

House of Commons Work and Pensions Committee. Inquiry into DWP's commissioning strategy and the employment programme market

Memorandum from the British Humanist Association.

1 About the British Humanist Association

- 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 areas of current concern 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 We wish to make it plain from the start that we are opposed to contracting out statutory public services of any kind to organisations based on a 'religion or belief'¹. It is incompatible with the open, secular society we advocate in which the shared institutions of society – its laws, governance and public services – maintain a careful neutrality on disputed matters such as religion and belief. Religion may motivate people to public service, but public services should not be delivered in the name of religion.
- 2.3 Nonetheless, the Government generally and the DWP specifically are determined to build the capacity of religious organisations so that they are able to provide services to the public. In light of this, we are focussing in this submission on the fact that the Government has thus far failed to address a number of problems that are associated specifically with having religious organisations as service providers. These problems desperately need addressing.
- 2.4 Attached to this response are:
 - 'Response from the British Humanist Association to the DWP Commissioning Strategy – Interim Report' (Annex A)
 - 'Response to the Government's proposals for welfare reform and to the Freud report, from the British Humanist Association' (Annex B) and
 - the BHA's report on the contracting out of public services to religious organisations, 'Quality and Equality: Human Rights, Public Services and Religious Organisations' (Annex C).

Annex A sets out our position in regard to the contracting out of public services to religious organisations and Annexes B and C provide greater depth and detail to the points made in this memorandum and Annex A, together with a number of recommendations to counter the problems we envisage with such a policy. This short memorandum sets out in brief our position, which is more fully explicated in annexes A, B and C.

¹ Belief in this sense encompasses any religious or philosophical belief and includes a reference to lack of belief. This is supported by national legislation, European case law and by international treaties.

2.5 We would also like to draw the committee's attention to the fact that the Trades Union Congress (TUC) has similar concerns regarding the contracting out of welfare and employment services to religious organisations, and they referenced the BHA a number of times in their own response to the Government's proposals for welfare reform and the Freud report in 2007. The TUC also supported the launch of our report on the contracting out of public services to religious organisations, 'Quality and Equality: Human Rights, Public Services and Religious Organisations', making particular comment on the likely very detrimental effects for employees, should they either be transferred under TUPE or have to apply for a job with a religious organisation that had a contract to provide services on behalf of the DWP, or indeed any other public authority.

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 (see below).

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 in some circumstances to discriminate in their employment practices and in the way they provide services on grounds of religion or belief or on sexual orientation, even when under contract 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 on 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 absence of legislation making such discrimination and other unacceptable activity, such as proselytising or harassing service users in other ways, illegal when providing a service on behalf of the State or any other public authority, we consider it vital that, at a minimum, the

DWP must include strict stipulations in its contracts against any such unacceptable activity. Contracts should also require contracted organisations to act as if they were bound by the HRA.

- 3.4 For the forthcoming Equality Bill, which is set to replace all existing equality and anti-discrimination legislation, the Government has stated that it 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 believe that the DWP must make clear in its commissioning strategy that all contracted organisations need to act as if they were bound by that duty.
- 3.5 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. Neither employees nor service users are party to such contracts and they therefore have to rely on persuading the public authority contractor to enforce its contract terms on their behalf at some cost and no direct advantage to itself, rather than having direct access to the law to enforce their own rights.
- 3.6 Further, as the DWP is ‘not party’² 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.
- 3.7 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, to the extent that religious suppliers become significant suppliers they may 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.

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² Letter from Caroline Flint MP, 11th October 2007