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**OPINION IN THE MATTER OF PRINCIPLE 4 OF THE  
GENERAL TEACHING COUNCIL’S PROPOSED  
CODE OF CONDUCT AND PRACTICE DATED NOVEMBER 2008**

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## **Introduction**

1. The proposed new code of conduct (hereinafter referred to as the “draft code of conduct”)<sup>1</sup>, published by the General Teaching Council for England (“GTCE”) and the subject of a now closed consultation, provides for a new equality and diversity clause which would place a duty on teachers to promote equality and value diversity.
  
2. The draft code of conduct has already provoked controversy. In consultation the Catholic Education Service has warned of *“those who would misappropriate the Code and who could abuse the use of the words in Principle 4 to discriminate, for example, against Christian teachers. ...In religious terms, it would be unacceptable to expect anyone to be required to promote something contrary to their own faith beliefs and, indeed, it would not be possible for a person of faith to promote another faith – this is a matter of conscience”*<sup>2</sup>. The Church of England response to the GTCE speaks of *“conflict between teachers’ professional responsibilities and their personal faith or philosophical commitments. ...As drafted, this potentially enables*

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<sup>1</sup> General Teaching Council for England: Code of Conduct and Practice, Draft for Consultation, November 2008

<sup>2</sup> Response to GTCE Draft Code of Conduct and Practice, Catholic Education Service, 26 February 2009

*school leaders to expect teachers to act beyond the bounds of their conscience, particularly in relation to religious belief and behaviour or moral and ethical issues”<sup>3</sup>. The Association of Christian Teachers speaks of “unexamined confusions about promoting and valuing diversity as such, with which many Christians, and people of other faiths and none, have serious difficulty. ...the language used in the code needs more careful examination, and to be used more cautiously, if the GTCE is to avoid the kind of embarrassment and damage to reputation recently experienced by other bodies, and if teachers are to avoid the distress and harm of unjustified criticism experienced by other well-intentioned professionals”<sup>4</sup>.*

3. There is concern amongst some faith groups that the draft code of conduct, if adopted, may conflict with the religious beliefs held by registered teachers. Many Christians and members of other faiths believe, for example, that sexual activity should be confined to marriage, being the union of one man with one woman for life to the exclusion of all others. Christians in particular believe in the exclusiveness of their faith in that Jesus Christ is the only way of salvation. This conflicts with any belief which holds there to be another way. Christians also believe they should not hide their faith<sup>5</sup>. If challenged to explain what they believe they would want to give an answer. Those instructing us are naturally worried that Christian teachers who express opinions in line with these beliefs, or refuse to

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<sup>3</sup> Quoted in the *Times Educational Supplement*, 6 March 2009

<sup>4</sup> Response to the Consultation on the GTCE Code of Conduct from the Association of Christian Teachers, 26 February 2009

<sup>5</sup> Matthew 5 v 14 – 15, The Holy Bible

condone conduct which goes against such beliefs, will be alleged to have breached their code of conduct which could have serious professional consequences.

4. This advice will consider the draft code of conduct and the impact which its terms, particularly principle 4, is likely to have on teachers who hold religious beliefs. Although many of the examples in this advice are drawn from the Christian faith the issues raised apply to teachers of any and no belief.
5. The GTCE was established under Section 1 of the Teaching and Higher Education Act 1998 (“the Act”). Its aims include “*to maintain and improve standards of professional conduct amongst teachers, in the interests of the public*”<sup>6</sup>.
6. Section 5(1) of the Act and Regulations made under it empower the GTCE to issue, and from time to time revise, a code laying down standards of professional conduct and practice expected of registered teachers. The new code will therefore not only be a code of practice for teachers, but, in effect, an employment disciplinary code and an intrusive one.
7. Section 5(2) of the Act provides that the Regulations may make provision as to the consequences of any failure to comply with the code. In addition the disciplinary powers of the GTCE, established by the Act under section 6 and Schedule 2, allow for investigation of

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<sup>6</sup> Section 1(2) Teaching and Higher Education Act 1998

teachers accused of unacceptable professional conduct which includes consideration of any breach of the code of conduct.

8. Any code of conduct which the GTCE issues would need to be consistent with the Act and with:
  - Existing law on religious discrimination in employment under the Employment Equality (Religion and Belief) Regulations 2003;
  - The GTCE's obligations under section 6 of the Human Rights Act 1998;
  - The Single Equality duty due to be enacted in 2011 in the proposed Equality Act (which is likely to be based on the current gender, race and disability equality duties).

It may be possible to mount a judicial review of the GTCE if the code, when adopted, is contrary to the duties set out in the first two bullet points. It is clear that the GTCE is amenable to judicial review: see *R(on the application of Rutter) v General Teaching Council for England* [2008] EWHC 133 (Admin) para 25.

9. In relation to pupils the GTCE's existing publication entitled Statement of Professional Values and Practice for Teachers<sup>7</sup> provides:

*“Teachers treat young people fairly and with respect, take their knowledge, views, opinions and feelings seriously, and value diversity and individuality. They model the characteristics they*

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<sup>7</sup> The Statement of Professional Values and Practice for Teachers, agreed by Council in March 2006

*are trying to inspire in young people, including enthusiasm for learning, a spirit of intellectual enquiry, honesty, tolerance, social responsibility, patience, and a genuine concern for other people.”*

10. Rule 11 of the Disciplinary Procedure Rules 2008<sup>8</sup> states that an investigating committee of the GTCE may, in investigating an allegation, take into account a registered teacher’s *apparent* failure to comply with the code of conduct. Thus, while a Professional Conduct Committee (“PCC”) may ultimately clear a registered teacher of misconduct, this would not be without significant impact on the teacher.
11. The GTCE makes clear in the draft code of conduct that third parties can report alleged breaches of the code<sup>9</sup> and there are likely to be many pressure groups who will be tempted to take such an opportunity, in order to make a political point.
12. Other professional regulatory organisations have similar codes for their members which include duties in respect of equality of opportunity. Their experiences may be useful in considering the potential regulatory impact of the proposed code. The developments in such fields have indeed already shown that conflict may arise where different protective grounds of discrimination are present.

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<sup>8</sup> General Teaching Council’s Disciplinary Procedure Rules 2006 which came into force on 1 September 2008

<sup>9</sup> General Teaching Council for England, Code of Conduct and Practice – Draft for Consultation, November 2008, page 24

13. The case law on religion and belief discrimination both under the Employment Equality (Religion and Belief) Regulations and case law from the ECHR under Article 9 of the ECHR has begun to grapple with difficult areas of potential conflict of rights, in particular in relation to:
- a. Visible manifestation of religious belief/ belonging to a religious group (e.g. *R (on the application of Begum by her litigation friend Rahman) v Headteacher and Governors of Denbigh High School*) [2007] 1 AC 100;
  - b. Private exercise of religious observance (*Kalac v Turkey* [1997] EHRR 552 referred to *In the matter of Christian Institute and others* [2007] NIQB 66 in paragraph 68);
  - c. An offer to a service user to pray for her (e.g. Caroline Petrie<sup>10</sup>);
  - d. Conflict between an individual's active job duties and their personally held religious conviction (e.g. *London Borough of Islington v Miss L Ladele* [2008] UK EAT 0453\_08\_1912);
  - e. A parent's belief as to how a child should be educated in school (*R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246; *Kjeldsen, Busk Madsen and Pedersen v Denmark* [1976] 1 EHRR 711).

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<sup>10</sup>*The Daily Telegraph*, 1 February 2009, see <http://www.telegraph.co.uk/health/healthnews/4409168/Nurse-suspended-for-offering-to-pray-for-patients-recovery.html> as at 6 May 2009; *The Times*, 7 February 2009, see <http://www.timesonline.co.uk/tol/comment/faith/article5675452.ece> as at 6 May 2009

14. We will analyse two such cases to demonstrate the problems that may arise in the context of a rigorous disciplinary regime based on a somewhat general code. The recent case of Caroline Petrie has highlighted how a commitment to equality and diversity written into a professional code of conduct and an alleged breach of that obligation (in that case, a nurse offering to pray for a sick patient) can be used to commence disciplinary proceedings against a professional person<sup>11</sup>. The relevant code was promulgated by the Nursing and Midwifery Council and stated “*you must demonstrate a personal and professional commitment to equality and diversity*”<sup>12</sup>. We note that the GTCE liaised with the Nursing and Midwifery Council in the production of its own code<sup>13</sup>. Ms Petrie has now been reinstated and the Trust have indicated that they believe she was acting with the best interests of the patient at heart, but the thinking which led to her suspension may yet recur.
15. In the *Ladele* case (referred to above) the policy was used to justify requiring the registrar to perform all of the same duties as all other registrars in Islington. It seems therefore that an equality and diversity provision in the teaching code of conduct will require teachers to perform all duties of teachers without demonstrating a discriminatory approach and promoting equality and diversity. This means that in teaching, disciplining and providing pastoral support

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<sup>11</sup>*Ibid*

<sup>12</sup>*The Daily Telegraph, Loc cit*

<sup>13</sup> General Teaching Council for England, Code of Conduct and Practice – Draft for Consultation, November 2008, page 4

equality, in the sense outlined above, must be promoted and practiced. This may not however provide an area for direct conflict in the same way that the role of a registrar does in relation to civil partnerships.

16. There have been cases in other jurisdictions where teachers have been disciplined for views expressed outside of the workplace, such as that of a teacher in British Columbia who wrote an article and series of letters expressing his views on homosexuality to the editor of a newspaper<sup>14</sup>. It is important to note that in the reasoning of the court it was the fact that the teacher was expressing stereotypical and discriminatory comments and publicly linking himself and his position as a counsellor that was objectionable, paragraph 51 of the judgment.
  
17. Similarly, it is conceivable that a head teacher, who is also a local lay preacher, might be targeted by gay lobby groups for a sermon on marriage given in the local church, the recording of which is accessible from the church website. The headteacher may have only expressed the orthodox religious belief that sexual activity should only take place within monogamous heterosexual marriage. This orthodox religious belief falls to be protected under Article 9 of the European Convention of Human Rights<sup>15</sup>. In this situation it may be that the teacher would have expressed an orthodox religious belief but their rights under Article 9 entitle them to hold any religious belief they chose. The right in Article 9(2) to manifest their beliefs is subject to

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<sup>14</sup> *Kempling v. School District No.28 (Quesnel) and Curr*, 2005 BCHRT 134

<sup>15</sup> *The Christian Institute and Others Re Judicial Review* [2007] NIQB 66 (11 September 2007)

restrictions and in this context it is possible that in giving the sermon the teacher would be in breach of the draft code of conduct. The question will turn on whether or not preaching is part of the teacher's professional relationships and interactions. We would suggest that the natural reading will be that this is not conduct within this provision but to the extent that he or she is publicly linked to the school in performing their role as a lay preacher difficulties may arise and it will be for the court to determine whether or not there is sufficient nexus to the professional relationships.

18. Teaching is, in some senses, unique as a profession in that its practitioners are inevitably required to instruct pupils and sometimes directly to engage with them about these difficult principles and where they conflict.
19. Teachers may have to teach subjects such as Religious Studies, philosophy and citizenship (which includes principles of equality, inclusion and anti discrimination).
20. In their pastoral duties teachers may encounter pupils who are (in the course of growing up):
  - a. personally reflecting on sexuality, religion or philosophical questions;
  - b. considering or affected by another's (e.g. a family member's) firmly held religiously, philosophically or convention driven expectation for them, especially in terms of, for instance:

- i. the roles of women and men;
  - ii. religious observance or duty;
  - iii. sexual relations, sexuality and transgender;
  - iv. association with individuals of another sex or gender, race, nationality, ethnicity, national origin, language, age, religion, philosophical belief, atheism, mental or physical disability;
- c. learning to cope with or caring for another's (often a relative's) disability;
  - d. learning to cope with their own developing disability.

### **The existing code**

21. The existing code of conduct for registered teachers provides that registered teachers may be found to be guilty of unacceptable professional conduct where they “*seriously demean or undermine pupils, their parents, carers or colleagues, or act towards them in a manner which is discriminatory in relation to gender, marital status, religion, belief, colour, race, ethnicity, class, sexual orientation, disability or age*”<sup>16</sup>. The GTCE’s own notes (which are contained within the code of conduct) provide examples of demeaning or discriminatory behaviour - swearing at pupils, using offensive names or making a racist remark to pupils.
22. The separate Statement of Professional Values and Practice provides, in the context of stating a general aspiration for teachers, “*within this*

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<sup>16</sup> Code of Conduct and Practice for Registered Teachers, page 4

*framework, they [teachers] place particular importance on promoting equality of opportunity – challenging stereotypes, opposing prejudice, and respecting individuals regardless of age, gender, disability, colour, race, ethnicity, class, religion, marital status or sexual orientation*”. While a PCC constituted by the GTCE may, according to their own Disciplinary Procedure Rules 2008, take into account a registered teacher’s failure to comply with the code of conduct, no such similar status is given to the Statement or other GTCE publications. It is thus likely to be considered merely as guidance without any obligation on a school or the GTCE to be bound by it.

### **The provisions of the proposed code**

23. The GTCE draft code of conduct consists of eight principles. It claims to set out the “*expected norms of teacher practice*” to “*guide everyday judgments and actions*”. ‘Principle 4’ is “*promote equality and value diversity*”. This provision is potentially of concern to Christians.
  
24. The first point to note is that it is not quite clear from this formulation whether the duty is:
  - a. To promote equality and value diversity (as a noun – i.e. equality as between values); or
  - b. To promote equality and (to) value diversity (as a verb)

although the latter appears more likely.

25. The first interpretation is potentially more restrictive of religious freedom of members.
26. The code then provides detailed commentary on the eight principles:
  - a. *“Registered teachers...*
    - i. *Act respectfully towards all children and young people, parents, carers and colleagues, regardless of their socio-economic background, age, gender, sexual orientation, disability, race, religion or beliefs*
    - ii. *Take responsibility for understanding and acting on their obligations under legislation and school policies relating to equality and diversity, bullying and inclusion and access, seeking clarification if necessary*
    - iii. *Proactively challenge discrimination, stereotyping, and bullying, no matter who is the victim or the perpetrator; promote equality and value diversity in all their professional relationships and interactions*
    - iv. *Contribute to the creation of a fair and inclusive school environment by taking steps to improve the wellbeing, development and progress of those with*

*special needs, or whose circumstances place them at risk of exclusion or underachievement*

v. *Help children and young people to understand and appreciate different views, perspectives, and experiences and develop positive relationships both within school and in the local community*

vi. *Are sensitive to the socio-economic and cultural context in which they are working and issues in the local community that may impact on the wellbeing, development and progress of children and young people.”*

27. Principle 4 is divided into six parts. The first part appears to be narrower than a similar provision proposed in a previous draft code for teachers in 2001<sup>17</sup>. At that time the GTCE was proposing a clause which would have required that teachers “*fully respect differences of gender, marital status, religion, colour, race, ethnicity, sexual orientation and disability*”. In the event this wording was not adopted. Part 1 of the new proposed wording would require teachers to act respectfully to others, *regardless* of the various grounds set out. Teachers are being asked to respect individuals but not necessarily their beliefs or lifestyles. However, the requirement must still be viewed in the light of the remainder of principle 4.

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<sup>17</sup> Professional Code for Teachers: Draft statement of values and practice, 2001

28. The need to tackle bullying is not at issue and is recognised by all involved; the second part of principle 4 draws attention to the importance of combating bullying on any grounds.
29. Much of the potential controversy surrounding the draft code centres on other wording in the third part of principle 4.

**Proactively challenge discrimination, stereotyping...**

30. The first part of principle 4(3) requires teachers “*proactively [to] challenge discrimination, stereotyping...*”.
31. The extent of this positive duty to “*proactively challenge discrimination*” is controversial. There is concern that “discrimination” is not fully defined here. If the formulation of “discrimination” were to be read to mean the same as in the Employment Equality (Religion and Belief) Regulations it would be defined as:
  - a. On grounds of religion or belief A treats B less favourably than he treats or would treat other persons (Reg 3(1)(a) (direct discrimination));
  - b. Where A applies to B a provision criterion or practice which he applies or would apply equally to persons not of the same religion or belief as B but:

- i. Which puts or would put persons of the same religion or belief as B at a particular disadvantage when compared with other persons;
      - ii. Which puts B at that disadvantage; and
      - iii. Which A cannot show to be a proportionate means of achieving a legitimate aim (Reg 3(1)(b)) (indirect discrimination);
    - c. Victimisation, if A treats B less favourably than he treats or would treat other persons in the same circumstances and does so by reason that B has:
      - i. Brought proceedings against A or any other person;
      - ii. Given evidence or information in connection with proceedings brought by any person against A or any other person;
      - iii. Otherwise done anything under or by reference to these Regulations in relation to A or any other person;
      - iv. Alleged that A or any other person has committed an act which would amount to contravention of the regulations (Reg 4);
    - d. Harassment on grounds of religion or belief if A engages in unwanted conduct which has the purpose or effect of:
      - i. Violating B's dignity or
      - ii. Creating an intimidating, hostile, degrading, humiliating or offensive environment (Reg 5).
32. If such an interpretation of discrimination is really to be imported into the code, it should be more explicit. Teachers may otherwise not know

that “discrimination” has these several meanings and act accordingly. Teachers will also not be familiar with the case law under these provisions, which specify that the appropriate comparators are narrowly defined (see the judgment of Elias J in *London Borough of Islington v Miss L Ladele* [2008] UK EAT 0453\_08\_1912).

33. The Oxford Dictionary defines ‘discrimination’ more broadly as:

*“The action or an act of discriminating or distinguishing; the fact or condition of being discriminated or distinguished; a distinction made. b. The practice or an instance of discriminating against people on grounds of race, colour, social status, age, etc; an unjust or prejudicial distinction”.*

34. The absence of a definition for discrimination leaves the requirements of the draft code of conduct open ended. Any distinction identified between two individuals or two groups could amount to discrimination within the meaning of the draft code of conduct.
35. It is true that the discrimination which teachers would be asked to challenge would be on the grounds that are set out i.e. socioeconomic background, age, gender, sexual orientation, disability, race, religion or beliefs but what constitutes discrimination is not spelt out.
36. Stereotyping of particular races, or religious beliefs is another important issue and does not necessarily come within the meaning of these provisions, although it may itself lead to less favourable

treatment or the use of indirectly discriminatory provisions, criteria and practices.

### **Proactive challenge**

37. The second potential issue here raised is the extent of the teacher's duty to "proactively challenge" such conduct. Individual teachers (particularly junior teachers) will not, in every situation, be the correct person to "challenge" the incident of discrimination. In some cases it would be appropriate for (particularly a junior) teacher to triage the complaint/ incident to the level of department head, or head teacher to be dealt with within the appropriate process. This will be particularly so if the matter is an especially serious or sensitive incident or if it involves an allegation of indirectly discriminatory effect of a school wide/ LEA wide policy.
  
38. It further may not be conducive to a harmonious staffroom if teachers are encouraged to "challenge" each other in the event of conflicting religious views or beliefs. The case law under the Employment Equality (Religion or Belief) Regulations has already shown that there are circumstances in which the belief of one employee may conflict with the manifestation of another employee's belief, or with views concerning active practices in relation to their sexual orientation (e.g. *Ladele*). A positive duty to "challenge" may potentially make such conflict more likely (rather than less likely) to manifest itself.

39. Teachers may over react to the conduct of their pupils or colleagues, fearing that they might be accused of not challenging views expressed in school. In the recent case of Jasmine Cain, a 5-year-old girl is reported to have been reprimanded by her teacher for expressing the Christian teaching about heaven and God<sup>18</sup>. The case has received media attention because Jasmine's mother apparently faces disciplinary action after privately emailing friends and asking them to pray for the situation. Jasmine's mother works at the school in question.
40. In so far as the action against Jasmine's mother, the issue appears to centre on the comments about the school in the private email which she sent and as such it is not relevant to the present opinion. However, the reaction of the school to Jasmine's conversation with her classmate is significant. Cases such as this do give rise to an understandable fear that staff of any religious belief or none will challenge the expression of any belief all the more if they are required to challenge discrimination.
41. Although the expression of a view, such as that Jesus is the only way to heaven, should not give rise to prima facie concerns of discrimination, this may depend on the precise context. For example, demeaning a child of another faith may make it appropriate for a teacher to challenge it. In some ways a clearer example would be if a child were bluntly to express the view that "homosexuals are wrong/

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<sup>18</sup> *The Daily Telegraph*, 12 February 2009, see <http://www.telegraph.co.uk/news/newstoppers/religion/4590870/Primary-school-receptionist-facing-sack-after-daughter-talks-about-Jesus-to-classmate.html> as at 6 May 2009

sinful”. Such a statement would be regarded as discriminatory and therefore a teacher would be required to challenge it under the code. Some Christian teachers may feel able to respond to the statement by pointing out that there are differing views about homosexuality, but many other Christian teachers may feel that in doing so they appear to condone the practice of homosexuality which conflicts with their sincerely held beliefs. The draft code of conduct would require them to *challenge* the behaviour even if that appeared to condone homosexual practice which the teacher finds anathema. A comment which demeans another is likely, considering the former code of conduct, to require challenge.

42. In some contexts a comment may not require the teacher to challenge it, for example if the comment is made in the context of a discussion of the views of Christians. It may well be appropriate that in this context a child or indeed teacher states that many Christians believe that homosexuality is wrong. The important point in this context is whether the teacher makes clear that all individuals have a right to choose their opinions for themselves.

**“Promote equality and value diversity in all their professional relationships and interactions”**

43. The second limb of the third part to principle 4 requires teachers to “*promote equality and value diversity in all their professional relationships and interactions*”. As noted above, this part of principle 4(3) also contains the problematic ambiguity as to whether “value” is used as a verb or a noun. With reference again to the Shorter Oxford Dictionary ‘to promote’ is defined as to “*further the development, progress or establishment of (a thing); encourage, help forward or support actively (a cause, process, etc)*”.
44. It is clear that a requirement placed upon teachers to *promote* in this sense requires the *active* encouragement of equality. The issue then turns upon how equality is defined. If equality is limited to equality of opportunity, inherent human worth or equality of the right to hold an opinion, principles repeatedly endorsed in statute and the Convention, then it is difficult to see any objection. In the Christian context at least one of these values is endorsed in the well known parable of the Good Samaritan<sup>19</sup> and in Jesus’ conversation with the Samaritan woman<sup>20</sup>.
45. We understand that concern arises if equality is regarded as equality of esteem of lifestyles and belief systems. While it may be possible and desirable for all teachers to promote the concept that all

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<sup>19</sup> Luke 10 v 30-37, The Holy Bible

<sup>20</sup> John 4 v 4-26, The Holy Bible

individuals have an equal right to decide their own lifestyle it is difficult to see how teachers should be required to promote *all* lifestyles. It is impossible to promote eating meat and veganism. Both are lifestyle choices but one person cannot advance both, although they may present the merits and problems of both but they cannot endorse or actively support both, nor can they personally adhere to both. In the same way, teachers cannot promote both homosexuality and heterosexuality if they are required to ‘further the development, progress or establishment’ of both. Regardless of an individual’s personal view an obligation to promote all views is unworkable if promote is given this active interpretation.

46. As Lord Steyn said in *Malik v BCCI* [1998] AC 20 at 48 “*If a train of reasoning leads to an unbelievable consequence it is in need of re-examination*”. Applying this approach to the question of what a teacher is required to promote it must in fact be limited to equality of opportunity, of the right to hold a view and equality of human worth.
47. The conjunction to ‘value diversity’ requires teachers to treat as significant or ‘of value’ differing views and opinions. We note that those instructing have expressed some concern that this would require teachers to promote equality of world views, beliefs and lifestyle choices and that this would mean that teachers would be required to view, and live out the view, that differences in such matters are positive, whatever their own personal beliefs.

48. Promoting equality of views cannot, as explained above, involve promoting all views although it may well involve presenting all views. Nor does promoting equality of opinion and valuing diversity require a teacher to view all differences of opinion as positive. A teacher is required to view all opinions, however diverse, as worthy of value and consideration. It may be contended that opinions, however diverse, have value in that they are the view of a human who has an inherent worth recognised by the law and indeed the Christian faith. Recognising the value of an individual's opinion and agreeing with it need not go hand in hand. Teachers may be required to lead by example in recognising each pupil's equal right to have an opinion but that cannot (using Lord Steyn's reasoning) require them to endorse any opinion held by a pupil or to contrive to find positives in the differences.
49. Although the GTCE has power to formulate and oversee a code of conduct it has no power to require a teacher to enforce its code against a fellow teacher as the wording of part 3 seems to imply. It is feared that this could lead to a subjective standard being applied to whether or not discrimination has taken place.
50. These further issues appear to arise
- a. Teachers who subscribe to a particular religious view or atheistic or other philosophical belief will, of course, not have a pluralistic view that all belief systems and philosophical approaches are of equal validity. They would

not, therefore, be able to comply with a duty which required them to promote the equality of **all** values if they believe **some** values are more important than others.

- b. People of differing beliefs disagree with each other about fundamental truth claims. The differences are not just between religions but between those who have a religious faith and those who do not. Atheism has equal status to other belief systems in domestic religious discrimination law and under the European Convention on Human Rights. Thus atheism cannot be considered ‘neutral territory’ since this too constitutes a set of beliefs about morality and God.
- c. There is a real risk, with the current drafting, that teachers may consider that the new code requires them to promote actively (rather than merely present neutrally) a set of beliefs which is not consistent with their own.
- d. The previous GTCE code dealt with this by referring to “*promoting equality of opportunity*” and “*respecting individuals*”. This theme seems to be supported by the general explanatory sections of the new GTCE code. In particular the example is given:

*“Mr X is the best teacher we have ever had. All the children in his class listen and they get their work done because they respect him and he makes us want to learn.”*

*He shows us respect and gives us the responsibility to decide about our learning. He's strict but fair, and you always know exactly where you stand with him. It's such a good feeling to come out of one of his lessons because you know you have learnt loads."*

- e. Mutual respect is, therefore, one of the core values already espoused in the new code.
  - f. The concept of respect is less likely to be amenable to abuse by those seeking vexatiously to complain about valid teaching by those with sincere beliefs than the current wording. As set out further below the disruption, stress and bad publicity of an unfounded complaint under the code should not be overlooked.
51. If promoting equality is viewed in the sense described above then this should not lead to such issues since a teacher expressing a view is required to promote the equal right of a pupil, fellow teacher or any other individual to hold a different view. However by implying that marriage is better than, say co-habiting, it is understandable as to how challenges could be brought that the teacher was not promoting the equal right of people to co-habit rather than marry.
52. There is no easy answer to this conflict. A teacher who believes that marriage is preferable is at liberty to say what their view is however if they are unable to do this in a manner which respects alternative views

and the right of all people to decide for themselves then the safest course may be to avoid personal expressions. This conflicts with the biblical notion of not hiding one's faith. If a teacher felt compromised because of the conflict between their personal desire to express their faith and the requirements on teachers to promote equality and value diversity this would put them in a very difficult position.

53. The Association of Christian Teachers, in their consultation response, recommends that the code be supplemented. They suggest that the following rider be added. In addition to the proposed amendment to the wording of principle 4(3) proposed in the previous paragraph, the following proposed passage, may be beneficial and provide necessary comfort:

*“The GTCE is very unlikely to take action where: a teacher has expressed their own personal beliefs within the context of a balanced presentation of an issue; where a teacher’s personal beliefs make it impossible for them to promote (as opposed to present) a particular point of view; or where a teacher in demonstrating their positive commitment to the Code’s general principles has done this in a way which is influenced by their personal beliefs.”*

### **Extra curricular activities outside school**

54. The proposed duty to promote equality and diversity is linked to a teacher's professional relationships. However, it is doubtful that the

reach of such obligations stop entirely at the school gates. The draft code of conduct includes at principle 8 the duty on teachers to “*uphold the law and maintain standards of behaviour both inside and outside school*”. It seems to us that this, taken together with the equality duty in principle 4, could be used to discipline a teacher for opinions expressed outside of school which are perceived to offend against the equality and diversity duty and this may indeed conflict with the right to a private life under Article 8. The examples given in paragraphs 17 and 18 above are relevant.

### **The role of the code in the PCC of the GTCE**

55. In the context of allegations of breach of the code by teachers, there is a danger that stereotypical assumptions about a particular religion or belief may be accepted. There is also a risk that the GTCE will be asked to weigh competing claims in relation to doctrinal religious issues, particularly in relation to issues of objective justification with which it is not equipped to deal.

### **The role of the code in application for posts as a teacher**

56. Further, the GTCE registration form requires applicants to sign a declaration that they understand that as a registered teacher they are required to comply with the code of conduct. However, if the draft code of conduct is adopted in a form which has not been clarified, applicants may increasingly question whether they can sign the declaration in good conscience if they consider the equality and

diversity duty conflicts with their conscientiously held religious and moral beliefs. For example, a Christian who believes that Jesus Christ is the only way of salvation is likely to find it impossible to commit to promoting equality of faiths.

57. Since September 2008, trainee teachers have been required to be provisionally registered with the GTCE. At appendix one of the draft code of conduct, the GTCE states that “*provisional registrants will be required to uphold the conduct aspects of this Code and once eligible for full registration all aspects of the Code*”. It seems likely therefore that would be teachers, starting out on teacher training courses at universities and colleges, will be required to abide by the GTCE declaration in order successfully to complete their courses.
  
58. The equality duty in the draft code of conduct might be used to inform training institutions as to the suitability of a potential candidate for teaching training. While the duty on teachers to promote equality and diversity set out in principle 4 applies in the context of their professional relationships, it is open to be used to draw on views expressed, or activities conducted, by would be teachers in the past. For example, an applicant for teacher training who as president of the Christian Union in the same university was in well publicised dispute with the student union for not admitting non Christians into membership of the Christian Union or for organising a debate on homosexuality.

59. It seems inevitable that governing bodies of schools and local education authorities will use the draft code of conduct as a benchmark to inform them as to a potential candidate's suitability to teach. For example, assessing a teacher's position on various issues, such as marital status, religion or sexual orientation might be used to assess his or her commitment to professionalism. Even if this is not followed to the letter, the positive equality duty could colour the general expectations of what is required to be a teacher.

### **Could principle 4 be applied to limit religious freedoms?**

60. It is also possible to envisage how the code could be used to limit religious freedoms which itself is protected by the European Convention and receives rather vague extra recognition in s13(1) Human Rights Act 1998. In recent years cases have been reported in which teachers upholding Christian beliefs have been threatened with disciplinary action. For example, it was reported that the leader of Caerphilly Council called for headmaster Bill Beales' suspension after he gave a school assembly defending mainstream Christian beliefs and calling for religious liberty.<sup>21</sup>

61. Principle 4 contains a broad, imprecise and far-reaching duty which could have unforeseen consequences. Whatever the drafters of the code intend, similar provisions have been used in recent times to restrict commonplace manifestations of religious belief such as prayer.

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<sup>21</sup> *The Western Mail*, 8 June 2002

62. This leaves potential for even greater problems. For example, a Muslim lobby group may pursue a complaint against a headteacher who requires that all boys in his school do not grow facial hair. The GTCE might become a forum for adjudicating over complicated theological issues.
63. The GTCE could also be used to become an alternative forum for deciding what would otherwise be costly and controversial legal complaints and which may generate widespread publicity. For example, if the headteacher of a Roman Catholic school refused to allow a homosexual rights group to hire the school hall. The group involved might refer the headteacher to the GTCE rather than pursue a civil action against the school.
64. Paragraph 38 of the 2008 Rules provides that a PCC of the GTCE in considering an allegation of unacceptable professional conduct may take into account a registered teacher's failure to comply with the code of conduct. Before determining whether the facts of an allegation amount to unacceptable professional conduct, the PCC must be satisfied that the facts of the case are proved on the civil court standard of proof, i.e. the balance of probabilities (Paragraph 27 (1)). Given that a teacher could find himself or herself answering allegations relating to his expression of personal beliefs, there do not appear to be sufficiently firm safeguards in the evidential process to protect a teacher who might be caught by the prevailing tide of opinion.

## **Does principle 4 infringe the Human Rights Act 1998?**

65. The application of principle 4 in the particular factual examples outlined in this opinion could constitute a breach of Article 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression) of the European Convention on Human Rights, which are incorporated into domestic law by the Human Rights Act 1998. While the draft code of conduct purports to protect religious beliefs from discrimination, we do not consider that the draft code of conduct sufficiently balances the need to accommodate the expression of religious beliefs. There is nothing explicit which does so.
66. Intruding on teachers' personal religious beliefs expressed outside school at the behest of third parties (principle 8 combined with principle 4) could contravene Article 8 of the Convention (the right to privacy).

## **Conclusion**

67. The draft code of conduct risks not so much a return to the imposition of a religious test for admission to the teaching profession, but the imposition of a test of professional commitment to secularism.
68. At the level of the class room, the school disciplinary investigation, the employment tribunal or the job or course application, principle 4 at the very least is likely to cause confusion as to what is permissible conduct for teachers and lead to a "chilling effect", creating a culture

where teachers hide their faith, fearing adverse consequences. At worst, the adoption of principle 4 in its current form risks leading to Christian teachers being found to have broken their code of conduct. Moreover, it may undermine social cohesion by pitting those of different religious and ethical views against one another and leading to a string of divisive disciplinary cases which could have a devastating effect on individual committed teachers. If that is the outcome, trust in the teaching profession would be jeopardised and lawyers would become the principal beneficiaries.

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**JOHN BOWERS QC**

**SAMUEL WEBSTER**

**6 MAY 2009**

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**OPINION IN THE MATTER OF PRINCIPLE 4 OF THE  
GENERAL TEACHING COUNCIL'S PROPOSED  
CODE OF CONDUCT AND PRACTICE DATED NOVEMBER 2008**

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