



CATHOLIC BISHOPS' CONFERENCE
OF ENGLAND AND WALES

**A REVIEW OF
THE WORK OF
THE BISHOPS' CONFERENCE ON
EQUALITY,
RELIGIOUS FREEDOM AND
SOCIAL COHESION
(2002 – 2007)**

Review of CBCEW Work on Equality, Religious Freedom and Social Cohesion (2002 – 2007)

The following briefly outlines public statements and other documents produced in the last few years by the Catholic Bishops Conference of England & Wales (CBCEW) and the Cardinal on equality, religious freedom, social cohesion and related issues.*

The statements and documents described here were prepared in the context of the Government's threefold commitment:

- to address the six equality strands (*race, gender, disability, religion and belief, sexual orientation and age*) within a single framework,
- to create a new Equality & Human Rights Commission (EHRC),
- to combine existing equality legislation into a new Single Equalities Act,
- and to promote integration and social cohesion.

In preparation for the new Commission and the new legislation, the government also conducted two Reviews – the Equalities Review and the Discrimination Law Review.

During the course of the work described here, CBCEW has participated in a number of government consultations and been represented on a Religion & Belief Consultative Group (RBCG). The RBCG has been in existence for more than three years and it brings together representatives from a cross section of major faith communities with the British Humanist Association and the National Secular Society. The RBCG is unique for bringing organisations with conflicting perspectives around the same table, and it has been informally recognised as such by government and the new EHRC. The RBCG are currently seeking more formal recognition.

EU Race and Equality Directives

During the year 2000, the European Union adopted two new Directives dealing with equality and discrimination. The Directives which were agreed by the EU Council of Ministers were:

- ***The Employment Directive*** (Council Directive 2000/78/EC, 27 November 2000) dealt with discrimination in employment and occupation on grounds of sexual orientation, religion/belief, disability and age.

* The full text of documents described here can be found in a separate *APPENDIX* (document number in parentheses).

- ***The Race Directive*** (Council Directive 2000/43/EC, 29 June 2000) dealt with discrimination in employment, health and social security, education, training and the provision of goods and services on grounds of race.

The Government planned to implement these directives by 'amending our existing legislation on race and disability, and introducing entirely new legislation to outlaw discrimination on grounds of age, sexual orientation and religion in employment and training'. Prior to introducing legislation, however, the Government published a consultation paper, *Towards Equality & Diversity*, outlining its proposals and inviting comment.

On 11 April 2002, Archbishops Peter Smith and Vincent Nichols wrote to the Minister, Rt Hon Barbara Roche MP raising a few issues. They supported the suggestion of a single statutory framework to promote good practice in the areas of *race, gender, disability, religion, sexual orientation and age*. They also supported the proposals to allow difference of treatment where there is a 'genuine and determining occupational requirement' and where 'the objective is legitimate and the requirement is proportionate'. With regard to *sexual orientation*, they asked that a clear distinction be made between sexual orientation and sexual behaviour; and they pointed out that the Church had clear moral teaching regarding sexual behaviour. Finally, they welcomed the proposal to include in the new legislation a provision based on Article 4(2) of the directive to allow religious organisations to continue to recruit staff of the same religion or belief where there is 'a genuine, legitimate and justified occupational requirement having regard to the organisation's ethos'. (1)

The Archbishops wrote again to Barbara Roche on 27 January 2003 in response to a further consultation on implementing the EU Directives on Race and Employment. They expressed concern over the narrowness of the *Genuine Occupational Requirement* defence in the proposals. (2)

On 2 May 2003, Archbishop Vincent Nichols and the Anglican Bishop of Southwark, Rt Rev Thomas Butler wrote to Rt Hon Charles Clarke MP, Secretary of State for Education & Skills regarding the possible impact of the proposed Regulations on church schools. (3)

On 16 May 2003, the Bishops Conference circulated a Briefing Note on these two sets of Regulations to Catholic MPs. (4)

The Regulations, once passed, were challenged in *R V Secretary of State for Trade and Industry ex parte Amicus and others*. On 4 May 2004, Stephen Slack, legal adviser for the Church of England, produced a *Memorandum* on this judgment. (5)

Equality & Human Rights Commission (EHRC)

In May 2004, the government produced a White Paper, *Fairness for All: a new Commission for Equality & Human Rights*. The White Paper outlined plans for the new Commission. The Department for Christian Responsibility and Citizenship submitted a response to the White Paper. The Bishops welcomed proposals for a new Commission and for a *Single Equalities Act*. At the same time they expressed some concern that a difficult balance would need to be struck in order to deal effectively with all six strands (*race, gender, disability, sexual orientation, religion and age*). They warned against treating the six strands as identical and noted that *religion and belief* is a strand which brings together people with conflicting perspectives. Finally, the Bishops highlighted the importance of the right to practice one's religion, which is guaranteed by the European Convention and the Human Rights Act. (6)

Guidelines for the Catholic Community in England & Wales

In 2003, anticipating the government's intention to create a new Equality & Human Rights Commission (EHRC) and to combine existing equality legislation into a new *Single Equalities Act*, the Department for Christian Responsibility & Citizenship established a Working Group to prepare *Diversity & Equality Guidelines* for the Catholic community in England & Wales. The *Guidelines* were approved by the full Bishops Conference in November 2004 and published in February 2005. (7)

Following publication of the *Guidelines* the CBCEW received some concerns, including from the Holy See. The Bishops have agreed to review and revise the *Guidelines* in the light of these comments.

Gender Recognition (disclosure)

In October 2005, the Department responded to a consultation on the draft Statutory Instrument *Gender Recognition (Exceptions to offence of Disclosure) Order 2005*. The consultation addressed the issue of reasonable exceptions for faith communities to the offence of disclosure under section 22 of the *Gender Recognition Act 2004*. (8 and 9)

Religious Discrimination (goods and services)

In October 2005, Archbishop Peter Smith wrote to Baroness Scotland regarding Part II of the Equality Bill (dealing with religious discrimination in the provision of good and services. He acknowledged that the churches had engaged in lengthy and productive discussions with officials; and he raised two remaining points – *harassment* and *public authorities*. (10)

Sexual Orientation Regulations (goods and services)

In March 2006, the government published a consultation paper *Getting Equal: Proposals to Outlaw Sexual Orientation Discrimination in the Provision of Goods and Services*. The proposed *Sexual Orientation Regulations (SORS)* were part of the larger body of equality legislation, and they built on earlier legislation relating to *sexual orientation*. In December 2003, sexual orientation discrimination was made unlawful in the workplace and in the provision of vocational training, and in 2004 the Civil Partnership Act was passed. The proposed regulations would prohibit direct and indirect discrimination and victimisation, but there would be no explicit provision covering *harassment*.

The consultation paper recognised that there would be circumstances where the new regulations could impact on aspects of religious activity or practice. However, any exceptions were to be clearly defined and limited to activities closely linked to religious observance or practice that arise from the basic doctrines of a faith. Where religious organisations provided a wider social or welfare service to the community it was unlikely that there would be exceptions for these services. The regulations would apply to organisations, including churches and charities with a religious ethos, that are contracted by a public authority to deliver a service on its behalf.

In June 2006, CBCEW responded to the *SORS* Consultation with serious concerns about the proposals which could gravely infringe the rights of Churches, religious organisations and other major Faiths, recognised by the *Human Rights Act 1998*. **(11 and 12)**

In their response, the Bishops argued:

We have serious misgivings about these proposals regarding the provision of goods and services because they do not sufficiently recognise the conflict of rights inherent in them. In particular, we do not believe they strike a reasonable balance between the right of people not to be discriminated against on the basis of their sexual conduct or lifestyle, and the right of religious organisations to be able to act in conformity with their religious beliefs and identity..... The government cannot expect that, in offering welfare and other services, we can lay aside our moral and religious beliefs.

The Bishops' Submission described Catholic teaching and the practice of schools, parishes and agencies and highlighted issues around adoption and fostering. The Bishops quoted a section of a separate Submission from Caritas – social action:

We aim to show that good grounds exist for granting a specific exception in relation to the work of Catholic adoption and fostering agencies. The case we make for exception is based on the Catholic teaching (especially as regards the sacrament of marriage) of our adoption and fostering agencies which entails acceptance criteria which means for instance, that gay and lesbian couples cannot be assessed as prospective adopters. The impact of these Regulations

could mean therefore that, in the worst case scenario, without an exception being granted, Catholic adoption and fostering agencies would close.

In addition to the Bishops' Submission, Caritas and the Catholic Education Service (CES) also responded to the Consultation raising similar concerns. In the end, the desired exemption was not included in the legislation, but the government gave Catholic agencies a time period in which to find some accommodation with the law.

Social Cohesion

In January 2007, the Bishops Conference submitted a covering letter and a longer paper to the Commission on Integration & Cohesion. Later in the year, Archbishop Vincent Nichols met with the Chair of the Commission. **(13 and 14)**

The CBCEW Response was based on the important assumption that there are institutions in society that play a significant role in promoting integration and cohesion, without being acknowledged, because that is not their primary function. The Catholic Church is one of those institutions.

The CBCEW Response concentrated on the role of the Catholic Church in supporting migrant, ethnic minority and other marginalized groups and helping them to integrate into society. In the course of developing this theme, however, the Bishops touch on a number of more specific issues, including the following:

- the Catholic Church's commitment to social cohesion and the common good,
- integration - addressing inequality and different histories of marginalized groups
- the Catholic Church in England – a support for people in transition (1850 – 2007),
- the role of parishes, schools, chaplaincies and Catholic organisations,
- relations with people of other faiths,
- broad-based community organising (a model of good practice)
- a vision for the future
- an inclusive concept of *secular society*

Religious Freedom

In March 2007, Cardinal Cormac Murphy O'Connor, on the occasion of the Corbishley Lecture, addressed the theme of *Religion and the Public Forum*. **(15)**

In his lecture, the Cardinal explored a number of themes, including:

- people need scope to practice their religion and to serve the common good in the public space;
- the secular state (neutral and void of religion) is ideology rather than neutrality;
- the link between truth, morality and democracy,

- the public sphere is a forum for collective reasoning and cannot be empty of tradition and belief;
- article 9 of the European Convention on Human Rights and the limitations on the right to manifest one's religion;
- the need for the public sphere to make space for uncomfortable religious conscience;
- plea for a balanced, inclusive, respectful accommodation between religion and the public sphere.

Proposals for a *Single Equality Bill*

In September 2007, the Department responded to the consultation on the *Discrimination Law Review: a Framework for Fairness: Proposals for a Single Equality Bill for Great Britain*. (16)

The consultation outlined the government's intentions for a new *Single Equality Bill* and invited comment. The Department's Response supported the government's intention to consolidate and simplify the law but raised a number of concerns, including:

- over regulation which would lay inappropriate burdens on business and public authorities and especially on the smaller voluntary sector;
- legislation should work with other measures and the need to avoid drifting into a culture of litigation;
- differences between the six strands (e.g. sexual orientation involves chosen lifestyle)
- indirect discrimination (proposal for a single objective justification)
- broad support for a genuine occupational requirement test for all strands and for a similar genuine service requirement test for the provision of goods, facilities and services;
- the need to ensure that current exemptions are retained in a new bill;
- support for at least the current scope for positive action (not positive discrimination) in a new bill;
- caution about a single public sector duty to promote equality, the importance of such a duty being proportional and possible difficulties in the areas of sexual orientation and religion;
- gender reassignment and the difficulties of non-disclosure for churches;
- the difficulties of legislating against harassment and potential conflicts with free expression and the right to practice one's religion.

Incitement to hatred

Incitement to racial hatred was made illegal under the *Race Relations Act 1965* and strengthened in the *Public Order Act 1986*. However, court decisions over the years have made it clear that, while Jewish people and Sikhs are protected by this legislation, Muslims and other religious groups are not protected (as they are not considered to be *ethnic* groups under the law). As Muslims, especially since 11 September 2001, have been especially vulnerable to hate crimes, this is seen as a serious anomaly in the law.

In July 2002, Archbishop Peter Smith wrote to the House of Lords Committee on Religious Offences supporting the introduction of a new offence of *incitement to religious hatred*. The letter argues that, in the context of 11 September and disturbances in Oldham, Burnley and Bradford, legislation on religious offences is needed. It accepts the repeal of the blasphemy law and argues for the extension of protection against incitement to all faiths. It expresses confidence that safeguards for free expression will be sufficient.

On 9 June 2005, the Government published the *Racial and Religious Hatred Bill* which prohibited *incitement to religious hatred* alongside *incitement to racial hatred*. The Bill amended part 3 (c 64) of the *Public Order Act 1986* to make incitement to religious hatred an offence alongside incitement to racial hatred.

Shortly after publication, the Catholic Association for Racial Justice (CARJ) published a statement supporting the new Bill. In October 2005, however, + Peter Smith met with Paul Goggins and raised concerns about the Bill that were becoming more serious as a result of parliamentary debates taking place at that time.

The Bill was finally passed in the House of Commons by a vote of 301 – 229. It went to the House of Lords in October 2005 where it was heavily amended to protect freedom of speech.

Two years later, similar discussions began surrounding proposals for a similar Bill to prohibit incitement on the grounds of sexual orientation. In November 2007 the Bishops Conference and the Church of England submitted a joint memorandum to the Public Bill Committee concerning the government's intention (through the Criminal Justice and Immigration Bill) to create a new offence of *incitement to hatred on grounds of sexual orientation*. The memorandum strikes the more cautious note concerning incitement legislation which had emerged in discussions in October 2005 on incitement to religious hatred. (17)

The larger context, in which these events have taken place, are still in flux. The new Equality and Human Rights Commission (EHRC) has been launched but is still in embryonic stage. A new *Single Equalities Bill* is expected before the end of this Parliament. At the same time, the Church and others are trying to adjust to the emerging context. Catholic adoption agencies are meeting to seek a way forward. The *Diversity & Equality Guidelines* need to be revised in the light of Vatican comments. Faith schools remain under the spotlight and the subject of public debate.