

**Response to the Government Equalities Office's 'UK Consultation on the European Commission Proposal for an Equal Treatment Directive. Consultation Document.'**

**British Humanist Association, July 2009.**

**About the British Humanist Association**

The 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 such people, who seek to live good lives without religious or superstitious beliefs. Humanism is a 'belief', within the meaning of the ECHR, the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006.

The BHA is committed to equality, human rights and democracy, and has a long history of active engagement in work for an open and inclusive society, and an end to irrelevant discrimination of all sorts. As a member organisation of both the Equality and Diversity Forum (EDF) and the Discrimination Law Association, the BHA has worked with other organisations to advance equal treatment on every ground. In recent years the BHA has participated in consultations and prepared submissions on such issues as the Employment Equality Regulations 2003 on Religion or Belief and Sexual Orientation, and the Equality Act of 2006, and our Chief Executive served on the Commission for Equality and Human Rights Steering Group and the Reference Group for the Equalities Review and Discrimination Law Review. We are undertaking work, sometimes with others, in relation to the Equality Bill, which is currently before Parliament in the UK.

The BHA is a member of the European Humanist Federation (EHF) and of the International Humanist and Ethical Union (IHEU).

**Introduction**

In principle, we support the proposed anti-discrimination Directive which would draw together the equality 'strands'. We support the scope of the Directive as set out in Article 3. In this short note, we make some comments on Articles 2 and 3 of the Directive: specifically on the place of harassment within the Directive, the possibility of exceptions, and the extension of the Directive to education. We support the extension of the Directive to education and believe there should be no exceptions to this aspect of the Directive for sexual orientation; we do not support the inclusion of harassment on grounds of religion or belief in the Directive.

**Article 2**

*Exceptions*

We support fully the proposal under Article 2 'Concept of discrimination' that 'exceptions to the general principle of equality should be narrowly drawn, the double test of a justified aim and proportionate way of reaching it (i.e. in the least discriminatory way possible) is required'. It is our position that any exceptions from anti-discrimination law must be as narrow as possible and must be fully justified – with certainly no blanket exemptions in any area or for any reason.

Much discrimination is a result of the manifestation of religious beliefs, such as those which are homophobic or opposed to people with other religious or non-religious beliefs. Unfortunately, in British domestic law, Part 2 of the Equality Act 2006 contains extraordinarily extensive exceptions for religions, amounting to the maintenance of institutional religious discrimination in a number of ways and areas. Those exceptions entrench discrimination and give immunity to the institutions responsible for it, rather than protecting individuals discriminated against by these institutions. It is vitally important that the proposed EU Directive does not follow that regrettable pattern and ensures that religious organisations and institutions must abide by the provisions of the Directive, with any exceptions limited to truly exceptional circumstances.

#### *Harassment on grounds of sexual orientation*

We support the provision in the proposed Directive to extend protection against harassment on grounds of sexual orientation outside the workplace.

Humanists unequivocally welcome any legislation designed to equalise treatment of LGBT people and to correct historical patterns of discrimination and disadvantage. We view sexual orientation as an attribute analogous to race in discrimination terms, and believe that all individuals should be protected against any discrimination on the former ground to the same extent they are protected on the latter ground. This principle of non-discrimination we view as inherent to a modern society that is serious about developing a culture of human rights and equality.

It would be unacceptable for harassment on grounds of sexual orientation to be permitted in any circumstances – in particular no exceptions from a prohibition on harassment for religious organisations should be allowed.

Much harassment on grounds of sexual orientation already occurs in schools with a religious character ('faith schools'). This is extremely serious, widespread and something that the proposed Directive has the potential to prohibit. A prohibition on harassment are undoubtedly be 'for the protection of the rights and freedoms' of young people (in the ECHR, Article 14 and Article 2 of the first protocol, but also Articles 2, 28 and 29 of the UN Convention on the Rights of the Child).

To make any exceptions from duties not to harass would be to exacerbate the isolating and damaging effect of homophobia in schools and would represent a failure to protect some of our most vulnerable children. It would also represent a failure to correct the predominant pattern of historic disadvantage in schools in this instance – undoubtedly one of discrimination and harassment directed against LGB people and not against the power of the religious and their wish to discriminate or harass.

#### *Harassment on grounds of religion or belief*

We do not support the extension of protection outside of employment against harassment on grounds of religion or belief. Religion and belief are vitally different from the other strands covered by discrimination law, in that they alone assert beliefs about the world and the way people should behave. None of the other strands has this intellectual content. This justifies a different approach where necessary to this strand.

There is no doubt that many humanists suffer harassment on the grounds of not being religious which, if suffered by them on a ground such as race or gender outside the workplace would be illegal. However, we are very concerned at the risk that legislating to prohibit harassment on grounds of religion or belief outside the workplace might endanger freedom of speech. Some religious people would use the threat or pursuit of legal action to silence criticism or to promote an impression of persecution simply to gain publicity. This is a serious risk that could have a chilling effect on freedom of speech that would far outweigh any good the creation of the offence might achieve.

If nevertheless the prohibition of harassment on grounds of religion or belief outside of the workplace is included in the proposed Directive, we believe that this should only be for 'closed' environments. We believe that a useful distinction can be made between 'closed' environments, such as schools (there are particular and well-known problems in 'faith schools'), prisons, hospitals and hospices (where service users are 'captive' with limited choice and control over their environment) and other extra-employment contexts. Indeed, it is not just a question of open and closed spaces, harassment becomes an issue whenever people do not have a choice of service provider, including but not limited to when they have to receive a public service from a contracted religious organisation.

However, the threats to freedom of speech through a wide-ranging prohibition of harassment on grounds of religion or belief are so great that we would recommend against such provision in the Directive, especially given the probable consequences in the UK because of our weaker test for harassment.

### **Article 3**

#### *The inclusion of education*

We support the inclusion of education in the proposed Directive but would like to see fewer exceptions to this area as listed under Article 3.

We believe that state-funded religious schools should have no special opt-outs.

We believe there should certainly be no opt out from the Directive for religious schools on grounds of sexual orientation (see also information above on harassment).

It is in the context of religious schools particularly that discrimination on grounds of religion or belief and of sexual orientation (although not limited to those two strands) occurs – specifically due to the manifestation of discriminatory religious beliefs in those settings.

We do not agree that there should be exceptions to the Directive to allow state-funded religious schools to discriminate on religious grounds in their admissions policies. Such discrimination is already under fire from religious as well as secular critics: the Directive provides occasion to eliminate it.

We believe that the Directive should include provisions to prohibit discrimination in terms of the curriculum. So, for example, Sex and Relationships Education (SRE) in all schools would be objective, balanced and give proper consideration to the equal treatment of non-heterosexual aspects of sex and relationships. Currently, young people with a same-sex orientation can feel isolated and excluded from the subject, as can non-religious young people who receive religion-based SRE. Neither do we agree that state-funded religious

schools should be allowed to have religious instruction rather than a broad and balanced religious education curriculum – much discrimination occurs via a curriculum which seeks to indoctrinate rather than teach about religious and non-religious beliefs and perspectives.

Certainly, it would be beneficial for the Directive to include prohibition against discrimination in terms of activities in all schools – no young person should be isolated or excluded from accessing or participating in a school activity or lesson.

We support Amendment 85 to Recital 18<sup>1</sup>, proposed by the European Parliament under the chairmanship of Kathalijne Buitenweg. This amendment would promote even further the principles of equality and non-discrimination in relation to the organisation and content of education in Member States. In particular, it would help to tackle the problem of access to educational institutions, where differences in access to such institutions are based on religion or belief, as in the case of discriminatory admissions policies to schools with a religious character, for example.

We also strongly support their Amendments 95 + 52 to Article 3, paragraph 4<sup>2</sup>, which seek to increase protection against discrimination by churches and other organisations based on religion or belief, where those organisations' activities fall within EU competence.

We ask the Government to support these amendments in the European Council along with others necessary to give effect to the points we make above.

**British Humanist Association**  
July 2009

[naomi@humanism.org.uk](mailto:naomi@humanism.org.uk)  
1 Gower Street  
London WC1E 6HD

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<sup>1</sup> European Parliament legislative resolution of 2 April 2009 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0211+0+DOC+XML+V0//EN&language=EN>

<sup>2</sup> *Ibid.*