

**BRITISH HUMANIST ASSOCIATION**

**RESPONSE TO BBC TRUST'S CONSULTATION ON SERVICE LICENCES**

This response should be read as a pendant to our response to the consultation on Purpose Remits.

The service licences as drafted at present bear out all that we say in that response about the failure of the BBC to take on board the need not to discriminate between religious and non-religious beliefs (or lifestances) in its broadcast output.

The broader considerations of public policy as manifested in the Equality Act, the Communications Act, the Government's statements in connection with renewal of the BBC's Charter and the new Agreement with the Secretary of State are set out in our response to the Purpose Remits consultation.

In this response we concentrate narrowly on the Human Rights Act and the obligations it places on the BBC as a public authority.

Section 6 of that Act says:-

- 6. - (1)** It is unlawful for a public authority to act in a way which is incompatible with a Convention right. . .
- (3) In this section "public authority" includes-
- (a) a court or tribunal, and
  - (b) any person certain of whose functions are functions of a public nature . . .
- (6) "An act" includes a failure to act . . .

It is incompatible with Convention rights guaranteed under Article 9 read in conjunction with Article 14 to discriminate on grounds of religion or belief.

In this phrase the word "belief" includes non-religious beliefs. This interpretation has been confirmed both in commentary on international human rights instruments and in legal cases under the European Convention. The interpretation is now beyond doubt. Relevant references are given at Annex I (which is identical to Annex I to our response to the consultation on Purpose Remits).

It should be noted that the word "belief" needs to be understood in a strong sense, as is shown by comparison with the corresponding words in the French and German versions of the European Convention on Human Rights. The French term is *conviction* and the German (in the 'manifest' clause) is *Weltanschauung*. The use of "conviction" in English is problematic because it has penological associations, which the French word lacks, but the word "conviction" without this unfortunate association expresses a significant aspect of what is required. Both "conviction" and *Weltanschauung* suggest deep or ultimate beliefs which are parallel to those of a religion. It is proper, therefore, that "religion or belief" should be so interpreted - both religions and beliefs in this sense are "lifestances" or "world views" - a concept that encompasses both religious and non-religious beliefs.

Humanism is such a non-religious belief - indeed, it is plainly the principal such belief found in the United Kingdom (see our response on Purpose Remits). It is therefore legally incumbent on the BBC not to discriminate unfairly between religion(s) and Humanism.

The exact practical implications of such a duty are open to argument: if Radio 4 hands over its microphone to Christians to talk Christianity to Christians each week for about 3 hours and 20 minutes, how many hours or minutes should in fairness be given to each other religions and to Humanism?

What is beyond doubt, however, is that policy documents - including such items as service licences - should not build in discrimination from the start. That would be a clear breach of section 6 of the Human Rights Act.

Regrettably, the current licences are riddled with such discrimination. Indeed, there is not a single paragraph where religion is mentioned that also mentions non-religious beliefs. The drafting is systematically discriminatory - indeed, the BBC seems to be institutionally discriminatory in this regard.

Correcting this “religionist” mindset that pervades BBC policy and practice will be difficult, but at least correcting the wording of the licences and of policy papers is easy. At Annex II we suggest how the licences might be reworded. It is merely a matter of speaking of “religion and non-religious beliefs” or (according to context) “religion and non-religious beliefs”<sup>1</sup> instead of “religion” and of avoiding narrow terms such as “faith” that are exclusive of non-religious beliefs.

A failure to make these changes when the service licences are revised will be an open invitation to judicial review. We hope that the BBC Trust will not force us down this confrontational path.

---

<sup>1</sup> In the phrase “religion or belief” used in human rights instruments and the Human Rights Act it is beyond doubt, as shown in Annex I, that “belief” includes non-religious beliefs. Unsurprisingly, however, the phrase causes confusion in that beliefs are often thought of in this context as exclusively religious. Hence our proposal that in policy documents and service licences etc the BBC refer unambiguously to “non-religious beliefs”.

## **ANNEX I**

### **“RELIGION OR BELIEF”**

The equivalence in law of religious and non-religious beliefs is founded in Articles 9 and 14 of the European Convention on Human Rights, which drew on earlier human rights instruments, and the duty of public authorities not to discriminate between religion and non-religious beliefs is laid down in the Human Rights Act, section 6:

- 6.** - (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right. . .
- (3) In this section "public authority" includes-
- (a) a court or tribunal, and
  - (b) any person certain of whose functions are functions of a public nature . . .
- (6) "An act" includes a failure to act . . .

### **Article 9 - Freedom of Thought, Conscience and Religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

### **Article 14 - Prohibition of Discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Both court cases and relevant commentary have established that 'belief' includes non-religious beliefs, as shown in the selected quotations below.

### **Court Cases on “Religion or Belief”**

"As enshrined in Article 9, freedom of thought conscience and religion is one of the foundations of a 'democratic society' within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, sceptics and the unconcerned." - *Kokkinakis v Greece*: (1994) 17 EHRR 397, para 31

"The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate." - *Manoussakis v Greece*: (1996), EHRR 387, para 47

Belief means “more than just ‘mere opinions or deeply held feelings’; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content.” - *McFeeley v UK*: (1981), 3 EHRR 161

“The term ‘beliefs’ . . . denotes a certain level of cogency seriousness cohesion and importance” - *Campbell and Cosans v. UK*: (1982), 4 EHRR 293 para 36 – (this case related to Article 2 - right to education).

“[T]he difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious . . . will seldom, if ever, arise under the European Convention. . . it does not matter whether the . . . beliefs . . . are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. . . Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs.” - *R v Secretary of State for Education ex parte Williamson [2005] UKHL 15 Per Lord Nicholls at paragraph 24*

Lord Walker added that it was “unnecessary for the House to grapple with the definition of religion” because “article 9 protects, not just the *forum internum* of religious belief, but ‘freedom of thought, conscience and religion’. . . Plainly these expressions cover a wider field than even the most expansive notion of religion. Pacifism, vegetarianism and total abstinence from alcohol are uncontroversial examples of beliefs which would fall within article 9.” - *R v Secretary of State for Education ex parte Williamson [2005] UKHL 15 Per Lord Walker at paragraph 55.*

*In re Crawley Green Road Cemetery, Luton* - St Alban's Consistory Court: Dec. 2000 - it was taken held without argument that Humanism was a belief within the meaning of the Human Rights Act.

## Commentary

from the UN Human Rights Committee on Article 18 of the International Covenant on Civil and Political Rights (*which is essentially similar to Article 9 of the European Convention*):

“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” - *Human Rights Committee, 1993 (General Comment no*

22(48) (Art. 18) adopted on July 20th 1993, CCPR/C/21/Rev.1/Add.4, September 27th 1993, p1.)

from the Organisation for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights:

The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. - *Guidelines for Review to Legislation Pertaining to Religion or Belief* (2004) Section A, Paragraph 3

## ANNEX II

### SUGGESTED RE-WORDING OF SERVICE LICENCES

CURRENT WORDING	SUGGESTED WORDING
<p><b>Radio 2</b>  including news, current affairs, documentaries, <b>religion</b>, arts, comedy, readings and social action output.</p> <p>The schedule should also include accurate, impartial and independent news and current affairs, arts programmes, social action output and <b>religious broadcasting</b> reflecting <b>different faiths and beliefs</b> and marking key events in the <b>religious calendar</b>.</p> <p>should reflect the diversity of the UK, as should its documentaries, arts programmes, current affairs and <b>religious output</b>.</p> <p><b>Conditions</b>  Radio 2 should:</p> <ul style="list-style-type: none"> <li>· Broadcast at least 170 hours of <b>religious output</b> each year covering <b>a broad range of faiths</b> each year</li> </ul>	<p><b>Radio 2</b>  including news, current affairs, documentaries, <b>religion and non-religious beliefs</b>, arts, comedy, readings and social action output.</p> <p>The schedule should also include accurate, impartial and independent news and current affairs, arts programmes, social action output and <b>broadcasting</b> reflecting <b>different religions and non-religious beliefs</b> and marking key events and dates of significance to religions and non-religious beliefs.</p> <p>should reflect the diversity of the UK, as should its documentaries, arts programmes, current affairs and output <b>about religion and non-religious beliefs</b>.</p> <p><b>Conditions</b>  Radio 2 should:</p> <ul style="list-style-type: none"> <li>· Broadcast at least 170 hours of <b>output</b> each year covering <b>a broad range of religions and non-religious beliefs</b> each year</li> </ul>
<p><b>Radio 3</b>  <b>religious</b> programming should feature in its output.</p> <p>Through its broadcasts of <b>religious services</b> with a strong musical element, Radio 3 should support and make known a uniquely British tradition.</p>	<p><b>Radio 3</b>  programming <b>relating to religion and non-religious beliefs</b> should feature in its output.</p> <p>Through its broadcasts of <b>religious services</b> with a strong musical element, Radio 3 should support and make known a uniquely British tradition.</p>
<p><b>Radio 4</b>  programmes including politics, <b>religion and ethics</b>,</p>	<p><b>Radio 4</b>  programmes including politics, <b>religion and non-religious beliefs, and ethics</b>,</p>

<p>live coverage of major events, <b>religious services</b>,</p> <p>specialist programmes on subjects such as politics, business, law, finance, health, education, food and farming, international affairs, <b>religion, ethics</b>, travel and gardening.</p> <p>Radio 4 should explore <b>ethnic, cultural and religious groups</b> within the UK, enabling the wider community to understand their customs, convictions and concerns. The station should also provide <b>worship, celebration and in-depth reporting of religious affairs across all the major faiths</b>.</p> <p><b>Conditions</b></p> <p>Radio 4 should:</p> <ul style="list-style-type: none"> <li>· Broadcast at least 200 hours of original <b>religious</b> programming each year.</li> </ul>	<p>live coverage of major events, <b>ceremonies relating to religions or non-religious beliefs, including religious services</b>,</p> <p>specialist programmes on subjects such as politics, business, law, finance, health, education, food and farming, international affairs, <b>religion and non-religious beliefs, ethics</b>, travel and gardening.</p> <p>Radio 4 should explore <b>groups defined by ethnicity, culture, religion and non-religious beliefs</b> within the UK, enabling the wider community to understand their customs, convictions and concerns. The station should also provide worship, celebration and <b>in-depth reporting across all the major religions and non-religious beliefs</b>.</p> <p><b>Conditions</b></p> <p>Radio 4 should:</p> <ul style="list-style-type: none"> <li>· Broadcast at least 200 hours of original programming each year devoted to <b>religion or non-religious beliefs</b>.</li> </ul>
<p><b>Asian Network</b></p> <p>responding in its output to the diversity of the UK Asian population in terms of geography, interests, ethnicity, and <b>religion</b>.</p> <p>BBC Asian Network's coverage of <b>religion and festivals</b> should aim to put British Asians in touch with each other and with their spiritual roots.</p>	<p><b>Asian Network</b></p> <p>responding in its output to the diversity of the UK Asian population in terms of geography, interests, ethnicity, and <b>religion or non-religious beliefs</b>.</p> <p>BBC Asian Network's coverage of <b>religion and non-religious beliefs (including festivals)</b> should aim to put British Asians in touch with each other and with their spiritual roots.</p>
<p><b>Local radio</b></p> <p>All stations should carry <b>religious output reflecting the faiths followed in their area and all should provide religious output on Sundays</b>.</p>	<p><b>Local radio</b></p> <p>All stations should carry <b>output reflecting the religions and non-religious beliefs followed in their area and all should provide relevant output on holy or festival days of religions or non-religious beliefs with large representation in their areas</b>.</p>
<p><b>Radio Scotland and Radio nan Gàidheal</b></p> <p>Its output should fully reflect the diverse communities, cultures and <b>faiths</b> of Scotland.</p>	<p><b>Radio Scotland and Radio nan Gàidheal</b></p> <p>Its output should fully reflect the diverse communities, cultures, <b>religions and non-religious beliefs</b> of Scotland.</p>
<p><b>Radio Wales and Radio Cymru</b></p> <p>Its output should fully reflect the diverse</p>	<p><b>Radio Wales and Radio Cymru</b></p> <p>Its output should fully reflect the diverse</p>

communities, cultures and <b>faiths</b> of Wales.	communities, cultures, <b>religions and non-religious beliefs</b> of Wales.
<b>Radio Ulster</b> Its output should reflect the diverse communities, cultures and <b>faiths</b> of Northern Ireland,	<b>Radio Ulster</b> Its output should reflect the diverse communities, cultures, <b>religions and non-religious beliefs</b> of Northern Ireland,
<b>BBC1</b> feature a range of documentary, leisure, social action and <b>religious</b> output. The channel should also cover <b>religion</b> , including some high impact <b>religious</b> programming in peakt ime.	<b>BBC1</b> feature a range of documentary, leisure, social action and <b>religion/non-religious beliefs</b> output. The channel should also cover <b>religion and non-religious beliefs</b> , including some high impact programming in peakt ime.
<b>Conditions</b> BBC One should: <ul style="list-style-type: none"><li>· Broadcast at least 80 hours of <b>religious</b> programming each year (as part of 112 hours across both BBC One and BBC Two)</li></ul>	<b>Conditions</b> BBC One should: <ul style="list-style-type: none"><li>· Broadcast at least 80 hours of <b>religion/non-religious beliefs</b> programming each year (as part of 112 hours across both BBC One and BBC Two)</li></ul>
<b>BBC2</b> There should be peakt ime coverage of science, history, business, arts and culture, <b>religion</b> , passions and leisure pursuits, as well as documentaries and current affairs.  Its output should explore many aspects of the UK's diversity including <b>religion</b> , ethics, and the issues facing minority groups. Some of this output should be in peakt ime.	<b>BBC2</b> There should be peakt ime coverage of science, history, business, arts and culture, <b>religion and non-religious beliefs</b> , passions and leisure pursuits, as well as documentaries and current affairs.  Its output should explore many aspects of the UK's diversity including <b>religion and non-religious beliefs</b> , ethics, and the issues facing minority groups. Some of this output should be in peakt ime.
<b>Conditions</b> BBC Two should: <ul style="list-style-type: none"><li>· Broadcast at least 20 hours of <b>religious</b> programmes each year (as part of 112 hours across both BBC One and BBC Two)</li></ul>	<b>Conditions</b> BBC Two should: <ul style="list-style-type: none"><li>· Broadcast at least 20 hours of <b>religion/non-religious beliefs</b> programmes each year (as part of 112 hours across both BBC One and BBC Two)</li></ul>
<b>BBC3</b> The regular schedule should be mixed and include hourly news bulletins until midnight, current affairs, drama, entertainment, music, the arts, animation and a range of factual, knowledge-building programmes including science, business, <b>religion and ethics</b> , and coverage of international issues.	<b>BBC3</b> The regular schedule should be mixed and include hourly news bulletins until midnight, current affairs, drama, entertainment, music, the arts, animation and a range of factual, knowledge-building programmes including science, business, <b>religion and non-religious beliefs</b> , and <b>ethics</b> , and coverage of international issues.

<p>It should play an important role in finding new ways to attract its target audience to subjects such as science, business, <b>religion and ethics</b>, where mainstream channels find it increasingly difficult to engage younger viewers.</p> <p>BBC Three should play its part in supporting this purpose amongst its audience, in particular by stimulating, supporting and reflecting, in all of its output, the diversity of UK society in ways that reflect the everyday lives of its target audience. This should be achieved through, for example, setting drama outside London, using voices and faces from a range of regional and ethnic communities and featuring <b>religion and ethics</b> as part of its genre mix.</p> <p>BBC's further commitment to other factual programming including 15 hours covering science, <b>religion/ethics</b> and business.</p> <p>Drama, animation, science, business, <b>religion and ethics</b> were added to the genre list.</p>	<p>It should play an important role in finding new ways to attract its target audience to subjects such as science, business, <b>religion and non-religious beliefs, and ethics</b>, where mainstream channels find it increasingly difficult to engage younger viewers.</p> <p>BBC Three should play its part in supporting this purpose amongst its audience, in particular by stimulating, supporting and reflecting, in all of its output, the diversity of UK society in ways that reflect the everyday lives of its target audience. This should be achieved through, for example, setting drama outside London, using voices and faces from a range of regional and ethnic communities and featuring <b>religion and non-religious beliefs and ethics</b> as part of its genre mix.</p> <p>BBC's further commitment to other factual programming including 15 hours covering science, <b>religion/non-religious beliefs, ethics</b> and business.</p> <p>Drama, animation, science, business, <b>religion/non-religious beliefs and ethics</b> were added to the genre list.</p>
<p><b>BBC4</b> It will also cover issues of <b>faith, spirituality and ethics</b>.</p> <p><b>CBeebies</b> CBeebies should reflect a wide mix of children and presenters in terms of disability, gender and ethnicity. Its output should mark <b>religious and cultural</b> festivals in an engaging and inclusive style.</p>	<p><b>BBC4</b> It will also cover issues of <b>religion and non-religious beliefs, spirituality and ethics</b>.</p> <p><b>CBeebies</b> CBeebies should reflect a wide mix of children and presenters in terms of disability, gender and ethnicity. Its output should mark <b>cultural</b> festivals in an engaging and inclusive style.</p>