

Submission to the Public Administration Select Committee Inquiry on ‘Smaller Government: “Bigger Society”?’ from the British Humanist Association. March 2011.

Summary

- The British Humanist Association’s (BHA) definition of, and position on, the ‘Big Society’.
- The BHA’s position on public services and commissioning.
- Specific concerns regarding commissioning and communities.
- Details about the Localism Bill and Equality Law as they relate to this Inquiry.
- Detailed discussion about exemptions in the Equality Act 2010 as they relate to this Inquiry.
- Details on public services and perceived community ‘needs’.
- Final recommendations to the Committee.
- About the BHA, contact details and request to give oral evidence to the Committee.

Q1. A definition of what the ‘Big Society’ is or should be.

1. The Big Society Agenda, being coordinated through the Cabinet Office, intends to ‘empower’ communities, open up public service provision to external bodies, and encourage citizen action.
2. The BHA’s general position is that government and others should recognise the value of communities where people of all different backgrounds and beliefs engage and work with each other for the benefit of everyone. Only in this context can people be positively empowered to make choices about their lives.
3. We recommend to the Committee the BHA’s briefing on ‘Religion, Belief and Volunteering’¹, which provides information, facts and figures about religion and belief in the UK, and specifically on the issue of religion, belief and volunteering. The briefing debunks myths that religious people or groups contribute more to society than non-religious people, and celebrates the importance of secular civil society.
4. There is no agreed definition of what the ‘Big Society’ is or what it means in practice. On the one hand, the BHA welcomes initiatives that encourage civil, social and political participation. We support democracy and we know that humanists are often social activists already, driven by their desire to work for the good society for the benefit of all.
5. On the other hand, it seems as though the ‘Big Society’ will focus on groups and communities rather than on individuals. We are critical of this approach, particularly because it treats people as members of perceived or declared identity groups rather than as equal, individual members of the wider community. There is every indication that the government and its agencies will focus specifically on religious groups and communities as part of its ‘Big Society’ agenda, probably to the exclusion and detriment of many within so-called ‘faith’ groups and certainly to the detriment of the wider society and social cohesion.
6. For example, Ministers in the Department for Communities and Local Government (DCLG) have been very vocal in praising religious groups, and even religion itself, as fundamental to the government’s vision of the ‘Big Society’²:

¹ Briefing available online here <http://www.humanism.org.uk/documents/4777>, or in hardcopy from the BHA.

² The BHA is happy to provide references for more such declarations on the centrality of ‘faith’ and ‘interfaith’ to the government’s vision of the ‘Big Society’.

- DCLG press release '*Keeping Faith in the Big Society*', 12th July 2010, reports that Communities Minister Andrew Stunell MP said, 'Faith groups... are integral to creating the Big Society'.
 - DCLG press release '*Andrew Stunell puts faith in Big Society*', 15th July 2010, reports, 'Inter faith activity is an important component of the Big Society we want to build'.
 - DCLG press release '*Communities Minister urges faith groups to inspire community action*', 20th October 2010, states that 'Mr Stunell stressed that faith based community action is a key plank of the Big Society vision'.
7. Rather than making a fetish of faith, we believe that social cohesion and other community initiatives should focus on the contribution that all individuals in the community can make. Where there are legitimate reasons for working with communities identified by beliefs (although we can imagine these would only ever be very few), then this must include humanists and other non-religious people, as well as religious people.
 8. Unless the 'Big Society' and any related initiatives are secular, that is, neutral on matters of religion and belief, treating all people equally regardless of belief, and without privilege or discrimination, then it will fail to be inclusive and may serve to divide rather than to unite society.

Q3. The role of and capacity for the voluntary and community sector to deliver local public services including the appropriateness of using charitable income or volunteer labour to subsidise costs.

Q4. Possible problems and challenges from increased commissioning of public service provision from the voluntary and community sector as envisaged by the Government.

Q6. Governance and accountability issues arising out of different organisational forms of social enterprises and co-operatives; and the participation of voluntary sector and community groups in greater public service provision.

Q9. Potential conflicts with other aspects of public service delivery, such as individual focus of personalised public services or universal provision and uniform standards of public services (i.e. avoiding postcode lotteries).

9. We have put the rest of our response under questions 3, 4, 6 and 9, as our position and concerns touch all of them. The sections below discuss our concerns specifically about the contracting of public services to religious organisations, including possible problems and challenges from increased commissioning of public service provision from such groups.
10. We have only outlined our position, including rather brief detail on the sections of the Equality Act 2010 and the Localism Bill that we are concerned with – and concerned to have amended. However, should the Committee request it, we would be very happy to provide more detailed information and evidence to support our position.
11. We make recommendations to the Committee on specific areas we believe are especially important for it to consider in this Inquiry.

Public services and commissioning

12. Fairly provided and fairly distributed public services of a good quality are an essential foundation of a healthy, happy, and good society. We believe that public services can promote the wellbeing of individual citizens and enhance their social capital, that their full availability is essential for full citizenship and equality for all and equally essential for greater social cohesion.

13. The BHA makes no judgment on the desirability or otherwise of a mixed economy policy in the provision of public services. However, the recent Labour governments' and the present coalition government's enthusiasm for placing contracts with religious organisations, for commissioning public services including 'free schools' to faith groups, gives rise to significant issues of principle and to substantial practical problems.
14. The government aspires 'to award 25 per cent of government contracts to SMEs, which will also benefit small and medium civil society organisations' (p7)³. If the government's aspirations to include contract out to faith-based organisations is also realised, then this ambitious target might include a significant number of such groups.
15. We believe that there are existing and potential problems for equalities, rights and inclusion that increasing the role of religious groups in future commissioning creates. We have suggested ways to mitigate those negative and sometimes unintended consequences, for the Committee's consideration.
16. It is our view that any future commissioning and public service reform should be grounded in principles of equalities and human rights, and be inclusive of people regardless of background or belief.

Commissioning and communities

17. Commissioning has the potential to be inclusive and support citizen and community involvement. On the other hand, a policy of commissioning to religious organisations without first assessing the potential for, and then preventing, discrimination will cause divisions and inequalities for employees, service users, citizens and those within communities.
18. Commissioners must not assume that religious groups and organisations will be better able to serve the local community than a secular organisation. Rather, those groups which wish to take on the delivery of public services may be particularly conservative, or evangelical, or unrepresentative, or internally discriminatory, and therefore there are particular problems with contracting to religious organisations that do not exist when contracting to secular organisations. There is no evidence that religious organisations are better able to reach vulnerable people in communities than others. If they are discriminatory however, perhaps having a men-only board or are homophobic⁴, then they may be less accessible to the wider community than an inclusive secular organisation would be.
19. We put for the Committee's consideration that if, government wishes to meet its aim of creating accessible, inclusive and accountable public services, it should only contract services to groups and organisations that do not discriminate on religious grounds in their employment or in the way they provide services.

Localism Bill & Equality Law

20. The Localism Bill is a cornerstone of the government's 'Big Society' and decentralisation agenda.
21. The Localism Bill creates a new 'community right to challenge' for contracts to deliver public services on behalf of a public or local authority. In chapter 4, a similar right is created for a community right to buy assets of value. Potentially, the Bill will open up many if not most local services to bids from 'community' groups to run them.
22. Not only is the definition of 'community' very widely defined, there are no measures in place to protect against groups with extreme views or agendas from bidding for – and winning – contracts under this new 'right to bid'.

³ 'Modernising Commissioning: Increasing the role of charities, social enterprises, mutual and cooperatives in public service delivery', Cabinet Office Green Paper

⁴ The Salvation Army for example, an evangelical organisation which provides a range of public services, has a positional statement on homosexuality which describes it as 'unnatural' and homosexual conduct to be 'renounced'
http://www1.salvationarmy.org.uk/uki/www_uki.nsf/vw-search/F2B09D2DFA617925802576EB00428FB6?opendocument

23. Moreover, at the same time as the government is keen to decentralise, localise and marketise public services, including contracting with religious groups and organisations to run public services on behalf of the state, it has failed to ensure that such groups are prevented from discriminating against employees or against service users when working under contract.
24. We recommend that the Committee looks into what measures the government intends to put in place to protect against groups with extreme religious, or other extremist, agendas from delivering public services under public contract.

Equality Act 2010, public services and community 'needs'

25. The Equality Act 2010 contains significant contentious exceptions that exempt religious organisations from parts of the law, permitting potentially wide discrimination by those organisations against their employees and against service users, even when working under contract to provide public services.
26. Religious organisations have exceptions in law⁵ to allow them to discriminate widely in employment on religious grounds, including when working under contract to provide public services, and even against workers transferred from the public authority. TUPE protections may not apply in a number of circumstances, including if a contracted religious organisation chooses to place a religious requirement on a previously secular position⁶
27. Religious organisations are also granted an exception⁷ to allow them to discriminate in the provision of services on religious grounds, even when working under contract to provide public services, which they are not permitted to do on other grounds including sexual orientation.
28. We are not objecting to the valid discrimination when commissioning services for particular groups, such as gay men's sexual health outreach work, or providing women-only refuges, which are covered by other, generic exceptions in the Equality Act 2010. Our concern is to prevent unnecessary and unjustified discrimination against service users by religious groups working under contract through having the specific exceptions suspended.
29. When public authorities contract out provision of services, and certainly as envisioned under the Localism Bill's 'community right to challenge', and more widely under the 'Big Society' programme, service users are placed in a lottery as to whether their new service provider is a religious organisation or not. This means that service users are arbitrarily put at risk of discrimination on the basis of their religion or belief, either through having the 'wrong' religion or none.
30. The Equality Act 2010 also contains a single public sector equality duty across the protected characteristics, as defined by the Act. The duty is set to come into force in England and Scotland in April 2011 and in spring/summer in Wales.
31. Provisions in the Equality Act 2010 allow religious organisations to discriminate widely on religious grounds in service provision (which we strongly oppose) and this, together with a requirement on public authorities to advance equality of opportunity through meeting the needs of persons who share a religion or belief, risks a balkanisation of public services. In order to meet their new duties, relevant authorities may feel under pressure to contract with religious groups in preference to inclusive secular groups if they exercise their new 'right to bid', in a mistaken attempt to meet the 'needs' of faith groups⁸.

⁵ Under Schedule 9 of the Equality Act 2010

⁶ For more details on TUPE and contracting with religious organisations, please see the BHA's response to *Modernising Commissioning* <http://www.humanism.org.uk/documents/4789>

⁷ Under Schedule 23 in the Equality Act 2010

⁸ The Joint Committee on Human Rights warned of this misinterpretation of the duty combined with the exception. See BHA Briefing on public sector duty for Equality Bill, Lords Committee Stage, for more details <http://www.humanism.org.uk/documents/4583>.

32. It may be claimed that needs arising in particular communities can be better addressed by religious organisations that it claims represent 'their' communities than by public bodies (there is no evidence to support this claim, however). But if one religion is so favoured, others may demand the same special treatment – especially when the new equality duty takes force. For most services – health, for example – it would be hugely inefficient to have overlapping and duplicated services. It would lead to unavoidable discrepancies in provision: different groups of people, demarcated irrelevantly by religion, who would be expected to rely on separate services.
33. Moreover, once there is a service which is religiously selective, then that automatically creates a pressure on local authorities to allow all religious groups their own services.
34. The creation of parallel religious and secular services is surely antithetical to the government's aims of modernising and making more efficient, representative and responsive public services – and to a cohesive and active society.
35. We believe that the existence of these exemptions from equality law, and many religious organisations' desire to use them, even when working under contract, will make it difficult for public bodies to work to the highest equalities standards however much they wish to do so.
36. Unless the Localism Bill is amended to suspend the Equality Act 2010 exception, there is also a risk that religious groups which have won their bid to run public services under the community 'right to challenge' might restrict the service they provided in compliance with religious doctrine. There are many examples of this kind of practice abroad: for example, hospitals run by Catholics do not provide family planning or abortion services; or religious residential homes do not allow gay couples to have private time together.
37. Restricted and exclusive services, as detailed above, would be a very detrimental effect of a greater role for the voluntary and community sector in the provision of public services, should that include a role for religious organisations without first making unlawful discrimination by those groups as currently – and unnecessarily – permitted by law.

Final recommendations

38. We recommend that the Committee investigates the meaning of the 'Big Society' and, in particular, the government's focus on 'faith' and 'inter faith' activities as central to it. We are especially concerned that this position is divisive and exclusive, unnecessarily treating people as parts of identity groups rather than equal persons in their own right.
39. We urge the Committee to recommend that social and public policies, including those which fall under the remit of the 'Big Society', are truly inclusive through being neutral on matters of religion or belief, and focused on the needs and contribution of individuals and not the perceived needs of identity groups or communities.
40. We recommend that the Committee takes into consideration the special, privileged position that religious groups have over all other civil society groups: they are exempted from large parts of equality law that binds everyone else. The exceptions for religious groups when they are working under contract to provide public services pose real problems for the delivery and legitimacy of public services.
41. We hope that the Committee itself recommends that government only contracts services to groups and organisations that do not discriminate on religious grounds in their employment or in the way they provide services.

About the BHA

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.

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 before the 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.

Our expertise lies in the 'religion or belief' equality strand, which includes non-religious beliefs such as Humanism, and how that strand relates to and intersects with other protected characteristics. We also work closely with others on wider equalities issues in a range of forums.

We are very keen to give oral evidence to the Committee on the matters raised in this memorandum.

For more details, information and evidence, contact the British Humanist Association:

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