DWP Commissioning Strategy – Interim Report

Response 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 at the moment 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 respond to this Interim Report on the DWP's Commissioning Strategy.

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. 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 Given the apparent determination of the Government to move in an exactly opposite direction, we devote the remainder of this response to steps we see as necessary to mitigate the damage this policy will cause.

2.4 Attached to this response are:

- 'Response to the Government's proposals for welfare reform and to the Freud report, from the British Humanist Association' (Annex A) 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 B).

Annexes A and B set out, in detail, our position in regard to the contracting out of public services to religious organisations, together with a number of recommendations to counter the problems we envisage with such a policy. This response summarises our position (as set out in the annexes) and also makes specific remarks on the Interim Report, focusing on equality, social

cohesion and non-discrimination in the DWP's commissioning processes. We have also requested a meeting with the Commissioning Strategy Team, in order to discuss in more detail our concerns and seek to find ways, with the DWP, to address them.

2.5 We would also like to make known that the Trades Union Congress (TUC) is sympathetic to our 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 (see more below) or have to apply for a job with a religious organisation that had a contract to provide services on behalf of the DWP.

3 Summary of concerns and recommendations on welfare reform proposals and the Freud report

3.1 In May 2007 we responded to the Government's proposals for welfare reform and the Freud report (Annex A). In that response, we set out our concerns and serious reservations about the Department for Work and Pensions' (DWP) policy of contracting out services to religious organisations.

3.2 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.

3.3 **Our recommendations**

In our May response, we recommended that the DWP:

- does not contract out or sanction the contracting out of the supply of welfare services to religious organisations;
- does not privilege religious over inclusive secular organisations in any circumstances;
- reviews its reasons for proposing to contract out welfare services to religious suppliers;
- bases its welfare policy on clear and testable evidence and not on dogma or spurious assumptions about the role of and 'need' for religious organisations in welfare delivery;
- ensures that all contracts and funding agreements specify that suppliers will be bound by the Human Rights Act 1998 (HRA) and equality and non-discrimination legislation, with no exceptions;
- does not award contracts to any organisation which seeks to manifest and/or promote religion or belief through its delivery of welfare or in its hiring practices;
- addresses the problems we identify throughout this submission and then re-thinks its welfare reform policy, specifically in relation to the inclusion and public funding of religious organisations in the areas of welfare and public services more broadly.

We continue to recommend the above to the DWP when it considers contracting to religious organisations.

3.4 Our report 'Quality and Equality: Human Rights, Public Services and Religious Organisations' (see annex B) takes further our position and recommendations, applying our principles on commissioning to all public services, not only welfare and employment services.

4 Specific comments on the interim report

4.1 Based on our position regarding the contracting out of welfare and employment services (as well as other public services) to religious organisations, we have a number of specific remarks on the Interim Report of the DWP's Commissioning Strategy. We would like to make clear that we do not have a position on having a mixed economy in the provision of services; we have specific concerns with the inclusion of religious organisations in the commissioning process.

4.2 Market Structure

Remarks on contracting and subcontracting

4.3 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.

4.4 We recommend that DWP contracts include specific provisions to protect against discrimination on all six equality strands, including religion or belief. To make explicit the need for contractors to prevent discrimination on all equality strands is vital, as there are no legal requirements for contractors providing services on behalf of a public authority to consider equality or non-discrimination requirements on grounds of religion or belief, as there are with gender, race and disability.

4.5 There are particular issues should public authorities contract services to religious organisations, which have exemptions from equality legislation allowing them to discriminate in employment on grounds of religion or belief and on sexual orientation, and on grounds of religion or belief in the provision of goods, facilities and services. To help ensure employees and services users are treated equally when services are contracted out to religious organisations, therefore, contracts must stipulate that those exemptions do not apply when commissioned to provide services on behalf of the DWP.

4.6 In 2007, some reassurances about contract provisions to prevent discrimination were offered by both Caroline Flint MP, then Minister of State for Employment and Welfare Reform and her predecessor Jim Murphy MP in correspondence to the BHA, but in inadequate terms which did not recognise the need to extend compliance to subcontractors.

4.7 We also have concerns that contracts are inadequate to guarantee service users' rights, compared with legislation such as the Human Rights Act 1998 to which public authorities are bound, but to which those providing services on behalf of a public authority are not (see annex B for more details).

Subcontracts and subcontractors

4.8 While we do not wish to comment on the principle of having a 'market where smaller providers will mainly act as sub-contractors' per se, we do have concerns where those subcontractors are religious organisations.

4.9 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 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.

4.10 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.

4.11 Market Development and Stewardship

Equality and social cohesion

4.12 In delivering the principles in this section, we reiterate the need for the DWP to be prescriptive in terms of the relationship between prime and subcontractors, to negate as far as possible the damaging effects to equality and social cohesion that having religious organisations as suppliers may create. This damage may not just occur because of the actions of the organisation, such as treating different groups of service users unequally or discriminating in their employment, but also because of the perception by service users of religious organisations as sectarian or 'not for them' if they are of a different or no religion. We hold that these perceptions will create barriers for many people in accessing vital welfare and employment services. It is hard to see how government would monitor how well religious subcontractors are delivering part of the government's wider agenda, which includes 'social cohesion; sustainability; equality and diversity' (p5).

Employment

4.13 In terms of employment, we cannot see how religious organisations that discriminate in their employment on grounds of religion and/or sexual orientation could ever contribute to the government's wider agenda (as above), or be perceived as legitimate service providers by service users and other organisations involved in welfare and employment. Contracts and subcontracts must make absolutely clear that the exemptions that religious organisations have from the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003 do not – and cannot – apply to posts involved in the provision of a service which they have been contracted to provide. In effect, this would mean that religious organisations would be bound by the same equality legislation in employment as all other private and third sector organisations providing services on behalf of the DWP. In the absence of such contractual stipulations preventing religious organisations discriminating in their employment against actual or potential staff on the irrelevant grounds of sexual orientation or religion or belief, religious organisations should not be considered as appropriate prime or subcontractors.

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

TUPE

4.14 We are not confident that, even if the DWP takes a highly prescriptive approach to its contracts and subcontracts and publishes a code of conduct covering TUPE in the contracting process, that workers transferred to religious organisations under TUPE would be sufficiently protected. Religious organisations can redefine their religious ethos at any time and begin discriminating against current or potential employees.

4.15 The BHA is currently paying the legal costs of a claimant in an employment tribunal, in what is set to be a landmark case in the area of discrimination on grounds of religion or belief. Prospects, a Christian charity which has a contract with the Local Authority to work with people with learning disabilities, employed a number of non-Christian staff and volunteers, including a number who were transferred to them under TUPE Regulations. This arrangement had worked reasonably successfully until, in 2004, Prospects began recruiting only practising Christians who were able to sign up to the organisation's statement of faith for almost all posts – using the exemptions under the Employment Equality Regulations 2003 – and told existing non-Christian staff that they were no longer eligible for promotion. There is no reason why religious organisations (sub)contracted to provide services on behalf of the DWP could not follow a similar pattern and begin discriminating in their employment practices, putting at a severe disadvantage or even making redundant those employees transferred to them under TUPE.

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