discrimination on the grounds of association with transsexual people?**

The current legislation covering association on the ground of sexual orientation, and proposed legislation to prohibit discrimination on the basis of association with transsexual people, raises religious liberty concerns. A church must be free to decide, in accordance with its doctrine, who it will allow to be baptised.

If two homosexuals bring a child to be baptised, and the baptism was argued to be a provision of a service to the child and not the couple, then the church would not be permitted to refuse to conduct that baptism under current sexual orientation discrimination law. Doing so would be discriminating against the child because of his parents' sexual orientation and not his own, which is impermissible discrimination by association (Regulation 14 of the Equality Act (Sexual Orientation) Regulations only allows the minister etc to discriminate against a person on the grounds of a "his" orientation, not any other person). Perhaps the Government is not aware that a church which refuses membership to a practising homosexual couple would also refuse baptism for their children as the couple would be unable to take the vows saying that they had turned away and repented of all sin, (necessarily including homosexual acts).

In both cases they would not wish to send a signal to the couple or to the outside world that they endorse homosexual relationships. They do not believe the couple could fulfil the requirements of membership or of raising children in the Christian faith unless they first repented of an active homosexual relationship. Yet, because of the current approach to association, it appears the law allows the church to refuse membership but not baptism.

### **Indirect Discrimination**

#### **Q5 Do you agree with our proposal to harmonise the definition of indirect discrimination where it applies across the protected grounds?**

There is a distinct problem with indirect discrimination in that it gives an opportunity for direct discrimination on one ground to be labelled indirect discrimination on another ground. For example, a Christian care home may operate a policy of only allowing married couples to use its double rooms. This would be in accordance with the religious ethos of the home and in order to preserve that ethos. It would be direct discrimination on grounds of marital status, against the unmarried, which is not prohibited in the field of goods and services under the law. However, this could lead to claims of indirect discrimination on the ground of sexual orientation because homosexuals cannot marry. The marriage requirement would therefore be argued under regulation 3(3) of the Equality Act (Sexual Orientation) Regulations to be a provision, criterion or practice which puts those of a homosexual orientation at a disadvantage. The home would then have the potentially troublesome task of justifying this provision by reference to matters other than the individuals' sexual orientation.

The home could plainly argue that the discrimination they engaged in was actually religious discrimination. The law allows them to restrict the provision of their services to those of the same belief. The fact that the couple believed homosexual relationships to be moral proved that they did not share the home's religious beliefs. However, if they were sued for sexual orientation discrimination, the home could well have difficulties in persuading the court to treat the matter as religious discrimination and not sexual orientation discrimination.

### **Genuine occupational requirement test**

#### **Q11 Do you think there is a need to retain any of the genuine occupational qualifications listed in the Sex Discrimination and Race Relations Acts? If so, please explain why.**

The genuine occupational qualifications in s7(2) SDA, particularly those in the interests of decency and privacy, should be retained. There are widely-held strong moral views about the inappropriateness of mixed sex environments in certain circumstances. These moral views should be respected.

The exceptions in 7A and 7B in relation to gender reassignment must also be preserved.

The genuine occupational qualifications for ministers of religion in s19 must also be retained to protect the religious liberties of those churches who believe that it is wrong to appoint women to positions of church leadership. (See question 14 below.)

### **Genuine service requirement test**

**Q12 Do you support or oppose the introduction of a genuine service requirement test for differentiation in the provision of goods, facilities or services, housing and the exercise of public functions? Please give your reasons and examples of what it might cover.**

The Christian Institute supports the introduction of a genuine service requirement test. Such a test could be used to recognise that there can be good, objectively justifiable reasons why a person would refuse to provide goods, facilities or services in some cases.

For example, some care homes are run on a Christian basis with the aim of providing somewhere that elderly Christian can continue to live in the same kind of Christian environment they lived in when independent. Clearly, such a home has a particular ethos and is founded on particular values. It is fundamentally contrary to the purpose of the home to accommodate those who do not adhere to Christian values, such as practising homosexuals or someone living as a transsexual or a member of another faith. Doing so would undermine the unique environment created and distress the Christian residents. This seems a prime example of where the service provided genuinely requires that differentiation be made between those who lead a lifestyle in accordance with Christian principles and those who do not. The introduction of a genuine service requirement test could allow this kind of Christian social work to continue.

### **Specific Exceptions**

**Q14 Do you have any comments on our proposals for retaining the specific exceptions set out in Table 1 in Annex A?**

The Christian Institute generally agrees with the proposals for retaining exceptions as set out in Table 1. There are some we would specifically like to emphasise:

- It is important that churches retain the right to employ only men as ministers and for other key posts (s19 Sex Discrimination Act). This is essential to allow churches the freedom to operate in accordance with their religious beliefs.
- For the same reason, the exceptions under 7(3) and 16(3) of the Employment Equality (Sexual Orientation) Regulations and 7(3) of the Employment Equality (Religion or Belief) Regulations must be preserved. Removing the freedom of religious organisations to act in accordance with their doctrines in these areas would be a serious infringement of religious liberty. Religious organisations must be able to preserve their ethos and purpose, and should not be forced to accept those who do not hold to the same beliefs. No-one has ever suggested that political parties should be forced to employ people with opposing political beliefs, or that vegetarian restaurants should be forced to employ non-vegetarians, or that an environmentalist organisation should have to employ a 4x4 enthusiast. They are entitled to freedom of association to protect their fundamental ideas. Forcing them to engage people hostile to their beliefs would be disruptive and offensive. In a similar way, religious organisations too are based on ideas. They must never be compelled to take on people who reject their ideas. This would

dilute their message and change the way they operate. It would be a profound attack on their civil liberties. This applies to organisations that have a religious ethos at their heart, even if they are not formally part of an organised religion. For this reason, the exception in the Employment Equality (Sexual Orientation) Regulations may need widening if the term “organised religion” is narrowly interpreted by the courts. Discrimination laws must always protect the ability of religious organisations to recruit staff according to their religious beliefs.

- The small dwellings exceptions in s48(1) of the Equality Act and regulation 6(2) of the Equality Act (Sexual Orientation) Regulations should be retained in order to protect individual freedom of association.
- The exceptions for religious organisations in s57 of the Equality Act and regulation 14 of the Equality Act (Sexual Orientation) Regulations must be retained. The religious exceptions in the sexual orientation regulations need to be widened to mirror the scope of the religious exceptions in Part 2 of the Equality Act. In particular, it is unjust that Christian welfare projects which receive public funding can discriminate on grounds of religion but not on grounds of orientation. Distinctions like this between rights based on orientation and rights based on religion create a hierarchy of rights in which rights based on sexual orientation are further reaching (and therefore more important) than rights based on religion. Furthermore, there needs to be an exception applying to both religion and orientation which covers commercial activities organised around a religious ethos. Currently, a Christian B&B could be sued for refusing a block-booking from a group of pagans or refusing a double-bed to a homosexual couple. This is an unjust infringement of their freedom of religion and freedom of association.
- Exceptions for faith schools under regulation 39 of the Employment Equality (Religion or Belief) Regulations and the Equality Act ss50 and 59 must be retained and equivalent protections inserted in the sexual orientation discrimination provisions. Schools must not be allowed to become a test-bed for litigation over the issue of homosexuality.
- The exceptions given to charities under ss60 and 58 of the Equality Act, and regulation 18 of the Equality Act (Sexual Orientation) Regulations should be retained.

**Q15 Do you agree that the exceptions listed in Table 2 in Annex A should be removed?**

The exceptions relating to the sale or letting of owner-occupied premises and consent for assignment or sub-letting of premises should not be removed. Section 48(3) of the Equality Act and regulation 6(4) of the Equality Act (Sexual Orientation) Regulations provide an exception for those who do not advertise or use an estate agent in disposing of their property. The disposal would therefore take place on a private basis, and the individual should be free to refuse to dispose of their own property at their own discretion.

**Chapter 5: Public Sector Equality Duties**

**Q38 Do you think that the proposed single public sector equality duty should apply to all public authorities? If not, please say how you think it should be targeted and give your reasons.**

We not support a single public sector equality duty. We would argue that the public sector already applies goods and services laws. There are many examples where Councils have acted over-zealously on existing equality laws. The newspapers are full of examples of local councils banning Christmas festivities or hospitals removing Bibles from patient's bedsides.

We cannot see what would be usefully added by a single equality duty. That said, imposing a single public sector equality duty on a Council as a service commissioner is very different to imposing it on a service provider such as a school.

Where Councils act as service providers they would at least have access to advice from the Council's legal department. A single equality duty would be less burdensome on them than on a smaller organisation such as a school, care home or Council funded project.

Small organisations with limited staff face considerable difficulties with regulatory compliance and staff training. Failure to comply with the minutiae of regulations can result in costly penalties. Religious groups have the additional worry that people hostile to their beliefs may use these laws to make vexatious claims. Small organisations should be given broad exemptions.

We are aware of the difficulties currently faced by Christian care home charities. We know of specific cases where the ethos of such homes is being challenged using the sexual orientation regulations and other laws primarily intended for secular workplaces. We fear that a number of homes may close down.

We are aware that the definition of public authority may change beyond that required by the Human Rights Act 1998. It is clear that the Government and others wish to overturn the Leonard Cheshire judgment, recently supported by the case of YL v Birmingham City Council. These cases established that private organisations operating under contract with a public authority to provide a public service cannot be considered to be public authorities for the purpose of the Human Rights Act.

A widened definition of what constitutes a public authority might see care homes being required to comply with a single equality duty. We would certainly not welcome this.

It would also mean that care homes become bound by convention rights. Including care homes and similar private bodies within the Human Rights Act would apply an unacceptable and unworkable degree of regulation to these organisations.

It should be made clear that any Single Equality Duty only applies to 'pure' public authorities.

**Q39 Do you think that a single public sector duty should be extended to cover:**

a) age

Yes

No

a) sexual orientation; and/or

Yes

No

b) religion or belief;

Yes

No

**Please state your reasons, including examples of the types of disadvantage you believe are experienced by people because of their age, sexual orientation or religion or belief which could be addressed effectively through such a duty.**

Any public sector equality duty should not be extended to either sexual orientation or religion or belief.

We fear that the extension to cover sexual orientation could lead to the active promotion of homosexuality in schools, and playgroups. This is already happening with highly controversial projects such as 'No Outsiders'.

The extension to cover sexual orientation could also be used to undermine the importance of marriage.

To say that such a duty would allow a local authority to "address a situation where there was widespread bullying of gay residents" is a spurious argument. A local authority can already take action in such situations regardless of the victim's sexual orientation. Intimidation is a criminal matter which should be handled by the police.

Furthermore, we have already seen examples of over-zealous public officials intimidating and harassing Christians because of their views on homosexuality. One council official asked the police to visit an elderly Christian couple because they had complained, in civilised terms, about the council's promotion of homosexuality. (The couple, Joe & Helen Roberts, successfully sued both the police and the council and there was a public apology.)

Other councils have withdrawn funding from Christian organisations over their refusal to endorse homosexuality. (E.g. Brighton & Hove Council.)

A public sector equality duty covering religion or belief may not "require a local authority to ban displays of Christmas decorations or to mark festivals of other religions." But however "absurd" the Government considers this to be, it is something that some local authorities have already done, without an equality duty existing. If local authorities perceive themselves to be under such obligations under the existing law, there are concerns that the addition of a public sector equality duty can only make the situation worse. If a public sector equality duty would not require a local authority to give equal recognition to all religions in terms of marking their festivals or prevent one religious festival such as Christmas being given more attention, what exactly would the duty achieve? What is the purpose of this additional burden upon local authorities? We do not see the case.

The Christian Institute is opposed to an equality duty on either religion or belief or sexual orientation. However, we firmly believe that a duty covering sexual orientation must not be introduced without a similar extension to religion or belief. Doing so would elevate gay rights above religious rights. The Government must appreciate that there is a conflict of ideas across ground between religion or belief and sexual orientation just as there is intra ground between two religions. If one perspective is

to be given particular treatment, so must the other. Otherwise an unacceptable disparity of rights is created.

**Q40 Might there be disadvantages in extending the duty to any of these groups? If so, please give examples.**

As indicated above, there are concerns over the practical consequences of a duty being extended to religion or belief or sexual orientation. In particular, there would be a grave disparity in rights created in this area should sexual orientation harassment be introduced without the equivalent on religion or belief.

## **Chapter 8: The grounds of discrimination**

### **Married Persons and Civil Partners**

**Q56 Do you consider that the protection for married persons and civil partners is still needed in the absence of a "marriage bar" in employment?**

The Christian Institute agrees that this protection is no longer needed and has been given an extended interpretation that it was never intended to have. It should therefore be removed.

## **Chapter 10: Gender reassignment**

**Q63 Do you agree that it is unnecessary to include school pupils and education in any extension to protect on the grounds of gender reassignment? What are your reasons for supporting/opposing this?**

The Christian Institute agrees that it is unnecessary to include school pupils and education in schools in any extension to protection on the grounds of gender reassignment. It is doubtful that gender reassignment would ever be made available on the NHS to those under the age of 18.

There is no practical need for further legislation in this area. Without any real cases it could still subject schools to political pressure from transsexual lobby groups.

**Q64 Are there any circumstances in which you consider that it is necessary for organised religions to treat people differently on grounds of gender reassignment? Please explain what they are.**

Yes. Organised religions need strong exceptions from any discrimination or harassment laws relating to gender reassignment. Seeking to live as a member of the opposite sex is entirely contrary to Christian teaching. As such, any person who had undergone or was planning to undergo a 'sex change', or was denying their created sex in any other way, could not in many churches be accepted into church membership or be given communion, for example. Exceptions to the harassment law covering gender reassignment are also necessary in order to protect preaching. A preacher must be able to say from the Bible that denying one's created sex by seeking a sex change is morally wrong without fearing being sued by someone who perceived an "offensive environment" to have been created for them.

The exceptions included in the implementation of the EU Gender Directive for premises used by an organised religion are a start. However, exceptions must go

further, because it must be recognised that organised religion does not just exist behind the doors of a church building and it cannot be confined in this way. The drafting of the exception fails to understand how churches operate and that much church activity in teaching and pastoral work takes place off church premises. These activities still need to be covered by an exemption.

It is unclear how far the exception extends: would the description 'for the time being occupied or used for the purposes of an organised religion' cover a public meeting held by a church in a town hall, for example? Would it cover a public lecture organised in a town hall by a religious charity? In either of these cases the Christian position on gender reassignment could be given, and, without a proper exception, the speaker could be accused of harassment by someone offended by what was said. The premises exception must be as broad as possible if it is to provide adequate protection for religious organisations.

Discrimination is sometimes necessary and acceptable. For example, sporting bodies have been given sweeping exemptions from discrimination laws which allow them to stop a man – including a male-to-female transsexual – from participating in women's events. In the same way, religious organisations should be allowed to choose who participates in their activities, according to their ethos. Is sport more important than religion? Religion is an area where discrimination is justifiable to protect sincerely held religious beliefs about the role of women and the immoral nature of certain lifestyles. Discrimination laws need to include exceptions for religious groups. They must be free to choose, on religious grounds, who participates in their activities.

It is not just "organised religion" that needs to benefit from an exception to the law. Christians believe that sex changes are wrong because the Bible is clear on the matter. Throughout the course of business and daily life, many Christians are open about their beliefs on a range of moral issues. While in conversation, Christian business owners should be free to share religious beliefs with customers, without having to worry about falling foul of a harassment provision. There could be an extensive chilling effect caused by such a law, which would constitute clear interference with free speech. Individual Christians must have their liberty to share their beliefs protected.

Exceptions must also cover the consciences of individuals in certain professions when forcing them to do something would conflict with their religious beliefs. For example, Christian doctors and nurses must not be compelled to participate in 'sex change' operations, whether in the surgery itself or by referring a person for such surgery.

If a man undergoes gender reassignment to a woman and then marries a man in his assumed sex, then a Christian believer who holds that someone's sex can never change, would also hold that this couple were not married. This believer would then be complicit in an immoral act if he allowed the couple to have a room for the night.

#### **Chapter 14: Harassment**

**Q74 Do you think that express statutory protection against harassment on grounds of:**

- **religion or belief;**
- **sexual orientation;**
- **age; and**
- **disability**

**should or should not be provided in any of the following:**

- (a) the provision of goods, facilities and services?**
- (b) education in schools?**
- (c) the management or disposal of premises?**
- (d) the exercise of public functions?**

Harassment within discrimination law is unnecessary because of the Protection from Harassment Act 1997. The way this Act has been applied shows that it has a much broader scope than just stalking, and does in fact cover a whole range of instances of genuine harassment.

As well as being unnecessary, the definition of harassment in discrimination law is highly problematic because of the low, subjective threshold of an "offensive environment". This is partly attributable to the way in which the EU definition has been implemented into UK law by using an "or" between the two limbs of the definition instead of an "and", thereby lowering the threshold. The Government's acceptance of this point is indicated by the suggestion in paragraph 14.28 that the "more stringent" definition requiring both limbs to be satisfied could be used for harassment covering religion. We reject the suggestion that religion should be treated differently to sexual orientation (see answer to Q76 below). However, this more stringent definition could be applied to both grounds, if harassment is to be introduced. Alternatively, the Government could consider the approach taken by Italy to implementing harassment: the definition contains an "and" within the second limb of the harassment test so that the environment must be intimidating, hostile, degrading, humiliating *and* offensive.

Giving someone the right to sue just because they feel offended is dangerous, not least in areas such as religion and sexual orientation where there are markedly differing views. The Christian Institute does not believe harassment should be introduced on the grounds of sexual orientation or religion or belief.

Concerns about harassment on the grounds of sexual orientation in the provision of goods, facilities and services include the potential impact on preaching. There are serious concerns that an orthodox sermon on homosexuality could offend someone, leading to a costly legal action for the church to defend. Harassment could also threaten the freedom of a church leader to give a justification for refusing church membership or communion to a practising homosexual without being accused of harassment.

Outside the church context, there is the concern that if a Christian providing a good or service says homosexual behaviour is wrong he could be accused of harassment by someone who disagreed. This will affect Christian individuals in all kinds of work who might fear fulfilling their biblical mandate to share the gospel with those they meet in case they are sued. The Christian business owner should be free to share his beliefs with those he serves.

If a harassment law was to be applied to education, the Christian teacher asked their opinion about the sinfulness of homosexuality or taking a school assembly on marriage could lead to the school or teacher being sued.

No Christian would accept bullying or genuine harassment on any ground. It would in any case be unprofessional conduct for the teacher. But the freedom to speak freely about one's religious beliefs should not be considered harassment but a fundamental right in society.

These are important issues of freedom of religion and free speech. In a free society there must be freedom to disagree, and Christians should not be gagged and prevented from putting forward the biblical position on sexual ethics. Similarly, Christians should not be barred from stating that Jesus is the only way of salvation, which could be the case under a harassment law covering religion or belief.

Although we are opposed to both harassment on sexual orientation and on religion or belief, we believe that if harassment is to be introduced for the former it must also be introduced for the latter. This is a straightforward issue of equality before the law, and to have harassment on the grounds of sexual orientation but not religion or belief would consolidate a hierarchy of rights (see answer to Q76 below).

**Q75 Were statutory protection against harassment to be extended to one or more of the above grounds in one or more of the above areas, do you think that specific exceptions would be desirable?**

If statutory protection against harassment was to be introduced on sexual orientation or religion or belief there must be robust exceptions to protect freedom of speech and freedom of religion. It must not become unlawful to state traditional religious beliefs on sexual ethics or the exclusivity claims of any single religion to truth. These exceptions must apply not just to "organised religion" but to individuals in business who believe that to avoid hypocrisy they must carry their religion with them into every day life. People cannot be expected to leave their beliefs and principles at home but must be allowed to live out their faith in their life.

**Q76 Do you think that harassment on grounds of religion or belief should be treated differently from the other protected grounds and that a different definition of harassment would be appropriate in this case? If so, please state your reasons why.**

Paragraphs 14.27 and 14.28 show that the Government considers harassment on the grounds of religion or belief to be particularly problematic because of concerns over interference with free speech. The problems are equally difficult with sexual orientation harassment.

The Government are clearly concerned about the intra-ground conflict between different religions because they are "defined in relation to a set of beliefs or opinions which are not held by all and may conflict with those of others." However, it must be realised that this same issue arises with harassment on the ground of sexual orientation. Leading a homosexual lifestyle, for example, means following a set of beliefs or opinions which are not held by all and may conflict with others, not least those of traditional Christian and other faiths. The fact that those of religion or belief can be on the opposite side of an argument regarding sexual ethics to those of different sexual orientations shows that the two grounds are connected. There is also a well publicised debate within the Anglican Communion at the moment regarding homosexuality. Clearly, when two grounds are related in this way, they should have equal protection. For this reason it would be wrong not to apply the same definition

of harassment to religion or belief as is applied to sexual orientation, if any such provision is introduced.

The concern over disparity in legal rights which introducing harassment on the ground of sexual orientation but not on religion can be illustrated through examples. If a Christian runs a bookshop and enters into a discussion with a Muslim customer, there will be no problem with either of the two people expressing full and frank views regarding the exclusivity of their own faith. However, if a homosexual enters the shop and there is an exchange of views regarding sexual morality, the Christian shop assistant could infringe a sexual orientation harassment provision by stating his religious belief that homosexuality is wrong. With no religion or belief harassment, a homosexual bookshop owner would be entirely free to criticise a Christian customer's religious beliefs, therefore giving him greater freedom to express his views than a Christian. This is to privilege one side of the argument and is contrary to free speech. It verges on a right not to be disagreed with and sends out a message that religious rights come second place to gay rights.

**Q77 Do you think there is a valid distinction to be made between harassment in an "open" and in a "closed" environment and that the approach to its prohibition should be differentiated accordingly? Please state your reasons why.**

There is a clear difference between "open" and "closed" environments which means that they must be treated differently. The Christian Institute believes that the definition of harassment in law is entirely unsuitable to an "open" environment. A definition applied to employment should not be transferred across to a goods and services context. The key issue is mobility. Whilst it is difficult to leave work to get away from an environment you find hostile, it is very easy to walk out of a shop where you find the environment hostile.

Service providers should also not be made liable if one customer believes he/she is being harassed by another customer. Imposing such a burden upon service providers would be impractical and disproportionate.

### **Annex B – Implementing the Gender Directive**

**Q79 Do you agree with the proposals in Table 1? If not, please give details of those you disagree with and your reasons for doing so.**

As stated above at Q64, it is essential that strong exceptions are provided to religious organisations, religious business owners and religious professionals to ensure freedom of conscience, religion and speech.

The Christian Institute  
4 September 2007