

Equality Bill

Committee Stage

Day 1 - 6 July

Day 2 - 11 July

Day 3 - 13 July

Day 4 - 18 July

Summary

We have a number of concerns about the Equality Bill. Although well-intentioned, the introduction of a ban on religious discrimination could have a profound affect on the British way of life. For example, we are concerned that the Bill could result in the banning of Bibles and the enforcement of secularism in the UK. Hospitals and hotels that allow the placement of Bibles could be targeted under Part 2 of the Bill, which outlaws religious discrimination in both public and private sectors.

There is a real risk that the non-discrimination provisions, rather than benefiting the Christian faith, will undermine our Christian heritage. We are used to hearing about absurd cases from the United States where atheist activists and the ACLU are campaigning for the removal of Christian symbols on public property (including seeking to remove crosses from cemeteries.)¹ There is, however, no federal law in the US on religious discrimination in the *private* sector. The Equality Bill outlaws religious discrimination in both the public and the private sectors.

We anticipate that during Committee Stage amendments will be debated addressing each of the following concerns:

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¹ Columbus Dispatch, 20 May 2005, "ACLU bullies township over cemetery cross"

Attacks on the UK's Christian heritage

Public Sector

Part 2 of the Bill outlaws religious discrimination. Clause 54 makes it unlawful for a public authority to "do any act which constitutes [religious] discrimination or harassment". There will doubtless be examples where this provision could be used to the benefit of religious groups. But we fear the effect will often be the opposite of what is intended.

We are concerned that, in the name of avoiding discrimination, local authorities will be encouraged to avoid any suggestion that they endorse any religious point of view. As experience shows, this overwhelmingly militates against the Christian faith (see case studies below).

The religious heritage of the UK is overwhelmingly Christian. The overwhelming majority of significant figures in our history were Christians. There are Christian prayers in Parliament and Bishops in the House of Lords. National events are marked with church services. The Monarch is the Supreme Governor of the Church of England, who swears an oath to uphold the Christian faith at their Coronation. In the most recent census, 71.6% of people in the UK identified themselves as Christian, with only 5.4% describing themselves as belonging to a non-Christian faith.² Jack Straw has said, "We can have no understanding of our history and culture unless we understand that we have a Christian tradition".³

Public bodies such as hospitals and local authorities often seem to take the line of least resistance when an allegation is made that their actions risk causing offence on grounds of religion. Some authorities even appear to be hostile to religious belief. The Equality Bill will create a new legal landscape in which there is a positive duty on local authorities not to discriminate on grounds of religion. It will also render them liable to intervention by the new Commission (see page 4 for information about the new Commission). A public body approached by the Commission may simply cave into its demands. They may be intimidated by the prospect of an investigation, or a Commission-backed legal action. Examples could include individuals using the Commission to force a council to remove its Christmas nativity display on the grounds that it is offensive (and therefore harassing) to non-Christians. Some people may even target Remembrance Day services on council property and demand that Christian prayers and hymns are removed.

Example – banning the Bible (public sector):

An activist from an atheist campaign group is injured in a car crash and rushed to hospital. When he wakes up, he finds a Gideon's Bible in the cupboard next to his bed. He complains to the nurse who removes the Bible temporarily. On being moved to a different ward, he again finds a Bible in his bedside cupboard and again insists on it being removed. He subsequently approaches the Commission for Equality and Human Rights. He alleges that the presence of the Bible created an intimidating, hostile and offensive environment for him. He asks the Commission to approach the NHS trust to request the removal of all the Bibles.

Clauses 51-54 oblige schools and public authorities not to discriminate on the grounds of religion. This could be used to oblige them to provide Halal food even where there are only one or two Muslims in the establishment.

Private Sector

In the private sector too, the Bill's provisions on goods and services (clauses 45-53) have the potential to create religious disharmony where currently there is none. For

² http://www.statistics.gov.uk/cci/nugget_print.asp?ID=293

³ Commons Hansard, 23 March 1988 col 418

example, a Muslim could complain that his local supermarket is not selling Halal meat and is therefore discriminating against him contrary to clause 46(3).

These provisions could also be used to try to ban the Bible.

Example – Banning the Bible (private sector):

An avowed atheist pays for a room in a hotel run by a major hotel group. He discovers a Gideon's Bible in the room. He complains to the Commission for Equality and Human Rights that the hotel is discriminating against him in the manner in which the facilities are provided (contrary to section 48(1)(c)) by forcing him to have a Bible in the room. He argues that Christians are not forced to have atheist literature in the room. The Commission relays the complaint to the hotel chain. The lawyers for the hotel point out that the Commission may back a legal action by the atheist, which could result in a lengthy and costly legal battle. They advise extreme caution and suggest that the safest course is to remove all the Bibles.

Recent case studies

- May 2005 – Norfolk County Council warns a Christian-run shelter for the homeless that it will lose £150,000 of funding unless it stops saying grace at mealtimes and putting out Bibles for use by guests.⁴
- April 2005 – Stirling University Students' Association calls for Gideon Bibles to be banned from halls of residence to avoid offending non-Christians. The students' group backed down in the face of protests.⁵
- March 2005 – Perth Royal Infirmary is told to remove the Communion table from its chapel after the NHS Trust warned it could offend non-Christians. The resulting public outcry forced a U-turn.⁶
- November 2004 – Worcestershire County Council is urged by one of its 'equality champions' to scrap its 116 year-old tradition of beginning its bi-monthly meetings with Anglican prayers because it is "not equally welcoming" to other religious groups.⁷
- February 2004 – Edinburgh University bans Christian prayers at graduation ceremonies to avoid offending other religions and atheists.⁸
- December 2003 – The Royal Hospital for Sick Children in Edinburgh bans the distribution of a Christmas CD because it mentions the baby Jesus and this "could cause offence to those who are not Christian".⁹
- November 2003 – The Scottish Parliament bans the words "Merry Christmas and a Happy New Year" from cards sent out by MSPs and staff saying that the wording is not "socially inclusive" and may offend other religions.¹⁰

Amendments

Lady O'Cathain is tabling an amendment to draw attention to this problem. Her amendment will state specifically that Part 2 is not intended to result in the removal of Bibles, crosses or other Christian symbols, the banning of Christian festivals or the withdrawal of public funding from religious groups.

⁴ *Daily Mail*, 3 May 2005

⁵ *Scottish Daily Record*, 21 April 2005; *Express on Sunday*, 17 April 2005

⁶ *Daily Express*, 3 June 2005

⁷ *Sunday Mercury*, 7 November 2004.

⁸ *Daily Telegraph*, 16 February, 2004

⁹ *The Scotsman*, 22 December, 2003

¹⁰ *Loc cit*

A new Commission for Equality and Human Rights (clause 3)

The Equality Bill creates an extremely powerful new Commission for Equality and Human Rights. We are concerned that in conflicts between the human rights of churches or religious bodies and the human rights of non-believers, the Commission will consistently side with individuals who feel aggrieved against religious believers. The Commission has considerable powers to ensure compliance with its views.¹¹

Clause 3 says that the Commission's "fundamental duty" is "the creation of a society" in which there is no discrimination. It replaces existing Commissions for sex, race and disability discrimination, and is granted new powers in the areas of religion, sexual orientation and age.¹² The 'Fundamental Duty' in Clause 3 greatly exceeds any of the functions of the three previous commissions.

"3 Fundamental duty

The Commission shall exercise its functions under this Part with a view to the creation of a society in which—

- (a) people's ability to achieve their potential is not limited by prejudice or discrimination,
- (b) there is respect for and protection of each individual's human rights,
- (c) there is respect for the dignity and worth of each individual,
- (d) each individual has an equal opportunity to participate in society, and
- (e) there is mutual respect between communities based on understanding and valuing of diversity and on shared respect for equality and human rights."

We are not aware of precedent in British legislation for giving a body the power to bring about "the creation of a society". The House of Lords Select Committee on the Constitution sent a letter to the Lord Chancellor on 21 June expressing concerns about this and other matters (see http://www.parliament.uk/parliamentary_committees/lords_constitution_committee/cwm.cfm).

Virtual immunity from judicial review

Our legal advice is that clause 3 will take precedence over the powers in clause 8 and will make the Commission almost immune to successful Judicial Review based on the concept of *ultra vires*. It allows the Commission almost unfettered discretion to do anything in pursuit of its anti-discrimination purpose. A judicial review action may be brought, but because the basic duty of the Commission involves the creation of a particular type of society it will be virtually impossible for a court to say that any action exceeds its purpose.

Commission will take sides where there are conflicts of rights

Clause 3(e) requires the Commission to create a society in which there is "mutual respect between communities based on understanding and valuing of diversity and on shared respect for equality and human rights". Previously, the law simply required people not to harm one another. It did not try to make people respect one another. But the Equality Bill makes it a legal obligation for the Commission to create "mutual respect" between communities. Clause 11 defines 'community' as people defined by reference to certain characteristics, including 'religion or belief' and 'sexual orientation'.

Most people strongly object to brain-washing cults. In particular there are organisations that speak out against cults and offer help to those who have left them. The cults are very litigious and can threaten those who criticise them.

¹¹ It has extremely broad freestanding powers to conduct inquiries and investigations with a view to enforcing any of the existing discrimination or human rights laws. The Commission can also provide assistance to individuals to help them bring a legal action to enforce any discrimination or human rights law. This includes advice and payment of legal fees.

¹² The powers of the Commission as set out in clause 8 are similar to those given to the three bodies it replaces (i.e. the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission), though it is notable that there appears to be a stronger emphasis on enforcement.

The Commission cannot be neutral as between these groups. It has a legal duty to promote “respect” between them and an “understanding and valuing of diversity”. Clause 45(b) defines ‘belief’ as “any religious or philosophical belief”. Presumably this means that in a dispute between, say, the cult of Scientology and a Christian charity which helps/counsels ex-cult members, the Commission is legally bound to support the cult because the Christian charity is, by definition, not “valuing diversity”.

‘Respect’ is a stronger concept than tolerance. To tolerate something requires that we put up with it, though we disagree. But respect requires esteem or deference. Is it right to require a Christian with orthodox beliefs to show esteem to a cult, or to a religion he regards as false?

Clause 11(1)(c) requires the Commission to work towards the “elimination of prejudice... towards communities”. The Commission could become involved in internal church arguments relating to ‘gay clergy’ on the basis that religious teaching that homosexuality is wrong is merely ‘prejudice’. This would mean the Commission choosing to arbitrate on the fundamental doctrines/ethical teachings of a major religion, something which the courts have persistently refused to do.

Amendments

Lady Miller and the Earl Ferrers have tabled separate amendments to clause 3 which would remove the duty to bring about “the creation of a society”. They are also seeking to remove the duty in paragraph (e) to force different groups to ‘respect’ each other.

We strongly support these amendments since they will help to limit the powers of the Commission and to make it more accountable. This will reduce the likelihood that its powers will be used against religious groups.

Lack of legal assistance for charities and voluntary bodies pursued by the Commission (clauses 17, 22, 30)

A crucial weapon in the new Commission’s armoury is the power to provide assistance to individuals pursuing legal action, including funding (clause 30). This amounts to a form of legal aid for discrimination claims. If the assisted person wins their case then the Commission can recover those costs from the other party (clause 31). The Commission can also bring an action for judicial review. However, there is no provision either in the Bill or in existing legal aid legislation for individuals or organisations to be given legal aid if they are being investigated by the Commission, or being sued by or with the backing of the Commission. Nor is there any provision for a person or organisation to recover their legal costs in defending themselves from an investigation or in fighting a legal claim backed by the Commission.

Charities would need legal aid, especially religious charities involved in Commission investigations or Commission-backed cases. Many religious charities have very limited financial resources.

We are advised that this omission may be a breach of the Human Rights Act. In the case of *Steel and Morris v. UK (Application No. 68416/01)* the European Court of Human Rights accepted that legal aid should be granted in civil cases where the resources of the parties were significantly different and where issues involving Convention rights are at stake. Otherwise, the right to a fair trial is compromised. Clearly, any case backed by the Commission will be in the dominant position because it will have the financial resources of the Government behind it.

Example 1:

A liberal Jew applies for a caretaker's post at a conservative synagogue. When his application is rejected, he sues the synagogue under the Employment Equality regulations. The Commission for Equality and Human Rights provides legal advice and funding of the applicant's case.

Example 2:

A prisoner is a member of a pagan group. Whilst in jail he attends a popular short course in Christian belief called the 'Alpha Course'.¹³ He asks the Commission to investigate after the course leader criticises the occult. He claims he has been harassed under clause 47 (in conjunction with clause 54) and calls for the Alpha Course to be banned from all prisons. The Commission launches an investigation and backs a legal test case by the man against the prison.

The Commission also has powers to launch enquiries (clause 17). Schedule 2 empowers it to subpoena an organisation to produce documents or give evidence which may incriminate them.

The Commission can also launch a formal investigation into an organisation where it suspects unlawful acts (clause 22). It does not have to show "reasonable suspicion" before launching such an investigation.

In both cases, the organisation would require legal advice to help protect itself against the all-powerful Commission. A church or religious organisation would have to fund such legal advice out of its own money. Their response could subsequently render them open to further enforcement action, such as a court case.

Amendments

We anticipate amendments to address the problem of legal aid for victims of Commission-backed legal action.

Currently, Lady Miller has tabled an amendment to Schedule 2 which would give the Commission discretion to provide assistance to any individual who is the subject of a Commission inquiry or investigation.

Lady Miller has also tabled an amendment to clause 22 requiring that the Commission's suspicion must be "reasonable" before launching an investigation.

The definition of religion (clause 45)

Clause 45 gives the following definition:

- '(a) "religion" means any religion,
- (b) "belief" means any religious or philosophical belief,
- (c) a reference to religion includes a reference to lack of religion, and
- (d) a reference to belief includes a reference to lack of belief.'

This differs from the definition currently used in section 2(1) of the 2003 Employment Equality (Religion or Belief) Regulations which reads:

"religion or belief" means any religion, religious belief, or similar philosophical belief."

¹³ Started in an Anglican church in London in 1992 as an introduction to the Christian faith, Alpha International say there are now 28,260 Alpha courses world-wide which have been attended by an estimated 6 million people. See http://alphacourse.org/mediaroom/pressreleases/04/07_06_text.htm as at 7 June 2005

Clause 77 of the Bill amends section 2(1) of the 2003 Regulations to conform to the definition in clause 45. This could have unexpected consequences. The current phrase in section 2(1) “religious belief or **similar** philosophical belief” implies that the philosophical belief is in some sense religious in nature. Take Buddhism, for example, which is technically a philosophy but which is regarded as being in practice a religion. The new definition applies merely to “any religious **or** philosophical belief” which appears to be wider and to cover free standing philosophical beliefs. **Potentially, racism, fascism, communism, anarchism and veganism could all come within this definition.**

The amended employment regulations could therefore be used by the BNP to prevent their members being excluded from employment. In addition the new definition would appear to provide greater protection to religious extremists. A person who believes in a form of extremist Islamo-Fascism and who praises suicide bombers and jihad may be rejected by mainstream Islamic leaders and might be therefore be regarded as not having a true “religious” belief. However they certainly have a “philosophical” belief.

The Government is proposing to introduce a new criminal offence of “Incitement to Religious Hatred”. However the changes proposed by the Equality Bill could put employers and others in a paradox. Someone may be expounding extremist beliefs which, depending on the police and the Attorney General, could be criminal. But if they express those beliefs in the workplace or in a shop and are told to leave then they could claim discrimination against their employer or the shop-owner.

Amendments

Lady Miller has tabled an amendment to insert “or similar”.

Over-extending the law on harassment (clause 47)

The Equality Bill prohibits harassment on the grounds of religion in the management of premises (clause 47 with clause 49) and by public authorities (clause 54) and educational establishments (clause 51). Clause 47 defines harassment as “creating an intimidating, hostile, degrading, humiliating or offensive environment”.¹⁴ The perception of the victim is a vital factor for the court.

Clearly, no-one would defend genuine harassment. But religion is a controversial subject on which feelings can run very high. People can easily feel very offended or even humiliated over religious issues.

In Victoria State, Australia, a case has been recently brought by a convicted paedophile who is a witch and who claims to have had his “religious beliefs” vilified by the Salvation Army working within his prison.¹⁵ They ran an Alpha course which included a criticism of the occult. Similar accusations could be made under clause 47, which would apply within prisons and within schools. The ‘witch’ could claim he has been subjected to ‘harassment’ for his ‘religious beliefs’.

The wording of clause 47 is not based on traditional concepts of harassment in English law or practice. It is based on a definition of harassment accepted by the EU in Directive 2000/78/EC and effectively obliges the defendant to prove they have not harassed rather than requiring the claimant to prove that they have been harassed. The EU definition of harassment has been incorporated into all types of legislation relating to discrimination in the workplace including the (Religion and Belief) Employment Regulations (regulation 5). However that does not mean that the same

¹⁴ Those who claim for harassment under the Bill can apply for injunctions or for damages. This is entirely separate from the provisions of the 1997 Protection from Harassment Act, or from the provisions of the criminal law against harassment, alarm and distress.

¹⁵ *Herald-Sun (Australia)*, 27 April 2005

definition is appropriate for legislation that will apply outside the workplace and can be used as the basis for an application for an Injunction.

The danger with the wording of the harassment provisions is the vagueness of the concept of an "intimidating, hostile, degrading or offensive environment" and the fact that the Bill does not provide for a general defence of "behaviour being reasonable in the circumstances".

Neil Addison, a barrister specialising in harassment law, questions whether there is any need whatsoever for clause 47. There is already a Tort of Harassment which has been created by section 3 of the Protection from Harassment Act 1997 and which can be used by victims of harassment as the basis for claims for damages and for Injunctions. The 1997 Act is neutral in the types of harassment it prohibits. It does not matter what the motivation. However the 1997 Act contains a far more rigid definition of harassment than the Equality Bill and provides clear defences so making it less likely to be misused. Instead of creating a new offence, the powers of the Commission could easily be extended to allow it to support claims brought under the 1997 Act.

Church schools

Some secularist groups are concerned that clause 61 gives faith schools exemptions from the harassment provisions as they apply to educational establishments (clause 51(2)). They want the harassment exemption lifting.¹⁶ The Government has expressed a willingness to discuss this.¹⁷

However, there is a great risk that exposing church schools to the Bill's very wide provisions on harassment could cripple them. Most church schools are greatly over-subscribed. Competition for places is considerable and many parents are extremely disappointed if their child fails to get a place. Removing the exemption from the harassment provisions could open up these schools to numerous claims of 'harassment' from disappointed parents.

Take the example of a Roman Catholic school that interviews parents as part of a rigorous selection procedure. They are asked questions about their faith and matters such as church attendance. A parent is dismayed when his child fails to get a place. He alleges that the questioning of his faith and practice amounted to harassment on the grounds of religion. If the exemption is removed, the school would have to engage lawyers to defend the claim.

Amendments

Amendments may be tabled to remove clause 47 and instead place a duty on the Commission to enforce the existing harassment provisions. We would support any amendments to remove or limit the harassment provisions.

Amendments may be tabled to extend the harassment provisions to church schools. We would oppose any amendments to limit the scope of the religious exemptions.

Freedom of conscience for public sector staff (clause 54)

As the date nears for full implementation of the Civil Partnership Act 2004, Christian registrars are being forced to agree to conduct homosexual civil partnership ceremonies. Under the Gender Recognition Act 2004, they will also be required to conduct weddings involving people who have a sex change and who hold a Gender Recognition Certificate (transsexuals). Under the Adoption and Children Act 2003 social workers with a religious faith are being required to sanction joint adoption by homosexual couples.¹⁸ We are aware of at least three Christian professionals who

¹⁶ Lords Hansard, 15 June 2005, col. 1264 (Baroness Turner of Camden).

¹⁷ Lords Hansard, 15 June 2005, col. 1308 (Baroness Ashton of Upholland)

¹⁸ The late Baroness Blatch attempted, unsuccessfully, to insert a conscience clause in the Local Government Bill in 2003 protecting Christian social workers who did not want to participate in gay adoptions.

have been forced out of adoption work by their local authority because they did not agree with homosexual adoption.

Clause 54 of the Equality Bill places a duty on public authorities not to discriminate on the grounds of religion. Obviously they are currently failing in this in relation to registrars and social workers. We therefore advocate a specific religious conscience clause for public sector workers.

Some will point out that employees already have religious non-discrimination rights under the Employment Equality (Religion or Belief) Regulations 2003. But the number of Christian registrars and social work staff who we know of who are being forced out of their positions over issues like this tell us that the regulations are not enough. Christians, Muslims and others with traditional religious views will increasingly be forced out of these professions in a kind of religious apartheid. This is an opportunity for Parliament to make clear that this is not acceptable.

Amendments

Lady O’Cathain will table an amendment to extend clause 54 to prevent public authorities from forcing staff to conduct ‘gay weddings’ and other functions which offend against the doctrines of their religion.

Gaps in the protections for religious groups (clauses 59-61)

For the first time the Equality Bill outlaws religious discrimination in the provision of goods, facilities and services, and the management or disposal of premises (clauses 48 and 49). Religious groups, by their very definition, discriminate on religious grounds all the time.

- A place of worship will often restrict access to the premises on the basis of membership.
- A denominational charity may restrict provisions of benefits to members of the denomination.
- A church school may reserve a certain proportion of places for children whose parents share the faith of the school.

The Government has therefore been careful to draft exceptions for religious groups (clauses 59 – 61) which address these situations. These exceptions seem drafted to protect most of the major activities of religious groups.

However, a religious group is excluded from the protection of clause 59 if its “sole or main purpose is commercial”. There are many businesses which are run by members of a particular religion and which seek to provide goods or services specifically for fellow-believers. It does not seem to make sense to render them liable to legal action simply for this.

Example

A Muslim taxi firm is set up specifically to supply cheap taxis to local mosques to help elderly and infirm Muslims to get to the Mosque for daily prayers. (This is covered by clause 59(1)(d).)

The firm also supplies taxis on an ordinary commercial basis to other customers. This side of the business expands, but the original purpose of the firm remains unaffected. Will a court take the view that its “main” purpose is now commercial? If so, an ordinary customer could successfully allege religious discrimination because elderly Muslims get cheaper rates for their journeys to the Mosque than he gets for his journey to work.

Amendments

Lady O’Cathain is tabling an amendment so that only those whose “sole purpose” is commercial are excluded from the benefit of clause 59. This would allow a religiously-oriented commercial enterprise to argue its entitlement to protection under the clause.

Sexual orientation

It is very likely that an attempt will be made to amend the Bill to also prohibit discrimination in the provision of goods and services on the grounds of sexual orientation. The Government is on record as being sympathetic to this idea although it did not put it into the Bill.¹⁹ This would create even more alarming problems for churches and religious organisations since gay rights groups have posed challenges to religious freedom, e.g. through litigation. We would strongly oppose any amendment along these lines.

Repealing protections for religious groups (clause 65)

The exemptions for religious groups were negotiated with a wide range of faith groups, including the Church of England and the Roman Catholic Bishops Conference. They are essential to the protection of basic religious liberties.

Despite the fundamental importance of these exemptions clause 65 gives the Secretary of State power to repeal them by order. If a future Secretary of State decided churches should be stripped of protections (e.g. so that the law requires them to admit atheists and Satanists into membership) surely the proposals would deserve proper scrutiny and be susceptible to amendment? This is something only primary legislation can ensure.

Amendments

Lady O’Cathain is to table an amendment to delete clause 65. Any attempt to remove the religious exemptions would have to be done through primary legislation.

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¹⁹ *The Independent*, 17 July 2004