

Not So Mythical!

British Humanist Association Response to:

“Ensuring a level playing field: funding faith-based organisations to provide publicly funded services”

Introduction

The British Humanist Association condemns this DCLG paper. It shows no understanding of the genuine and legitimate concerns shared by ourselves, trade unions, equality bodies and many local authorities, and so does not inform local authorities of the risks to equality standards and service provision that contracting with religious organisations may entail.

Our full report on the subject of contracting public services to religious organisations can be found here:

<http://www.humanism.org.uk/uploads/documents/BHA-Public-Services-Report-Quality-and-Equality.pdf>

Our position on the issue of contracting religious groups to run statutory public services is:

Inclusive public services are best provided in a secular context. (‘Secular’ here means neutral as between all religions and beliefs.) This ensures that all citizens, whatever their religious or non-religious beliefs, have equal access to public services and do not face discrimination on grounds of their religion or belief, whichever organisations supply the service they are receiving.

If public services are to be fair and inclusive, religious organisations that provide services should never be allowed to discriminate in their service delivery or employment practices on grounds of religion or belief, sexual orientation, or any other irrelevant grounds.

We maintain that if religious groups are to be given contracts, they must operate in an inclusive, secular manner, not making any use of the various exemptions they enjoy from equality and non-discrimination laws.

“Myth” 1 “We’re not allowed to give public money to religious organisations.”

The Department for Communities and Local Government (DCLG) says:

Fact There is no law against funding faith-based bodies, nor is there any Government policy discouraging this. Whilst it should be transparent that in most cases funds will not primarily be used to promote the specifically religious activities of the funded body, there is a difference between solely religious activity and wider faith based work for the common good. Often faith-based bodies are best placed to deliver services.

We say:

It is true that there is no law or government policy against funding religious organisations to provide services. But this does not mean that the DCLG has researched the risks or investigated the effects on equality for service users and employees or that such a practice is a good idea.

It is extremely worrying that DCLG say “in *most cases* funds will not *primarily* be used to promote *specifically religious* activities”. Public funds are meant to be used for the delivery of public services. They should *never* be used to further any particular religion or belief. That is *not* a legitimate use of public funds.

To suggest that religious groups are best placed to deliver services is not only unfounded, it is also deeply unfair to community organisations working in the third sector that are not affiliated to a religion or belief (ie, secular). There is no research evidence that religious groups bring added value to a project or service that secular groups cannot. Nor is it useful to split the third sector between secular and religious as the DCLG increasingly does, which can only lead to a lack of cohesion in the third sector and local communities.

“Myth” 2 " Faith-based bodies don't have the necessary expertise or 'clout' to deliver services."

DCLG say:

Fact On the contrary, faith-based groups often have the experience, 'reach', buildings and volunteers that can enable highly effective delivery of services. Many among their number operate on a large scale and have led innovation in housing, social care and the children and family sectors to name but three.

We say:

There is no need to single out religious organisations specifically on this issue. These statements relate to concerns reflected across the wider third sector that community and voluntary organisations lack the capacity to deliver public services. There is no evidence that religious organisations cannot access general capacity building funding and support simply because they are religious in nature.

In fact, DCLG have run more than one grant and support scheme specifically for religious groups which are not accessible to secular groups. This privileging of religious organisations again unnecessarily splits the third sector along religious lines.

“Myth” 3 “They will use public money for proselytising or worship.”

DCLG say:

Fact Faith-based service providers will want to be honest and open about their religious convictions and/or practices and for others to recognise that their faith or religion is a prime grounding or motivation for their social action. However they understand that except where a very specific service is being procured such as the provision of religiously sensitive meals, public money is not for use for purely religious purposes. Making the provision of services conditional on the unwanted taking part in an act of worship would not be acceptable, and local authorities and other parts of government at the local level may wish to reassure themselves that such conditionality would not apply.

We say:

Apart from this ‘myths’ document there is currently no guidance for local authorities regarding public services and religious organisations. Plans for such guidance have been scrapped, partly under pressure from religious organisations. We know that religious organisations can and do use service provision as a means to proselytise when delivering services when they fund themselves: there is nothing to stop the same organisations continuing this practice if they win contracts to run public services. After all, many religious organisations have a stated primary aim of converting others.

For example:

‘Whilst it is appropriate for the state to be religiously neutral, this is impossible for an organisation such as The Salvation Army, which delivers its services as a direct outworking of the Christian faith’

Salvation Army (2006) Memorandum to the Joint Committee on Human Rights

In a time of budget cuts and competitive tendering processes, how much work can each local authority be expected to do to monitor the work done by organisations running services on their behalf? Will local authorities add clauses to contracts which make it clear that such behaviour is unacceptable? How useful will that be to individual service users? What sanctions will organisations face if they break such clauses? What evidence do DCLG have that local authorities even check to see if tendering organisations are religious or not?

DCLG has made no effort to answer these questions and thus our concerns remain.

“Myth 4” “They wouldn’t want to help people they don’t approve of.”

DCLG say:

Fact The equalities legislation is clear: religious organisations providing public services are subject to

the requirements of discrimination law in the same way as other organisations, save for the limited exceptions designed to ensure that a person's right to hold and manifest a religious belief is not interfered with. Discrimination against faith-based providers in a tendering process could, however, be unlawful.

We say:

Unless public service contracts make explicit that these 'limited' (actually significant) exemptions in equality law should not be used when delivering public services under contract, there is a real risk that service users will be put at risk of discrimination. Religious service providers can discriminate legally in ways that would be illegal for secular service providers. The equality and human rights of the service user should be paramount in service delivery and allowing religious organisations to continue to use the exemptions when delivering a publicly funded service is simply unacceptable. In countries where the churches are more powerful and - for example - run hospitals, they have no hesitation in limiting the services they provide to the public in compliance with their own religious doctrines.

Moreover, DCLG fails to address the fact that these exemptions are not well understood and are not adequately enforced, meaning that they are often misused by organisations to discriminate unlawfully, for example by refusing to employ gay people in any post within the organisation. Many organisations that may tender for public services have actively lobbied the government to widen the exemptions, demonstrating that their commitment to equal treatment of individual service users is questionable.

For example:

"we are very concerned that the scope of the exemption currently available under the Employment Equality (Sexual Orientation) Regulations 2003 in relation to employment for the purposes of an organised religion is proposed ... to be reproduced in a form which is considerably more restrictive."

Church of England, Parliamentary Unit, Equality Bill: Second Reading Briefing, May, 2009

DCLG also fails to address the fact that these exemptions cover employment as well as service delivery, meaning that the rights of people running a local authority service that is subsequently contracted to a religious organisation may find their prospects of promotion or continued employment affected. We know of at least one Christian organisation that took over a service and its staff from a local authority and then announced that only evangelical Christians would be promoted. Many in practice restrict employment to Christians in ways that are dubiously legal but rarely challenged.

Finally, to suggest that “discrimination against faith-based providers in a tendering process could, however, be unlawful” is scaremongering. Local authorities may not rule out religious organisations as a category, but if they have genuine concerns about contracting with a particular organisation based on possible effects on equality or service delivery they are within their rights to take account of them. In any case, DCLG makes no mention of the opposite case: privileging an organisation in a tendering process simply because it is religious could also be unlawful.

“Myth 5” “Single group funding has negative implications for community cohesion.”

DCLG say:

Fact Faith-based organisations and religious organisations can be funded to deliver services to a wide cross section of the community, such as homeless shelters, youth clubs, health and social care, health promotion or pregnancy advice and relationship counselling services.

In particular circumstances they (and other identity-, cause- or issue-focused bodies) may be funded to work primarily with their own community. It is not unlawful for a local authority to contract with an organisation to provide a service to a particular community (e.g. Kosher meals on wheels to Jewish old people), as part of service provision for the local population as a whole. Sometimes this can enhance service access to especially vulnerable groups in society.

Local authority funders may wish to encourage faith-based service providers to co-operate, where appropriate, with other faith traditions or communities with which it may have racial, social or theological differences. They will no doubt also wish to encourage the wider voluntary sector to collaborate with faith based bodies so that skills, access and resources can be pooled.

We say:

The BHA supports single group funding where it is relevant and based on evidenced need. The BHA is not against small contracts for religious organisations that run specialised targeted services for people based on recognised needs arising from a particular religious belief as in the example of Kosher meals on wheels to Jewish old people. However, there is a big difference between such small scale endeavours and large scale contracting for statutory public services which all people are entitled to access fairly.

“Myth 6” “Faith based groups only work with their own communities.”

DCLG say:

Fact Many faith-based organisations are only too willing to extend the help they offer to others in the wider community. For example, churches which have been embedded in local communities for centuries hold precepts that explicitly encourage them to regard themselves as part of the wider community and naturally extend the help they offer to that community. This is true of many other

communities also.

We say:

It is true that some religious congregations provide valuable services to people in their communities. But this essentially personal engagement is different from running a local authority contract. Religious charities capable of taking on such contracts rarely rely on volunteers: they are in fact small businesses, often evangelically motivated.

In addition, there are growing concerns that some religious organisations cannot reach various individuals within their 'own' community. A lack of secular services and community spaces mean that it is increasingly difficult to find supportive environments for people who have chosen to leave a religious 'community' (as they may be branded apostates), those within 'faith communities' who are gay, lesbian, bisexual or trans and women who have been abused.

"Myth" 7 "Funding will imply support for the religious views/doctrine of the organisation."

DCLG say:

Fact This issue is not confined to faith based organisations. Local authorities and other bodies may want to include a disclaimer with any grant emphasising that funding does not imply support for views/doctrine, but in any case this implication is unlikely to be drawn. Local public bodies would fund only those functions which they consider to be of benefit to the community. Funding to organisations to deliver services does not imply endorsement of their overall organisational aims – whether they are religious or not.

We say:

We believe that this issue is particularly relevant to religious organisations as public authorities acting on behalf of, and funded by, the state should never be seen to endorse any particular religion or belief.

We are also concerned what this will mean in practice – does this mean that local authorities will be contracting with organisations who have questionable principles on equalities in other areas of their work or have an overall aim to convert people to a particular belief? If an organisation has an overall ethos or aim with which local authorities do not agree, are they really in a position to deliver publically funded services on their behalf? A disclaimer surely does not exempt the local authority from being sure that such an ethos or aim will not be reflected in service delivery?

Even if few people see contracts with religious organisations as implying local authority support for their views and doctrines, contracts will inevitably strengthen such organisations and may be used by them for self-promotion. This will only be compounded by DCLG's apparent licensing of the use of public money for religious purposes, as suggested in its "myth-busting" document. Again, we do not believe that public funds should ever be used for what should be private religious purposes of the organisation, such as proselytising activity.

"Myth" 8 "This is too much of a cosy relationship between faith and government."

DCLG say:

Fact Not at all, it is about local government and other parts of the local state, especially where *Total Place* is active, supporting those who are well placed to deliver the services which it is obliged to ensure are available locally.

We say:

Firstly, we are not convinced that religious organisations are well placed to deliver services for the many reasons stated in our report and in this response.

Secondly, the DCLG's 'myth busting' document is part of a wider project by government going back at least seven years to work specifically with religious groups which we believe is damaging the third sector and disempowering non-religious people as well as secular community groups. For example, *Face to Face and Side by Side*, the government's main policy document in this area, repeatedly champions the role of religious groups within the third sector with little mention of the role of secular groups.

DCLG has given specific funding and support to religious organisations which has been inaccessible to secular groups. It has a "Race, cohesion and faith" Directorate and held a conference in March 2010 to celebrate the contribution of faith groups. The department has 13 'faith advisors' and a 'Faith Communities Consultative Council' which make direct representation to Ministers and officials on government policy.

"Myth" 9 "It means that non faith-based service providers in the third sector will be disadvantaged."

DCLG say:

Fact Not true. If other voluntary sector groups can offer the best service, the contract would go to them.

We say:

In the context of the DCLG's record (see the previous section), it is not difficult to see why secular service providers feel that they are being systematically disadvantaged by the DCLG's approach. The 'myth busting' document can only make this situation significantly worse by actively pressurising local authorities to contract with religious organisations despite the legitimate concerns they may have. We think it particularly unhelpful to refer to the possibility of local authorities acting unlawfully if they "discriminate . . . in a tendering process" against religious organisations without mentioning that discrimination in favour of religious organisations could be equally unlawful.

"Myth" 10 "If you engage with one faith community you will have always to engage with all the others in the same way, and all together."

DCLG say:

Fact Not true. Whilst public authorities must not discriminate against religion and belief organisations in matters of engagement and the letting of contracts, there are great differences in scale, capacity and skills between faith communities in different parts of the country, just as there are across the wider third sector. Faith communities should be engaged with as appropriate to this context. For example, in some regions or sectors a faith community or religious organisation may be able to take on a large service contract while another community in the same area, or the same community or organisation in another region, may not yet be ready to do so.

We say:

The Government may claim that needs arising in particular communities can be better addressed by religious organisations that it claims represent 'their' communities than by public bodies. But if one religion is so favoured, others may demand the same special treatment – especially if the proposed new equality duty is imposed.

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 belief would be expected to rely on separate services.

The last thing anyone would want to see would be parallel, separatist services for different sections of the community, based on religious differences.

Conclusion

The BHA remains concerned that contracting religious organisations to run public services is a policy which involves a significant level of risk to the nature of public services, the rights of individual service users and the rights of employees.

The DCLG's 'myth busting' document sent to local authorities has increased our concerns as it is fundamentally flawed. The DCLG until last summer saw the need for a "Charter of Excellence for Faith Communities in Service Delivery". They were persuaded out of it by religious lobbying and said instead they would use the "refresh of the Compact between Government and the Voluntary Sector . . . [to] proper account of the faith-led voluntary sector" (DCLG letter, 24 July 2009). But this too was watered down along with any attempt to engage with our widely shared concerns.

The DCLG's latest circular demonstrates a superficial understanding at best of these concerns, ignores entirely the position of employees, suggests no positive steps to mitigate the risks (such as clauses that might be added to contracts) and yet pressurises local authorities to contract with religious organisations.

We remain convinced that, in the absence of legislative change, the role of religious organisations in public service provision should be fully researched and openly discussed. The issues raised in our report and in this document are not "myths" but are legitimate concerns which need to be fully addressed before any public funding is given to religious organisations to run statutory public services.

Pepper Harow
British Humanist Association
1 Gower Street
London WC1E 6HD
02074624992
pepper@humanism.org.uk