

THE 'RELIGION OR BELIEF' EQUALITY STRAND IN LAW AND POLICY:

Current Implications for Equalities and Human Rights

A 'State of the Nation' Report Researched and Written by brap for the British Humanist Association





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Executive Summary

Introduction

This 'state of the nation' report has been commissioned by the British Humanist Association (BHA) to examine the equality and human rights implications of the 'religion or belief' equality strand, as it is presently enshrined in law, policy and practice.

The report is part of a wider BHA project – funded by the Equality and Human Rights Commission (EHRC) – which aims to increase understanding of issues of 'religion or belief' in the context of equality and human rights. The report was written by brap, a national equality and human rights charity based in Birmingham.

The aims of the report are: to help provide a clear basis for understanding of current issues; to inform the future work and thinking of the BHA and other organisations active in the 'religion or belief' strand; and to make recommendations to key stakeholders in relation to the fair and equitable implementation and development of the 'religion or belief' equality strand.

Approach to Research

The research that informed the report involved a programme of work conducted in three phases:

Phase 1: Secondary research

A desk-based literature review to consider and analyse existing research, reports, policies and other sources relevant to the 'religion or belief' equality strand. The literature review focused on the following broad themes: legislation; demography; government policy; education; 'conflicting rights'; public service delivery; employment.

Phase 2: Primary Research

A series of telephone interviews with a variety of stakeholder organisations and institutions that have an interest in or are engaged in activities that influence and shape implementation and practice of the 'religion or belief' strand.

Phase 3: Analysis, interpretation and report writing

The production of the final report.

Findings and Recommendations

The findings in the report show there is a need to improve our approaches to policy and law on 'religion or belief' if we are to ensure equality for a range of people in the UK (and not just those with particular 'religions or beliefs', but also other groups that may be affected by 'religious or belief' groups).

A particular challenge will be integrating approaches to equality across equality strands ('gender', 'race' etc) to ensure that the rights of all people are protected in similar ways. Developing a better knowledge of when

'religion or belief' related equality issues 'intersect' with other equality issues and the rights of others will help to achieve this. The report also notes the need for an open and honest debate about the role 'faith' or belief plays in public service reform to inform future policy. And of course, these issues are not easily addressed. The close relationship between religion and politics, particularly in recent years, has led the Government to discuss a number of potentially explosive issues (such as foreign policy, race relations and community cohesion). There is no sign of this trend abating and the recommendations included in the report are written with that in mind.

Findings and recommendations are organised in relation to the seven key issues explored in secondary research:

Legislation

Legislation considered in the findings section includes:

- Human Rights Act 1998
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Racial and Religious Hatred Act 2006
- Equality Act 2006

Essentially this body of legislation protects the right of individuals to hold their own religious or non-religious beliefs and includes the right to have no 'religion or belief'. In practice this means that, with defined exceptions, it is unlawful for someone to discriminate against you because of your 'religion or belief', or because you do not have a particular 'religion or belief' in any aspect of employment, when providing goods, facilities and services, when providing education, in using or disposing of premises, or when exercising public functions.¹ It gives individuals the right to practise and manifest their 'religion or belief' and live their lives without experiencing threats or discrimination on the basis of 'religion or belief', including not having a particular 'religion or belief'.

This is an area of much debate and political interest, and a report of this type could not hope to cover detailed recommendations on every specific area of legislation. However, a number of common themes do emerge in the report regarding 'religion or belief' related legislation that will need to be addressed in the future. This report recommends:

- An extended definition of 'public function' in the Human Rights Act to cover private and third sector organisations providing public services.
- The collection of more evidence and data on indirect discrimination in relation to 'religion or belief'. Development of a wider range of case studies, drawing on issues faced by those with non-religious beliefs and minority religious beliefs would be useful in improving awareness of legislative requirements.
- That, even though Government has clearly indicated that equality law is applicable to those that have been contracted to deliver public services, there is a need for closer scrutiny and regulation of 'religion or belief' based organisations that have exemptions from equality legislation to ensure that this is not having a discriminatory impact on service users or staff.

¹ Guidance on new measures to outlaw discrimination on grounds of religion or belief (CLG, 2007).

- The application of Genuine Occupational Requirements (GORs) in the future should involve robust tests to ensure that discrimination is legitimate and proportionate. Surveys of their use could potentially be conducted periodically by a body like the EHRC to ensure robustness and transparency. An open and inclusive debate about the appropriateness of exemptions under the Religion or Belief Regulations would be a useful long-term contribution to this process.
- Awareness-raising and training on relevant laws.

Demography

The notion that census data, as currently collected, can accurately reveal the religious attitudes of contemporary Britain is highly problematic. The nature of the question used – ‘What is your religion?’ – gives an inaccurate picture of the religious or non-religious beliefs of census respondents. And yet the data is repeatedly used to underpin policy making. This makes it much more than simply an ‘academic’ issue. The direct use of census data to inform government policy has implications for the inclusiveness of policy on the ‘religion or belief’ strand as a whole. A debate regarding future questions on ‘religion or belief’ in the census to inform future policy is a pressing need.

To address this, the report offers two broad recommendations:

- ONS should thoroughly review the degree to which the proposed question on religion (for the 2011 census) is unlawful under the Human Rights Act 1998 and the Equality Act 2006, identifying in particular any potential discrimination against those with non-religious beliefs. A more thorough and robust equality impact assessment of this issue would help to achieve this.
- Public authorities should give closer consideration to how census data on this issue is used to make funding or policy decisions. Given some of the drawbacks to current demographic data on ‘religion or belief’, it will be important to understand the impact of its use by policy makers and funders. At worst, the use of inaccurate data may lead to: the exclusion of non-religious people from a variety of community initiatives; the disproportionate allocation of resources to those perceived as religious, and exclusion of non-religious people from democratic processes and civic engagement.

Government Policy

In recent years there has been increasing emphasis on the contribution of religious groups to public policy. For a number of political reasons, which are explored more fully in the report, particular policy themes have received more attention than others and include:

- Greater engagement with ‘religion or belief’ stakeholders in the formation of public policy;
- The role of religious organisations in delivery of public services;
- The role of religious groups in building civic society, social capital and community cohesion;
- The role of religion and ‘inter-faith’ activities in preventing violent extremism and radicalisation and in maintaining social order;
- The role of religion in education provision.

The 'religion or belief' equality implications of the following key policies are considered in this report:

- *Working Together: Co-operation between Government and Faith Communities*, (Home Office, 2004)
- *Face to Face, Side by Side: A Framework for Partnership in our multi-faith society*, (CLG, 2008)
- *Our Shared Future*, (Commission on Integration and Cohesion, 2007)
- *Fairness and Freedom: The Final Report of the Equalities Review*, (Equalities Review, 2007)
- *Communities in Control*, (CLG, 2008)

The report's recommendations are arranged in relation to 3 core areas:

Practical & Appropriate Engagement Mechanisms

- The need to develop alternative spaces and/or forums where 'religion or belief' stakeholders can come together. While additional to existing regional and national 'inter-faith' and equalities networks, these smaller groups could be complementary 'sub-sets' of equality networks, with their participants reflecting both religious and non-religious perspectives.
- Identify 'religion or belief' sub-group participants by interview rather than election or self-appointment. In this way, emphasis could be placed on seeking particular skill-sets, expertise and competence rather than religious, cultural or ethnic 'identity'.
- Ensure that any interview processes are accessible (in terms of resources and time) and target a broad range of expertise/skills so those with competence in related areas can still get involved.
- Ensure that the purpose of these sub-groups is widely understood and that there is an emphasis on:
 - Building an evidence base regarding 'religion or belief' discrimination;
 - Sharing skills and experience in a spirit of mutuality and shared endeavour;
 - Creating a space where difficult equalities issues can be discussed and resolved.
- Work with public agencies to:
 - Develop a constituency for and trust in the 'religion or belief' sub-groups;
 - And encourage inter-faith networks (in particular) to engage with these alternative forums.

Identifying and Using Evidence

Working through the proposed 'religion or belief' sub-groups and with other statutory and voluntary regional partners, the EHRC and other relevant partners should:

- Commission work and activities that can assist in building the evidence and knowledge base of 'religion or belief' discrimination and how it interacts with other issues (e.g. 'race', class, 'gender').
- Assist in assessing the robustness of regional stakeholders' input by encouraging generation of fresh evidence and data as a means of developing evidence-driven reasons for policy interventions.
- Assist the proposed 'religion or belief' sub-groups (which can in turn work with other local, regional and national partners/stakeholders) to develop a clear rationale and guidance for when 'religion or belief' perspectives are legitimate and/or required and when they are not (e.g. in which policy areas, contexts or initiatives).

Developing Capacity, Access and Communication

There is a clear argument for additional resources and support (training, capacity-building etc) to help build skills at a local and regional level of both religious and non-religious belief groups. Work in this area should include:

- Equal recognition, for funding purposes, of religious minority and non-religious groups – and all other third sector organisations. Approaches to making funding decisions should be open, transparent and based on robust evidence of need. Third sector organisations should be judged on the basis of their expertise and ability to deliver particular services, or to offer advice on particular issues. This will help to address any discrepancies or inequality in access to funding for ‘religion or belief’ groups.
- Ensuring equality of access to information and to local, regional and national decision-making processes.
- Building skills, knowledge and expertise of non-religious and religious individuals to engage with each other in a non-confrontational way on contentious issues. This might include mediation and conflict resolution techniques or customised ‘advocacy’ courses to develop a new cohort of regional advocates on ‘religion or belief’ issues.
- Support for local and regional public agencies, equality networks and ‘inter-faith’ organisations / networks to:
 - Establish safe, neutral environments where contentious issues can be discussed;
 - Support to develop clearer guidance on inclusive engagement and consultation as well as clear rationale for which policy areas require the input of ‘religion or belief’ perspectives.

Education

A range of connected issues are covered in the report. Firstly, the law and practice that shapes approaches to ‘religion or belief’ in education, secondly, religious education and collective worship in schools, and thirdly, publicly funded religious schools (focusing specifically on cohesion implications, admissions policies and academic achievement). The report identifies examples of inequalities and human rights breaches that result from current approaches to this issue.

In recommending solutions to these challenges, the report advocates a rights-based approach to religious education and religious schools that involves putting the pupil at the centre of this debate. Promoting the freedom to choose the nature of one’s own engagement with ‘religion or belief’ will be paramount. As will the longer term challenge of developing a more equitable education service, so that outcomes do not differ so widely according to the type of school one attends – be that a religious school or not.

A ‘shortlist’ of recommendations is included in the report:

- Inspection and monitoring of equalities and human rights breaches in education should be improved.
- ‘Religious Education’ should be made part of the National Curriculum. This would open it up to similar levels of evaluation and monitoring.
- More evidence and research is needed to understand levels and breadth of discrimination – including bullying – on the basis of ‘religion or belief’ (including lack of any particular ‘religion or belief’). This type of bullying should be more closely monitored.
- Improved guidance for dealing with the ‘religion or belief’ strand of equalities for schools is needed.

- Publicly funded religious schools should be more accountable to external public authorities in design of admission procedures. Improved evidence and regulation of their compliance with equalities legislation is required.
- Clearer evidence of the value and impact of religious schools is required.
- Compulsory worship in schools should be replaced by broader assemblies for pupils that do not contravene the rights of pupils to freedom of 'religion or belief'.

Conflicting Rights

This section in the report covers the issue of conflicting rights and the competing needs and interests of different groups in society. Of all of the equality strands, it is arguably issues of 'religion or belief' that have received most attention in the media in this area – from the refusal of adoption services to same sex couples on the grounds of religious belief, to the religious and ethnic profiling of potential terrorist suspects. Inconsistencies in approaches to dealing with these conflicts appear in increasingly stark relief when set against the Government's desire to promote human rights for all and a shared notion of Britishness.

The report recognises that approaches to resolving conflicts between groups are informed heavily by a pervasive political context. Particular attention is paid to the influence of multiculturalism, cohesion and new approaches to equality (including the creation of the EHRC and a 'single equality bill').

Conflicting rights' is a broad term. In the context of the report it refers to (a) conflicts that exist between the rights of more than one group as protected in equality laws (e.g. through exemptions in equality law), and (b) conflicts that arise when freedom of 'religion or belief' conflicts with other people's rights to things not covered in equality law (e.g. freedom of expression).

Examples of conflicting rights in relation to 'religion or belief' are explored in the report including:

- Blasphemy
- Gay adoption
- Smacking children
- Religious dress
- School admissions

Similarly, the report considers how conflicting rights have been managed when creating exemptions in equality law. This includes a consideration of the principle of 'proportionality' as used in law and policy to resolve problems of competing needs and rights.

Recommendations focus mainly on the need to develop better approaches to responding to conflicting rights outside of the courts (e.g. local authorities that are making difficult decisions about funding or policy that involve balancing the needs and rights of different groups of people). The report advocates the use of human rights principles to facilitate discussions about 'balancing rights' of different *groups of interest* in society:

- The concept of 'proportionality' is not something that should be limited to the courts and could help to shape more proportionate and legitimate decisions in other settings – for example, within local strategic partnership structures, in the development of equality initiatives, and in the funding (and commissioning) of third sector organisations working with specific groups. But a key challenge for public officials will be

developing the skills needed to facilitate and mediate debates and decision-making processes that involve competing claims of social groups for influence or resources. Much greater investment would be needed in training and development in this regard.

- Public officials should play a central role in empowering communities and ensuring that a wide range of local people are able to express those things that they find valuable and will help them to flourish in life (those with religious and non-religious beliefs alike). Yet public officials should play an equally important role in supporting communities to recognise the limitations to those freedoms – a notion that may be pushed further up the agenda once we begin to see the full implications of the *Community Empowerment White Paper* implemented. Of course, often this process of resolving conflicting rights is not a straightforward one. It is not necessarily a matter of deciding that one right ‘trumps’ another one, but is instead a matter of identifying particular circumstances when a particular compromise is appropriate, though subject to review. Developing skills amongst public officials to understand this process will be critical.
- There are implications too for the way issues of ‘religion or belief’ are handled in public debate. For example, in local SACREs, local authority representatives could play a role in ensuring the voices of both religious and non-religious stakeholders are heard, that participants maintain levels of respect and dignity for each other, and that decisions are made on the basis of reasoned and proportionate evidence-based arguments that take into account the rights of children.

Public Service Delivery

The Government’s current emphasis on religious organisations is part of broader policy objectives which include third sector public service delivery, the ‘third sector commissioning’ agenda, and the potential for diversification in public service delivery to help bring about public service reform. In addition, the unique nature of faith-based third sector work to improve the lives of local people has been emphasised by a number of commentators. On the other hand, assumptions about the coherence of the ‘faith sector’ and its potential contribution to public service delivery have not gone unchallenged.

The indications are that the Government is firmly committed to recognising a ‘faith sector’ as a distinct partner in delivering public services. Assessing the appropriateness or impact of this policy is difficult to do because of a lack of evidence. It is still extremely difficult to analyse the scope of funding for or service commissioning from ‘faith-based’ third sector organisations compared to other types of organisation. Robust data about the ‘added value’ of this ‘sub-sector’ of the third sector are few and far between. Similarly, there are a number of concerns about the potentially discriminatory nature of service provision by religious organisations, yet there is limited access to robust evidence on the scope and nature of this problem.

Previous analysis of the issue has been informed by a limited evidence base and the report’s recommendations focus largely on the need to improve intelligence on this issue, along with an urge to investigate potential discrimination by ‘religion or belief’ based organisations:

- More evidence is needed about the impact of third sector organisations on public service outcomes generally, and this is particularly true in relation to understanding the impact of religious organisations.
- Available research and evidence does not substantiate that discrimination in public services delivered by faith organisations is the common experience of all users, nor does that research fully explore the views of the providers of those services. The available evidence does, however, highlight a number of examples of discrimination and clearly demonstrates the potential for discrimination. Given that this clearly contravenes the purposes of public service delivery and equalities and human rights legislation, it is an issue that requires further investigation.

- Further research is needed regarding the impact that such discrimination is having on potential service users. Without substantial evidence, the fears that some people have about religious organisations and public service delivery will continue. In addition, clear guidance needs to be produced to ensure that religious organisations are certain of their role and responsibilities and that their legal responsibilities are fully understood.
- Public officials must develop effective approaches to monitoring the compliance of contracted 'religion or belief' based organisations with equality law.
- New approaches to ensuring equity in commissioning practice are being developed in a number of areas of public service delivery. A notable example is in the health sector. These can be used to inform better approaches to commissioning 'religion or belief' based organisations.

Employment

The number of employment tribunal cases covering discrimination on the grounds of 'religion or belief' has increased year by year since the introduction of legal protections in 2003. Yet when compared with cases in other areas of equality law, a relatively large percentage of claims are not successful: for example 17% of sex discrimination cases were successful at tribunal in 2005-06 compared with 3% of 'religion or belief' cases. While this may relate to the relative novelty of law on 'religion or belief' discrimination, a number of other concerns have been raised about the application of 'religion or belief' law in the context of employment and these may be affecting the outcomes of tribunals:

Firstly, since the introduction of the Employment Equality (Religion or Belief) Regulations there have been a number of challenges to the definition of 'religion or belief'. Whilst confusion and disagreement on this issue has now been resolved to a large extent, available Government guidance on the issue does not reflect these developments.

Secondly, courts are able to employ a rational balancing of rights because the right to expression of 'religion or belief' is not absolute. It is unsurprising that decisions regarding proportionality are made on a case-by-case basis because of the need to determine whether an organisation has sought to make reasonable adjustments and is pursuing a legitimate aim. Yet the range of judgements and the subjectivity involved in making decisions of this type arguably make it much harder for employment tribunals to apply consistent approaches to testing the proportionality of GORs. The law in practice does not seem to offer clarity for either employees or employers and could therefore result in discrimination being perpetuated.

Thirdly, there are a number of concerns about how the exemptions relating to a GOR are being applied, with fears that many organisations and companies with a religious ethos are overlooking the narrowness of the exemptions.

The report's recommendations focus on the key challenge of developing more consistent approaches to implementing the law at employment tribunal level. It also recommends closer monitoring of the effectiveness and fairness of tribunal decisions in order to gauge the effectiveness of implementing GOR cases in particular:

- Training for tribunal members should help to ensure the consistent and comprehensive application of proportionality principles in making tribunal decisions.
- There should be increased monitoring of tribunals to ensure that the quality of decisions on this issue is high and that GORs are being applied consistently across the country. New and more authoritative advice from Government on how to apply GORs for employers would be particularly helpful, and indeed this has been outlined as important in consultations for the new Single Equality Bill. Consultation with tribunals regarding application of GORs across the country would help to understand specific issues that should be included in such guidance.

Full Report

I.0 Introduction

This 'state of the nation' report has been commissioned by the British Humanist Association (BHA) to examine the equality and human rights implications of the 'religion or belief' equality strand, as it is presently enshrined in law, policy and practice.

The report is part of a wider BHA project – funded by the Equality and Human Rights Commission (EHRC) – which aims to increase understanding of issues of 'religion or belief' in the context of equality and human rights. The report was written by Brap, a national equality and human rights charity based in Birmingham.

The aims of the report are: to help provide a clear basis for understanding of current issues; to inform the future work and thinking of the BHA and other organisations active in the 'religion or belief' strand; and to make recommendations to key stakeholders in relation to the fair and equitable implementation and development of the 'religion or belief' equality strand.

I.1 Background to this Project & Wider Context

'Religion or belief', an already socially complex area of policy, is made more so by other factors (including other strands of policy, sometimes complementary and sometimes conflicting). These include:

- Confusion regarding the term 'religion or belief' as used in the Human Rights Act 1998, the Equality Act 2006 (Part 2) and the Employment Equality (Religion or Belief) Regulations 2003. There is a persisting tendency – including within Government – to confuse (or even equate) 'religion or belief' with 'faith' in both rhetoric and practice;
- The growth of legislation to protect against discrimination on grounds of 'religion or belief' and a growing recognition that while equality is necessary individually, socially and economically, the law also needs to be 'decluttered', as set out in *Framework for a Fairer Future: The Equality Bill*; ²
- An increasing emphasis on the role of the third sector – including 'faith groups' – in public service delivery, and increasing demands that religious organisations have a key role to play in urban regeneration and neighbourhood renewal; ³

² Framework for a Fairer Future: The Equality Bill, Government Equalities Office, (2008) <http://www.official-documents.gov.uk/document/cm74/7431/7431.pdf>

³ See 'Faith' in urban regeneration? Engaging faith communities in urban regeneration, Farnell, R, et al published for the Joseph Rowntree Foundation by The Policy Press, (2003) <http://www.jrf.org.uk/knowledge/findings/housing/413.asp> In 2007, Community Care, the online journal for all those in social care, wrote: "Government and local authorities need to recognise the contribution faith groups are already making to communities, and need to encourage them to take a more formal role in society. In other words, churches, mosques and other faith groups should be helped to play a role in supporting frontline council services." <http://www.communitycare.co.uk/Articles/2007/11/28/106614/should-faith-groups-get-involved-in-local-services.html> The Home Office continues to promote the role of faith groups and in 2006 launched the Faith Communities Capacity-Building Fund (£7.5m), since followed by the Faiths in Action grants programme which is aligned with the Face to Face and Side by Side framework (£4m) http://www.cdf.org.uk/bfora/systems/xmlviewer/default.asp?arg=DS_CDF_TECHART_23/_page.xml/27&xsl_argx=4

- A wide range of domestic policy, especially the community cohesion and integration agenda, set out on *Our Shared Future and Face to Face and Side by Side*,⁴ and the new equalities framework proposed in *Fairness and Freedom*, which seeks to move beyond ethnically and culturally delineated equality strategies;⁵
- Efforts to combat radicalisation and fundamentalism, especially in the wake of the London bombings of July 2005, and wider foreign policy, especially the ‘war on terror’ following the 11th September 2001 attacks.

The last three of these points are not solely about ‘religion or belief’, but they are part of the canvas against which today’s fractious debates around ‘religion or belief’ are being played out.

The IPPR report *Faith in the Nation* argues that ‘faith’ and specific religious affiliations have been and continue to be instrumental in shaping both personal and national identity, and that current debates are in danger of marginalising this contribution and as a consequence neglecting the powerful role that “faith-based activities make to the life and cohesion of communities” and to “civic mobilisation and social campaigning.” The report’s editors state:

“Our underlying conviction is that people of faith can and should be constructively engaged by proponents of the secular public sphere, in order to tap the considerable potential that religion offers a society in which other sources of social capital are declining. [...] In a context in which there is some evidence that faith communities feel more alienated and apart from the cultural mainstream, we want political progressives and liberals (even those confident in their own secularist outlook) to consider whether this is a healthy and necessary state of affairs.”⁶

Moral, But No Compass – Government, Church and the Future of Welfare goes significantly further than this, arguing that while minority religious communities are courted, consulted and funded, the majority Christian community does not feature strongly in the Government’s policies regarding faith, and as a corrective the report calls (amongst other things) for the establishment of a ministerial portfolio for Religion, Social Cohesion and Voluntary Action.⁷

For many, then, what is at stake is not the issue of whether faith and religious affiliation have played a part in shaping personal and national identity: rather, it is an argument for political influence deriving specifically from an authority conferred by religion.

It is these increasingly strident demands for political power and public influence that worry many – religious and non-religious. Many people who do not identify with any particular religious or non-religious belief system are concerned that a greater emphasis on ‘faith’ in both public policy and public life more generally has the potential to create division rather than cohesion and integration, with individuals and communities playing a ‘religious trump card’ – the kind of non-negotiable demands that were so in evidence when sections of the

⁴Our Shared Future, the report of the independent Commission on Cohesion and Integration, Communities and Local Government (Feb 2008) <http://www.communities.gov.uk/documents/communities/pdf/681624.pdf>. Face to Face and Side by Side: A framework for partnership in our multi faith society, Communities and Local Government (July 2008) <http://www.communities.gov.uk/publications/communities/interfaithdialogue>

⁵ Fairness and Freedom: Final Report of the Equalities Review, Crown Copyright (2007)

http://archive.cabinetoffice.gov.uk/equalitiesreview/upload/assets/www.theequalitiesreview.org.uk/equality_review.pdf

⁶ Faith in the Nation: Religion, identity and the public realm in Britain today, foreword by The Prime Minister, Rt Hon Gordon Brown MP, edited by Zaki Cooper and Guy Lodge, IPPR (2008) <http://www.ippr.org.uk/publicationsandreports/publication.asp?id=637>

⁷ Moral, But No Compass – Government, Church and the Future of Welfare, Davis, F, et al, Von Hügel Institute, St Edmund’s College, Cambridge. Matthew James Publishing (2008)

Sikh community rioted and forced the closure of Gurpreet Kaur Bhatti's play, *Behzti*, at the Birmingham Rep Theatre in December 2004. For those who share these concerns, a neutral, secular public space in which competing demands – for resources, services, and social and political influence – can be effectively negotiated is increasingly at a premium.

There are mounting concerns too that the greater involvement of faith-based organisations in public service delivery might signal a creeping 'desecularisation' of services which could encourage, however inadvertently, the kind of discrimination and inconsistency that existed in health and social care, for instance, in the pre-NHS era.

In addition, the BHA has argued that evidence already exists to support the view that the term 'religion or belief' as used in the Human Rights Act 1998, the Equality Act 2006 (Part 2) and the Employment Equality (Religion or Belief) Regulations 2003, is open to wide misinterpretation. Despite the fact that in these contexts 'religion' "includes a reference to lack of religion", and 'belief' encompasses "any religious or philosophical belief" (and in Government guidance specifically includes Humanism), Government frequently uses the term 'faith' as if it includes (or can be used as a synonym for) both of these elements. It is significant, for example, that despite emphasising that cohesion and integration are not just matters of "race or faith", one of the recommendations of the Commission on Cohesion and Integration (in *Our Shared Future*) was that Government should publish an "inter-faith strategy" and that this promptly followed in the shape of *Face to Face and Side by Side* – a "framework for Partnership in our Multi Faith Society."

It is against this broad canvas, then, that this report explores the current 'state of the nation' regarding the 'religion and belief' equalities strand in law and policy.

1.2 About brap

brap is a Birmingham-based strategic equalities and human rights charity with an established and growing local, regional and national profile. The organisation was established ten years ago as a new kind of equalities partnership, bringing together key public institutions and third sector agencies as part of promoting progressive and evidence-based approaches in equalities practice.

From its inception brap has drawn on the philosophy and principles underpinning human rights, recognising the growing dissatisfaction with and inadequacies of the traditional 'silo' approach to equalities which tends to emphasise rigid and narrow interpretations of cultural identity. brap has long taken the view that in an age of 'super-diversity', the notion of a single 'identity' determined by culture and ethnicity is both out of step with reality and potentially damaging – especially when, as has historically been the case, policy-makers assume that that which is culturally conservative offers the most authentic expression of ethnic or cultural identity.

brap's research, analysis, guidance and support covers a range of policy areas – health and mental health, housing, employment, education and criminal justice, for example – but we also develop operational and 'critical friend' relationships with service providers and delivery agencies in these areas. This enables us to take a unique perspective on both the policy drivers shaping the roles of the public, private and third sectors and also their implementation. This is especially significant in terms of public service delivery.⁸

⁸ www.brap.org.uk

2.0 Methodology & Approach

This has been a short and contained programme of work conducted in three phases:

Phase 1: Secondary research

A desk-based literature review to consider and analyse existing research, reports, policies and other sources relevant to the 'religion or belief' equality strand. The literature review focused on the following broad themes:

- Legislation
- Demography
- Government policy
- Education
- Conflicting 'rights'
- Public service delivery
- Employment

Phase 2: Primary Research

A series of telephone interviews with a variety of stakeholder organisations and institutions that have an interest in or are engaged in activities that influence and shape implementation and practice of the 'religion or belief' strand. The interviews were also used to identify additional sources of information and data, to triangulate the findings from the desk-based literature review, and to identify and develop a series of case studies included later in this report in the relevant sections. Interviewees were drawn from:

- Inter faith networks
- Regional equalities networks
- Government Offices throughout the English regions
- Local authorities including equalities departments
- Non-religious belief groups and organisations
- Major religious groups
- Minor religious groups
- 'Religion or belief' advocacy groups
- Third sector groups and organisations
- SACREs
- Equalities organisations, both generic and strand specific
- Human rights organisations
- Trade unions

Phase 3: Analysis, interpretation and report writing

The production of this final report.

The biggest challenge for any research project of this nature lies in accessing relevant information and data, particularly from consultees and interviewees, and these difficulties are well-documented:

- 'Religion' and 'belief' remain emotive subjects and this can stifle honest and open debate – not least through the misconception that any critical analysis or robust questioning of religious and non-religious beliefs constitutes an attack on those beliefs.
- Some groups, such as 'inter-faith networks', contain an extremely wide diversity of opinions even amongst those who profess to share the same religious tradition. Similarly, many people with non-religious beliefs do not join formalised non-religious organisations. For this reason it will always be difficult to arrive at a definitive 'consensus' view.
- Not all 'religion or belief'-based organisations want to engage in this wider discourse. As research undertaken by the West Midlands Faiths Forum (WMFF) highlighted, some groups and organisations want to continue doing exactly what they have been doing for many years: serving the interests of their constituency without necessarily looking to go beyond that or be part of the wider socio-political landscape this research begins to consider.⁹

With these challenges in mind our methodology was devised to ensure that full use was made of all existing secondary sources including policy documents, reports and other sources of relevant information and data – from 'faith' mapping exercises¹⁰ to specialist online resources that highlight and explore case law relating to 'religion or belief' and human rights.¹¹

In addition, brap used its existing networks, affiliates, collaborators and previous experience to identify potential areas of crossover with existing research and to gather additional information and data.

⁹ West Midlands Faiths Forum, A faith group engagement strategy, (2007) p. 11.

¹⁰ Saltbox, Faith action audit in Stoke on Trent, (2008)

¹¹ Westlaw www.westlaw.co.uk

Findings

3.0 Legislation

The past fifteen years has seen the introduction of key legislation which concerns 'religion or belief'. This legislation includes:

- Human Rights Act 1998
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Racial and Religious Hatred Act 2006
- Equality Act 2006

Essentially this body of legislation protects the right of individuals to hold their own religious or philosophical beliefs¹² and includes the right to have no 'religion or belief'. In practice this means that, with defined exceptions, it is unlawful for someone to discriminate against you because of your 'religion or belief', or because you do not have a particular 'religion or belief' in any aspect of employment, when providing goods, facilities and services, when providing education, in using or disposing of premises, or when exercising public functions.¹³ It gives individuals the right to practise and manifest their 'religion or belief' and live their lives without experiencing threats or discrimination on the basis of 'religion or belief', including not having a particular 'religion or belief'.

A brief overview of each of these pieces of legislation in relation to 'religion or belief' is set out below:

3.1 Human Rights Act 1998

This Act made the European Convention on Human Rights justiciable in the domestic courts of the United Kingdom. Article 9 of the Convention specifically relates to freedom of thought, conscience and religion and sets out that:

- (i) Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change one's religion or belief, and freedom, either alone or in community with others and in public or private, to manifest one's religion or belief, worship or teaching;
- (ii) 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.

¹² See the Equality Act 2006, Section 44

¹³ Communities and Local Government, Guidance on new measures to outlaw discrimination on grounds of religion or belief, (2007)

'Religion or belief' has been established in case law to include atheism, scepticism and indifference.¹⁴ It also includes humanism and in fact, there is rarely if ever a need to distinguish between religious and non-religious beliefs.¹⁵

Article 14 of the European Convention prohibits discrimination on the basis of any marker including 'religion or belief':

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.

This provides a partial protection against discrimination based on 'religion or belief' (and all the other factors covered by the Convention): it is not a freestanding right but applies only in relation to the exercise of the other rights in the Convention.

However, section 6 of the HRA reinforces Article 14 by making it 'unlawful for a public authority to act in a way which is incompatible with a Convention right'. (The term 'public authority' has proved contentious: see below).

Finally, Article 2 of the First Protocol to the Convention provides that whilst 'no person shall be denied the right to education':

In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Definition of 'public authority'

During the passage of the HRA, the Government made clear that the term 'public authority' was to be interpreted widely.¹⁶

¹⁴ "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

¹⁵ "[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." - *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15 Per Lord Nicholls at paragraph 24.

¹⁶ For example, the Lord Chancellor in the House of Lords, 24.11.97 said that the clause embraced "bodies which are not manifestly public authorities, but some of whose functions only are of a public nature. It is relevant to cases where the courts are not sure whether they are looking at a public authority in the full-blooded Clause 6(1) sense with regard to those bodies which fall into the grey area between public and private. The Bill reflects the decision to include as 'public authorities' bodies which have some public functions and some private functions." Earlier the same day he said: "If a court were to uphold that a religious organisation, denomination or Church, in celebrating marriage, was exercising a public function, what on earth would be wrong with that? If a court were to hold that a hospice, because it provided a medical service, was exercising a public function, what on earth would be wrong with that? Is it not also perfectly true that schools, although underpinned by a religious foundation or a trust deed, may well be carrying out public functions? If we take, for example, a charity whose charitable aims include the advancement of a religion, the answer must depend upon the nature of the functions of the charity. For example, charities that operate, let us say, in the area of homelessness, no doubt do exercise public functions. The NSPCC, for example, exercises statutory functions which are of a public nature, although it is a charity."

Perversely, the courts have done the opposite and, following the House of Lords judgement in YL v Birmingham City Council, the current definition of 'public authority' is limited exclusively to 'pure' public authorities. This means that organisations contracted by a public authority are not considered 'public authorities' and hence do not have to comply with the Human Rights Act (with the exception of privately contracted care homes which are now considered public authorities following the Health and Social Care Act 2008). This makes it much harder to ensure those organisations contracted to deliver public services are not discriminating or breaching the rights of individuals.

Particular concerns have been raised by some non-religious belief groups, women's groups, and trade unions which wish to ensure that religious organisations providing public services do not discriminate against others. There were a number of calls to redress this legal loophole in the Health and Social Care Bill in 2008. This resulted in an amendment to the Health and Social Care Act 2008 (Section 145) which confirms that private and voluntary sector organisations providing residential care services under contract to local authorities are bound by the Human Rights Act.

Proportionality

The right to hold a 'religion or belief' is an absolute one,¹⁷ but the right to manifest that religion or belief is subject to limitations.¹⁸ This means that simply claiming a right on the basis of 'religion or belief' is not adequate without considering that right as part of a dynamic balancing process with the rights and needs of others in society. Rights could be limited in those instances where it is proportionate "for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."¹⁹

In cases where the proportionality of a decision to limit this right needs to be justified, the onus lies with the respondent to demonstrate that the discrimination is justified. For example, limitation of the right to manifest 'religion or belief' was allowed in the case of Begum v Denbigh High School (wearing of the jilbab in school). Proportionality in this case was demonstrated by (amongst other things) the fact that the school's policy was judged to be sensible and balanced, and that the claimant was able to attend another school where she was able to wear the jilbab. Other cases where limitations on the right to 'religion or belief' have been upheld by the courts include the case of a student who wanted to continue wearing a 'purity ring' at school,²⁰ and the British Airways worker wearing a visible cross while working.²¹

3.2 The Employment Equality (Religion or Belief) Regulations 2003

Under these regulations 'religion' means 'any religion', and 'belief' means 'any religious or philosophical belief' and 'religion or belief' also encompasses a lack of 'religion or belief'. The regulations apply to all aspects of employment – recruitment, terms and conditions, promotions, transfers, and dismissals – and also apply to vocational training. Under the regulations it is unlawful on the grounds of 'religion or belief' to:

- Discriminate directly against someone – i.e. treat them less favourably than others because of their 'religion or belief';
- Discriminate indirectly against someone – i.e. apply a criterion, provision or practice which disadvantages people of a particular 'religion or belief' – unless it can be objectively justified;

¹⁷ Article 9 (1) European Convention on Human Rights

¹⁸ Article 9 (2) European Convention on Human Rights

¹⁹ Ibid. 9(2)

²⁰ Playfoot (a minor), R (on application of) v Milias School [2007] EWHC 1698

²¹ Eweida v British Airways Plc [2008] UKEAT 0123 08 2011 (20 Nov 2008)

- Subject someone to harassment – i.e. to unwanted conduct that violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment ‘having regard to all the circumstances, including in particular the perception of’ the victim;
- Victimise someone because they have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on the grounds of ‘religion or belief’;
- Discriminate against or harass someone in certain circumstances after the working relationship has ended.

3.2.1 Exemptions

Legitimate Justification

This relates only to cases of indirect discrimination where someone uses a general policy which is coincidentally discriminatory to one particular group. A recent example is the case of *Azmi v Kirklees*.²² This involved a teacher who wore a veil in the classroom and was dismissed for failure to comply with school policy. She claimed discrimination on grounds of ‘religion or belief’, but the court found that the policy was a general one which would have applied equally to anyone of any religion, and that the policy was based upon the nature of the job.

After watching the children with Azmi, the court concluded that children were less likely to engage with her when she was wearing the veil; therefore, a policy which disallowed any wearing of something which covered the face would be justified. The court found that the school did employ a policy which caused indirect discrimination, but there was a legitimate justification under s.3 (b) (iii) of the 2003 Regulations – a ‘proportionate means of achieving a legitimate aim’.²³

Genuine Occupational Requirement (GOR)

The Regulations allow that in very limited circumstances it may be lawful for someone to be treated differently on the grounds of ‘religion or belief’, namely where ‘being of a particular ‘religion or belief’ is a genuine and determining occupational requirement’ (GDOR) or where ‘being of a particular religion or belief is a genuine occupational requirement for the job’ (GOR). A GDOR is potentially applicable to all employments, but GORs are limited to employers having ‘an ethos based on “religion or belief”’.

These exemptions are applicable only to discrimination as defined in regulation 3 (indirect and direct discrimination) and do not provide any justification for harassment or victimisation. There is no statutory definition of a GDOR or GOR, which makes for uncertainty, even though it was suggested by the Government of the day that they would be used rarely.²⁴ They are exceptions to the principle of equality and there must therefore be robust evidence to indicate that they are necessary.

(i) *Genuine and determining occupational requirements (Regulation 7(2))*

The onus is on the employer to show that a GDOR is required in relation to the job, and a court is required to assess the nature and context of the job and how it is carried out. DTI guidance provides a good reference for what a requirement is: ‘A requirement is stronger than something which is merely a

²² UKEAT/0009/07 [2007] ICR 1154

²³ R (on application of Elias) v Sec State of Defence [2006] exemplifies the test for claiming a legitimate justification

²⁴ DTI Explanatory Notes for the Employment Equality (Religion or Belief) Regulations 2003 para. 75 and 76 (p.21)

factor; a preference, or a qualification for the job – it is something which is essential for the person to be able to perform the functions of the job. It must also be a determining requirement – that is, the requirement must be crucial to the post, and not merely one of several important factors. The fact that it must be an occupational requirement emphasises the necessary connection to the job in question.

And it must be a genuine occupational requirement for that job – in other words, the employer cannot simply create a requirement on a whim because she does not like persons of a particular sexual orientation / religion or belief.²⁵

Regulation 7(2) (b) asserts that the DGOR must be proportionate: ‘an appropriate and necessary means of achieving the legitimate aim in question – namely that the employer needs to recruit a person able to perform the functions of the job.’²⁶

Case Study

The case of *Sheridan v Prospects*,²⁷ involved an organisation providing services for adults with learning disabilities. It introduced a recruitment policy requiring that its posts, with the exception of some administrative positions, be filled by practising Christians. Prospects already employed non-Christian employees in some of these posts and, although they were not dismissed, they were told that they could not be promoted. This policy eventually led to two employees resigning and claiming constructive dismissal and religious discrimination.²⁸ The organisation implemented a sweeping employment practice which denied promotional opportunities to level 1 posts by asserting that all posts above level 1 required employees share the religion of the organisation. Prospects attempted to present themselves as a Christian organisation; as a result they attempted to employ a genuine occupational requirement for all posts above the support worker levels, the discrimination suffered by level 2 workers led to the organisations’ policies to be scrutinised by a tribunal. The decisions show that employers that seek to recruit only those who hold a particular religious belief are discriminating against all who do not hold that belief, unless they can show that there is a genuine occupational requirement.²⁹ Thus the necessity for an organisation to display proportionality in employing a GOR policy includes an assessment of the nature of the job in relation to the need for an employee to hold particular beliefs. Further, this case illustrates where an organisation asserts itself as having a religious ethos, it is not simply an assumption that the workers must belong to the same religion, without any investigation into the proportionality of such a policy to the job.

(ii) *Genuine occupational requirements (Regulation 7(3))*

Regulation 7(3) applies only to organisations with a religious ethos but allows wider exemptions. The onus is again on the employer to demonstrate that the organisation can show that the religious ethos is real and not a guise to avoid employing people not of a particular ‘religion or belief’.

²⁵ DTI, Explanatory Notes for the Employment Equality (Religion or Belief) Regulations 2003, (2003), para. 73 (p.17)

²⁶ DTI, Explanatory Notes for the Employment Equality (Religion or Belief) Regulations 2003, (2003), para. 78 (p.18)

²⁷ [2008] ET/2901366/06

²⁸ Religious Discrimination Laws Cover Lack of Religion or Belief <http://www.xperthr.co.uk/blogs/employment-intelligence/2008/05/religious-discrimination-laws.html>

²⁹ <http://www.xperthr.co.uk/blogs/employment-intelligence/2008/05/religious-discrimination-laws.html>

Furthermore the job or nature of the role must relate to the ethos in such a way as to justify a GOR. However, unlike regulation 7(2) above, the GOR does not have to be a determining factor. DTI guidance gives the example of the “shop assistant in a bookshop with a religious ethos, where for all practical purposes the nature and context of the job are the same as for a shop assistant in any other bookshop.”³⁰ This demonstrates that the ethos alone will not suffice: there must be a link between the ethos and the nature of the job. As ACAS guidance puts it:

In these cases the need for a particular religion or belief may not be a ‘decisive’ factor for the job but organisations must still be able to show that it is a requirement of the job in order to adhere to the ethos of the organisation and that it is proportionate to apply the requirement. Such an organisation should not assume that it is able to apply a ‘blanket’ GOR to all posts as they may be required to show that each GOR is reasonable when considering the nature of the job and the context within which it is carried out.³¹

Positive Action

Regulation 25 allows an organisation to employ positive action in relation to ‘religion or belief’. This is permissible where it reasonably appears that action ‘prevents or compensates for disadvantages linked to ‘religion or belief’ suffered by persons of that ‘religion or belief’ doing that work or likely to take up that work.’³² Remedial actions can include affording persons of a particular ‘religion or belief’ access to facilities for training which would help fit them for particular work or encouraging persons of a particular ‘religion or belief’ to take advantage of opportunities for doing particular work.

One key challenge to implementing positive action initiatives like this is the absence of reliable statistical data that can establish disadvantage on the basis of ‘religion or belief’. Without this data it can be difficult to apply the Regulation in a consistent way directly attributed to evidence of inequality or need.

3.3 The Employment Equality (Sexual Orientation) Regulations 2003

There is a further stand-alone exemption in sexual orientation law, which allows organised religion to exempt itself from sexual orientation equality duties, under strict terms. The Employment Equality (Sexual Orientation) Regulations 2003 allow an exemption where ‘in relation to discrimination falling within regulation 3 (discrimination on grounds of sexual orientation)...the employment is for purposes of an organised religion³³ ...[and] the employer applies a requirement related to sexual orientation...so as to comply with the doctrines of the religion³⁴ or because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.’³⁵

The first exemption relates to compliance with a doctrine of religion. Although a wide definition, very few religions are specific in their doctrines as to the sexual orientation of followers, and as such it is highly unlikely that this will be used significantly. DTI guidance defines a doctrine of religion as ‘the core concepts and articles of faith laid down by a religion in its teachings as true. As such, doctrine must represent the established

³⁰ DTI Explanatory Notes for the Employment Equality (Religion or Belief) Regulations 2003 para.86

³¹ ACAS, Religion or Belief and the Workplace: A guide for employers and employees, (2005), p.9.

³² DTI, Explanatory Notes for the Employment Equality (Religion or Belief) Regulations 2003

³³ Regulation 7(3)(a) The Employment Equality (Sexual Orientation) Regulations 2003

³⁴ Regulation 7(3)(b) The Employment Equality (Sexual Orientation) Regulations 2003

³⁵ DTI, Explanatory Notes on The Employment Equality (Sexual Orientation) Regulations 2003

teachings of a religion which is authoritative, commanding a wide, if not universal, acceptance within the religion.’³⁶

The second relates to the link between the nature of the employment and the potential conflict with followers of the religion. In this case it is most likely to relate to ministers or clergymen, where the followers may feel more confident in someone whose way of life does not conflict with their religious convictions. Again a link is made here to the nature of the job, thus for example, applying the exemption to a cleaner’s role within a church would not succeed under this exemption. The number of followers must also be substantial in order to justify this exemption. DTI guidance gives the example of a minister, where the requirement is necessary in order for followers to feel confident in their leader. Yet there has been much debate about the degree to which the exclusion of LGB people from positions of this type is legitimate. In particular commentators have suggested that the inclusion of this exemption suggests an undermining of the power of equality law in relation to sexual orientation.

3.4 Racial and Religious Hatred Act 2006

The Act makes it an offence to incite or ‘stir up’ hatred against somebody on the grounds of their religious belief or lack of religious belief’. The Act covers contexts such as: use and publication of written material; public performances of plays; playing of recordings; possession of inflammatory material, powers of entry and search; but explicitly recognises the need to maintain freedom of expression.

In defining the meaning of ‘religious hatred’ the Act states that “religious hatred means hatred against a group of persons defined by reference to religious belief or lack of religious belief.”³⁷

This was the third attempt by Government to bring in legislation covering this offence. Previous Bills had defined the offence in much wider terms; however, following widespread criticism³⁸ an amendment introduced by the House of Lords means that the Act requires demonstration of an *intention* to stir up religious hatred, not just the possibility of this happening through offensive or insulting language.

3.5 Equality Act 2006 Part 2

Part 1 of the Equality Act 2006 established the Equality and Human Rights Commission (EHRC), and Section 8 requires the Commission, among other duties, to ‘encourage good practice in relation to equality and diversity’ across the seven equality strands (including ‘religion or belief’), with a responsibility to monitor progress and identify outcomes and indicators that would begin to evidence change in terms of tackling and eradicating discrimination. As part of these responsibilities, the EHRC can issue codes of practice and co-operate with those interested in human rights in the UK and elsewhere to move towards a more fairer and equitable society.

³⁶ Regulation 7(3) (b) (i) The Employment Equality (Sexual Orientation) Regulations 2003

³⁷ Racial and Religious Hatred Act 2006 (c. 1), 29 (A)

³⁸ For example the National Secular Society, the BHA, the Church of England and many other organisations noted the potential for previous versions of the bill to limit freedom of speech. See: <http://www.publications.parliament.uk/pa/ld200203/ldselect/ldrelol/95/2071801.htm>

Part 2 of the Act is entirely about discrimination on grounds of 'religion or belief'. Section 46 of the Act, for example, outlaws discrimination in relation to the provision and quality of goods, facilities and services, including access to and use of places open to the public, while section 47 covers the management of premises.

In addition, Section 53 outlaws any action or practice that might be likely to result in unlawful discrimination if applied to persons of any 'religion or belief'.

Section 49 of the Act states that it is unlawful for educational establishments to discriminate on the grounds of 'religion or belief' in terms of:

- Admission of pupils
- Rejecting applications for admission
- Access by pupils to any benefit, facility or service and exclusion or subjection to any other detriment

Section 49 does not, however, apply to schools with a religious character – so-called 'faith schools' – as defined in Section 69 (3) School Standards and Framework Act 1998. Nor does it apply to anything done in the curriculum or to acts of worship or any religious observance that is organised by or on behalf of the educational establishment. There are other similar exceptions.

Defining 'religion or belief' – challenges and case law

The courts have shown that there is a broad definition of religion and that the law does not need to define it.³⁹ As Lord Walker stated in a case in 2005, 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."⁴⁰ However it is worth noting that this agreement on the definition relates only to its application in equality and human rights law (and not, for example, to definitions used in social policy).

The Equality Act 2006 covers religions that are widely recognised in Britain (although is not limited to these alone) including Baha'i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism. Denominations or sects within these and other religions – such as Catholicism and Protestantism – are also covered by the term 'religion or belief'. In terms of 'belief', the Equality Act 2006 defines this as including 'philosophical beliefs'.

In practice, despite these comparatively clear definitions in the law, applying it consistently and defining 'religion or belief', and 'philosophical belief' remains a source of difficulty. A critical problem is the persistent confusion and conflation of the term 'faith' with 'religion or belief'. Sometimes – and it is frequently the Government that is at fault – the term 'faith' is even substituted for 'religion or belief'. This latter usage is especially significant because used alone the term 'faith' clearly fails to cover a lack of 'religion or belief', quite apart from its exclusion of non-religious beliefs themselves.

³⁹ See *Manoussakis v Greece*: (1996), EHRR 387, para 47 - - "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."

⁴⁰ *R v Secretary of State for Education ex parte Williamson* [2005] UKHL 15 Per Lord Walker at paragraph 55

An example of this can be found on the website of the *Race, Cohesion & Faiths Directorate* within the site of the department of Communities and Local Government (CLG).⁴¹ Here, information about preventing discrimination on the grounds of 'religion or belief' is found under the heading 'Stopping religious discrimination' in the 'Faith' section.⁴² Nowhere is it indicated that discrimination on the grounds of a non-religious belief or a lack of 'religion or belief' is also covered by the relevant legislation.

This persistent confusion, in spite of the clarity of the law, clearly has the potential to disadvantage people on the basis of their non-religious beliefs or their lack of religious beliefs and more needs to be done by relevant bodies to raise awareness and understanding of the full extent of the legislation. The CLG above all others should be aware of the law and should adopt more accurate terminology and ensure in particular that the term 'faith' is not conflated with, or substituted for, 'religion or belief'.

The terms 'religion' and 'belief' have also been challenged, defined and redefined by European and British case law. These challenges have highlighted how widely the term 'belief' can be interpreted.

3.6 'A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain – A Consultation Paper' & 'The Equality Bill: Government Response to the Consultation' (July 2008)

As the title to the first report suggests, this was a consultation paper and the Bill has yet to be introduced to Parliament. Yet the paper does include a number of indications as to the Government's likely direction. Those issues of most relevance to the 'religion or belief' strand (although obviously many of them relate to other equality strands) are summarised below.

Direct Discrimination: Judging direct discrimination requires use of a comparator: 'where someone is treated less favourably on any grounds of discrimination covered by the law than another person is, or would be treated in the same circumstances.'⁴³ Discrimination includes that based on perceived 'religion or belief' or association with a particular 'religion or belief'.

Indirect discrimination: There will be a harmonisation of the definition across all protected grounds of equality.⁴⁴ The legitimate justification defence is maintained in relation to indirect discrimination and there are plans to harmonise the definition of "proportionate means of achieving a legitimate aim."⁴⁵ It is noted that it will prove more difficult for 'religion or belief' groups to show that they have been "put at a particular disadvantage" as relevant data is currently lacking.⁴⁶

The Government's response to the consultation notes that it does not plan to extend the harassment provisions outside of employment for 'religion or belief'.⁴⁷ Thus harassment experienced in the provision of goods or services in relation to 'religion or belief' would remain legal.

⁴¹ <http://www.communities.gov.uk/communities/racecohesionfaith>

⁴² <http://www.communities.gov.uk/communities/racecohesionfaith/faith/stoppingreligiousdiscrimination/>

⁴³ *Discrimination Law Review, A Framework for Fairness: Proposals for Single Equality Bill for Great Britain A Consultation Paper*, para. 1.9

⁴⁴ *op. cit.*, para. 1.39

⁴⁵ *op. cit.*, para. 1.45

⁴⁶ *The Equality Bill: Government Response to the Consultation*, para. 7.25

⁴⁷ *ibid.*, p. 8

It indicates that the equality duty will be extended to include 'religion or belief',⁴⁸ noting that 'the point of the Equality Duty is to ensure that public authorities take account of the different needs of all of their constituents or customers.'⁴⁹ The response also indicates the need for a working group to examine the public sector equality duty in more detail in relation to 'religion or belief'.⁵⁰

Both papers suggest that there is no need to clarify that the public sector equality duties apply to procurement. For this reason there is no specific reference to procurement in those duties, assuming that the application of the obligations under the general duties to public functions as a whole adequately includes procurement.⁵¹ However it is worth noting the implications of these duties if applied across all equality strands. If applied to 'religion or belief' based organisations, for example, those organisations would need to clearly demonstrate that their services had not illegally benefited or discriminated against any particular group or individual.

Yet the Government's response does suggest there is still a gap in guidance regarding how these duties should be carried out in a consistent way by contracted organisations. In particular, the response indicates a need for guidance on how to 'buy and make a difference' and on how to implement equality at different stages of the procurement process. This of course has implications for the future commissioning of 'religion or belief' based organisations, and suggests that there will be a relatively wide margin of interpretation on this issue (in the absence of more detailed legislative instruction or guidance centrally).

3.6.1 Exemptions

The proposed bill is unlikely to remove many of the exceptions already present in 'religion or belief' equality law. This would seem to be a missed opportunity given the Discrimination Law Review's principal aim of equalising protection for a range of excluded groups in the country.

Genuine Occupational Requirements

The paper notes that the 'Employment Equality (Sexual Orientation) Regulations explicitly permit differences of treatment on the grounds of sexual orientation in narrowly defined circumstances where the employment is for the purposes of an organised religion.'⁵² The paper does not indicate any plans to change this.

Provision of Goods and Services

The consultation document invited specific comments on whether exemptions should be made from laws to cover a newly protected group (those who are considering, are undertaking or have undertaken gender re-assignment) where that might conflict with others' 'religion or belief'. However, in the Government's response to the consultation they note that respondents, whilst identifying some areas for exceptions to do with religious doctrine or practice (e.g. not wanting to officiate in religious marriages for trans people), did not identify any such circumstances in the area of public functions – that is, in cases where a religious body is itself carrying out a public function on behalf of a national or local authority such as a role in welfare or community care.

⁴⁸ *ibid.*, p.18

⁴⁹ *ibid.*, para.2.60

⁵⁰ *ibid.*, p. 9

⁵¹ *Discrimination Law Review... op. cit.*, para. 5.92

⁵² *ibid.*, para. 1.68

⁵³ *The Equality Bill: Government Response to the Consultation...*, *op. cit.*, para. 9.3.1

Other than this example, neither the consultation paper nor the Government response discuss in much detail the nature of existing exemptions in relation to 'religion or belief'. This is despite continued concerns that existing exceptions based on 'religion or belief' may be discriminatory and infringe the rights of others in society.⁵⁴

The consultation involved consideration of introducing of a 'Genuine Service Requirement Test' which would have allowed service providers to objectively justify actions which, while being apparently discriminatory, are a genuine requirement of the service or public function being provided. This may have provided an opportunity to subject judgments made by 'religion or belief' based organisations in their delivery of public services to more objective and robust scrutiny.

3.7 Conclusion

This is an area of much debate and political interest, and a report of this type could not hope to cover detailed recommendations on every specific area of legislation. However, a number of common themes do emerge in the report regarding 'religion or belief' related legislation that will need to be addressed in the future. This report recommends:

- An extended definition of 'public function' in the Human Rights Act to cover private and third sector organisations providing public services.
 - The collection of more evidence and data on indirect discrimination in relation to 'religion or belief'. Development of a wider range of case studies, drawing on issues faced by those with non-religious beliefs and minority religious beliefs would be useful in improving awareness of legislative requirements.
 - That, even though Government has clearly indicated that equality law is applicable to those that have been contracted to deliver public services, there is a need for closer scrutiny and regulation of 'religion or belief' based organisations that have exemptions from equality legislation to ensure that this is not having a discriminatory impact on service users or staff.
 - The application of Genuine Occupational Requirements (GORs) in the future should involve robust tests to ensure that discrimination is legitimate and proportionate. Surveys of their use could potentially be conducted periodically by a body like the EHRC to ensure robustness and transparency. An open and inclusive debate about the appropriateness of exemptions under the Religion or Belief Regulations would be a useful long-term contribution to this process.
- a) Awareness-raising and training on relevant laws.

⁵⁴ See BHA, Consultation Response to Framework for Fairness, (2007)
http://www.humanism.org.uk/_uploads/documents/BHA-Response-to-A-Framework-for-Fairness.pdf

4.0 Demography

4.1 Introduction & Context

In the 1990s, there were demands from within some minority religious communities for the Government to begin collecting statistics on religious affiliation in the UK. Some, such as the Muslim Council of Britain (MCB), argued that the inclusion of a question about religion in the national Census would not only improve availability of the kind of demographic and related data required for more effective and equitable planning of service provision but also send out a positive message to British Muslims— and others – that their presence and contribution was recognised by Government.⁵⁵ There was some academic and political support for this position. Professor Paul Weller and Ahmed Andrews from the University of Derby, for instance, noted that:

“In a context in which...religious self-identification is becoming increasingly important, such lack of clarity can seriously impede the formation and implementation of religiously inclusive policy, practice and service provision, as well as exacerbating tensions between religious communities in terms of competition for resources.”⁵⁶

Elsewhere, others suggested that greater evidence relating to ‘religion or belief’ would assist and improve resource allocation, meet legislative requirements, strengthen policy targeting, encourage working with ‘faith communities’, support the identification and tackling of discrimination, improve the meeting of equality targets, and encourage better policy development.

There was also opposition to the inclusion of a religious affiliation question in the 2001 Census. Graham Zellick, the then-Vice Chancellor of the University of London, wrote in a letter to *The Times* on the 16th October 1998:

Such a question would be objectionable in principle for two fundamental reasons. First, it is wholly inconsistent with our traditions of freedom and personal privacy to ask a question about a person’s religious beliefs... Secondly, in answer to the argument that it would be useful for these religious bodies to have reliable information about their supporters in order to plan their own welfare and educational services, it must be observed that it is improper to use the unique power of the State to ascertain information so that these bodies can carry out their own functions. It must also be wondered whether, given the difficulties surrounding definitions of religious affiliation, the statistics obtained would have any value whatever.⁵⁷

⁵⁵ Muslim Council of Britain, *Government White Paper on the 2001 Census: The Religion Question & What Needs to be Done*, MCB, (1999)

⁵⁶ Weller, P., Andrews, A., *Counting religion: religion, statistics and the 2001 Census*, in ‘World Faiths Encounter’, no. 21, (November 1998)

⁵⁷ *Times*, 16th October, 1998.

David Coleman, Reader in Demography at the University of Oxford, also in a letter to *The Times* on 12th January 1999 argued that:

Religious faith is a private matter; not to be pried into by compulsory public inquiries. Most of us, even if religious, do not structure our lives around religion, which is the active pursuit of an increasingly small minority... The main reason for its proposed inclusion is the desire by ethnic minority populations and their pressure groups, particularly Muslims, to be able to number and to label themselves publicly. This may be in their short-term interest, enabling them to argue for more group related privileges and facilities and exercise power over and above that available to them as citizens. But it is not in the national interest for the census to encourage people to segregate themselves from the rest of the population and to emphasise their differences from each other.⁵⁸

4.2 The 2001 Census & Religious Affiliation Data

To investigate and pilot the inclusion of a religious affiliation census question, a Religious Affiliation Sub-Group was established comprising representatives of various religious organisations, academics and others. The Sub-Group's findings were unanimously in favour of including a question on religious affiliation and a business case was put forward to Government who took up the Sub-Group's recommendations. Ministers agreed to the inclusion of the question but with the caveat that it was not compulsory to answer it, given what was seen to be the highly personal nature of 'religion or belief' in people's lives.

The specific wording of the question in the 2001 census was "What is your religion?"⁵⁹ Following the completion of the census, the Office for National Statistics (ONS) published the findings. A breakdown of the largest twenty five categories taken from the 2001 Census is shown in Table 1 over-page:

⁵⁸ Times Newspaper; 12th January, 1999

⁵⁹ It is worth noting that there was much debate regarding the exact wording of this question. Some preferred the question 'do you have a religion'? It is worth noting that in the Scottish census, respondents were asked to indicate which religion they grew up with, and what they are now (which in many cases had changed). The Scottish census identified a higher percentage of non-religious people compared to England and Wales, and some believe this is due to the wording of the question.

Table 1:**Breakdown of Religious Affiliation (ONS) for England and Wales**

| Religion | Responses | % |
|---|-----------|-------|
| Christian ⁶⁰ | 37046500 | 71.19 |
| None | 7274290 | 13.98 |
| Question not answered | 4010658 | 7.71 |
| Muslim (Islam) | 1546626 | 2.97 |
| Hindu | 552421 | 1.06 |
| Jedi Knight ⁶¹ | 390127 | 0.75 |
| Sikh | 329358 | 0.63 |
| Jewish | 259927 | 0.50 |
| Buddhist | 144453 | 0.28 |
| Jehovah's Witness | 70651 | 0.14 |
| Methodist | 33519 | 0.06 |
| Spiritualist | 32404 | 0.06 |
| Roman Catholic | 31836 | 0.06 |
| Pagan | 30569 | 0.06 |
| Church of England | 27985 | 0.05 |
| Greek Orthodox | 24176 | 0.05 |
| Other Religions | 22797 | 0.04 |
| Other Religion (not described) | 19306 | 0.04 |
| Baptist | 16467 | 0.03 |
| Jain | 15132 | 0.03 |
| Agnostic | 14909 | 0.03 |
| Church of Jesus Christ of Latter Day Saints (Mormons) | 12722 | 0.02 |
| Atheist | 10357 | 0.02 |
| Orthodox Church | 8863 | 0.02 |
| Humanist | 8297 | 0.02 |

⁶⁰ The category 'Christian' includes Church of England, Catholic, Protestant and all other Christian denominations where no additional text was written in answer to the question of religion. For the small percentage of respondents that answered the question by stating a specific Christian affiliation – e.g. Methodist or Church of England for example – those individuals were coded to that specific Christian denomination hence the reason why both 'Christian' and 'Church of England' (as well as others) are shown as separate categories.

⁶¹ All categories indicated in italics on this table were not multiple choice categories and were added by respondents.

92.7% of the population chose to answer the question. Approximately 71% of the population ticked 'Christian'. The second largest group ticked 'none' at just under 14%, almost five times the size of the second largest group, those who ticked 'Muslim', and almost two-and-a-half times the size of all the non-Christian religions put together.

4.2.1 Quality & Dependability of Data

The quality, dependability and usefulness of the data which derives from the religious affiliation question are widely doubted.

The Government, for example, noted in its response to the Equality Bill consultation that census data on 'religion or belief' (and sexual orientation) would not in itself enable conclusions regarding discrimination to be reached, because the limitation of the statistics and the 'issues of privacy involved in gathering data' which might provide more robust statistics.

The ONS has acknowledged limitations in the data produced, noting that the imprecision of the 'religion' question means that many people, especially those with a loose or possibly merely cultural affiliation to a religion, would have identified themselves as religious (particularly Christian) even when they are not and suggests that there is a significant disparity between the number of people identifying with a religion and the number actively involved with or practising a religion – something that cannot readily be interrogated in the census data.⁶²

Analysis of this data and the way in which it can be presented is therefore open to misinterpretation. Even ONS's own use of the data is ambiguous. For example, on its own website, in the section 'Focus on Religion', ONS refers to 'religious populations' and offers no indication that what is in fact being referred to is a measure of religious 'affiliation'.⁶³ In other instances, the percentage populations are equated to 'belonging' to a religion and/or to a religious community. But as academic research has shown, 'belonging' is significantly different from 'affiliation'.⁶⁴ Elsewhere, ONS's wording is misleading, seeming to equate religious 'affiliation' to the *practice of religion*. For example, 'South Asians and Black Africans were the most religious,' and 'Being religious was also related to country of birth.'⁶⁵

The fact that the form of the 'religion' question in the 2011 census was reviewed by the ONS and alternative questions tested, suggests that the question as it presently stands is acknowledged to be problematic.

Suggestions that the formulation of the religious affiliation question in the 2001 census 'prompted' people to adopt a religious affiliation, even if they would not under normal circumstances profess to have one, appear to be borne out by the findings of the 24th British Social Attitudes Survey. This found that over two-thirds of people (69%) either did not claim membership of a religion or said that they never attended a religious service, up from 26% of the population in 1964 – a marked contrast with the 2001 census data.

⁶² Office of National Statistics, Focus on Religion, ONS, (2004)

⁶³ *ibid.*

⁶⁴ Voas, D., Religion in Britain: Neither Believing nor Belonging, in 'Sociology', Vol.39, No.1, pp. 11-28, (2005)

⁶⁵ Office of National Statistics, Focus on Religion, ONS, (2004)

Again in stark contrast to the 2001 census findings, other sources suggest that the numbers of people with no religious identity is growing and that there is a steep decline in religious commitment. In a poll carried out for The Daily Telegraph, 72% of those questioned said that they either 'never' or only 'very occasionally' attended a place of worship.⁶⁶ Elsewhere, data exists to suggest that current regular attendance at the Church of England stands at just 6.3% of the population,⁶⁷ a low figure that is declining year on year. Much similar data exists from other surveys and polls.

4.3 Conclusion

The notion that census data can accurately reveal the religious attitudes of contemporary Britain, then, is highly problematic. And yet the data is repeatedly used to underpin current public policy making. This makes it much more than simply an 'academic' issue. For example, as the foreword to *Face to Face and Side by Side: A framework for partnership in our multi-faith society* puts it:

According to the 2001 census, more than three quarters of us in the United Kingdom consider ourselves to have a faith. Today, as they have for many generations, people of faith make a huge contribution to our society: to the economy, arts and culture, politics. And I believe faith has the potential to be an immense force for good in all our communities.⁶⁸

The direct use of census data to inform government policy has implications for the inclusiveness of policy on the 'religion or belief' strand as a whole. A debate regarding future questions on 'religion and belief' in the census to inform future policy is a pressing need.

Whilst clearly the level of investment and scale of the census makes it an extremely valuable piece of evidence, policy makers could also potentially draw on alternative pieces of evidence that examine the nature of people's relationship with 'religion or belief' more closely.⁶⁹

More detailed recommendations on this issue are included in Section 10.0

⁶⁶ Briton's belief in God vanishing as religion is replaced by apathy, in The Daily Telegraph, 27th December, 2004.

⁶⁷ Christian Research, The 2005 English Church Census, (2005)

⁶⁸ See CLG, *Face to Face and Side by Side: A framework for partnership in our multi-faith society*, (2008)

⁶⁹ See for example, Voas, D., *Religion in Britain...* op. cit.

5.0 Government Policy

In recent years there has been an increasing emphasis on the contribution of religious groups to public policy. While this is a trend that has been seen in a wide range of policy areas, from issues as diverse as encouraging participation in sport through to the procurement of public services, particular policy themes have received more attention than others. These include:

- Greater engagement with ‘religion or belief’ stakeholders in the formation of public policy;
- The role of religious organisations in delivery of public services;
- The role of religious groups in building civic society, social capital and community cohesion;
- The role of religion and inter-faith activities in preventing violent extremism and radicalisation and in maintaining social order;
- The role of religion in education provision.

2001 census data is commonly used to support this increased focus on religion in public policy. Yet as early as 1998, Jack Straw, the then Home Secretary, noted a marked increase in self-identification with religion: ‘It is becoming clear that more people are identifying themselves in terms of their religion than ever before’.⁷⁰ However, as discussed above, there is diverging evidence on the degree to which self-identification with religion is taking place.

What exactly can be extrapolated from this apparent increase in religious self-identification is widely contested (as is the claim that there is an increase at all) and arguments regarding the potentially misleading nature of Census data have been covered in more detail in section 4.0. The more recent Social Attitudes Survey 2007 used by the EHRC in a recent report⁷¹ gave a markedly different interpretation of the data, pointing out that the number of those who identify themselves as having no religious beliefs, or non-religious beliefs such as Humanism, is about equal to those who identify as Christian (45.8% and 46.0% respectively), while those who identify with non-Christian religions make up just a tiny minority of the population.

Growing tendency to self-identify by religion?

The possible reasons for an increased religious self-identification are also contested. Some see it as marking a renewed interest in spirituality as a response to the ‘moral decay’ and increased individualism associated with contemporary society;⁷² others have seen it as a means of emphasising difference, a form of ‘group closure’.⁷³ One example of this ‘group closure’ was described in recent research that found the proportion of White British citizens describing themselves as Christians rather than non-religious to be higher in areas with large Muslim populations.⁷⁴

⁷⁰ Jack Straw at a Muslim Council of Britain event, 2nd December 1998.

⁷¹ Equality and Human Rights Commission, *Fairness: A new contract with the public*. Manchester, Equality and Human Rights Commission, (2008).

⁷² See for example, Himmerlfarb, G., *One Nation, Two Cultures*, Alfred A. Knopf, New York, (1999) in which she describes resistance to a perceived moral decay in America reflected in increased religiosity.

⁷³ Weber, Max, *Economy and Society: An Outline of Interpretive Sociology*, Berkeley, (1978)

⁷⁴ See Voas, D., Bruce, S., Research note: The 2001 census and Christian identification in Britain, in *Journal of Contemporary Religion*, Volume 19, Number 1, [January 2004]. See also See Kaufman, E., *The Slow Death of Secularism*, ‘Prospect Magazine’, (November, 2006)

Recent assertiveness by religious groups found an early response from the Government in the 'Working Together' working party. This is further described below (5.5.1).

The rest of this section provides short commentaries covering key policy areas and documents and their implications for 'religion or belief'.

5.1 Third Sector Delivery of Public Services

There has been massively increased interest in the role of the third sector in delivery of public services.⁷⁵ Reasons for this re-appraisal of Government's relationship with the third sector are wide-ranging, based largely on a belief that third sector organisations can deliver services in distinctive ways that will improve outcomes for service users. Yet there has also been an increasing recognition that this aspect of Government policy, a policy shared by other political parties, has not been evaluated or tested, largely due to a lack of evidence about the impact of that work.⁷⁶

It is arguable that increasing Government interest in the role of religious organisations in the UK mirrors developments in the US, where then-Governor Bush established a 'Faith-Based Task Force' in Texas in May 1996 and subsequently, as president, issued executive order 13198 creating 'Centres for Faith-Based & Community Initiatives' in five cabinet departments in January 2001.⁷⁷

Partly as a consequence of this increased emphasis on the role of religious organisations in the UK, a 'faith sector' has come to be seen by some as a distinct sub-set within the wider third sector. Religious organisations have, of course, been involved in delivering social welfare initiatives – luncheon clubs, elderly visiting and befriending, day care centres and so forth – for well over a century and while these activities are not in themselves religious or intended solely for religious beneficiaries, the projects are affiliated to or operate as part of many churches, temples and mosques. What is new is the use of such organisations to provide public services.

5.2 Preventing Extremism and Promoting Cohesion

Another reason for the increased prominence of religion in public policy and political debate is current concern over terrorism and violent extremism. The events of 9/11, 7/7, and the disturbances in Bradford, Burnley and Oldham in 2001 have served to galvanise the Government's commitment to developing policies that will prevent violent extremism, and religious and 'inter-faith' issues have taken centre stage in subsequent policy responses, debates and Government interventions.⁷⁸

⁷⁵ See Home Office, *Working Together*; Home Office, (2004), and National Audit Office, *Working with the Third Sector*; National Audit Office, (2005)

⁷⁶ House of Commons Public Service Select Committee, *Public Services and the Third Sector: Rhetoric and Reality*, Eleventh Report of Session 2007-08, (2008)

⁷⁷ See, for example, *Texas Workforce* at <http://www.twc.state.tx.us/svcs/charchoice/chchoice.html> Former Governor Bush created a Faith-Based Task Force in May 1996 to survey the legal and regulatory landscape for faith-based groups operating in Texas with a view to identifying and removing obstacles to their operation and recommending ways in which Texas could create an environment in which these groups could thrive, 'free of regulations that dilute the "faith factor"'. Subsequently, on 29/01/01, President Bush issued Executive Order 13198 creating Centers for Faith-Based & Community Initiatives in five cabinet departments – in Health and Human Services, Housing and Urban Development, Education, Labor, and Justice. See: <http://www.whitehouse.gov/government/fbci/>

⁷⁸ See <http://security.homeoffice.gov.uk/news-publications/publication-search/prevent-strategy/preventing-violent-extremism>

A related trend is the Government's commitment to achieving community cohesion and integration. This has been a consistent feature of Government policy for nearly a decade. While obviously influenced by a desire to address social order issues and violent extremism, the Government's focus on religion in relation to community cohesion has also been driven, at least in part, by concerns that in some cases increased religiosity – especially if part of wider, entrenched 'cultural differences' – may be preventing people from different backgrounds 'getting along with each other'.⁷⁹ Similarly the Government's interest in encouraging the development of social capital at a local level has led to consideration of the role that religion or religious groups can play in doing that.⁸⁰

5.3 Community Empowerment

In recent years, a new agenda for community empowerment has unfolded. In many respects it can be argued that this is New Labour's most ambitious project yet – a bid not just to establish 'people power', but to fix declining democratic involvement (voter 'absenteeism' is at its highest since the second world war and the combined membership of all the main political parties has imploded, falling from over 3.5m to barely 500,000),⁸¹ to rebuild civil society, create a climate of social and democratic renewal, and repair the tattered reputation of the political class – which has never been lower.⁸²

It is also, of course, an attempt to unite a number of key Government agendas, including devolution and localisation, community engagement, a new 'contract' between citizens and services providers, the 'choice agenda' and increased accountability in public service delivery.⁸³ And yet despite (or perhaps because) of the scale of its ambition, the community empowerment agenda has huge potential to replicate some of the 'representational' errors that have been evident over the past two or three decades in multiculturalist policies, especially where these have revolved around the use of religious, cultural and ethnic 'identity' to provide a framework for engagement.

5.4 Legislative Change

The political nature of developing equality law is discussed in more detail in section 2. Suffice to say that the relationship between Government policy and equalities legislation is not always a clear one. Political lobbying from 'religion or belief' stakeholders has meant that in some instances policies or guidance have not been reflective of the full scope of 'religion or belief' equalities law – excluding, for example, dedicated work to support the rights of those with non-religious beliefs.⁸⁴

⁷⁹ "the percentage of people who believe people from different backgrounds get on well together in their local area" is used as one of the main indicators in the Government's cohesion Public Service Agreement (21)

⁸⁰ See Furbey, R., et. al., *Faith as Social Capital: Connecting or Dividing?*, Policy Press, Bristol, (2006)

⁸¹ Labour Party membership, for example, has declined from 407,000 in 1997 to just over 158,000 as at June 2008. The other main political parties have shown similar declines in membership.

⁸² See CLG, *Communities in Control: Real People, Real Power*, (July 2008), p. 106. The community empowerment White Paper goes as far as to talk about "our desire to rehabilitate politics as a legitimate and worthy activity".

⁸³ CLG, *Communities in Control*... op. cit.

⁸⁴ For example, the BHA notes that a DTI funded report by Faithworks "Guidelines on religious discrimination and Christian Ethos", whilst described as 'a guide for churches and Christian organisations to explore religious discrimination legislation' instead contains mainly information on how to take full advantage of how to enact legal exemptions for religious employers. See BHA, *BHA Response to the Equalities Team Review*, (2005)

5.5 Key Government Policies

Although the ‘religion or belief’ strand in equality is relatively new in Britain, mechanisms to enable engagement with and feedback from organised religious groups have a long-established presence at central, regional and local government levels. These mechanisms exist in addition to those that all people have – such as lobbying Members of Parliament, attending public consultations etc. Historically, however, those with non-religious beliefs – such as Humanists – have not enjoyed a similar level of access. Many of course trace the roots of this religious privilege to our historic disinclination to disestablish Church and State.

Recent efforts to strengthen engagement with religious groups in particular began in 2001 with a specific reference to this in the Labour Manifesto of that year. Since appointing John Battle to act as the UK’s first ‘faith tsar’ in 2001, there have been a number of initiatives to co-ordinate and improve engagement with religious groups. In 2002 the Local Government Association with the Inner City Religious Council, Office of the Deputy Prime Minister and the Inter-faith Network produced a good practice guide for Local Authorities regarding consultation with religious communities.⁸⁵ The report’s sole focus on ‘building good relationships between Local Authorities and faith groups and organisations in their localities’ was felt by some to be discriminatory and exclusive in ignoring engagement with those with non-religious beliefs.

In 2003 Tony Blair set up a ministerial working group in the Home Office to achieve ‘greater involvement of the faith communities in policy-making and delivery across Whitehall’.⁸⁶ While based in the Home Office, the remit of the *Faith Community Liaison Group* was to advise the departments for Education, Culture, Media and Sport and Trade and Industry. Non-religious groups were not included in this group.

5.5.1 Working Together: Co-operation between Government and Faith Communities

In 2004, ‘Working Together’ was released by the Home Office, reporting the results of a six month enquiry on patterns of engagement between Government and faith communities. Despite requests from BHA and the National Secular Society (NSS), the review excluded⁸⁷ representatives from non-religious belief organisations. The report⁸⁸ outlines plans for Government to consult ‘faith communities’ and develop a more comprehensive understanding of their needs and recommends subsidies to religious groups to help them to be more effective as lobbyists with Government. A ‘Faith Communities Capacity Building Fund’ of almost £14 million⁸⁹ was subsequently distributed by the Community Development Foundation on behalf of the Government.

Key Issues

While the report does briefly refer to the need to engage those with non-religious beliefs – largely as a result of lobbying from BHA and NSS – the focus of the report is firmly on consultation with religious groups. In fact, as the BHA identified in its response to the Equalities Review,⁹⁰ the reference to engagement with non-religious groups sits in sharp contradistinction to other aspects of the report’s guidance for Government departments. For example, it notes:

⁸⁶ See Hansard: 30 June 2003, Column 12W or And on the seventh day Tony Blair created... in ‘The Guardian’, 3rd August 2003.

⁸⁷ Personal testimony to the BHA by Fiona Mactaggart as minister responsible.

⁸⁸ <http://www.communities.gov.uk/documents/communities/pdf/151393.pdf>

⁸⁹ Cm 7059, p. 14

⁹⁰ BHA, Response to the Equalities Review Team, London, 2005

...that some secular organisations have concerns about the influence of faith groups on Government. Adverse criticism is more likely where secular/humanist organisations have not been transparently consulted, but in any case it may be wise to be prepared to mount a publicity and media handling strategy to answer any such criticism, and to justify decisions taken.⁹¹

As the BHA has noted, this guidance would seem to indicate that the first reaction to anticipation of 'adverse criticism' is not to consider engaging in discussion on the issues, but is to devise a 'media handling strategy' to contain or defuse this criticism.⁹²

It is also arguably unlawful given Government departments' duties under section 6 of the Human Rights Act.

5.5.2 Face to Face, Side by Side: A Framework for Partnership in our multi-faith society

Produced in 2008 by CLG, this document builds on other policy documents and consultations already undertaken. In particular, it draws on thinking from the *Empowerment White Paper*,⁹³ the Commission on Integration and Cohesion's final report⁹⁴ and research undertaken by the Faith Based Regeneration Network.⁹⁵

The report outlines Government's planned approach to working with 'faith communities' to promote cohesion. The framework is based on 4 'building blocks' which include:

- i) Confidence and skills to bridge and link
 - Skills development to build trust and relationships between people with different religions and beliefs and those with none
 - Skills development to build partnerships between faith based organisations and local decision-making bodies
- ii) Shared spaces for interaction and social action
 - Encouraging sharing of resources between local faith groups
 - Creating shared spaces and buildings for faith groups to work together and interact
- iii) Structures and processes which support dialogue and social action
 - Raising awareness of mechanisms and structures for consulting faith groups (within both Local Authorities and communities)
 - Assessing the robustness of these mechanisms, including their representativeness and accessibility
- iv) Opportunities for learning
 - Role of educational establishments in raising faith awareness and cohesion
 - Role of faith organisations in education on these issues

⁹¹ Working Together, op. cit., 2.2.40

⁹² BHA, Response to the Equalities Review... op. cit.,

⁹³ CLG, Communities in Control, op. cit.

⁹⁴ COIC, Our Shared Future, CLG, (2007)

⁹⁵ FBRN, Regional Forums of Faiths, their Relationship to Regional Governance and Social Action, (2007) and FBRN, Faith Based Social Action", (2007)

To help achieve this, the Government invested £7.5 million. This included:

- A programme to build capacity of regional faith forums;
- Grants for local organisations working to progress the Framework's aims;
- Guidance for Local Authorities regarding dialogue with community stakeholders, specifically including faith groups
- Commitment to strengthening the evidence base regarding impact of related activity.

Key Issues

Despite its professed aim to pursue recommendations from 'Our Shared Future' regarding improving engagement between those with different 'religions or beliefs' (including non-religious beliefs), there is scant reference to non-religious belief groups in the report. Particular concerns were raised about the following:

- Assumptions regarding the inclusiveness of 'inter-faith' structures. Much of the framework hinges on the role of 'inter-faith' networks, yet the Inter-Faith Network and most of its local affiliates exclude those with non-religious beliefs.⁹⁶ Without a more thorough assessment of the inclusivity of 'inter-faith' networks, and without more robust recommendations for improving dialogue between 'inter-faith' networks and those with non-religious beliefs, approaches to engagement are likely to exclude those with non-religious beliefs; and so fails to embrace the 'religion or belief' strand as a whole.
- Inconsistencies between the proposed focus of Local Authority approaches to engagement of 'religion or belief' stakeholders and related equalities legislation and regulations (focusing only on religion not being reflective of the full scope of 'religion or belief' equalities law);
- Use of census data to identify the need for increased 'inter-faith' work, despite inherent problems with that data.⁹⁷ The report does acknowledge the variable and often scarce nature of evidence regarding the impact of 'inter-faith work',⁹⁸ yet there is little analysis of the implications of this for the recommendations to increase investment in 'inter-faith' work made as part of the framework itself.

5.5.3 Our Shared Future

This report produced by the Commission on Integration and Cohesion identified a number of specific recommendations regarding the role of religion and/or belief in contributing to community cohesion. In particular the report refers to the importance of developing 'inter-faith' programmes, while also calling for 'a more constructive conversation between those who are religious and those who are not'.

The report highlights the need to review engagement with religious organisations. It states:

There is a case to be made for a review of some aspects of the way Government, both central and local, supports, consults and engages with faith-based bodies. These might include: grant giving (and appropriate guidelines for this); issues linked to contracts for the delivery of public services; and forms of engagement with non-religious belief groups, such as Humanists. There are also wider debates to be held about the role of faith in society more generally.

⁹⁶ Inter-faith Networks for the UK, *Inter-faith Organisations in the UK: A Directory*, (2007)

⁹⁷ A response by BHA notes the varied use of terms to describe religion or belief – see BHA, *Face to Face Side by Side*, <http://www.humanism.org.uk/documents/3838>

⁹⁸ *Face to Face*. . . . op. cit., p. 117

Another significant recommendation was that ‘single group funding’ should not be promoted unless there is a clear business and equalities case. This is developed further in the Government’s *Cohesion Guidance for Funders*.

Key Issues

‘Our Shared Future’ suggests a future commitment on the part of public services to pay closer attention to evidence of local need and rely less on identity-driven approaches to funding and service design. Since the publication of that report, there have been a number of campaigns and funding decisions made that may have a bearing on the Government’s future decisions in this matter. One of the most notable has been the judgment regarding Ealing Council’s decision not to fund Southall Black Sisters (SBS), an organisation that offers domestic violence support services specifically for BME women. In this case, despite the Council’s wish to pursue the recommendations of the report (noting that single identity funding can lead to segregation), the Court ruled that the Council had not paid due regard to its duties under the race relations act (by not conducting an equality impact assessment) of the policy. The judge saw no dichotomy between cohesion and specialist services.

It is clear that many local authorities are struggling to implement the Government’s recommendations on this issue and more support and guidance will be required if commissioning agents are to make effective use of these recommendations in the future.

The SBS decision may have a potential bearing on future decisions regarding funding of organisations that provide services to particular ‘religion or belief’ groups. However, the Government’s future position on this is unclear. It would seem to sit in opposition to their plans to pursue reductions on reducing single identify funding (as confirmed in its response to the Commission on Integration and Cohesion).

What is much less clear in this response however is the Government’s specific plan to encourage constructive conversations between those who are religious and those who are not (as recommended in ‘Our Shared Future’).⁹⁹ Despite outlining its broad intentions to pursue this goal, the response goes on to add that wider efforts to build cohesion have been made through a specific commitment to developing an embryonic ‘inter-faith’ strategy. Given the fact that ‘inter-faith’ is in itself an example of exclusive terminology, this seems somewhat contradictory: a desire to engage with those ‘who are religious and those who are not’ is to be fulfilled through a process of ‘inter-faith’ dialogue. This contradiction is evident throughout the response to the Commission itself:

- To facilitate **inter faith** dialogue which builds understanding and celebrates the values held in common such as integrity in public life, care, compassion and respect;
- To increase the level of collaborative social action involving different **faith communities** and wider civil society where people work together to bring about positive and concrete change within their local communities;
- To maintain and further develop good relations between **faith communities** and between **faith communities** and wider civil society;
- To overcome the perceived and actual barriers faced by young people and women in participating in **inter faith dialogue** and activity.¹⁰⁰

⁹⁹ CLG, *Government Response to the Commission on Integration and Cohesion, 2007*

¹⁰⁰ *ibid.*, p. 31.

5.5.4 Fairness and Freedom: The Final Report of the Equalities Review

Conducted in 2006-7, the Review¹⁰¹ examined progress in addressing inequality over the last 40 years in the UK. The Review helped to demonstrate the relative paucity of evidence available regarding 'religion or belief' discrimination in the UK (along with other grounds of equality, particularly those that have only recently received legislative attention). For example, the Review noted that 'there is no continuous systematic recording or analysis of ethnicity, disability, sexual orientation or religion or belief.'¹⁰² It also noted that despite the potential ability to record mortality statistics by religion and other factors, this is not done consistently and up to date information about mortality rates of different groups is not available.¹⁰³

The Review highlighted a lack of meaningful categories when recording inequalities in the 'religion and belief' strand: 'existing categories for collecting data on 'religion and belief' do not include an adequate way of recording non-religious belief. Better consultation of the relevant groups, as well as greater efforts to reach "hard to reach" groups would help improve the situation.'¹⁰⁴

A key development indicated in the Review is the use of new approaches to measuring and progressing equality. The Review advocates use of an 'equalities score card' to assess levels of protection of people's rights in relation to ten 'dimensions' or freedoms (e.g., physical security; health; education). 'Identity, expression and self respect' is the dimension that relates to the right to freedom of 'religion or belief'. The Review also recommends adoption of a different approach to defining and measuring equality, referring to equality of:

- **Opportunity:** whether everyone really has the same freedom to flourish.
- **Agency:** what degree of choice and control an individual has in achieving the valued activity.
- **Process:** whether discrimination (or some other barrier or process) causes or contributes to a particular inequality.

Key Issues

The logistics of measuring an equalities scorecard of this type and in relation to the three aspects of equality above are currently being refined and tested by the Centre for Analysis of Social Exclusion in the London School of Economics (funded by GEO).¹⁰⁵ Questions remain however regarding how public agencies will take up recommendations from the Review. Clearly significant levels of investment will be required if public agencies are to adapt equalities monitoring procedures to collect evidence on 'religion or belief' discrimination (and indeed other grounds of equality that are not yet recorded). That being said, the 'capabilities approach' to equality advocated by the Review does offer a number of significant opportunities for rethinking and strengthening current work on 'religion or belief' equality.

A key tenet of the capability approach is the desire to create freedom and opportunities for people to live in the way they value and would choose. The focus here is on an individual's right to choose their own priorities and decide when particular aspects of their identity should influence their decisions.

¹⁰¹ Equalities Review Team, *Fairness and Freedom: Final Report of the Equalities Review*,

¹⁰² *ibid.*, p. 140

¹⁰³ *ibid.*, p. 141

¹⁰⁴ *ibid.*, p. 143

¹⁰⁵ EHRC Briefing Note, *The Equality Measurement Framework*, (2008)

http://sticerd.lse.ac.uk/textonly/case/research/equality/Briefing_Equality_Measurement_Framework.pdf

This approach is different from previous approaches to multiculturalism in the UK that have tended to accord primary importance to aspects of identity such as religion or ethnicity. Some commentators have noted the restrictive nature of multiculturalism in that it tends to place people from particular backgrounds in 'boxes' which do not reflect the diverse nature of those backgrounds. Taken to its full conclusion, the approach advocated in the Equalities Review offers new ways to address this issue. It recommends more debate and the challenging of particular inherited traditions or cultures in order to ensure people within such cultures can make informed decisions about what they need to flourish in life.¹⁰⁶

It still remains unclear whether Government and the EHRC will implement the recommendations from the review. Certainly as noted above, many contemporary policies that address engagement on 'religion or belief' continue to be informed by essentially multiculturalist approaches to engagement and equality.

5.5.5 Communities in Control

In relation to 'religion or belief' issues, the *Government's Empowerment White Paper* highlights 'a particular role for faith based groups' in building stronger communities. It also indicates a commitment to removing the barriers to commissioning services for faith-based groups and outlines plans to increase dialogue between people with different 'religions or beliefs'.

The paper also contains a number of proposals that are likely to have an impact upon the way religious or non-religious belief groups are engaged through local strategic partnerships and local democratic processes:

A duty to listen

- A new 'duty to promote democracy', extension to the existing 'duty to involve'.
- An Empowerment Fund of £7.5 million to support national third sector organisations to turn key empowerment proposals into practical action.

Promote more active citizens

- Support for a range of people to take up volunteering and local leadership opportunities.
- £70 million Communitybuilders scheme to promote more sustainable community led organisations.

Enable more people to access information

- Improve information to local communities, new duty for councils to respond to petitions.

Enable people to have an Influence

- Participatory budgeting so that citizens can help to set local priorities for spending.

¹⁰⁶ See Sen, A., *The Uses and Abuses of Multiculturalism: Chili and Liberty*, in 'The New Republic', February 2006: "One of the central issues concerns how human beings are seen. Should they be categorized in terms of inherited traditions, particularly the inherited religion, of the community in which they happen to have been born, taking that unchosen identity to have automatic priority over other affiliations [...]? Or should they be understood as persons with many affiliations and associations, whose relative priorities they must themselves choose (taking the responsibility that comes with reasoned choice)? Also, should we assess the fairness of multiculturalism primarily by the extent to which people from different cultural backgrounds are "left alone," or by the extent to which their ability to make reasoned choices is positively supported by the social opportunities of education and participation in civil society? There is no way of escaping these rather foundational questions if multiculturalism is to be fairly assessed."

Support people to challenge ‘bad’ decisions

- Holding those in power to account with public officials becoming more visible.
- Comprehensive area assessments to include evaluation of the quality of public engagement.

Get more people from diverse backgrounds to get involved

- Encouraging a wider range of people to stand for office.
- Formal qualification for councillors, including a review of existing qualifications and modules.

Hand over control of assets to communities

- New asset transfer unit to provide information and best practice on transferring ownership to communities.
- Encourage local authorities to ensure social enterprises are able to compete fairly for contracts.

Key Issues

Despite the clear plans to reinvigorate local democratic processes contained in this paper, there still remain challenges at a local level to ensure that access to local decision-making processes is fair and equitable. As a recent report by the Local Government Association noted, the principal mechanism for engaging ‘religion or belief’ groups in local strategic partnerships is through local ‘inter-faith’ organisations where they exist.¹⁰⁷ Relatively few of these organisations or networks have representation from non-religious belief groups.¹⁰⁸ Indeed the survey carried out by the LGA of 123 Local Authorities noted that only 26% of local authorities engage with non-religious groups such as humanists. This is compared to 76% of authorities that do consult on policy matters with their local inter-faith organisation if they have one.

When implementing the recommendations outlined in this paper, local authorities will need support to think through the ‘religion or belief’ equality implications of engagement. They will require support to respond to and balance the needs of a diverse range of interest groups (not only ‘religion or belief’ groups but also other communities of interest).¹⁰⁹ They will also require support to develop robust approaches to commissioning services from ‘faith-based’ organisations. Indeed the LGA survey notes that this is a particular area of training that local authority officers would like to receive.

Increased empowerment, involvement and communication as indicated in the White Paper is, on the whole, a positive aim, although without the necessary checks being put in place the consequences might be detrimental to equality practice. It will be important to ensure fair access to decision-making for all stakeholders in the ‘religion or belief’ strand. Poor targeting and a low understanding of equality legislation could allow some aspects of the White Paper to be misinterpreted. Through the emphasis on wanting to ‘shift power, influence and responsibility... into the hands of communities and individual citizens’¹¹⁰ the Government’s existing approach could lead to disempowerment of non-religious individuals and organisations. If applied badly, it could also mask more systemic patterns of inequality *within* communities, with more vulnerable or traditionally excluded groups, such as women and young people, unable to gain access to those opportunities for influence.

¹⁰⁷ Local Government Association, Local Authority engagement with faith groups and inter-faith organisation, LGA, (2008)

¹⁰⁸ Only 10% include non-religious representation. See The Inter Faith Network for the United Kingdom, Inter Faith Organisations in the UK, A Directory, (2007)

¹⁰⁹ See Afridi, A., The link between Cohesion and Deprivation, Commission on Integration and Cohesion, (2007)

¹¹⁰ *ibid.*, p.1.

A first step to addressing this might be to ensure that all Government departments adopt a more inclusive approach to language – for example, ceasing to speak of ‘faith communities’ as if these were inclusive of the whole ‘religion or belief’ strand.

Case Study: Regional Inter-Faith Forum

(from an interview with a regional inter-faith forum representative)

Since 2006, the Government has invested heavily in faith and inter-faith initiatives. In addition to the £13.8m in building the capacity of faith communities through the Faith Communities Capacity Building Fund (FCCBF), a further £50m has been earmarked for building cohesion in local areas which includes supporting inter-faith work. Another £7.5 million has been made available via the Faiths in Action fund, one part of which is to develop inter-faith activity at the regional level. This has been warmly welcomed by those working at the regional level: “I see it as a clear statement of the value that Government sees in terms of faith. It recognises the reality of today’s Britain as well as shows an effort to engage.”

Some critics have questioned the Government’s approach – not least because of its emphasis on faith but also because of the potential this has to exclude some groups and communities. This was not the view of this interviewee: “Some from a secularist or humanist background might see it as privileging certain religious groups, I know. But as for the regional faiths forums we try not to do this, we try to ensure that no-one is excluded... Having said that, the ‘faiths’ do have agendas and issues that are important to them. We are happy to work alongside others on some of these, including those with no faith, but there are some agendas where people don’t feel they want to collaborate.”

While they also argued that the role of faith has a ‘unique selling point’, they also acknowledged the need for a stronger evidence-base: “[Faith brings] a mixture [of benefits]. It’s got a spiritual nature first off. It adds value to improving cohesion – it’s about supporting people and communities. It marks people’s personal and cultural milestones. It also gives purpose...but all of this needs more research undertaken so that it can be better evidenced. This is critical, because there is a definite ‘added value’ but we don’t tend to acknowledge or recognise it.”

And yet this interviewee took an interesting – and somewhat unexpected – line on ‘religion or belief’ in equalities legislation and policy: “The equality strand does appear to have been picked up quite separately from the ‘Face to Face’ agenda. I think that there needs to be more work done to align these better and reckon that a human rights based approach to this would be useful. It would make things all the more inclusive for minority faith groups and those without a faith also. The EHRC are probably going down the right route. My worry though is that because ‘religion or belief’ is made up of two distinct strands – ‘religion’ and ‘belief’ – there is a possibility that it will get the least attention. If we don’t do something about this, I could see it falling away.”

5.6 Implications for Future Policy on ‘Religion or Belief’ Issues

This section covers three principal areas of government policy in turn: engagement, cohesion and equality.

5.6.1 Engagement

The LGA survey described above offers a useful snapshot of the state of local authority engagement with ‘religion or belief’ groups, focusing in particular on engagement with religious groups. It provides a picture of variable and largely inconsistent approaches to engagement of ‘religion or belief’ stakeholders between different local authorities in the country.

While there may have been progress in pockets of the country in improving the equitability of engagement of ‘religion or belief’ groups, there is clearly more work to be done. A particular challenge for local authorities highlighted in the LGA survey was a lack of understanding about how work with religious groups could help to support and deliver their authority’s overall objectives of cohesion, empowerment and preventing violent extremism (between 14% and 44% of respondents, depending on the area of policy were unable to answer this question).

A similar survey was undertaken in 2006 by brap on behalf of the CEHR transition team at a regional level in England, Scotland and Wales. While not published or released by the EHRC, this report also noted that many regional agencies have varying approaches to engagement of ‘religion or belief’ groups. For example, at that time, while already engaged in work to further the ‘faith and cohesion’ agenda, only around half of Government Offices for the Regions were aware of non-religious belief groups and none had sought to consult these groups directly. Some were aware of the need to expand the representation of minority religious groups. Yet there remained significant confusion regarding which precise policy issues legitimately required consultation with ‘religion or belief’ groups and which did not.¹¹¹

There are potentially two key challenges for improving engagement of ‘religion or belief’ stakeholders in the future. The first relates to developing equitable approaches to engagement that reflect the breadth of expertise and experiences across the ‘religion or belief’ strand. The second involves ensuring that engagement is meaningful and contributes to improvements in policies and services that affect people’s lives.

Equitable Engagement

One of the key characteristics of policies to improve engagement with ‘religion or belief’ stakeholders is a reliance on ‘group representation’. As long as this approach continues, it will be important to ensure that representation also includes those from minority religious groups and those with non-religious beliefs. This is an issue that has received little attention in recent Government policy and is potentially a serious flaw in policy. While legislation has been introduced that goes some way towards reducing inequality, eliminating discrimination, strengthening good relations between people, and promoting and protecting human rights across a variety of different equality strands including ‘religion or belief’, the faith and ‘inter-faith’ programmes have the potential to sit in opposition to some of these objectives, not least those that seek to strengthen good relations between all people in society as well as eliminating discrimination.

¹¹¹ brap, *Religion and Belief: Developing Inclusive Approaches to Engagement*, publication pending (written on behalf of the CEHR Transition Team), (2006)

That being said, there is potentially a more equitable approach to engagement on these issues that begins to move past solely 'group representation' approaches to engagement. And this should perhaps be considered more closely by Government.

The first step to achieving this is for public agencies to be extremely clear about the purpose of their engagement with 'religion or belief' groups. For example, is engagement essentially an issue of representation (to ensure that a diverse range of views from people with different 'religion or belief' backgrounds feed into decision-making processes)? Or is the objective to garner expertise and strategic guidance on issues of equality as they relate to specific policy areas (cohesion, empowerment, housing, education, for example)?

If the purpose is the latter then engagement with stakeholders from the 'religion or belief' strand should reflect this, facilitating the provision to public agencies of expertise and evidence to identify and prevent discrimination against those with religious or non-religious beliefs in particular policy areas. brap's research has shown, however, that at present approaches to engagement are *overwhelmingly concerned with representation* and as a consequence are primarily modelled on 'group representation'. They do not seek to marshal specific skills or expertise at a local or national level; rather, they aim to address an assumed 'demographic deficit' by ensuring that 'representatives' from particular religious groups are present.

While group representation models can play an important role, their weaknesses are increasingly widely recognised:

- They assume a homogeneity on the part of the group being 'represented' that rarely if ever exists, invariably overemphasising the conservative and traditional elements in a religious group;
- They tend to assume that a single individual speaking from their own experience represents the views of a wider community;
- They tend to favour representation only from specific parts of the community (often male and older people);
- And they tend to emphasise identity over expertise or experience.

This ignores the differences that exist within minority groups (whether defined by ethnicity, culture, 'religion or belief', or indeed a mixture of all four), such as nationality, class, 'gender', cultural and religious or belief interpretations, sexual orientation, age and disability.

And yet there is a common assumption that a broader, more inclusive engagement process will help to develop better equality practice and more equitable social policies. There is little evidence to suggest this is true. Indeed, group representation models may reinforce a tendency for individuals to define themselves by their ethnic, cultural and religious differences, seeing other groups as competitors rather than allies in a common struggle for equality.

A distinction therefore needs to be made between *engagement* and *representation* and one possible way to do this is by placing a much clearer emphasis on what might be called 'strategic guidance'. The starting point in this model is that people's opinions are sought because of their expertise and aptitudes rather than because they are of a particular ethnicity or religion. The purpose of engagement in this instance is consultation rather than representation. In this model, 'advocates' (rather than representatives) for issues of 'religion or belief' might be selected by interview rather than election or self-appointment. Advocates would be invited to contribute regional or local intelligence, views and advice derived from their expertise and knowledge.

Competence in equalities is a learned skill and in the context of stakeholders for the 'religion or belief' strand the necessary skills include:

- A strong commitment to equality and human rights.
- The ability to engage and work constructively with religious, 'inter-faith' and non-religious groups on equality and human rights issues.
- A commitment to sharing expertise and good practice with others.
- An ability to identify and analyse evidence of 'religion or belief' discrimination.

In some cases, group representation may be what is required, particularly when public authorities are seeking to discharge their duties and demonstrate engagement of a wide range of stakeholders. But if the purpose for engaging with stakeholders from the 'religion or belief' strand is to understand the nature of discrimination and difficulties in this area and identify good practice to prevent it, then a strategic guidance model would offer clear advantages over a group representation model.

Meaningful Engagement

If approaches based on strategic guidance are to be inclusive and accessible to those with a broad range of perspectives (and from different backgrounds), there is a real need to make sure support is provided both to individuals who might wish to get involved and to those groups where capacity, resources and sometimes the necessary expertise are extremely limited.

It is important for public agencies to recognise the potential role they could play in building capacity and empowering 'religion or belief' stakeholders to take part in decision-making processes. Certainly *'Face to Face and Side by Side'* has outlined plans to encourage capacity building amongst local faith and inter-faith groups on this issue, yet this risks excluding those with non-religious beliefs, or indeed essentially personal, unorganised religious beliefs. In many parts of the country, it will be important to establish a level playing field which does not favour established, organised religious groups over all others.

The challenge of developing capacity of 'religion or belief' stakeholders is compounded further by the nature of particular 'constituencies' in that group. What is perhaps less recognised and more pertinent to addressing this situation are the structural and conceptual problems associated with religious and non-religious *representation*. One particular issue associated with this is the issue of defining the term 'non-religious'. While there would be no single, universally accepted definition of the term, it could be argued that non-religious individuals – perhaps unlike religious people, whatever their religion – are more likely to manifest their 'non-religiousness' in response to particular issues or debates rather than as an over-riding determinant of individual identity, as the key to what 'makes them tick'. Although it is worth noting that religious people do not always see religion as an important part of their identity. In 2001 only 20% of the UK population considered their religion important to their self-identify.¹¹²

A further issue following on from this is that while there *may* be an organised 'faith sector' as part of the wider third sector, there is no similarly organised 'non-faith sector'. Such a conception does not exist. Except in the case of a small number of mainly national organisations (with local sub-groups), such as the British Humanist Association and the National Secular Society, many non-religious people are not organised according to, nor motivated primarily by, their 'non-religiousness'. Such people tend to devote themselves to (for example) secular charities and

¹¹² See Home Office, Home Office Citizenship Survey, (2001), p.18

civic activity but may resent the attention paid to small ‘religion or belief’ minorities or even to the whole strand and feel themselves unrepresented in a dialogue of apparently increasing importance.

There are, then, conceptual, organisational and practical problems in seeking to identify non-religious groups able to act as representational counterparts to faith-based voluntary sector organisations. In matters of representation it can be extremely difficult to reach all people, as many are not motivated to organise or mobilise in that way.

5.6.2 Cohesion

A number of assumptions about the role of religion in improving community cohesion continue to be made in Government policy. Yet views on this are not shared consistently at a local level. For example, a recent survey¹¹³ of local authority officers asked: “How well do you think the work of other faith groups or faith based organisations helps to support/deliver your authority’s overall objectives on cohesion?” Responses ranged from 24 saying ‘very well’, 63 saying ‘fairly well’, and 12 saying ‘not very well’. However, perhaps more significantly, it is worth noting that a larger proportion of the overall sample was unable to respond to the question at all. This might be indicative of the challenges faced by local authorities in assessing the impact of faith group activities on cohesion.

Despite this uncertainty regarding the contribution of faith-based organisations, ‘cohesion and sense of belonging’ was the main issue local authorities consulted local inter-faith organisations on.¹¹⁴ At a local level, it would probably be fair to say that confusion still remains as to not only the specific role faith-based organisations can play in promoting cohesion, but also the best approach to monitoring their impact in achieving this.

This raises particular challenges regarding the recommendation for local authorities to limit provision of funding for ‘single identity’ groups. Local authorities will clearly require support in the future to establish firm rationales for funding ‘religion or belief’ groups to promote cohesion and they will need to generate evidence to demonstrate their impact once funded. A MORI poll conducted for the Commission on Integration and Cohesion highlighted how more than half of people (56%) feel that some groups get unfair priority: that “people are very sensitive about perceived free-loading by other groups, and about others getting a better deal than them.”¹¹⁵ On this point, the report added that there was some evidence of concerns that engaging with religious groups might undermine the inclusiveness of wider strategies:

...religious identity can be advanced in divisive ways or can become a factor that separates people from the wider community – for example, in many of the areas where ‘parallel lives’ are most in evidence.¹¹⁶

Faith in the Nation, a recent IPPR report, notes that a ‘tense stand-off’ has developed between some non-religious belief groups and religious groups.¹¹⁷ This has led in some cases to missed opportunities for discussions of the role of ‘religion or belief’ in public life. The report calls for a ‘more sensitive and less polemical discussion of these issues’.

Progressing this kind of debate will probably require a re-thinking of approaches to cohesion as proposed in part by the report ‘Our Shared Future’. For example, it will require debate to move beyond narrow and partial views of cohesion that focus only on interaction between people from different religious or ethnic backgrounds, focusing instead on other factors such as protection of human rights, class, wealth, ‘gender’ and age, to name but some.

¹¹³ Local Government Association, *Local Authority engagement with faith groups and inter-faith organisation*, LGA, (2008)

¹¹⁴ 79% of local authorities that consulted local inter-faith organisations consulted them on this issue.

¹¹⁵ *ibid.*, p. 29

¹¹⁶ *ibid.*, p. 82

¹¹⁷ IPPR, Zaki, K., Lodge, G., (eds.), *Faith in the Nation: Religion, identity and the public realm in Britain today*, IPPR, London, 2008

Certainly, as a country we do need to find new ways to debate issues of cohesion – approaches that are not driven primarily by an interest in ensuring the dominance of a particular ‘religion or belief’ position in the public sphere, but rather approaches in which we are humans first, and people with a ‘religion or belief’ second.

In some cases this will require us to ‘let go’ of views that have precluded that kind of debate in the past. It will probably require a greater acceptance from some non-religious groups that religious voices can be heard in an equal setting in the public sphere. Similarly it will require more inclusive approaches to engagement and debate by religious groups, some of whose spokespeople have reacted intemperately to a loss of accustomed deference and privilege. It will require both types of groups to resist ‘imposing’ their views on others.

Examples of this kind of debate are already happening, the national ‘Religion and Belief Consultative Group’ is one such example. Yet in order for an approach like this to work at a local level, it will need ‘rules’ and support for those involved in facilitating and mediating such discussions. In particular it will need to be guided by principles of human rights and equality that ensure the rights of people to express their ‘religions or beliefs’ does not result in disproportionate difficulty for others to enjoy their rights (explored in more detail in section 7.0, Conflicting Rights).

Evidence

There are particular issues in the ‘religion or belief’ strand regarding evidence and the use of evidence. Unlike ‘gender’, ‘race’ or ‘disability’, the ‘religion or belief’ strand is relatively new and its purpose and parameters not widely understood. As a consequence, our understanding of discrimination (both levels and kinds) on grounds of ‘religion or belief’ is not well-developed. There are additional problems too: ‘mapping’ religious and especially non-religious groups is problematical; the precise role of ‘religion or belief’ in self-identity is extremely fluid; and in terms of discrimination it is widely acknowledged that other factors – class, ‘gender’, ‘race’, nationality, cultural practices – may also play a big part in addition to ‘religion or belief’.

For these reasons, developing an evidence base to support our understanding of discrimination on grounds of ‘religion or belief’ is of primary importance and engagement at the regional level has a potentially important role to play in assisting this. We need, for example, to better understand when ‘religion or belief’ is not the key factor, and we need to be able to triangulate and compare the views and experiences of a wide range of stakeholders in the ‘religion or belief’ strand with other forms of evidence. Representational models founded on ‘group representation’ (or community or interest group representation) are not best suited to assisting this analysis.

There is a clear challenge, then, both in building the evidence base and in assisting stakeholders to acquire the skills and expertise which will help them identify, contribute and analyse appropriate evidence. This also points to the need to develop a much clearer rationale to underpin consultation on the grounds of ‘religion or belief’.

5.7 Conclusion

This section has demonstrated the sheer breadth of policy issues that relate to ‘religion or belief’. One of the key challenges to improving the content and implementation of future policies will be developing fairer and more effective approaches to engagement on issues of ‘religion or belief’. That debate will need to be based on principles of human rights that recognise us as humans first and those with particular religious or non-religious beliefs second. Only then are we likely to find new ways to address ‘religion or belief’ discrimination faced by all groups within that equality strand.

More detailed recommendations are included in Section 10.0.

6.0 Education

6.1 Introduction

There is a range of connected issues that need to be examined in relation to 'religion or belief' and education in schools. Firstly, the law and practice that shapes approaches to 'religion or belief' in education (e.g., policy on SACREs in local authorities). Secondly, Religious Education and collective worship in schools. And thirdly, religious schools.

But before that, it is important to set the historical context for current approaches to 'religion or belief' in schools and to understand the profile of the school sector.

6.2 Historical Context

Religious institutions have a long history in Britain of providing education. Alongside private provision in 'public' schools and their long commercial tail (reaching down to the likes of Dotheboys Hall) and village guild 'dame schools', schools started and run by the Church of England, the non-conformist churches and (later) the Roman Catholic Church became increasingly important during the middle decades of the nineteenth century. While these were increasingly subsidised from public funds, rivalry between the churches delayed the introduction of universal education in England and Wales by comparison with other European countries (including Scotland). After 1870, 'board schools' created by elected boards and paid for by the levy of a rate were used to supplement the religious schools and fill the huge gaps left by them.

The 1902 Education Act, gave local councils responsibility for education, including secular education in voluntary (religious) schools. The major part of the voluntary system, comprising Church of England, Roman Catholic and Methodist and a sprinkling of Jewish schools, continued, as did rivalry between the denominations. The 1944 Education Act brought an end to that rivalry with a settlement that transferred almost all the costs of religious schools to the tax- or rate-payer. Religious schools had to opt to become either 'voluntary controlled' (with all their costs met from public funds but less independence in matters of governance and religion) or 'voluntary aided' (with all running costs but only half their building costs met by public funds but with greater freedom). For the first time the law required (what was already almost universal), daily worship and a syllabus of religious instruction in all schools, but both were to be non-denominational in local authorities' own schools. Under this 'dual system' nearly 80% of Church of England schools opted for 'controlled' status while all Roman Catholic schools became 'aided'.

Since 1944 the basic structure of the dual system has remained stable, the main developments being the early absorption of most Methodist schools by the Church of England, the progressive increase of the share of building costs in aided schools from 50% to 90% or in some cases 100%, and since 2001 the addition of small numbers of aided schools with a Muslim, Sikh, Seventh Day Adventist and Greek Orthodox or other minority Christian denominational character. In 2008, the first maintained Hindu primary school opened.

6.3 Profile of the School Sector

Approximately one third of the total number of maintained schools in England are schools with a religious character (approximately 6,850 state-funded religious schools out of a total of around 21,000 state-funded schools) and they cater for approximately one-quarter of all pupils. The proportion is higher in primary than secondary schools. Of 47 Academies that are now open, 16 have a religious designation: three Church of England, one Roman Catholic, one Anglican/Roman Catholic and 11 non-denominational Christian.

In the independent sector, almost two out of every five schools have a religious character (nearly 900 out of a total of just over 2,300 independent schools in total). Over 700 independent schools represent various Christian denominations with the next largest groups being Muslim (115) and Jewish (38).¹¹⁸

The choice of school status – voluntary controlled (VC), voluntary aided (VA), independent religious schools and academies with religious sponsors – relates to the different ways in which individual schools are funded, and governed. Among the state-maintained religious schools, approximately 60% of primary religious schools are VA and 40% are VC. In the secondary sector, 88% are VA and 10% VC.¹¹⁹ 100% of RC and non-Christian schools are VA, a status that affords them greater control over governance, school admissions and the teaching of Religious Education (RE).

Recent figures from the school census suggest that 11.5% of pupils attending religious schools are eligible for free school meals, compared to 15.7% of other schools.¹²⁰ A survey conducted in 2004 by the DFES noted that 65% of pupils between 11 and 19 years old were not religious.¹²¹

6.4 Law and Practice in Education (SACREs & Religious Education)

All maintained schools, whether they have a religious character or not, are required to teach Religious Education (RE) to all pupils. RE is part of the basic curriculum rather than the National Curriculum and so is not subject to the same prescribed attainment targets, programmes of study or assessment arrangements that other subjects in the curriculum currently are.

VA religious schools have the right to teach RE in accordance with the tenets of their faith, but non-religious state schools and (in practice) VC religious schools and foundation religious schools teach a locally agreed RE syllabus that is produced by the local Agreed Syllabus Conference (ASC), a body technically independent of but in practice identical with the local Standing Advisory Council on Religious Education (SACRE). Although it is worth noting that at the wish of parents, RE can be denominational in VC schools.

Since 1988 every local authority with responsibility for education is required by law to have a SACRE and from time to time, as needed, to appoint an ASC. Their origins go back to the Education Act of 1944, but the Education Reform Act 1988 and the Education Act 1996 strengthened their position within the LA. SACREs are responsible for advising LAs and the schools that fall within their remit on RE and collective worship (see

¹¹⁸ DCSF, Faith in the system, 2006, pp. 2-3

¹¹⁹ Runnymede Trust, Right to divide, (2008), p. 11.

¹²⁰ Wednesday, 25th February, 2009, written answer in House of Commons:

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090225/text/90225w0009.htm#09022629000093>:

¹²¹ Young People in Britain: The Attitudes and Experiences of 12 to 19 Year Olds. DfES Research Report RR564, National Centre for Social Research 2004 - ISBN 1 84478 291 3

below) and can require the LA to set up an ASC to review its Agreed Syllabus for RE. There are over 150 SACREs in England and Wales, each composed of four representative groups (three in Wales): Christian and other religious denominations; the Church of England (except in Wales); teachers' associations; and the local authority. ASCs have the same composition.

In some SACREs humanists are permitted representation, yet there have been a number of attempts to limit humanist attendance at related meetings across the country. At a Government level, guidance regarding who should attend SACREs has remained unchanged since 1994,¹²² despite calls to update it and perceived infringements under the Human Rights Act. Only now, after many years of lobbying, is the guidance under active review.

The kind of advice and support offered by SACREs varies, often depending on the quality of advice given by the LA officer whose job it is to keep the SACRE informed of local and national developments. Effective SACREs carry out a range of responsibilities from providing support to implement an Agreed Syllabus to monitoring local schools' OFSTED inspection reports on RE. Each SACRE is required to publish an Annual Report which is sent to the Qualifications and Assessment Authority (QCA) and these reports provide the basis for any QCA analysis of the work of SACREs.

The Government believes that all religious schools, as well as teaching pupils about the faith of the school, should also foster an awareness of the tenets of other faiths and of Humanism. In 2004, the first non-statutory National Framework for Religious Education (NFRE) identified important principles for RE in order to raise the standards of RE teaching.¹²³ In a Joint Statement in February 2006 on the importance of RE, the Government and religious leaders recognised the important contribution of RE to developing respect and a sensitivity towards others, especially those whose faith and beliefs were different from their own. This joint statement seemed to reinforce an exclusive attitude, accepting all those with 'faith' but not those without. The following excerpt from that statement displays this point "we believe that schools with a religious designation should teach not only their own faith but also an awareness of the tenets of other faiths."¹²⁴ Although it is worth noting that there is little indication that the statement is monitored or is binding.

The statement – in line with the NFRE – put forward that RE should promote discernment, thus enabling pupils to combat prejudice and contribute to community cohesion through learning about the faiths of others and naturally, their own.¹²⁵ However while many religious schools do teach some aspects of other faiths, there is no legal requirement for them to do so. And because RE sits outside the National Curriculum, it is extremely difficult to monitor this situation, as the Runnymede Trust has noted.¹²⁶

In the NFRE, it was recommended that pupils of all ages should also learn about and from secular philosophies, including Humanism, and a much wider range of religious traditions such as the Baha'i faith, Jainism and Zoroastrianism. A more inclusive RE curriculum would "ensure that all pupils' voices are heard and the religious education curriculum is broad and balanced".¹²⁷

¹²² Circular 1/94, DFE, bans humanist representatives from full membership of SACREs and ASCs, though almost half of SACREs have humanists as either co-opted or observer members and about 10 ignore the guidance and have them as full members.

¹²³ Qualifications and Curriculum Authority (QCA) & Department for Education and Skills (DfES), The Non-statutory National Framework for Religious Education, London, QCA, (2004)

¹²⁴ See The Importance of Religious Education: Joint Statement <http://www.cofe.anglican.org/news/pr2106b.html>

¹²⁵ DCSF, Faith in the system, 2006.

¹²⁶ Runnymede Trust, Right to divide, (2008)

¹²⁷ Qualifications and Curriculum Authority (QCA) & Department for Education and Skills The Non-statutory National Framework for Religious Education, London, 2004, p.12

Given that since the 1988 Education Act, LAs, ASCs and SACREs have had a statutory duty to ensure that RE is of a broadly Christian nature across all four key stages of the RE curriculum, the inclusion of non-religious philosophical beliefs was seen as a significant innovation. But the situation remains that each individual ASC still has the power to determine its own statutory syllabus for RE, thus including and excluding as it sees fit. The situation is made even less clear by the fact that the QCA does not know how many locally agreed syllabuses have or are likely to broaden their curricula to incorporate either minority religions or non-religious philosophical beliefs.

Having analysed a sample of ten locally agreed Agreed Syllabuses (see Section 6.6), we find that the picture is at best unclear. Thurrock's Agreed Syllabus, for example, acknowledges that the majority of pupils in schools do not come from overtly religious families and that the teaching of "secular humanism" provides students with a real opportunity to "clarify their own beliefs, values and attitudes. . . in their own quests for identity, meaning and purpose",¹²⁸ but this is certainly an exception.

Interviews with SACRE members in Westminster suggest that Humanism only features in RE at Key Stage 3 in its Agreed Syllabus while in Sandwell, the only reference to minority religions and non-religious philosophical beliefs is that 'schools may also plan work about other religions (e.g. Baha'i, Jains, Rastafarians) and non-religious ethical life-stances (e.g. Humanism) as appropriate'.¹²⁹ This same minimal and piecemeal approach was reflected in the other Agreed Syllabuses too.

Other research would seem to support this. Jacqueline Watson,¹³⁰ for example, found that while there was "some" reference to secular philosophies such as Humanism in 81% of Agreed Syllabuses, on only a few occasions was this anything more than merely "tokenistic". Humanism in particular was identified as being compulsory in only 5% of syllabuses and in only one across all the key stages. Rarely were Humanism or other non-religious beliefs included in GCSE courses. Highlighting the need for a more consistent and quality-driven approach to RE, OFSTED has been extremely damning of the way SACREs undertake their task, stating:

All agreed syllabuses seen meet statutory requirements, but their quality varied considerably. Very few syllabuses seen were of high enough quality throughout to make a consistently sound basis for good planning, teaching, learning and assessment.¹³¹

A new approach is surely needed that reflects the NFRE as a bare minimum.

If OFSTED's charges of inconsistency and poor quality are to be addressed, the obvious step would be for community school RE to be incorporated into the National Curriculum – rather than leaving it in the unregulated Basic Curriculum – and thereby to introduce a national syllabus in place of the multiplicity of locally agreed syllabuses. This should ensure that pupils learned not only about a range of religions in addition to Christianity but also about the non-religious beliefs found in society. It would also ensure that agreed standards were adhered to, so helping to break down barriers that could potentially reinforce segregation and divide communities. However, it would not address the issue of VA religious schools which can devise their own RE syllabuses.

As the Association of Teachers and Lecturers (ATL) proposes in its position paper, a standard should be established where all schools – whether religious or not – are subject to the same requirements, expectations and inspections when it comes to RE.¹³²

¹²⁸ Thurrock SACRE, *The Agreed Syllabus for Religious Education in Thurrock*, 2004

¹²⁹ Sandwell SACRE, *The Agreed Syllabus for RE in Sandwell*, 2005, p.25

¹³⁰ Watson, J., *Humanism in Agreed Syllabuses for Religious Education A Report to the British Humanist Association*, University of East Anglia, (2007)

¹³¹ Runnymede Trust, *Right to divide*, (2008), p.33

¹³² ATL, *ATL Position Paper on Faith Schools*, ATL, (2007), p.4

6.5 Religious Education

As stated above, the 1944 Act made religious instruction and school worship legal requirements. Over the years religious instruction developed into a broader topic of religious education and the 1988 Act, for the first time, acknowledged that non-Christian religions might have a place in it, although the Act emphasises that Christianity should occupy the main place. Very slowly moves have been taken towards inclusion of non-religious beliefs, though Humanism first appeared in a syllabus in the late 60's and early 70's.

The Government does respect the long-held right of parents to withdraw their children from RE and acts of collective worship, if they so wish. Indeed, such an opt-out clause would seem to reflect Article 2 of Protocol 1 of the ECHR and the need to respect the right of parents to ensure that their children's education and teaching is undertaken in conformity with their own religious and philosophical convictions.

In spite of this, questions remain about the extent to which the rights of the child are taken into account as regards religious schools, the teaching of RE and participation in acts of collective worship. In terms of the right to withdrawal, a pupil cannot make this decision for themselves – not at least until they reach Year 12 – but have to rely on their parents to make such decisions. The young are often critical of the amount and representation of religion in schools; for example, only 16% of pupils like school assemblies, 41% dislike them, and 55% thought they should be able to choose whether to attend.¹³³ Denying young people the right of withdrawal would seem to sit in contention with human rights principles, as well as going against some aspects of the 'Every Child Matters' agenda and the five outcomes for children and young people that were given legal force in the Children Act 2004.¹³⁴

6.6 Collective Worship

All maintained schools are required to have a daily act of collective worship. In non-religious schools, this must be wholly or mainly of a broadly Christian nature. In religious schools however, collective worship may be in accordance with the tenets and practices of the religious identity of the school.

In addition to its advisory role, a SACRE has a further responsibility in relation to collective worship: it must consider requests from schools to lift the legal requirement to hold an act of collective worship of a "broadly Christian" character – typically, these requests come from schools with a large number of pupils from non-Christian religious backgrounds. If the SACRE agrees, then the school is granted a 'determination' for five years after which it can reapply. In all that they do, SACREs are to try and ensure that their work reflects the religious make-up of an area.

The Government states that such a collective act contributes to the spiritual, social, moral and cultural development of children and to the greater exploration of social and moral issues and their own beliefs.¹³⁵ It adds that where appropriate, alternative activities that pursue similar objectives and nurture students' spiritual, moral, social and cultural development can also be encouraged. Given this, it would seem sensible to re-examine the 1988 Education Reform Act requirement that acts of collective worship be 'wholly or mainly of a Christian character'. Compulsory worship in schools is incompatible with freedom of 'religion or belief'. A more inclusive approach should be recommended.

¹³³ Economic and Social Research Council, *Children 5-16 Research Briefing: Civil Rights in Schools*, ESCR, 1999

¹³⁴ NUT, *In good faith*, (2007)

¹³⁵ DCSF, *Faith in the System*, p.10.

In any case, findings from inspections of collective acts of worship tend to suggest that there is, in practice, a significant degree of non-compliance in schools with the legal requirement for a collective act of worship. OFSTED surveys have highlighted the fact that only approximately a quarter of secondary schools actually hold a daily act of collective worship as required by law and that collective worship often fails to meet the requirements of the Education Reform Act.¹³⁶ It might therefore be argued that the current situation regarding worship in schools also represents something of a missed opportunity. A more inclusive approach coupled with appropriate alternative activities could be used to explore and reinforce other key areas of socialisation and civic education, such as the Citizenship agenda, for example.¹³⁷

6.7 Review of Agreed Syllabuses

Since the 1988 Education Act, LAs have had a statutory duty to ensure that RE is of a broadly Christian nature across all four key stages of the RE curriculum. However, further guidance since the introduction to the Act in the form of the Non-statutory National Framework for Religious Education (NFRE)¹³⁸ has recommended that LAs – via the SACRE – include a wider range of religions in locally Agreed Syllabuses as well as non-religious philosophical beliefs. What was seen as a welcome innovation however has been seen by many as difficult to monitor:

A detailed analysis of ten locally Agreed Syllabuses highlights this very point. In the Agreed Syllabus of Somerset & North Somerset, employing an approach that seeks to explore ‘Awareness, Mystery and Value’, very little mention – if indeed any – is made to non-religious philosophical beliefs. In its ‘Requirements for Coverage of Religions’, each Key Stage is identified as needing to offer an overview and exploration of Christianity in line with the legal requirements. The ‘Requirements’ also identify the need to explore one or more other ‘religions’. Nowhere however are minority religions or non-religious beliefs mentioned.¹³⁹

For the East Sussex Agreed Syllabus, under the section ‘The Number and Balance of Religions to be Studied’ the Syllabus notes that:

in the small amount of time available for RE, it is not possible to cover all six major world religions in depth...’ it adds ‘...Tokenism should be avoided

Yet under a further heading – ‘Other World Views’ – it notes that ‘schools may introduce other world views, if they judge this to be appropriate.’¹⁴⁰

A similar picture is replicated elsewhere, in Agreed Syllabuses for Liverpool and Sandwell amongst others, minority religions and non-religious philosophical beliefs receive scant attention with only partial recognition of their existence. For example, one states ‘schools may also plan work about other religions (eg Baha’i, Jains, Rastafari) and non-religious ethical life-stances (eg Humanism) as appropriate’.¹⁴¹ Across all the Agreed Syllabuses, the impetus to broaden the subject content of RE appears to be relatively vague and open to very broad interpretation. In Warwickshire, the explicit reference to the ‘religious content to be selected from the six major world religions’ leaves little room for interpretation or wider inclusion.¹⁴²

¹³⁶ OFSTED, *Secondary Education*, TSO, London, (1998)

¹³⁷ NASUWT, *Keeping the Faith*, NASUWT, (2008), p.9

¹³⁸ Qualifications and Curriculum Authority (QCA) & Department for Education and Skills, *The Non-statutory National Framework for Religious Education*, London, QCA, (2004)

¹³⁹ Somerset and North Somerset SACRE, *Somerset & North Somerset Agreed Syllabus for RE*, nd., p.51

¹⁴⁰ East Sussex SACRE, *East Sussex Agreed Syllabus for RE*, p.12.

¹⁴¹ Sandwell SACRE, *The Agreed Syllabus for RE in Sandwell*, (2005), p.25

¹⁴² Warwickshire Authority, *Quick guide: Statutory Requirement: Key Stage 4 amend Post-16*, (2005)

However, one Agreed Syllabus seems to go against the recommendations of the NFRE. In Birmingham, an explicit statement is included at the outset of the 2007 Summary RE syllabus:

Religious Education confines itself to the contribution that faith and religious traditions alone may bring, i.e. Religious Education does not seek to represent secular humanism and atheism.¹⁴⁵

The analysis here of the locally Agreed Syllabuses would seem to reflect the research undertaken by Watson previously. Whilst noting the findings from the Runnymede Trust's recent report that all Agreed Syllabuses seem to meet their statutory requirements but are nowhere near the standard required to ensure that RE is a consistently taught subject.¹⁴⁶

The widely different and at times disparate approaches taken by SACREs in putting together locally Agreed Syllabuses would seem to present very real challenges for RE teachers who are looking to promote or indeed adopt an inclusive approach to teaching. Despite recommendations and guidance from a range of organisations, the SACREs that develop, devise and oversee the implementation of the Agreed Syllabuses seem to be – at times – failing to reflect and incorporate the wide range of beliefs that exist in today's British society. Without a more consistent approach, and one where national guidelines and attainments can be monitored, it would seem that this situation will become increasingly confused. In many ways, this could go against the recommendations as well as the ethos of the NFRE that sought to raise the standards of RE teaching.

6.8 Religious Schools, Human Rights & Equality

The dual system of schools supported by religious institutions and organisations and those without a religious character has been at the heart of the educational system for well over a century. Government continues to support this dual system arguing that the role of religious schools supports notions of parental choice and reflects the changes occurring in today's society. It also argues that providing this dual system of education is not only popular with parents – of both those with and without adherence to any particular faith – but also goes some way towards discharging its responsibilities under Article 2 of Protocol 1 of the European Convention on Human Rights (ECHR) and the need to respect the right of parents to ensure that education and teaching provision conforms with their own religious and philosophical convictions.¹⁴⁷

The National Union of Teachers (NUT) has noted that it is vitally important that human rights and equalities legislation must fully apply in all schools, including religious schools, but notes in addition that:

- 'The rights of parents not to be exercised to the detriment of others';
- 'Recognition should be given to the rights of the child';
- 'The importance of universal application of equality legislation in all schools, including in faith schools should be emphasised; in particular, the importance of the promotion of equality on the basis of sexual orientation, gender, race and gender identity' – a principle that 'must also inform staff recruitment and [the promotion of equality regarding] disability in schools';

¹⁴³ Watson, J., *Humanism in Agreed Syllabuses for Religious Education a Report to the British Humanist Association*, University of East Anglia, (2007)

¹⁴⁴ Thurrock SACRE, *The Agreed Syllabus for Religious Education in Thurrock*, (2004), para. 1.6

¹⁴⁵ Birmingham SACRE, *Summary of the 2007 Birmingham Religious Education Syllabus*, (bold text as shown in the Agreed Syllabus), (2007)

¹⁴⁶ Runnymede Trust, *The Right to Divide...*, op. cit.

¹⁴⁷ DCSF, *Faith in the system*, (2006), p.3.

- ‘Human equality in all its dimensions should be affirmed and celebrated. The importance of working for the elimination of any faith-based homophobia, transphobia and institutionalised prejudice towards lesbian, gay, bisexual and transgender people is vital’;
- ‘Any calls by any religious leaders, seeking exemptions from equality legislation, and attempts to base this on the right to freedom of thought, conscience and religion... should be rejected’.¹⁴⁸

In principle, the Government appears to agree with this. Setting out a range of commitments that all schools – including religious and non-religious schools – are expected to meet, the DCSF has said:

All schools are expected to meet their legal requirements to promote a positive attitude to diversity of faith, race and ethnicity through every aspect of every pupil’s school experience... staff and governors will encourage pupils to respect their own and other faiths and beliefs in a way that promotes tolerance and harmony with those of other faiths and no faith.¹⁴⁹

The potential for this to conflict with specific religious teachings – on ‘gender’ differences, birth control, or homosexuality, for instance – is clear. And yet remarkably little evidence exists in relation to the ways in which religious schools understand and respond to issues of ‘gender’ and other forms of inequality.¹⁵⁰

6.9 Religious Schools & Cohesion

Religious schools are required – as indeed are all maintained schools – to promote community cohesion, a duty set out in the Education and Inspections Act 2006 which came into force in September 2007, and which forms part of the inspection reports undertaken by OFSTED for all schools.

A persistent charge made against religious schools is that they have the potential to damage community cohesion because they ‘segregate’ communities along lines of religion. Indeed, writing in its *Response to the Equalities Review Team* the British Humanist Association has made it clear that its own concerns regarding religious schools revolve around three key issues: their potential to discriminate against the non-religious; the potential for religious, ethnic and social ‘segregation’; and the ‘chimera’ of choice such schools present given the ‘huge extension in the number of families with no choice of school but a religious one’.¹⁵¹

Concerns regarding religious schools and cohesion have risen up the political agenda following inquiries into the disturbances in Bradford, Burnley and Oldham in the summer of 2001. One recurrent finding, highlighted particularly in the report of the Independent Review Team headed by Ted Cantele, was that the living of ‘parallel lives’ – segregation and separateness along the lines of ethnicity and religion – including in schooling, had played a direct role in the underlying causes of discontent.¹⁵² Sir Herman Ouseley’s report into the Bradford disturbances of the same year also noted that here was a ‘fear of confronting all white and/or all Muslim schools about their contribution, or rather lack of contribution, to social and racial integration’.¹⁵³

¹⁴⁸ NUT, *In good faith*, (2007), p.6.

¹⁴⁹ DCSF, *Faith in the system*, p.7.

¹⁵⁰ Runnymede Trust, *Right to divide*, 2008, p. 43

¹⁵¹ BHA, *Response to the Equalities Review Team*, (2005), p.28

¹⁵² Home Office, *Community Cohesion: A Report of the Independent Review Team*, Home Office (2001)

¹⁵³ Ouseley, H., *Community Pride not Prejudice: Making Diversity Work in Bradford*, Bradford Vision (2001), p.1.
<http://www.bradford2020.com/pride/report.pdf>.

The Association of Teachers and Lecturers (ATL) has also noted that higher levels of segregation are evident in local authorities with the highest number of religious schools, particularly those with restrictive admissions or curriculum.¹⁵⁴

6.10 Religious Schools & Admissions Policies

Evidence exists to indicate that where religious schools are their own admission authorities, they are ten times more likely to be unrepresentative of their surrounding communities, typically reflecting only one part of that community.¹⁵⁵

Given that so many religious schools have VA status – thus affording them greater control over governance, school admissions and the teaching of RE for instance – the issue of admissions becomes critical and pivots on whether religious schools see themselves as having a role in contributing to the education of all children in a community or only those who share a particular religious affiliation. This crucial distinction shapes the debate and also the ability of religious schools to contribute to community cohesion.

In a response to consultation by the Runnymede Trust,¹⁵⁶ the DCSF stated that for schools to promote community cohesion they should aim to be community-based and focused, taking into account the different ethnic, religious and non-religious and/or socio-economic groups that make up the local demographic. While some religious schools have sought to address this issue, many have been less forthcoming. The Catholic Church, for example, has said that it will only consider ‘the scope’ for new Catholic schools to admit pupils of other faiths, and no agreement has so far been reached with Jewish, Sikh, Greek Orthodox or Muslim schools. That being said, there are encouraging signs that voluntary aided schools are improving in this regard. Recent research found that more voluntary aided schools had an admissions criterion giving priority to children of ‘other faiths’ in 2008 than in 2001 (42% versus 23%).¹⁵⁷

Yet despite this, there would seem to be existing structures in place that might be able to facilitate and improve equal access to religious schools including the establishment of admissions forums and the need for ethnic monitoring amongst others. However, early research undertaken by the DCSF into the implementation of the Schools Admissions Code has highlighted that religious schools are disproportionately likely to have used practices deemed unfair, including asking about parents’ ability to contribute funds, refusing to admit children in care as a priority (despite legal obligations to do so), and refusing to admit children with ‘special needs’.¹⁵⁸

Taken overall, the picture is one where religious schools appear to be rather more exclusive than inclusive. The potential implication of this trend for community cohesion in local areas is yet to be explored fully.

¹⁵⁴ ATL Position Paper on Faith Schools, ATL, (2007)

¹⁵⁵ IPPR, School Admissions – Fair Choice for Parents and Pupils, (2007)

¹⁵⁶ Runnymede Trust, Right to divide, (2008), p. 47.

¹⁵⁷ See West, A., Barham, E., Hind, A., Secondary School Admissions in England: Policy and Practice, RISE, (2008) <http://www.risetrust.org.uk/Secondary.pdf>

¹⁵⁸ Quoted in the Independent Newspaper; Garner, R., Faith Schools: A Law unto themselves, Independent Newspaper, April 3rd, (2008) <http://www.independent.co.uk/news/education/education-news/faith-schools-a-law-unto-themselves-803978.html>

6.11 Religious Schools & 'Academic Achievement'

This comparative exclusiveness is particularly problematic given the higher academic results of religious schools. A recent Centre for Policy Studies (CPS) report states that religious schools account for almost two-thirds of the top 209 primary schools in the country, and of the 25 highest-attaining primary schools at Key Stage 2 in 2007, 15 were of a religious character.¹⁵⁹ Data from the 2007 National Curriculum tests in England in the same year also shows that 17 of the 25 top ranking schools were of a religious character.

Of course, as other research has noted, the higher academic standards in religious schools could have other causes than simply the alleged 'added value' of a 'faith-based' education. A study by the London School of Economics (LSE) in 2003 found that church and foundation schools were 25 times more likely to select pupils who will boost their league tables, adding that OFSTED inspectors were recorded as saying that, 'Selection, even on religious grounds, is likely to attract well-behaved children from stable backgrounds'.¹⁶⁰

Other research has shown that religious secondary schools take significantly fewer pupils with emotional, behavioural and physical difficulties than other state schools; that 17.1% of children at non-religious state secondary schools have special needs compared to 14.1% at their religious equivalent; and that 18.9% of children at non-religious state primary schools have special needs compared to 16% at their religious equivalent.¹⁶¹ Church of England and Catholic schools have also been found to take fewer children from deprived backgrounds.

Similarly, recent figures from the school census suggest that 11.5% of pupils attending religious schools are eligible for free school meals, compared to 15.7% of other schools.¹⁶²

In conclusion, the National Foundation for Educational Research (NFER) has argued that religious schools do well not because they have a particular approach to improving achievement, but because they control admissions and therefore attract more ambitious parents. Its analysis of 3,044 schools found no evidence to indicate that religious schools add more value than other state schools.¹⁶³ Whilst religious schools may achieve higher academic results, many of them have lower 'added value' in terms of the degree to which pupils improve.¹⁶⁴

There is an obvious danger here that religious schools are 'cherry picking' their student cohorts (or even without deliberately doing so, are ending up being selective in this way), and the potential for this to damage community cohesion is relatively unexplored.

¹⁵⁹ Odone, C., In *Bad Faith*, Centre for Policy Studies, London, (2008), p.8.

¹⁶⁰ *Times Educational Supplement*, September 24th,,(2004)

¹⁶¹ *TES*, 11 November 2005.

¹⁶² Wednesday, 25th February, 2009, written answer in House of Commons

¹⁶³ NFER, *The Impact of Specialist and Faith Schools on Performance*, LGA Research Report 28, (2002)

¹⁶⁴ See for example, Bolton, P., Gillie, C., *Faith Schools: Admission and Performance*, House of Commons Library, (2009) <http://www.parliament.uk/commons/lib/research/briefings/snsg-04405.pdf>

6.12 Religious Schools – a Privileged Position?

Religious schools receive up to 90% of the total capital costs of buildings and 100% of running costs from the state.¹⁶⁵ This would seem to unfairly privilege religious schools in that they are maintained and supported by the state while at the same time – especially those that are voluntary-aided, academy or the recently proposed ‘trust school’ status – retaining significant control over admissions, ethos, and the curriculum.

There is also a disproportionate provision of religious schools by Christian denominations, suggesting that not only are students with other ‘religions or beliefs’ disadvantaged, but that applications for their own schools from other minority religious communities will also continue to rise and that politically it will be difficult for Government, local or national, to refuse or reject these applications – even assuming it wanted to.

Included in the financial support that VA, academy and trust-type religious schools also receive from the state are teachers’ salaries. Specific statutory provisions also exist to enable governing bodies of VA religious schools to secure the religious character of the school when considering a teacher’s remuneration and/or promotion as well.¹⁶⁶ This is not a particularly new trend for the education sector, and conforms with the wide exemptions allowed in the Employment Regulations. Yet clearly the potential for discrimination against employees or prospective employees from other religions or none is large. Set against the backdrop of a relatively large ‘faith schools sector’ in this country, there is potential for substantial impairment of the overall career prospects for non-religious teachers.

6.13 Conclusion

Adopting a rights-based approach to religious education and religious schools will involve putting the pupil at the centre of this debate. The Government’s commitment to protecting the rights of children and reducing child poverty displays a willingness to adopt a similar rights based approach in other areas of children’s lives. Promoting the freedom to choose the nature of one’s own engagement with ‘religion or belief’ will be paramount. As will the longer term challenge of developing a more equitable education service, so that outcomes do not differ so widely according to the type of school one attends – be that religious school or not. Ensuring the pupils and parents have freedom of choice in this regard is critical.

Detailed recommendations, taken largely from more in-depth studies of these issues are included in Section 10.0.

¹⁶⁵ ATL, ATL Position paper, op. cit.

¹⁶⁶ DCSF, Faith in the system, 2008, p.12.

7.0 Conflicting Rights

This section covers the issue of conflicting rights and the competing needs and interests of different groups in society. Of all of the equality strands, it is arguably issues of 'religion or belief' that have received most attention in the media regarding this issue – from the refusal of adoption services to same sex couples on the grounds of religious belief, to the religious and ethnic profiling of potential terrorist suspects, to the forced closure of Gurpreet Kaur Bhatti's play, *Behzti*, to the historic twenty-year old fatwa issued against Salman Rushdie following publication of his novel *The Satanic Verses* in 1988.

Clearly, then, conflicts and competition between different groups in the exercise of 'rights' are not new. Yet inconsistencies in approaches to dealing with these conflicts appear in increasingly stark relief when set against the Government's desire to promote human rights for all and a shared notion of Britishness.

The main part of this section explores examples of conflicting rights in relation to 'religion or belief'. But first we explore the broader context within which those conflicting rights are debated and resolved.

7.1 Context

Community Cohesion

A number of studies have suggested a causal link between lack of social cohesion and levels of deprivation¹⁶⁷, and public policy is increasingly recognising deprivation, poverty and disaffection as 'cross cultural' conditions – the relatively low educational attainment levels of white British boys from deprived working class neighbourhoods, for example.

Yet in relation to community cohesion, 'remedies' targeted primarily at BME groups remain the norm (in the case of Muslim communities prompted at least in part by a desire to address religious radicalisation and extremism). The fact that some BME groups are much more likely to be affected by deprivation does of course help to legitimise such targeted approaches,¹⁶⁸ but failing to address and respond to the deprivation and inequality faced by *all groups* also runs the risk of driving some in the most deprived white working class communities into the arms of far-right political parties that are only too ready to exploit inter-communal tensions.¹⁶⁹

Multiculturalism

As has been noted elsewhere in this report, multiculturalist policies have not just influenced the way that social groups (including 'religion or belief' groups) have sought to secure public resources and gain social authority; to a large degree multiculturalist policies have been instrumental in *constructing* those responses as the norm. Relying heavily on the use of 'identity' (and on culturally delineated or 'ethnicised' need), social groups have lobbied for policies, public services and funding that will meet the needs of people with the same identity. Indeed, it might be argued that multiculturalism has created expectations amongst social groups that

¹⁶⁷ Afridi, A., *Cohesion and Deprivation*...op. cit.

¹⁶⁸ Letki, N., *Does Diversity Erode Social Cohesion? Social Capital and Race in British Neighbourhoods*, *Political Studies*, 56 (1), pp. 99–126

¹⁶⁹ Afridi, A., *Cohesion and Deprivation*...op. cit.

it is legitimate – necessary, even – to lobby for the needs of one’s ‘group’ without considering fully the impact this might have on other ‘groups’. As is now increasingly evident, this has made it much harder to resolve (and in some cases even discuss) issues that revolve around ‘competing disadvantage’, presenting barriers to compromise and entrenching and reinforcing difference.

The tendency of multicultural policies to value what Sen has termed ‘cultural conservatism’ (the often unchosen religious and cultural identities that derive from the community we are born into) as opposed to ‘cultural freedom’ (having the ability and permission to exercise choice in determining one’s cultural affiliations, practices and identity)¹⁷⁰ has the potential to reinforce ‘closed’ and static communities, rather than more open and fluid communities that enable personal and social mobility.

Legislation and Single Equalities

The Discrimination Law Review and the Equalities Review both raised concerns about differential treatment on particular grounds of equality (noting the inconsistency in legal protection across different equality strands and varying progress in combating different types of inequality). The ‘harmonisation’ of equality law signalled by the Single Equality Bill is likely to involve extending the public sector duties to all equality strands, although the detail will be different for each strand. Similarly, the Equalities Review recommended that an equalities scorecard be used to monitor progress in key human rights and freedoms across all grounds of equality. Given these developments it would seem that the time is ripe for wider public debate informed by human rights principles about the kinds of freedoms we as a society should be protecting irrespective of background.

Some commentators have already made a related point in arguing for the inclusion of a ‘purpose clause’ in the new Single Equalities Bill to ensure that human rights principles are considered fully in the application of equalities law.¹⁷¹

7.2 Examples of Conflicting Rights

‘Conflicting rights’ is a broad term. In the context of this report it has a two-fold meaning: (a) conflicts that exist between the rights of more than one group as protected in equality laws (e.g. through exemptions in equality law), and (b) conflicts that arise when freedom of religion or belief conflicts with other people’s rights to things not covered in equality law (e.g. freedom of expression).

Occasionally equality law has recognised these potential conflicts and legislated accordingly (e.g. inclusion of exemptions in the Equality Employment (Sexual Orientation) Regulations 2003). On other occasions approaches to resolving conflicts on grounds of equality are less clear cut in the law.

Often conflicts of this type are resolved by resort to the law, and the following brief selection of legal cases demonstrates some of these conflicts. The final example, whilst not a legal one, demonstrates a common approach by public authorities to conflicts of this type.

¹⁷⁰ Sen, A., *Identity and Violence: The Illusion of Destiny*, Penguin, London, (2006)

¹⁷¹ Malik, M., *From Conflict to Cohesion: Competing Interests and Conflicts in Equality Law and Policy*, EDF, London, (2008)

Blasphemy

Until only recently it was illegal to produce any publication which contains 'any contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ or the Bible, or the formularies of the Church of England as by the law established.'¹⁷² As recently as 1991, it was ruled that 'blasphemy is limited to the protection of the Christian religion, and specifically to the doctrines of the established church.'¹⁷³

Yet in 2003 a House of Lords Select Committee Report stated 'it is our view that prosecution for blasphemy today is likely to fail on grounds either of discrimination or denial of the right to freedom of expression.'¹⁷⁴

At a European level there is still significant uncertainty regarding when artistic expression, for example, should be limited in favour of religious freedom. As the Otto-Preminger Institute v Austria case found, artistic freedom can be 'necessarily limited by the rights of others to freedom of religion and by the duty of the State to safeguard a society based on order and tolerance.'¹⁷⁵ This case concluded that limitations on freedom of speech may be justifiable provided they are 'proportionate'.

Despite this, the court did not define in detail what proportionality would look like in this context: '... it is not possible to arrive at a comprehensive definition of what constitutes a permissible interference with the exercise of the right of freedom of expression, where such expression is directed against the religious feelings of others. A certain **margin of appreciation** is therefore to be left to the national authorities in assessing the existence of the necessity of such interference.'¹⁷⁶

Gay Adoption

In McKlintock v Department of Constitutional Affairs¹⁷⁷ a magistrate had refused to place adopted children with same sex couples on grounds of his religious beliefs. The tribunal ruled that the law should be applied in relation to the judicial oath he took and that he had not honoured that oath in refusing to place with same sex couples. The tribunal maintained that its ruling did not constitute discrimination based upon his beliefs.

Religious Dress

ECHR R(SB) v Denbigh High School¹⁷⁸ involved the case of a pupil who refused to attend her school for three years as school uniform policy did not allow her to wear the jilbab. Following a number of hearings and appeals, the Court ruled in favour of the school. HL Lord Hoffman asserted, 'Article 9 [the right to 'religion or belief'] does not require that one should be allowed to manifest one's religion at any time and place of one's choosing.'¹⁷⁹

Smacking Children

Williamson v Secretary of State for Education¹⁸⁰ involved an assertion on the part of parents on the basis of their religious beliefs that they should be permitted to smack their children. This was judged as disproportionate and right to 'religion or belief' had to give way to the rights of the child and legislation which prohibited smacking.

¹⁷² Garcia Oliva, J., 'The legal protection of believers and beliefs in the United Kingdom', in 'Ecclesiastical law journal', EECLJUK69, (2007)

¹⁷³ [1991] 1 QB 429

¹⁷⁴ House of Lords Select Committee on Religious Offences, First Report for 2002-3, Chapter 3

¹⁷⁵ [1995] 19 EHRR 34

¹⁷⁶ Id. para 50

¹⁷⁷ [2008] IRLR 29

¹⁷⁸ [2007] 1 AC 100

¹⁷⁹ Id. Para. 50

¹⁸⁰ [2005] 2 AC 246

School Admissions

In the case of *R (E) v The Governing Body of JFS and Others*¹⁸¹ an orthodox Jew claimed that oversubscription criteria at JFS, which gave priority to admitting the children of Jewish mothers (of which his child was not) was racially discriminatory. All claims were dismissed in relation to the discriminatory nature of religious entry requirements, apart from the claim under section 71 of the RRA. As Munby J noted, 'it is important to realise that reliance upon religious beliefs, however conscientious the belief and however ancient and respectable the religion, can never itself immunise the believer from the reach of the secular law. And invocation of religious beliefs does not necessarily provide a defence to what is otherwise a valid claim. Some cultural beliefs and practices are simply treated by the law as going beyond the pale.'

Exemptions in Equality Law

With reference to the use of exemptions in equality law, specific concerns have been raised regarding exemptions in the Employment Equality (Sexual Orientation) Regulations 2003 (referred to in Section 3). In the *Amicus* case¹⁸² which challenged whether the regulations adequately transposed the EU directive on which they were based, it was claimed that this element of the Regulations was incompatible with particular rights in the ECHR (namely the right to privacy and right to non-discrimination). It was ruled that in fact the Regulations were compatible and struck a legitimate balance, given that determining a General Occupational Requirement (GOR) in relation to 'religion or belief' equality legislation is a stringent test and will only be awarded on exceptional occasions.

Proportionality

That being said, there have been a number of recent cases that have registered the need to be much clearer about the analysis of GOR decisions, using principles of proportionality more closely. For example, the ruling on *Hardys and Hansons v Lax*¹⁸³ in relation to sex discrimination included expanded guidance on the application of proportionality in making decisions of this type.

There have been similar discussions in courts in relation to how to apply proportionality regarding decisions to discriminate on grounds of 'religion or belief'. The most notable of these is probably *London Borough of Islington v Miss L Ladele*. At employment tribunal it was found that she (a registrar) had been discriminated against and harassed on the basis of her 'religion or belief' because her employer required her to conduct civil partnership services. A subsequent appeal found in favour of the employer:

The question is whether what the council did was a proportionate means of achieving a legitimate aim. This has nothing to do with balancing the rights of one section of the community against another. If one applied the principles of proportionality in a proper way, requiring staff to act in a non discriminatory manner was entirely rationally connected with the legitimate objective. The council were also entitled to take the view that it would be wrong to allow registrars to pick and choose whether or not to carry out their obligations, depending on their religious views, and it would send the wrong message to staff of the council about its commitment to equality.¹⁸⁴

¹⁸¹ [2008] EWHC 1535, 1536

¹⁸² *R (on application of Amicus-MSF section) v Sec State for Trade and Industry* [2004] IRLR 430 HC (genuine occupational requirements)

¹⁸³ IRLR 726 para.33 Pill LJ

¹⁸⁴ [2008] UKEAT/0453/08, Para.100

...it would be wrong for the employers to accommodate the claimant and thereby lend support to discrimination which the law forbids. This is particularly so given that the council itself is under a legal duty to provide its services without discrimination on the grounds of sexual orientation. Parliament has in certain areas permitted religious beliefs to take priority over the claims of those who seek not to be discriminated against on the grounds of sexual orientation.¹⁸⁵

Yet when considering the resolution of conflicting rights *outside* of the courts, we rarely see this type or level of human rights analysis – largely, it might be argued, because in such ‘real life’ scenarios there is an absence of a viable means of discussion and mediation. This is exemplified by the *Behzti* affair, when sections of the Sikh community rioted, forcing the closure of Gurpeet Kaur Bhatti’s play, *Behzti* (‘Dishonour’), in Birmingham during December 2004. A human rights approach could offer a framework to dissect and understand the freedoms at stake in situations like these.

7.3 Conclusion

Recommendations for improving legal resolution of conflicts of this type have been outlined elsewhere in some detail.¹⁸⁶ In particular the call to include a ‘purpose clause’ in the new Single Equalities Bill in relation to human rights is seen as a way to help improve the complex and at times inconsistent framework in which constitutional and statutory discrimination law principles are exercised in the courts. However, inclusion of this is unlikely to happen.

The same report outlines the importance of developing new policy responses and approaches to group representation to help resolve conflicts of this type. As Malik notes, ‘In some situations, it may be appropriate to have a more wide ranging debate that allows greater public participation about the appropriate balance between conflicting equality groups or between equality and other human rights.’ Malik suggests that this could be achieved by ensuring more equitable forms of engagement that recognise the dynamic nature of cultural and religious identity. She also suggests that for some conflicts, it ‘could be possible to give greater powers of investigation and supervision to Parliament or to local assemblies.’ A useful example she cites is monitoring the impact of exercising the exemption (Regulation 7) in relation to ‘religion or belief’ in the Sexual Orientation Regulations.

Yet if approaches of this type are to be exercised outside the courts, by local authority officers mediating public meetings for example, those staff will need training and support. More detailed recommendations are contained in Section 10.0.

¹⁸⁵ [2008] UKEAT/0453/08, Para. 104

¹⁸⁶ Malik, M., *From Conflict to...* op. cit.

8.0 Public Service Delivery

8.1 Wider Context

The Government's current emphasis on faith organisations is also part of broader policy objectives which include third sector public service delivery, the 'third sector commissioning' agenda, and the potential for diversification in public service delivery to help bring about public service reform.¹⁸⁷ That being said, there are a number of reports that have emphasised the unique nature of faith-based third sector work to improve the lives of local people. For example, in *Moral, but No Compass*, Francis David challenges a common perception that the importance of Churches are on the decline by suggesting that in actual fact the 'Church of England is the country's largest voluntary organisation'.¹⁸⁸

Assumptions about the coherence of the 'faith sector' and its potential contribution to public service delivery have not gone unchallenged. For example, a report about the Faith Communities Capacity Building Fund suggested that 'faith groups' should be seen as part of the voluntary and community sector and not separate from it.¹⁸⁹ Questions have also been raised regarding the lack of an evidence-base to demonstrate the added value of faith-based voluntary organisations' services.¹⁹⁰ The BHA itself has also noted that the awarding of contracts to religious organisations is happening despite the tendency of some to discriminate in their employment practices and to provide services in a distinctly religious way, which may infringe the rights of others in receipt of those services.¹⁹¹

The indications are, however, that the Government is firmly committed to recognising the 'faith sector' as a distinct partner in delivering public services. This is demonstrated most recently in *Face to Face, Side by Side* and *Communities in Control* and is consistent with previous Government policy.

And yet it is still extremely difficult to analyse the scope of funding for or service commissioning from 'faith-based' voluntary and community organisations. This reflects an overall paucity of monitoring data being gathered by public purchasers about the types of third sector organisations they are commissioning to deliver public services. This is true across a wide range of purchasers and funders, as a recent report commissioned by the Finance Hub found.¹⁹²

¹⁸⁷ Home Office, *Working Together*, (2004) and National Audit Office, 'Working with the Third Sector', (2005)

¹⁸⁸ Davis, F., *Moral, No Compass...*, Von Hugel Institute, (2008)

¹⁸⁹ Malcolm, J., *Faith, Cohesion and Community Development*, An evaluation report from the Faith Communities Capacity Building Fund, Community Development Foundation and Communities and Local Government, (2007), p. 69

¹⁹⁰ Even in reports that have emphasised the importance of faith-based contributions to service delivery, a lack of evidence of impact has been noted. For example in Davis, F., *Moral, No Compass...* op. cit., he calls for funding to develop a serious faith-based evidence strand in the Cabinet Office's new third sector research centre to help demonstrate the impact of faith based organisations' work.

¹⁹¹ BHA, *Quality and Equality...*, op. cit.

¹⁹² Brap, *Intelligent Funding: From Vision to Reality*, Finance Hub, London, 2007

8.2 Key Issues

What is the added value of the ‘faith sector’?

The NCVO sought to address this question in its report, *Faith and voluntary action: an overview of current evidence and debates*, suggesting that the Government is predisposed to closer relationships with faith organisations because:

- *Values*: Government sees faith communities as places where social values are prevalent – they are vital for initiating social action and civic mobilisation.
- *Black and minority ethnic communities*: The Government sees faith communities as a main point of access to, and a means of engaging with, people from BME communities.
- *Resources*: Faith communities are able to command and contribute human and material resources.
- *Community cohesion and integration*: The Government sees the ‘faith sector’ as having a significant role in the promotion of community cohesion.¹⁹³

But despite this, a stronger evidence base is needed to demonstrate the impact of third sector organisations – including religious organisations – in public service delivery.¹⁹⁴

Evidence of Discrimination in public service delivery

A recent NCVO report acknowledges that there are questions regarding both the ability and willingness of third sector faith organisations to commit to and provide universal service provision, and their compliance with equalities legislation.¹⁹⁵

The BHA Report *Quality and Equality* also outlines some of the risks associated with the growing role of religious organisations in public service delivery. The report suggests that ‘there is little or no evidence that better outcomes result from service delivery by religious organisations – and that actually there is evidence to the contrary’ (citing the above NCVO report and an earlier report from the Public and Commercial Services Union¹⁹⁶). Specifically the report outlines seven main areas of concern which are summarised below:

- *Doubts about the perceived legitimacy and acceptability to users of public services contracted to religious organisations*

Need for religious organisations (and indeed other third sector organisations) to make convincing, evidence-based arguments about their representation of particular groups, and their ability to meet the needs of those groups.

¹⁹³ NCVO, *Faith and voluntary action: an overview of current evidence and debates*, NCVO, 2007

¹⁹⁴ “The central claim made by the Government, and by advocates of a greater role for the sector in service delivery, is that third sector organisations can deliver services in distinctive ways which will improve outcomes for service users. We were unable to corroborate that claim. Too much of the discussion is still hypothetical or anecdotal. Although we received a great volume of response to our call for evidence, much of it admitted that the evidence was simply not available by which to judge the merits of government policy.” From the summary, Eleventh Report of Session 2007–08, Public Administration Select Committee: *Public Services and the Third Sector: Rhetoric and Reality* (June 2008) <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/112/112.pdf>

¹⁹⁵ NCVO & The Commission for Rural Communities, *Faith in the community: the contribution of faith-based organisations to rural voluntary action*, (2007), p.20

¹⁹⁶ Public and Commercial Services Union (PCS), *Third Sector Provision of Employment-Related Services*. London: PCS, 2006

- *The risk of ‘parallel services’*

Risk that by continuing a trend of providing specialist services for particular religious groups, less focus will be placed on improving the equality and accessibility of mainstream public services for religious or belief groups.

- *The risk of discrimination against employees and potential employees*

Risk that specific exemptions in equality law are often interpreted too widely which leaves some employees at risk of discrimination on the basis of their ‘religion or belief’.

- *The risk of lower standards of service*

Risk that if staff are employed on the basis of their religion, as opposed to specific skills to deliver services, then that might have a detrimental effect on the standard of services provided.

- *The risk of discrimination against service users*

Concern that there is little regulation to ensure that religious organisations do not discriminate against those with particular ‘religions or beliefs’ when providing services (with associated risks of potential harassment or proselytising).

- *The risk of artificially boosting religious organisations with public money and the question of accountability*

Concern that religious groups delivering public services might use the role and resources as an opportunity to build their capacity to promote their own religion.

- *Lack of human rights protection*

There is a limited definition of the term ‘public authority’ in relation to application of the Human Rights Act (referring only to a small range of private and third sector suppliers of public services). This means that many contracted organisations (religious organisations included) are not subject to the Human Rights Act in their delivery of public services.

The research for this project uncovered little evidence that this issue is being monitored by public service commissioners through the contract monitoring process (see the case study below). Limited research¹⁹⁷ carried out by the Equality Network Scotland – a lesbian, gay, bisexual and transgender rights and equalities charity – shows that not only is there a fear amongst some LGBT service-users about accessing public services from religious organisations but that some service users have experienced discrimination on the basis of their sexual orientation.

This discrimination was understood by the users to have been motivated by the view taken of homosexuality and same sex partnerships by certain religions. Some respondents noted that services were ‘openly hostile to what they termed as “alternative lifestyles”’ and ‘very homophobic, judgemental’. Another respondent was ‘told by project volunteers that homosexuality was wrong, sick, evil’.

While it should be emphasised that all organisations have the potential to display homophobia and transphobia, the respondents in this Scottish survey clearly considered there to be a strong link between the prejudice they had experienced and the religious character of the service providers approached.

¹⁹⁷ Equality Network, Survey on faith-based providers, nd.
<http://www.equality-network.org/Equality/website.nsf/home?OpenForm>

Cohesion

A particular issue worth noting is the apparent inconsistency of Government policy-making in this area. While the Government accepted COIC's recommendation that they should 'strengthen their [faith groups'] engagement with the process of policy development and implementation',¹⁹⁸ this seems somewhat contradictory given the recognition given by both the COIC and CLG to the potential problems associated with funding on the basis of a 'single identity'.¹⁹⁹

Given that the consultation by the CLG identified that funding should be driven by the local context and the specific needs of that locality, there is the possibility that where local authorities are seen to be funding the faith sector this could be understood as either favouring or privileging faith. This could lead to divisions between religious groups and other belief groups and a range of VCS organisations with related reductions in levels of cohesion.

'Faith-sector' concerns about public service delivery

The Faith Based Regeneration Network noted how the drive towards greater public service delivery has brought about concerns that the independence of faith groups might be compromised. Elsewhere there has been a sense of cynicism amongst some faith groups suggesting that local authorities and other commissioners are willing to fund them as a means of claiming some 'grass roots legitimacy' without ever actually engaging with their values and practices.²⁰⁰ A report by the Economic Social and Research Council noted even more hostile responses from some faith-based organisations – 'The Government... They'll fund us if we don't do anything religious with the money'²⁰¹ – which does tend to reinforce concerns about religious groups being prone to use public funding for evangelism or proselytising.

Indeed, various church networks have noted that negative public perceptions of religious proselytising are problematic and that faith organisations may as a consequence be disadvantaged because of deeply entrenched stereotypes, perhaps especially amongst those who have had negative personal experiences of organised religion.²⁰²

It should also be emphasised that few if any of the local authority representatives surveyed as part of this work were aware of any monitoring undertaken by their organisation which related specifically to the 'religion or belief' strand of equalities either in terms of discrimination or of service delivery.

¹⁹⁸ COIC, *Our Shared Future...* op. cit., p. 87

¹⁹⁹ CLG, *Cohesion Guidance for Funders*, CLG, (2008)

²⁰⁰ ESRC, *Faith-based voluntary action: ESRC Seminar Series Mapping the public policy landscape*, (2006), p.6.

²⁰¹ ESRC, *Faith-based...* op. cit.

²⁰² London Churches Group for Social Action, *Regenerating London: faith communities and social action*, (2002) and WMFF, *West Midlands Faith Forum Engagement Strategy*, (2007)

Case Study: Public Service Delivery

(drawing on an interview with a Local Authority Commissioning Officer)

In 2005, the then Prime Minister Tony Blair told an audience of faith representatives: “I would like to see [faith communities] play a bigger not a lesser role in the future. I say this because of the visible, tangible difference they are making for the better in our society for so many people. That is the proof of faith in action in the service of others.” But perceptions at the interface between faith organisations and local authority commissioning are rather different. As one interviewee put it: “We do fund faith groups but they get funded because of who they are not because of their religion...”

There is a different perspective too on whether faith organisations deliver value for money: “Sometimes it’s difficult to see the value for money... Some [faith organisations] look as though they could do better or maybe don’t do enough. But it’s difficult to find the measures against which to monitor this. For example, one project that supports Muslim women is great but it’s also restrictive because it doesn’t really go beyond its own community.”

Could this be – as some critics have suggested – that faith organisations may not always offer a fully inclusive service? This interviewee said: “Some groups – despite being funded by us – are clearly not engaging with the wider community. This is the other side of the coin on funding faith organisations. Some are excluding because of the narrow focus that some from within the faith groups have of their own religion.” They also cited a further example: “We found that a lot of the new church groups that we were supporting weren’t making the necessary provision for disabled access as required under the Disability Discrimination Act. Many weren’t ensuring their services were fit for purpose and this brought about many, many heated debates between us and them.”

These issues are highlighted through the monitoring of services that the local authority fund: “In 2002/3 we introduced outcomes measures that all have to agree at the outset. We then visit some organisations to try and see the really visible, tangible evidence of the impact that they are making. The real problem is what to do with the information we get. We’re doing Equality Impact Assessments and yet we’re not sure what to do with the information. There’s no guidance that tells us this.”

Lack of guidance emerges as a key problem in other contexts too: “...if we ask the question, Are you ensuring equal access, or, Is all equalities legislation being upheld, and the organisation says ‘No’, there’s this real absence of any guidance about how to deal with those faith groups and organisations that don’t uphold their equalities requirements...”

Data regarding the total value of public service contracts held by faith organisations does not exist. When coupled with inadequate operational guidance, it is apparent that local authorities face a significant challenge in ensuring that services delivered by faith organisations are inclusive.

8.3 Conclusion

- a) More evidence is needed about the impact of third sector organisations on public service outcomes generally, and this is particularly true in relation to understanding the impact of religious organisations.
- b) Available research and evidence does not substantiate that discrimination in public services delivered by faith organisations is the common experience of all users, nor does that research fully explore the views of the providers of those services. The available evidence does, however, highlight a number of examples of discrimination and clearly demonstrates the potential for discrimination. Given that this clearly contravenes the purposes of public service delivery and equalities and human rights legislation, it is an issue that requires further investigation.
- c) Further research is needed regarding the impact that such discrimination is having on potential service users. Without substantial evidence, the fears that some people have about religious organisations and public service delivery will continue. In addition, clear guidance needs to be produced to ensure that faith-based organisations are certain of their role and responsibilities and that their legal responsibilities are fully understood.
- d) Public officials must develop effective approaches to monitoring the compliance of contracted 'religion or belief' based organisations with equality law.
- e) New approaches to ensuring equity in commissioning practice are being developed in a number of areas of public service delivery. A notable example is in the health sector. Following the Darzi report,²⁰³ commissioners are being encouraged to consider the interplay of a range of factors in determining the appropriateness of commissioned services and those organisations they choose to contract with. In particular commissioning should ensure services are: fair; personalised; effective; safe; locally accountable.²⁰⁴

More detailed recommendations are contained in Section 10.0.

²⁰³ DOH, Our NHS, Our Future: NHS Next Stage Review, (2007)

²⁰⁴ DOH, The Operating Framework for the NHS in England for 08-09, (2008), p.5

9.0 Employment

The most relevant employment legislation are the Employment Equality (Religion or Belief) Regulations 2003 which deals specifically with issues of discrimination on the basis of 'religion or belief'.

9.1 Tribunal Cases – 'Religion or Belief'

The number of employment tribunal cases covering discrimination on the grounds of 'religion or belief' has increased year by year since the introduction of the law in 2003. The following refers to cases that were accepted:

| Year | No. of cases |
|---------|--------------|
| 2003/04 | 70 |
| 2004/05 | 307 |
| 2005/06 | 486 |
| 2006/07 | 648 |

Source: Employment Tribunal and EAT Statistics (GB) – 1 April 2006 to 31 March 2007
<http://www.employmenttribunals.gov.uk/Documents/Publications/AnnualStatistics0607.pdf>

The success of those cases has not varied significantly over time (information is only currently available from 2005-07):

| Category | 2005/06 | | 2006/07 | |
|----------------------------------|---------|-----|---------|------|
| Juristictions disposed | 340 | | 498 | 100% |
| Withdrawn | 119 | 35% | 167 | 34% |
| ACAS conciliated settlements | 126 | 37% | 176 | 35% |
| Struck Out (not at hearing) | 22 | 6% | 38 | 8% |
| Successful at tribunal | 9 | 3% | 12 | 2% |
| Dismissed at preliminary hearing | 18 | 5% | 31 | 6% |
| Unsuccessful at hearing | 45 | 13% | 69 | 14% |
| Default Judgment | 1 | 0% | 5 | 1 |

Source: Employment Tribunal and EAT Statistics (GB) – 1 April 2006 to 31 March 2007; ETS Annual Report and Accounts 2005/6; ETS Annual Report and Accounts 2004/5

When compared with cases in other areas of equality law, the table indicates that a relatively large percentage of claims are not successful: for example 17% of sex discrimination cases were successful at tribunal in 2005-06 compared with 3% of 'religion or belief' cases.

While this may relate to the relative novelty of law on 'religion or belief' discrimination, a number of other concerns have been raised about the application of 'religion or belief' law in the context of employment and these may be affecting the outcomes of tribunals.

9.2 Scope & Application of Employment Law – Key Issues

Concerns regarding the nature of employment exemptions to discrimination law are covered in some detail in section 3.0 of this report. However, it is also worth noting that there has been debate regarding the scope of employment law and application of the law in employment tribunals. Some of the key issues are outlined below.

9.2.1 Definition of 'Religion or Belief'

The definition of 'religion or belief' in the 2003 Regulations was amended in the 2006 Equality Act²⁰⁵ to 'religion or belief' to ensure the Regulations covered 'any religion and any religious or philosophical belief'. These revisions also made it clear that a lack of any particular 'religion or belief' was afforded protection as was protection from discrimination that arises because of the 'religion or belief' of someone with whom a person might associate, such as spouses or partners.

There have been a number of challenges to this and other definitions. For example, in the case of Williams v South Central²⁰⁶ where the claimant – a US citizen – refused to remove a flag pinned to his waistcoat. The claimant argued that he had been discriminated against on the basis of the conviction of his beliefs as a patriotic American. The claim was rejected. The case of Devine v Home Office saw the claimant argue that his sympathies with asylum seekers had led to his dismissal. As with Williams, this too was rejected by an employment tribunal.

In these and other cases, the courts have sought to establish a distinguishing line between what constitutes a belief for the purposes of the law and what constitutes a belief in terms of personal understanding. In doing so, some controversy has arisen. This is particularly true of the ongoing refusal by the Charity Commission to accept the Church of Scientology as a religion.²⁰⁷

Unsurprisingly, the lack of clarity has affected those who have tried to offer guidance. For example, ACAS and the Department of Trade and Industry (DTI) do not agree. ACAS states that:

The Regulations cover religion, religious belief and similar philosophical beliefs. Until the Courts and Tribunals have had an opportunity to consider which religions or beliefs are covered by these Regulations, it is not possible to provide definitive guidance. However, those listed below are some of the most commonly practised religions and beliefs in Britain. They are listed in alphabetical order for ease of reference only. However, there are many more and this list should not be considered to be exhaustive.²⁰⁸

²⁰⁵ S.44 (a),(b),(c),(d) Equality Act 2006 ch.3

²⁰⁶ Williams v South Central Limited ET, Case Number: 2306989/2003 (16 June 2004)

²⁰⁷ The full case including the detailed responses of the Charity Commissioners can be explored at <http://www.charitycommission.gov.uk/Library/registration/pdfs/cosfulldoc.pdf> and <http://www.charity-commission.gov.uk/Library/registration/pdfs/cosdecsum.pdf>

²⁰⁸ ACAS, Religion or Belief and the Workplace – A Guide for Employers and Employees, (2004), Appendix 2

The DTI however offered the following:

The reference to 'religious belief' is also a broad one, in line with Article 9 ECHR. It may go further than simply a belief about adherence to a religion or its central articles of faith. It may include other beliefs founded in a religion, if they attain a certain level of cogency, seriousness, cohesion and importance, provided the beliefs are worthy of respect in a democratic society and are not incompatible with human dignity.²⁰⁹

Furthermore the DTI issued guidance on what a philosophical belief might be, possibly with the intention of distinguishing beliefs such as Humanism or atheism from football or political ideologies for instance.²¹⁰ Consequently, the DTI's reference to 'similar philosophical belief' does not include any philosophical or political belief unless it is similar to a religious belief. A belief must therefore include faith in a supernatural 'god' or 'gods' or the worship of a supernatural 'god' or 'gods' for it to be considered 'similar' to a religious belief. It means that the belief in question should be a profound one that affects a person's way of life or perception of the world (worldview).

Effectively, the belief should occupy a place in the person's life parallel to that filled by the supernatural 'god' or 'gods' of those holding a particular religious belief. As with a religious belief, a similar philosophical belief must attain a certain level of cogency, seriousness, cohesion and importance, be worthy of respect in a democratic society, and not incompatible with human dignity.²¹¹

As well as predating the new definition of 'religion or belief' in the Equality Act, when read alongside developments in case law which have recommended a wide definition of 'belief', this guidance appears out of date. As well as updating the guidance to reflect these changes, further changes need to be made after the new Equality Bill has passed through Parliament.

9.2.2 Differential Application of the Proportionality Test

The legal situation, as it stands, leaves it open for the courts to employ a rational balancing of rights, the right to expression of 'religion or belief' is not absolute. And it is unsurprising that decisions regarding proportionality are made on a case-by-case basis because of the need to determine whether an organisation has sought to make reasonable adjustments and is pursuing a legitimate aim. Yet the range of judgements and the subjectivity involved in making decisions of this type arguably make it much harder for employment tribunals to apply consistent approaches to testing the proportionality of GORs.

The range of different organisational policies on this issue complicates matters further. For example, in 2007, it was widely reported that Sainsbury's was allowing Muslim employees who did not want to be involved in the sale of alcohol to opt out of certain duties.²¹² A spokesperson for the supermarket chain was quoted as saying at the time:

At the application stage we ask the relevant questions regarding any issues about handling different products and where we can we will try and accommodate any requirements people have, but it depends on the needs of the particular store.²¹³

²⁰⁹ DTI, Explanation of the provisions of the: Employment Equality (Sexual Orientation) Regulations 2003 and Employment Equality (Religion or Belief) Regulations 2003, (2003), (p.2)

²¹⁰ Ibid., para. 13

²¹¹ Ibid., p.2

²¹² 'The Sunday Times', 30 September 2007.

²¹³ <http://www.timesonline.co.uk/tol/news/uk/article2558198.ece>

In a similar instance last year, an Employment Tribunal heard how Mohammed Ahmed claimed not to have known that he would be required to move alcohol as part of his duties as a forklift truck driver working for Tesco.²¹⁴ He alleged that he was victimised because of his objection on religious grounds and was forced to leave. Tesco argued that the claimant was aware in his induction training that he would be transporting alcohol and that they made every effort to find alternative work in the warehouse.

After a three-day hearing, the Tribunal found that Tesco had not discriminated against the claimant. Following reports that Mr Ahmed was considering launching an appeal, one human resources website noted that ‘any decision by the Employment Appeal Tribunal would provide another interesting interpretation of this increasingly tested area of discrimination law’, not least because of the apparent inconsistency between competing companies and their quite different interpretation of the legislation.²¹⁵

The law in practice does not seem to offer clarity for either employees or employers and could therefore result in discrimination being perpetuated.

9.2.3 Concerns about Exemptions Regarding Employment

The TUC has a number of concerns about how the exemptions relating to a GOR (described in Section 3.0) are being applied, fearing that the narrowness and stringent tests for the exemptions are being overlooked by many organisations and companies with a religious ethos.

While this may well be true, the TUC is aware that it is something that trade union representatives do not seem to be highlighting as an issue. One reason for this might be that data relating to such instances does not appear to be recorded or monitored. Research undertaken for this project has revealed that there is little evidence to suggest that either the Employment Tribunals Service, the DTI or individual trade unions are doing this.

Following judicial review, the TUC sought legal clarification of the exemptions that apply as it felt that there did not appear to be any consistent consideration of proportionality given that the exemptions relating to ‘religion or belief’ are wider than other equality strand exemptions. It noted that the exemptions are so narrow for GDORs that they can only be applied where there is a specific religious need as in the case of a minister or imam for example. Yet the TUC has also noted a number of instances where these restrictions are being overlooked, citing for example a case where a contract required a belief in creationism duly quoting extracts from the ‘Old Testament’.²¹⁷

In addition to inconsistencies within the wording of the law itself, where tribunals have happened to resolve disputes regarding GORs, the TUC has warned that these are not always monitored closely. The lack of any coherent and comprehensive central monitoring of discrimination on the basis of ‘religion or belief’ or on the application and implementation of GORs is likely to have an impact upon a wide range of people, including those with no religion and those from minority religious groups.

²¹⁴ <http://news.bbc.co.uk/1/hi/england/derbyshire/7695950.stm>

²¹⁵ ExpertHR, <http://www.xperthr.co.uk/blogs/employment-intelligence/2008/10/tribunal-rejects-handling-alco.html>

²¹⁶ The Employment Tribunal Service does collate information and data but it requires to be requested rather than being readily available.

²¹⁷ Interview with a TUC representative (see case study)

Case Study: Employment

(from an interview with a TUC representative)

Whilst the GDOR in the Employment Equality (Religion or Belief) Regulations 2003 exemption is only likely to apply to very few jobs, some who advocate on behalf of employees believe that the exemptions provided by the GOR are being used by some employers to discriminate against those of different beliefs to themselves. This also includes those with no religious belief as well as those with different genders and sexual orientations.

“There is a real potential for problems around the issue of equalities particularly with the exemptions in existing equalities legislation for ‘religious groups’...” said one employment rights advocacy group. “At the moment though, it isn’t something that appears to be being flagged up by trade unions themselves.”

“Following the judicial review, we sought clarification of the exemptions as there didn’t appear to be any relevant consideration in relation to proportionality given that the exemptions for religion are worded quite differently to other equality strand exemptions” they went on. If the law is to be equitable and fair for all, then the exemptions could be counter-productive. As they add, “All exemptions should be brought into line and because of this the ‘religion or belief’ strand should be no different. It would send a clear message that there are no ‘special exemptions’ for anyone and that everyone – all groups and organisations - is required to uphold the law in exactly the same way.”

The employment rights advocacy group believes that some religious and faith-based organisations are unaware of this, preferring instead to apply exemptions on a wholesale basis: requiring all employees to hold the same views and beliefs as the employing organisation.

“We have evidence of the problem and it still exists. Job adverts and employment contracts continue to have completely untenable demands made in them. One contract was recently shown to have extracts from the Old Testament in it – requiring employees to believe in creationism”.

Consequently, many continue to have very real concerns about the potential for discrimination that currently exists under the exemptions allowed in the Employment Regulations. Given that few trade unions are recognising this and that no apparent monitoring is being undertaken around this issue, the scale and impact of the problem may be bigger than is currently acknowledged.

9.3 Conclusion

A key challenge here is developing more consistent approaches to implementing the law at employment tribunal level. Whilst the Employment Tribunal Service has published relevant evidence for the last few years, it will be important to ensure similar and more detailed information is available in the future. Coupled with a closer monitoring of the effectiveness and fairness of those decisions, this should help to gauge the effectiveness of implementing GOR cases in particular.

More detailed recommendations are included in Section 10.

10.0 Recommendations

The findings in this report have shown there is a need to improve a number of approaches to policy and law on 'religion or belief' if we are to ensure equity for a range of people in the UK (and not just those with particular 'religions or beliefs', but also other groups that may be affected by religious or belief groups).

A particular challenge will be integrating approaches to equality across equality strands ('gender', 'race' etc) to ensure that the rights of all people are protected in similar ways. Developing a better knowledge of when 'religion or belief' related equality issues 'intersect' with other equality issues and the rights of others will help to achieve this.

This report has also noted the need for an open and honest debate about the role 'religion or belief' plays in improving public service delivery to inform future policy. Whilst there may be 'demand' from service users for faith-based support for example, how important is this demand in relation to other demands for resources or services? Does that demand match what service users 'need?' If 'religion or belief' is particularly important to a service user, how do service providers make proportionate decisions about the inclusion of 'religion or belief' issues in service delivery? These are questions that will need to be answered in the future if we are to develop consistent approaches to issues of 'religion or belief'.

And of course, these issues are not easily addressed. The close relationship between religion and politics, particularly in recent years, has led the Government to discuss a number of potentially explosive issues (such as foreign policy, race relations and community cohesion). There is no sign of this trend abating and the recommendations that follow are based on this premise.

For ease of reference recommendations are summarised following the key themes investigated in this report.

10.1 Legislation

- a) There is a need for an extended definition of 'public authority' in the Human Rights Act to cover all private and third sector organisations providing public services. This would help to ensure adherence to the protection of rights outlined in the Act. It would also help to ensure that infringement of people's rights by organisations with an ethos based on 'religion or belief' are eliminated. It would also have a further benefit in encouraging debate regarding the appropriateness of exemptions in existing equalities law on the subject.
- b) There is a need for the collection of more data on indirect discrimination in relation to 'religion or belief'. Current examples of discrimination of this type provided in guidance to employers tend to focus on relatively straightforward examples of discrimination in relation to major religious beliefs. Development of a wider range of case studies, drawing on issues faced by those with non-religious beliefs and minority religious beliefs would be useful in improving awareness of legislative requirements. The details and outcomes of employment tribunals could be used as an important source of evidence in this regard.
- c) It is clear that the application of GORs in the future should involve robust tests to ensure that discrimination is legitimate and proportionate. Cases of this kind could potentially be reviewed periodically by a body like the EHRC to ensure robustness and transparency. An open and inclusive debate about the appropriateness of exemptions under the Religion or Belief Regulations would be a useful long-term contribution to this process.

10.2 Demography

- a) There is a need for ONS to thoroughly review the degree to which the proposed question on religion (for 2011 census) is unlawful under the Human Rights Act 1998 and the Equality Act 2006, identifying in particular any potential discrimination against those with non-religious beliefs. A more thorough and robust equality impact assessment of this issue would help to achieve this.
- b) Public authorities should give closer consideration to how census data on this issue is used to make funding or policy decisions. Given some of the drawbacks to current demographic data on 'religion or belief', it will be important to understand the impact of its use by policy makers and funders. At worst, the use of inaccurate data may lead to: the exclusion of non-religious people from a variety of community initiatives, the disproportionate allocation of resources to those perceived as religious, and exclusion of non-religious people from democratic processes and civic engagement.

10.3 Government Policy

Recommendations relating to areas of government policy are set out below under three headings:

- Practical & Appropriate Engagement Mechanisms
- Identifying and Using Evidence
- Developing Capacity, Access and Communication

(i) Practical & Appropriate Engagement Mechanisms

- a) There is a need to develop alternative spaces and/or forums where 'religion or belief' stakeholders can come together. While additional to existing regional and national 'inter-faith' and equalities networks, these smaller groups could be complementary 'sub-sets' of equality networks, with their participants reflecting both religious and non-religious perspectives. (If non-religious participation in existing 'inter-faith' networks remains a sticking point then 'religion or belief' 'sub-groups' could be helpful in offering a neutral space for mixed discussion/input.)
- b) Identify 'religion or belief' sub-group participants by interview rather than election or self-appointment. In this way, emphasis could be placed on seeking particular skill-sets, expertise and competence rather than religious, cultural or ethnic 'identity'.
- c) Ensure that any interview processes are accessible (in terms of resources and time) and target a broad range of expertise/skills so those with competence in related areas can still get involved.
- d) Ensure that the purpose of these sub-groups is widely understood and that there is an emphasis on:
 - Building an evidence base regarding 'religion or belief' discrimination;
 - Sharing skills and experience in a spirit of mutuality and shared endeavour;
 - And creating a space where difficult equalities issues can be discussed and resolved.
- e) Work with public agencies to:
 - Develop a constituency for and trust in the 'religion or belief' sub-groups;
 - And encourage 'inter-faith' networks (in particular) to engage with these alternative forums.

(ii) Identifying and Using Evidence

Working through the proposed 'religion or belief' sub-groups and with other statutory and voluntary regional partners, the EHRC and other relevant partners should:

- a) Commission work and activities that can assist in building the evidence and knowledge base of 'religion or belief' discrimination and how it interacts with other issues (e.g. 'race', class, 'gender').
- b) Assist in assessing the robustness of regional stakeholders' input by encouraging generation of fresh evidence and data as a means of developing evidence-driven reasons for policy interventions.
- c) Assist the proposed 'religion or belief' sub-groups (which can in turn work with other local, regional and national partners/stakeholders) to develop a clear rationale and guidance for when 'religion or belief' perspectives are legitimate and/or required and when they are not (e.g. in which policy areas, contexts or initiatives).

(iii) Developing Capacity, Access and Communication

There is a clear argument for additional resources and support (training, capacity-building etc) to help build skills at a local and regional level of both religious and non-religious belief groups. The Government has indicated in recent policy that responsibility for promoting greater diversity in religious (and likewise by implication non-religious) representation is the responsibility of both third sector and public agencies.

Work in this area should include:

- a) Equal recognition, for funding purposes, of religious minority and non-religious groups – and indeed all other third sector organisations. Approaches to making funding decisions should be open, transparent and based on robust evidence of need. Third sector organisations should be judged on the basis of their expertise and ability to deliver particular services, or to offer advice on particular issues. This will help to address any discrepancies or inequality in access to funding for 'religion or belief' groups.
- b) Ensuring equality of access to information, to local, regional and national decision-making processes.
- c) Building skills, knowledge and expertise of non-religious and religious to engage with each other in a non-confrontational way on contentious issues. This might include mediation and conflict resolution techniques or customised 'advocacy' courses to develop a new cohort of regional advocates on 'religion or belief' issues.
- d) Support for local and regional public agencies, equality networks and 'inter-faith' organisations / networks to:
 - Establish safe, neutral environments where contentious issues can be discussed;
 - Support to develop clearer guidance on inclusive engagement and consultation as well as clear rationale for which policy areas require the input of 'religion or belief' perspectives.

10.4 Education

Despite (or perhaps because) of the emphasis placed on the role and importance of religion in education – in the backing of faith schools, in the teaching of RE and the participation in acts of collective worship – it is difficult not to conclude that religion and the education sector need a significant overhaul.

A 'shortlist' of recommendations that could go some way towards such an overhaul is listed below. Many are taken from more in-depth studies of these issues in the last few years:

- a) OFSTED should inspect/monitor on the basis of equality/human rights legislation.
- b) RE must be made part of the National Curriculum and so end the inconsistent and discriminatory practices of some SACREs and Agreed Syllabuses. This would put RE on a similar footing to other National Curriculum subjects, and so open it up to similar levels of evaluation and monitoring. If this cannot be achieved, then radical reform of Agreed Syllabuses needs to be undertaken, including the adoption of a statutory framework for RE.
- c) The Government's *Every Child Matters* and *Citizenship and Diversity* policies could be used as a framework within which to review the role and place of religion in schools not least on the basis that children also have human rights and need to have their own beliefs respected.
- d) Research should be undertaken that maps the levels and breadth of discrimination – including bullying – on the basis of 'religion or belief'.
- e) Further guidance on dealing with the 'religion or belief' strand of equalities needs to be published and disseminated to all schools across the country to ensure that good practice is being upheld.
- f) 'Religion or belief' based bullying should be included as a category when the Government legislates to require schools to record all incidents of bullying across their school communities.²¹⁸

Religious Schools

- g) Schools should not be allowed to design their own admission procedures. The most obvious body to perform this would be the local authority as with other maintained schools within its area.
- h) Faith schools should not be allowed to 'by-pass' existing equalities legislation and practice on the basis that certain activities or those from within certain equality strands go against their own rights to 'religion or belief'. Neither should theological arguments be allowed to divert attention from promoting a holistic understanding and implementation of equalities practice.
- i) More research needs to be undertaken to ensure that existing equalities legislation is being upheld by publicly funded religious schools in terms of their admissions, recruitment, promotion procedures etc.
- j) If any weight is to be given to claims that religion is an important factor in defining a school's vision and so brings with it an inherent 'added value', that value must begin to be properly evidenced. More comprehensive independent research into the value and impact of religious schools, including an analysis of the 'value added' index as part of the Government's SATs monitoring, needs to be undertaken.
- k) Given that almost all the major teaching bodies and unions oppose or at least have strong reservations about the existing framework for publicly funded religious schools, greater consultation with these need to

²¹⁸ In addition to the recommendations that have been drawn from our own research, some of these recommendations also reflect the findings and recommendations from the following reports: ATL, *Position Paper on Faith Schools*, (2007); Runnymede Trust, *Right to divide*, (2008); NUT, *In good faith*, (2007); BHA, *A better way forward*, 2006; Burgess et al. *Parallel lives? Ethnic segregation in schools and neighbourhoods*, CASE paper 101, LSE, (June 2005)

be undertaken to ensure that there is a national debate in which all voices are heard in place of the dialogue that seems to be going on between Government and religious leaders.

- l) Compulsory worship in schools should be replaced by broader assemblies for pupils that do not contravene the rights of pupils to freedom of 'religion or belief'.

10.5 Conflicting Rights

While new forms of public engagement and interventions from public authorities *operating at the local level* have the potential to help in resolving conflicts between group interests and rights in society, these authorities will need to recognise and respond to the contextual issues outlined at the start of this section. Whilst human rights are of course principally concerned with the rights of *individuals* in relation to the state, human rights principles can be used to facilitate discussions about 'balancing rights' of different *groups of interest* in society. The following issues are particularly relevant here:

- a) The concept of 'proportionality' is not something that should be limited to the courts and could help to shape more proportionate and legitimate decisions in other settings – for example, within local strategic partnership structures, in the development of equality initiatives, and in the funding (and commissioning) of third sector organisations working with specific groups. But a key challenge for public officials will be developing the skills needed to facilitate and mediate debates and decision-making processes that involve competing claims of social groups for influence or resources. Much greater investment would be needed in training and development in this regard.
- b) Public officials can play a central role in empowering communities and ensuring that a wide range of local people are able to express those things that they find valuable and will help them to flourish in life (those with religious and non-religious beliefs alike). Yet public officials can play an equally important role in supporting communities to recognise the limitations to those freedoms – a notion that may be pushed further up the agenda once we begin to see the full implications of the *Community Empowerment White Paper* implemented. Of course, often this process of resolving conflicting rights is not a straightforward one. It is not necessarily a matter of deciding that one right 'trumps' another one, but is instead a matter of identifying particular circumstances when a particular compromise is appropriate, but subject to review. Developing skills amongst public officials to understand this process will be critical.
- c) There are implications too for the way issues of 'religion or belief' are handled in public debate. For example, in local SACREs, Local Authority staff could play a role in ensuring the voices of both religious and non-religious stakeholders are heard, that participants maintain levels of respect and dignity for each other, and that decisions are made on the basis of reasoned and proportionate evidence-based arguments that take into account the rights of children.

10.6 Public Service Delivery

- a) More evidence is needed about the impact of third sector organisations on public service outcomes generally, and this is especially true in relation to understanding the impact of religious organisations.
- b) Available research and evidence does not substantiate that experiences of discrimination in public services delivered by religious organisations is common to all users, nor does that research fully explore the views of the providers of those services. The available evidence does, however, highlight a number of examples of discrimination and clearly demonstrates the potential for discrimination. Given that this undoubtedly contravenes the principles of public service delivery and the purpose of equalities and human rights legislation,

it is an issue that requires further investigation. Steps need to be taken to define and eliminate what is not permissible in equalities law (explored in Section 3). At the same time a review of the scope of exemptions in the law needs to be undertaken in the light of potential risks of unfair discrimination against service users.

- c) Likewise, further research is needed regarding the impact that such discrimination is having on potential service users. Without substantive evidence, and better communication of this evidence, it will be hard to verify whether the fears that people have about discrimination by religious organisations and public service delivery will continue. In addition, clear guidance needs to be produced to ensure that religious organisations are certain of their role and responsibilities and that their legal requirements are fully understood. The need for this guidance is identified clearly in the case study.
- d) A key challenge public officials will face is developing effective approaches to monitoring compliance with equality law, again as the case study demonstrates.
- e) New approaches to ensuring equity in commissioning practice are being developed in a number of areas of public service delivery. A notable example is in the health sector. Following the Darzi report,²¹⁹ commissioners are being encouraged to consider the interplay of a range of factors in determining the appropriateness of commissioned services and those organisations they choose to contract with. These principles can be adapted in relation to engagement with 'religion or belief' groups. In particular commissioning should include that services are:
 - Fair: ensuring that people, regardless of 'religion or belief', can access them and that they take full account of the personal circumstances of individuals and diversity within 'religion or belief' groups;
 - Personalised: ensuring that services match what the service user wants and that they can exercise choice in determining the way services are provided;
 - Effective: ensuring that outcomes are the same for people from different 'religions or beliefs';
 - Safe: ensuring that those with particular beliefs or from particular backgrounds are not harassed or victimised during the provision of services because of their life choices;
 - Locally accountable: ensuring that commissioners engage with local 'religion or belief' groups to discuss the needs of local people (listening to a representative variety of views in this regard and ensuring that all have an opportunity to contribute). Feeding back decisions to local 'religion or belief' groups and using evidence to inform commissioning decisions.²²⁰

10.7 Employment

Application of proportionality

- a) Training for tribunal judges could help to ensure the consistent and comprehensive application of proportionality principles in making tribunal decisions.

Exemptions

- a) Increased monitoring of tribunals to ensure that the quality of decisions on this issue is high and that GORs are being applied consistently across tribunals in the country. New and more authoritative advice from Government on how to apply GORs for employers would be particularly helpful, and indeed this has been outlined as important in consultations for the new Single Equality Bill. Consultation with tribunals regarding application of GORs across the country would help to understand specific issues that should be included in such guidance.

²¹⁹ DOH, *Our NHS, Our Future: NHS Next Stage Review*, DOH (2007)

²²⁰ Principles taken from DOH, *The Operating Framework for the NHS in England for 08-09*, 2008, p.5



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