Memorandum to the Joint Committee on Human Rights on the Welfare Reform Bill from the British Humanist Association

1 About us

1.1 The British Humanist Association (BHA) is the national charity representing the interests of the large and growing population of ethically concerned non-religious people living in the UK. It exists to support and represent people who seek to live good and responsible lives without religious or superstitious beliefs.

1.2 The BHA is deeply committed to human rights, equality, democracy, and an end to irrelevant discrimination, and has a long history of active engagement in work for an open and inclusive society. In such a society people of all beliefs would have equal treatment at law, and the rights of those with all beliefs to hold and live by them would be reasonably accommodated within a legal framework setting minimum common legal standards.

1.3 One of our largest campaigning areas is that of public service reform – and specifically the contracting out of public services to religious organisations.

2 Introduction

2.1 We welcome the opportunity to submit evidence to this inquiry.

2.2 The Welfare Reform Bill is not yet published. However, the Green Paper, 'No one written off: reforming welfare to reward responsibility', currently open for public consultation, sets out the Government's intentions and proposals for the forthcoming Bill.

2.3 In May 2007 and in January 2008 the BHA responded to two Department for Work and Pensions (DWP) consultations: those on welfare reform and the "Freud report" and on the DWP's interim commissioning strategy. In those responses we set out a number of equality and human rights-based concerns specifically in reference to the Government's proposals for welfare reform. In November 2007 we published our report on the contracting out of public services (including welfare services) to religious organisations, 'Quality and Equality: Human Rights, Public Services and Religious Organisations'. That report sets out in detail our concerns about discrimination and infringements on human rights that are specific to contracted religious organisations. We attach all three documents, as evidence, as annexes A, B and C.

2.4 In September, we met with DWP officials from the Commercial Directorate and from the Commissioning Strategy Policy Team. While we were assured that the DWP has no *intention* of allowing discrimination in employment on religious grounds by its contractors and subcontractors in its Flexible New Deal programme, our concerns in terms of employment remain. It was clear from our meeting that the present exemptions from equality legislation for organisations based on religion or belief have not been taken into specific consideration by those responsible for commissioning and perhaps more widely.

2.5 The welfare reform Green Paper, in essence, proposes the implementation of Freud's proposals. Importantly from our standpoint, that includes the continuation and expansion of commissioning welfare services from the private and third sectors. Indeed, the Green Paper suggests even more extensive change than the 2007 proposals and proposes 'giving private and voluntary providers the right to bid for *any* back-to-work service' (p7, emphasis added). This will include contracting out many welfare and employment services to religious organisations – a policy that the Government has been especially and increasingly keen to promote over the past couple of years (see annexes A, B and C for evidence and detail).

2.6 In this short memorandum (which should be read with the annexes), we summarise our concerns regarding welfare reform and set out in brief our proposals for mitigating the negative effects of contracting out services to religious organisations. We finish with a number of safeguards to promote equality, tackle discrimination and uphold human rights that we consider vital inclusions in the forthcoming Welfare Reform Bill.

3 Our position

3.1 We set out our fundamental position as follows:

- that all public services, including welfare services, should be open and accessible to all citizens and be provided on a non-discriminatory basis;
- that organisations in receipt of public funding to provide public services should be bound in their provision of those services by the same legal obligations to avoid discrimination in dealing with their clients as are public providers of the same services;
- that those organisations should be bound in their provision of those services by the same legal obligations to avoid discrimination in their employment practices as apply to public providers of the same services;
- that those organisations should be bound, as public authorities, in their provision of those services by the Human Rights Act 1998;
- that such organisations should be required to respect the privacy and autonomy of their clients.

Therefore, should any religious (or, equally, humanist) organisation be involved in providing public services in partnership with or on behalf of the Government or any public authority, it should not be allowed to discriminate on the grounds of religion or belief either in its employment practices or in its service delivery, and it should not be allowed to suggest either to employees or to clients that any advantage might attach to those with beliefs consonant with its own, far less to proselytise. To avoid misunderstanding, we make clear that it is our view that any religious organisation engaged in public services must be ineligible, so far as the delivery of those services is concerned, for the exemptions from anti-discrimination law provided to religious organisations in their religious activities.

3.2 We would like to draw the Committee's attention to the fact that religious organisations have exemptions from equality legislation which allow them to discriminate in their employment practices and in the way they provide services in some circumstances, on grounds of religion or belief or of sexual orientation, even when contracting to provide welfare or other public services. Such organisations are also not covered by the Human Rights Act 1998 (HRA), and we consider there to be especial problems in terms of possible infringements of service users' rights, such as their right to freedom of conscience and belief, if their service provider is a religious organisation.

3.3 In the forthcoming Equality Bill, which is set to replace all existing equality and anti-discrimination legislation, the Government will look at legislative and non-legislative measures to encourage (or force) contracted organisations to comply with the general equality duty when they are performing public functions. The duty will be extended to cover seven protected areas: gender, race, disability, religion or belief (which includes non-religious beliefs), sexual orientation, age and gender reassignment. In the absence of such future legislative requirements on contracted organisations, or until such time, we would like to see the DWP make clear in its commissioning strategy that all contracted organisations should act as if they were bound by that duty. This should certainly be reflected in the Welfare Reform Bill.

3.4 It should be noted that we see contracts – however tight the stipulations are – as a poor second best to legislation for protecting employees and service users from discrimination, for promoting equality, and for protecting human rights – all of which may be especially necessary should the contractor be a religious organisation.

3.5 Further, as the DWP is 'not party'[1] to subcontracts, we have additional concerns that, through including religious organisations as subcontractors in particular, neither employees nor service users will be adequately protected from discrimination or unequal treatment.

3.6 It is the main contractors' responsibility both to stipulate the details of subcontracts and to monitor whether the subcontractors are fulfilling their contractual obligations and, in most cases, it would be the main contractor who would be held accountable for the way subcontractors operate. However, religious main contractors will be able to ignore infringements by religious sub-contractors and in any case, to the extent that religious suppliers become significant suppliers they will be in a position to disregard contractual provisions since there will be no ready alternative to them as suppliers, and the Government or local authority may be reluctant to penalise them.

4 Proposals for Welfare Reform Bill

It is vital that there are legislative provisions in the Welfare Reform Bill that make clear that:

- Any exemptions in equality law that allow religious organisations to discriminate in employment on any grounds do not apply when working under contract to provide welfare and employment services.

- Any exemptions in equality law that allow religious organisations to discriminate in service provision on any grounds do not apply when working under contract to provide welfare and employment services.

- All organisations working under contract to provide welfare and employment services must act – and be held accountable – as if they were bound by the Human Rights Act 1998.

- Any organisation contracted to provide welfare and employment services must be bound by the same equality and anti-discrimination regulations and duties as public sector providers.

- All services must be provided in a secular way, that is, in a way that is neutral and not religious. This would include outlawing proselytising, preaching, praying and any other religious activity, whether compulsory, voluntary or even that which is visible in the context of service provision. It would also prohibit the provision of welfare and employment services from places of worship or where there is religious symbolism on display.

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[1] Letter from Caroline Flint MP to the BHA, 11th October 2007