



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)**

Third Draft 16.1.08

**Review of CBCEW Documents on  
Equality, Religious Freedom,  
Social Cohesion and related issues  
(2002 – 2007)**

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11 April 2002

Rt Hon Barbara Roche MP  
Minister of State, Cabinet Office  
70 Whitehall  
London SW1A 2AS

Dear Minister

### **Consultation on Implementing the Employment and Race Directives**

The Bishops' Conference of England and Wales has just finished its Spring Meeting and officials at the Department for Trade and Industry kindly allowed us an extension to send our response to your Consultation after the deadline of 30 March.

We write on behalf of the Bishops' Conference of England and Wales to welcome the Government's plans to implement the EU Employment and Race Directives. We agree that equality and diversity are good for individuals, communities, businesses, voluntary organisations and for society generally. This has been the general thrust of Catholic social teaching over many years.

We also agree with most of the proposals set out in the consultation document *Towards Equality and Diversity*. On the whole, the proposed legislation reflects a broad consensus about a standard of behaviour which is the minimal requirement for a just society in the United Kingdom and the European Union as a whole.

We have a few comments, relating to specific proposals.

#### **1. A single statutory framework for dealing with all equality issues.**

We believe there is considerable value in having a single legislative and support framework to promote good practice in the areas of race, gender, disability, religion, sexual orientation and age. We would, therefore, urge the Government, as far as is reasonably possible, to adopt rules, definitions and exceptions which are consistent and mutually reinforcing.

For reasons outlined above, we support the Government's proposals to move towards a single Commission dealing with equalities issues. However, we are keenly aware that some of the groups who experience discrimination and disadvantage first hand (e.g. ethnic minorities, people with disabilities etc) are very concerned that such a move might reduce the level of protection which existing statutory agencies currently provide. This objection must be taken very seriously in any move towards a single Commission.

#### **2. Advice on day to day good practice**

In addition to legislation, formal guidance and legal remedies, it is important that organisations should have reasonably easy access to advice about good practice on a day to day basis (perhaps a helpline). We believe this would promote good practice and reduce the number of complaints which arise. There is anecdotal evidence that such advice is not currently as accessible as it might be. This should be a priority for the future.

### **3. Occupational requirements**

As a sizeable religious community, with large numbers of churches, schools and voluntary organisations, we cherish the right to operate freely and openly in society; and we would accord other communities the same right. This requires reasonable flexibility in the law for which provision is already made, for the most part, in the EU Directives and in the Government's current proposals.

The Directives and proposals, for instance, allow differences in treatment where there is 'a genuine and determining occupational requirement' and where 'the objective is legitimate and the requirement is proportionate'. This is an entirely reasonable exception. We do not believe that it will be required only in 'rare' situations (see 9.5). On the contrary, it will be important to a wide variety of organisations, including charities and religious communities. Without it the law would be unworkable.

We support the proposal not to define a list of permissible occupational requirements, but this will leave much to be worked out in practice. The Guidance on this matter, therefore, will be very important; and we would expect to be consulted about it.

### **4. Sexual orientation.**

We recognise the importance of protecting people of heterosexual, homosexual or bisexual orientation against discrimination and harassment. At the same time, the Church has a clear moral teaching regarding sexual behaviour. We would therefore wish to make a clear distinction between sexual orientation and sexual behaviour. We would expect to continue to be able to have the Church's moral teaching appropriately reflected in codes of behaviour to be expected of staff – whatever their sexual orientation – working in schools and other Catholic organisations.

It is essential that any guidance issued in this area makes these distinctions carefully and clearly, and we look forward to further consultation on these issues.

### **5. Religion.**

We support the proposal to prohibit discrimination and harassment in the work place on the grounds of religion or belief.

We welcome 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'. It is essential that religious organisations should continue to be able to pursue employment policies necessary to ensure the preservation of their ethos. Moreover, in respect of the employment of teachers in our Voluntary aided schools, we have welcomed the assurances given us by government departments that the provisions of S.60 (5) of the School Standards and Framework Act 1998 will remain in place and unamended.

It is very important that guidance issued to employers adequately reflects these legitimate, and where applicable statutory freedoms, and we wish to be consulted further when the relevant guidance is being proposed.

## **6. Removal of the exemption for charities (RRA)**

We are concerned about the proposal to remove the exemption for charities (RRA).

We understand that charities, as employers, may have sufficient protection under the provisions for 'genuine occupational requirements'.

However, as providers of 'goods, facilities and services', charities may be vulnerable to accusations of 'indirect racial discrimination' when their charitable instruments provide for conferring benefits on particular classes of persons. Religious charities, for instance, might be accused of 'indirect racial discrimination' when they cater for a particular religious community.

The consultation document does not discuss the reasons for removing this exemption, the effect it might have on charities in relation to the provision of goods, facilities and services, or the reasons why an exception for charities that was deemed to be necessary in the past is now considered to be unnecessary.

We seek further clarification and reassurances from the Government on this issue.

Finally, we are grateful for this opportunity to comment on the Government's proposals, and we hope that we will be consulted again at later stages of the process.

We are sending a copy of this letter, together with a completed questionnaire, to the Consultation Unit at the Department of Trade and Industry.

Yours sincerely

Most Rev Vincent Nichols  
Archbishop of Birmingham

Most Rev Peter Smith  
Archbishop of Cardiff



CATHOLIC BISHOPS' CONFERENCE  
OF ENGLAND AND WALES

27 January 2003

Rt Hon Barbara Roche MP  
Minister of State, Cabinet Office  
70 Whitehall  
London SW1A 2AS

Dear Minister,

Response to Equality and Diversity: The Way Ahead

The Catholic Bishops' Conference of England & Wales welcomes the opportunity to respond to your Consultation Document of 23 October 2002 regarding proposals for implementing the EU Directives on Race and Employment. We apologise for responding a working day after your consultation formally ended. Jayne Berod at the DTI kindly agreed to this as our Standing Committee met only today to consider and approve this response. Copies of this response are being sent to her today at the DTI and also to the DfES.

This response is meant to be read with our letter to you of 11 April 2002 submitted at an earlier stage of the consultation process in which we made clear our broad support for the Government's proposals to implement the EU Directives. As we said in that response, anti-discrimination legislation in the areas of race, gender, sexual orientation, disability and age represent 'a broad consensus about a standard of behaviour which is the minimal requirement for a just society in the United Kingdom and the European Union as a whole'.

The proposed legislation, however, will only gain full support if it respects other, equally legitimate rights. Among these is the right to practice one's religion. As far as possible, any new legislation must leave sufficient space for religious organisations and institutions to operate according to the beliefs, ethos and religious susceptibilities of their communities. In this context, it is important to reaffirm what we wrote in our earlier letter. We recognise the importance of protecting people of heterosexual, homosexual or bisexual orientation against discrimination and harassment. At the same time, the Church has a clear moral teaching regarding sexual behaviour. We would therefore wish to continue to be able to draw a clear distinction between sexual

orientation and sexual behaviour. We would expect to continue to be able to have the Church's moral teaching appropriately reflected in codes of behaviour to be expected of staff – whatever their sexual orientation – working in schools and other Catholic organisations.

We have a number of serious concerns about the way in which the regulations as drafted give effect to the requirements of the Directive. We agree with the Church of England's concern that current proposals do not leave faith communities sufficient space for the free practice of their beliefs.

We would join them in urging the Government to insert in part V of the *Employment Equality (Sexual Orientation) Regulations 2003* an explicit provision exempting anything done to comply with the doctrines of a religion, to preserve its ethos or to avoid offending the susceptibilities of its followers.

We would also join in their suggestion that the exemption for charities under the *Race Relations Act 1976 (Amendment) Regulations* may be too narrow.

Our concerns centre on the following three issues, on which we have taken legal advice:

- The Genuine Occupational Qualification Defence
- The Definition of Harassment
- Provisions relating to vocational training and further and higher education

### **The Genuine Occupational Qualification (GOQ) Defence**

The rights of those who hold religious beliefs to form organisations which have a religious ethos, and to preserve the ethos of those organisations, are recognised by the Directive (see the preamble at recital 24 and Article 4.2). Plainly, however, there may be a tension between these rights and the right not to be discriminated against in relation to employment on the grounds that a given individual does not share the beliefs underpinning a given organisation or lead his or her life in accordance with its ethos.

Our concern is that the drafts Regulations do not strike a fair balance between these competing imperatives bearing in mind the fact that the individual will, in many cases, be able to seek alternative employment, whereas there is no comparable option for the religious organisation. In particular:

- We are concerned that the GOQ defence is not available in principle in relation to all decisions which may be taken by an employer in relation to an employee or prospective employee.
- We believe that it must be made clear that incompatibility with the ethos of a religious organisation may in principle be a defence to discrimination on the grounds of sexual orientation, whether direct or indirect.



As to the first point, the rationale for accepting that there may be legitimate discrimination in relation to decisions on recruitment and promotion or transfer to, or training for, employment would appear to be that there may be cases where the incompatibility of the beliefs or actions of the individual with the ethos of the employer justifies a refusal to employ them at all or in a particular job. We are not clear why this rationale has not been applied to other decisions by the employer, such as to dismiss or discipline an employee on the grounds of conduct which is incompatible with the ethos of the organisation. Moreover, the Directive does not require the GOQ defence to be limited in the way that it has been in Regulation 7. We therefore argue that the defence should be available in relation to any dismissal or any other disciplinary action taken on grounds of conduct which is incompatible with the ethos of the employer.

As to the second point, we are concerned that the GOQ defence available to religious organisations is only available in relation to religious discrimination. Whilst there are interesting arguments as to the position under the new legislation e.g. on the facts of a case such as O'Neill v St Thomas More VA School (1996 IRLR 372) or if a church, temple or mosque were to refuse to employ an overtly gay person, we would prefer clarity. Similarly, we would like it to be made clear that indirect discrimination may be permissible if the rule or practice complained about relates to the religious ethos of the employer e.g. a requirement that an employee be celibate or married ought to be capable of being regarded as justified indirect sexual orientation discrimination. Accordingly, we would advocate an express provision in the draft sexual orientation regulations and the Sex Discrimination Act 1975 similar to s19 (3) of the 1975 Act (as amended) but making clear that employment by employers whose ethos is based on religion or belief is caught and steps to preserve the ethos as well as to avoid offence will be lawful.

### **The Definition of Harassment**

Our concerns here are that:

- The definition in draft regulation 5 catches conduct which has the relevant effect, whether or not it is intended to do so. Arguably, this is too wide. Asking an individual questions about their religious convictions in the context of recruitment or disciplinary action might, for example, be said to be caught. We would therefore advocate a test which requires the person complained against to have had the relevant purpose and the conduct to have had the relevant effect.
- It draws undue attention to the perception of the individual. The explicit reference to this factor in considering the question of reasonableness is likely in practice to give rise to a bias in favour of the subjective perception of the complainant, whereas the test is clearly intended to be objective. We would therefore argue that the words “including in particular the perception of B” should be omitted.

### **Provisions relating to vocational training and further and higher education**

Whilst supporting the principle in regulation 23 of the draft Employment Equality (Religion or Belief) Regulations 2003, that no student should be denied admission to a further or higher education institution (including sixth form colleges) on the grounds of his or her religion, or discriminated against while attending such an institution, we strongly contend that the law should explicitly make provision to allow such an institution with a faith foundation or trust deed (for example, a Catholic teacher training college or Catholic voluntary aided sixth form college) to give preference in its admissions criteria to students of that faith or denomination in the event of oversubscription.

The right (and "legitimate aim" of draft regulation 3) of the Church to provide further and higher education in accordance with its teachings should also be explicitly preserved.

We also suggest that the phrase "governing body of a school" be included in draft regulation 19(5), in the definition of training provider, as voluntary aided schools may also provide training (for example, work experience) that the regulation anticipates.

We hope you find these responses helpful. We would be very happy to meet you or your officials to discuss any of the points we have made.

With all good wishes

Yours sincerely,

Archbishop Peter Smith  
Department Chairman,  
Christian Responsibility and Citizenship  
Formation

Archbishop Vincent Nichols  
Department Chairman,  
Catholic Education and

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2 May 2003

To the Right Honourable Charles Clarke MP  
Secretary of State for Education and Skills  
Sanctuary Buildings  
Great Smith Street  
Westminster

Dear Secretary of State

### **Equality and Diversity**

We are writing on behalf of the Church of England and the Roman Catholic Church in England and Wales to alert you to concerns we have about the potential impact on Church and other faith schools of draft regulations implementing EU Directives.

Officials from our Churches have engaged in extensive correspondence and meetings with officials working to Barbara Roche. We acknowledge the fact that the Government has moved some way to address a number of our concerns. However, there were two remaining matters over which we thought it necessary ourselves to meet the Minister. We are grateful to Barbara Roche for seeing us urgently yesterday and for the time she gave us. She did not feel that she had enough room for manoeuvre to answer our concerns. Since they relate to schools and were addressed in the absence of any official from your Department, it seemed right to mention them to you. We would not wish to put in any way at risk the close partnership between our Churches and your Department.

The first issue is about teachers in Church and other faith schools and the implementation of the directive in relation to sexual orientation. We deplore discrimination on the grounds of orientation but have had to accept lawyers' advice that the distinction we would make between orientation and practice is not one that could be supported in these regulations. We also recognise that, within the Churches and other faith communities, there would be a variety of interpretation over homosexual practice. But the great majority of parents who seek a Church or faith school education for their children would take a clear view, as does the teaching of many of the Churches and faiths. While the draft regulation helpfully recognises a potentially 'genuine occupational requirement' in relation to employment 'for the purposes of organised religion', there needs to be greater clarity over what this means in relation to Church and faith schools.

For the avoidance of doubt we would like to see the regulation simply state that Church and other faith schools fall within this definition. It would be inconsistent to deny or cast doubt on the ability of the Churches and other faiths to apply their own ethical standards to one particularly important area of their work and mission. The simple statement which we seek would give effect to the understanding we had with Jack Straw and David Blunkett over the School Standards and Framework Act 1998 and with David Blunkett at the time in 2000 that the Equal Treatment Directive was being drafted.

Section 60 of the SSFA 1998, included in the Act following discussion with Jack Straw about the forthcoming HRA and which David Blunkett fully intended to protect as he sent Tessa Jowell lobbying the governments of Europe in 2000, guarantees Church schools' position over the employment of teachers and also says that 'regard may be had, in connection with the termination of the employment of any teacher at ... [a VA] school [with a religious character], to any conduct on his part which is

incompatible with the precepts, or with the upholding of the tenets, of the religion [of the school]'. All we are seeking is clarity that the posts protected under section 60 are also protected under the new regulations as being employment 'for purposes of organised religion'. This will prevent a potentially onerous, costly and unseemly case by case establishment of the position through the courts.

The second issue relates to admissions to Sixth Form Colleges, about which Oona Stannard has already written to you. For reasons of what seems to us an over-cautious interpretation of judgements by the European Court of Justice, the Minister was unwilling to acknowledge for the purposes of the regulations that students might be admitted to Sixth Form Colleges on the grounds of religion. In practice Catholic Sixth Form Colleges operate inclusive admissions arrangements but wish to have the right to admit Catholic and other students on the basis that they seek a religiously-based sixth form education. Sixth Form Colleges are not FE Colleges offering primarily vocational education but providers of secondary education. We do not believe they should be caught by the ECJ judgements in question.

We understand the regulations are to be published within days and that there is little time for these matters to be addressed. We look forward to hearing from you therefore with some urgency. A copy of this letter goes to the Prime Minister, Patricia Hewitt, Helen Liddell, Paul Murphy, Peter Hain, and Barbara Roche.

Yours sincerely

The Right Reverend Thomas Butler  
Bishop of Southwark

The Most Reverend Vincent Nichols  
Archbishop of Birmingham

**BRIEFING NOTE FOR CATHOLIC MEMBERS OF PARLIAMENT**

**by the Catholic Education Service and the Bishops' Conference of England and Wales**

**The Employment Equality (Religion and Belief) Regulations  
2003 and the Employment Equality (Sexual Orientation)  
Regulations 2003**

**Summary**

1. The Catholic Bishops' Conference of England and Wales has been in discussions with Government over the details of regulations implementing the EU Employment Directive on discrimination in employment on grounds of religion and sexual orientation, which have been revised and were laid before Parliament on 8 May 2003. The regulations must be implemented by 1 December 2003.
2. Although an improvement on earlier drafts there are concerns about two aspects of what is proposed.
  - **the religion regulations will force Catholic sixth form colleges to change their admissions policies so** they can no longer give preference to Catholic students;
  - **there is a lack of clarity in the sexual orientation regulations** about the extent to which Catholic and other faith schools will in future be able to adopt employment policies needed to preserve their particular religious character.
3. There are 16 Catholic sixth form colleges in England and Wales and their admission policies currently, like those of our schools, allow them to give preference to Catholic pupils in the event of oversubscription. **But because our sixth form colleges are classed as 'further education' for funding purposes, they are now being caught in regulations designed solely for vocational training institutions, not for schools, and their admissions policies will now be deemed discriminatory.** We will be continuing to press the Government to save these successful colleges, and would urge Catholic members of Parliament to do so.
4. In defending the inclusion of sixth form colleges within the regulations, government officials have placed reliance on two cases from the European Court of Justice (ECJ): *Gravier v. City of Liège* and *Blaizot v. University of Liège* (see Annex). Both cases relate to highly specific vocational courses of higher education and our legal advice is that these ECJ judgements do not require or support the argument the Government has made.
5. The School Standards and Framework Act 1998 allows faith schools to adopt employment policies needed to preserve their particular religious character. But there is a lack of clarity in the drafting of the sexual orientation regulations in this regard. **It would be helpful if in the debates on the sexual orientation regulations in parliament assurances could be sought and gained from the Minister that the government's intention is not to inhibit voluntary aided schools in any way from relying on Section 60 of the School Standards and Framework Act 1998.**

**BRIEFING NOTE FOR CATHOLIC MEMBERS OF PARLIAMENT**

**by the Catholic Education Service and the Bishops' Conference of England and Wales**

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## **The Employment Equality (Religion and Belief) Regulations 2003 and the Employment Equality (Sexual Orientation) Regulations 2003**

### **Background**

1. In 2000 the EU adopted the Employment and Race Directives. Through these and the 1975 Equal Treatment Directive there is now a common framework to address discrimination on six grounds: sex, race, disability, religion, sexual orientation and age. The UK Government is required to implement the EU Directives in relation to sexual orientation and religion or belief by the beginning of December 2003.
2. When the Directive was being negotiated in 2000, Churches sought and gained an important safeguard in Article 4(2) (quoted in full in the attached Annex of legal extracts). The effect of this is set out in the preamble to the Directive (paragraph 24):

*“The European Union ... expects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.”*

3. To implement the Directive the UK government consulted broadly on the key issues in 2001, and then issued draft regulations for more detailed comment last autumn. The Catholic Bishops’ Conference for England and Wales, the Catholic Education Service and the Church of England have since been working together to negotiate a secure and satisfactory position within the framework of the Directive with Government.
4. The Government laid the regulations before Parliament on 8 May 2003 for approval by resolution of each House.

### **The Position of the Catholic Church**

5. The Catholic Bishops’ Conference of England and Wales (“CBCEW”) supports the intention of the Directive. It welcomes and broadly supports the Government’s proposals for implementing the EU Directives on Race and Employment. Anti-discrimination legislation in the areas of race, gender, sexual orientation, disability and age represents a broad consensus about a standard of behaviour which is the minimal requirement for a just society in the UK and the EU as a whole.
6. However, when the draft regulations were published in the Autumn of 2002, there were a number of serious concerns about the possible consequences for religious organisations as a result of the way the government had chosen to implement the Directive.
7. As a result of discussions with officials and ministers since then, held jointly with the Church of England, the Government has made a number of amendments to the regulations to meet our concerns. In particular, there is now specific recognition within the Sexual Orientation Regulations that where an employment is for the purposes of an organised religion the employer can apply a requirement which bears on sexual conduct to comply with the doctrines of the religion. This is extremely important as it is applicable to not only churches themselves but also to other activities which in our view are “for the purposes of organised religion” including leadership and teaching posts in Catholic schools. However, the Government did not agree to our request that employment in religious schools be explicitly included within the scope of this exception, and in our view this lack of clarity could lead to unnecessary litigation.

8. It is important to stress that there is a real difficulty over the phrase “sexual orientation”. Church teaching distinguishes between ‘orientation’ and behaviour. Government officials however, have made clear that the phrase on the regulations connotes both behaviour and intrinsic orientation.
9. We have two outstanding concerns about the regulations now laid before Parliament. Both chiefly relate to the situation of Catholic education:
  - A. The right of Catholic sixth form colleges (designated institutions of further education under the Further and Higher Education Act 1992 – see Annex) to maintain their distinctiveness and give preference to Catholic students in their admissions criteria.
  - B. The right of Governing Bodies of Catholic (and other faith) Voluntary Aided Schools to apply section 60 of the School Standards and Framework Act 1998 (see Annex) fully and to ensure that teachers comply with Church teaching on sexual conduct.
10. Commenting on the publication of the regulations on 9 May 2003, Archbishop Peter Smith and Archbishop Vincent Nichols said:

*“In our view the regulations published by Government on 8 May 2003 are a significant improvement on the drafts issued for consultation last year, but we still have two reservations about them.*

*Developing anti-discrimination legislation on the new grounds of religion and sexual orientation is important and will promote the common good, provided it is done in a way that also respects the rights of those who hold religious beliefs to run charities and schools which have a religious ethos, and to preserve that ethos. We therefore warmly welcome the amendment now included in the regulations to accommodate these rights where employment is for the purpose of an organised religion.*

*We are particularly concerned, however, about the impact which the religion regulations as drafted will have on our 16 Catholic sixth form colleges; a vital part of our secondary provision. Their admission policies currently, like those of our schools, allow them to give preference to Catholic pupils in the event of oversubscription. But because our sixth form colleges are classed as ‘further education’ for funding purposes, they are now being caught in regulations designed solely for vocational training institutions, not for schools, and their admissions policies will now be deemed discriminatory. We are very disappointed that despite our repeated representations an amendment has not been made to rectify this anomaly, and we will be continuing to press the government to protect the distinctive character of these successful colleges.*

*We would also have preferred greater clarity in particular with reference to schools, where the School Standards and Framework Act 1998 allows faith schools to adopt employment policies needed to preserve their particular religious character. As regards Catholic schools we retain the right to have the church’s moral teaching appropriately reflected in codes of behaviour to be expected of all staff – whatever their sexual orientation. But there is a lack of clarity in the drafting of the sexual orientation regulations in this regard.”*

### **The impact on Catholic Sixth Form Colleges**

11. Regulation 20 of the Religion or Belief Regulations makes it unlawful for institutions which provide further or higher education to discriminate against their students or applicants on grounds of religion or belief, so prohibiting admissions criteria which take Catholicity into account.

The exception within 20(3) (to restrict access to persons of a particular faith to courses leading to qualifications for jobs for which being of a certain religion is a genuine occupational requirement) will apply to Catholic teacher training colleges in the HE sector but is not applicable to sixth form colleges.

12. This problem for our sixth form colleges arises because they are now designated institutions within the further education sector under ss28-30 of the Further and Higher Education Act 1992. The majority of their governing bodies were incorporated only two years ago by the Education (Designated Sixth Form Colleges) (Incorporation) (England) Order 2001, until which time they had been Voluntary Aided (VA) schools. But, because they are now so designated for funding purposes, they have been inappropriately caught by these regulations which in reality are designed for universities and vocational training providers.
13. The majority of the 16 Catholic sixth form colleges are the only providers of Catholic post-16 education in their areas, as many Catholic VA school sixth forms were closed to ensure the stability and success of the colleges when they were established. Like other Catholic schools, they have admissions policies that allow them to give preference to Catholic pupils in the event of oversubscription. At present, many Catholic sixth form colleges guarantee places (i.e. make unconditional offers) to Catholic students whilst setting entry requirements for non-Catholic students. This is an important mechanism in fulfilling their mission to serve the most vulnerable in our community, for it allows Catholic students with poorer grades to have a Catholic post-16 education which they would otherwise not be able to have.
14. The effect of the regulations will be to render these admissions policies unlawful, and so to threaten the distinctiveness of Catholic sixth form colleges and their ability to provide post-16 education to the young Catholics in the areas in which they are situated.
15. Our sixth form colleges, which often perform very highly, are predominantly providers of secondary education, such as A' levels and so are distinct from Further Education Colleges. Very little vocational training is typically offered. For instance, vocational training makes up 8% of the course offering at Holy Cross Sixth Form College in Bury and 13% at Christ the King Sixth Form College in Lewisham.
16. In defending the inclusion of sixth form colleges within the regulations, government officials have placed reliance on two cases from the European Court of Justice (ECJ): *Gravier v. City of Liège* and *Blaizot v. University of Liège* (see Annex). Both cases relate to highly specific vocational courses of higher education (cartoon strip art and veterinary science). The judgements in these cases are not relevant to the general secondary education provided by our colleges, which provides students with preliminary qualifications which will subsequently give them access to courses of further and higher education that then equip them to qualify for a wide range of jobs and occupations.
17. **Our legal advice is that these ECJ judgements do not require or support the argument the Government has made. In the context of the reform of post-14 education which is the central pillar of the Government's education strategy, it is now essential that the importance of the distinctive role played by Catholic sixth form colleges is publicly recorded and their future secured by excluding them from the scope of these regulations.**

### **The Employment Equality (Sexual Orientation) Regulations 2003**

18. As noted in para.7 above, the Government has amended the Sexual Orientation Regulations to meet the concerns expressed by churches and others, and has now added a new paragraph, regulation 7(3), which states:

*This paragraph applies where—*

- (a) *the employment is for purposes of an organised religion;*
- (b) *the employer applies a requirement related to sexual orientation—*
  - (i) *so as to comply with the doctrines of the religion, or*



- (ii) *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; and*
  - (c) *either—*
    - (i) *the person to whom that requirement is applied does not meet it, or*
    - (ii) *the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied that that person meets it.”*
19. It is very helpful that that this has been incorporated in to the regulations and it gives some protection to religious employers wishing to lay down rules relating to sexual conduct for clergy and other key posts. Paragraphs (3) (b) and (3) (c) (ii), in using the phrases “*the employer applies a requirement*” and “*is not satisfied and in all the circumstances it is reasonable for him not to be satisfied*” are particularly welcome.

### **Particular Issues for Catholic Voluntary Aided Schools**

20. Greater clarity would have been very helpful, however, particularly in relation to employment in Catholic and other VA schools designated as having a religious character. Such employment is not explicitly incorporated within the Regulations and, as the Bishops' comment makes clear, there is a lack of clarity which could lead to wasteful litigation.
21. The Catholic Church, in common with other churches and faiths, promotes and contributes to primary and secondary education to ensure the advancement of the Catholic Faith through the delivery of Catholic education to Catholic pupils and those of other faith backgrounds and none. Each is conducted in accordance with a Trust Deed that makes its religious purpose explicit. Schools' religious purposes are also recognised in law in other ways. For example, the statutory power to ensure that the religious education taught in the schools conforms with Catholic teaching, and the additional inspections on denominational education that are conducted on faith schools under s23 School Inspections Act 1996. These would have no place in the law were these schools not for the purposes of an organised religion and this should be publicly recognised.
22. Section 60 of the School Standards and Framework Act 1998 provides that the Governing Body of a voluntary aided school have regard “*in connection with the termination of the employment of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.*” In a letter dated 7 May 2003 to Archbishop Vincent Nichols and Bishop Tom Butler, the Secretary of State Charles Clarke said that “*faith schools will be able to continue with the employment policies needed to preserve their particular religious character as set out in the School Standards and Framework Act, and we have ring fenced this provision in the new Religion and Belief*

*Regulations.” He went on to say, however, that “we have also made it clear that they will not be able to discriminate against their staff on other grounds, which is the approach taken by the Directive itself”. In the same letter he says: “The new Sexual Orientation Regulations still allow faith schools to challenge the behaviour of any teacher which is incompatible with their religious ethos, provided it is not done on grounds which are discriminatory. It will therefore still be possible for faith based schools to have conduct rules for teachers to observe”. The lack of clarity over precisely what will or will not be deemed discriminatory is, of course, the issue. However, the Catholic Church wishes to maintain its right to require appropriate conduct rules to be expected of staff in Catholic schools.*

- 23. It would be helpful if in the debates on these regulations in parliament assurances could be sought and gained from the Minister that the government’s intention is not to inhibit voluntary aided schools in any way from relying on Section 60 of the School Standards and Framework Act 1998.**

16<sup>th</sup> May 2003

## ANNEX: LEGAL EXTRACTS

### **1. The Directive**

The specific needs and rights of churches and religious organisations are addressed in two key paragraphs of the Directive:

#### Recital 24:

*“The European Union in its Declaration No.11 on the status of Churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has not explicitly recognised that it expects and does not prejudice the status under national law of Churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.”*

#### Article 4(2):

*“Member states may maintain national legislation in force at the date of adoption of this Directive pursuant to which, in the case of occupational activities within Churches and other public or private organisations the ethos of which is based on religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation’s ethos...provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of Churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation’s ethos.”*

### **2. School Standards and Framework Act 1998**

Section 60 SSFA states:

*“60(5) If the school is a voluntary aided school –*

*(a) preference may be given, in connection with the appointment, remuneration or promotion of teachers at the school, to persons –*

- (i) whose religious opinions are in accordance with the tenets of the religion or religious denomination specified in relation to the school under section 69(4), or*
- (ii) who attend religious worship in accordance with those tenets, or*
- (iii) who give, or are willing to give, religious education at the school in accordance with those tenets; and*

*regard may be had, in connection with the termination of the employment of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.”*

### **3. The Employment Equality (Sexual Orientation) Regulations 2003**

#### A. The Definition of Sexual Orientation

*2(1) In these Regulations “sexual orientation” means an orientation towards –*

- (a) *persons of the same sex,*
- (b) *persons of the opposite sex, or*
- (c) *persons of the same sex and of the opposite sex.*

## **B. The Exception for Genuine Occupational Requirement**

7.—(1) *In relation to discrimination falling within regulation 3 (discrimination on grounds of sexual orientation)—*

- (a) *regulation 6(1) (a) or (c) does not apply to any employment;*
- (b) *regulation 6(2) (b) or (c) does not apply to promotion or transfer to, or training for, any employment; and*
- (c) *regulation 6(2) (d) does not apply to dismissal from any employment,*

*where paragraph (2) or (3) applies.*

(2) *This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out—*

- (a) *being of a particular sexual orientation is a genuine and determining occupational requirement;*
- (b) *it is proportionate to apply that requirement in the particular case; and*
- (c) *either—*
  - (i) *the person to whom that requirement is applied does not meet it, or*
  - (ii) *the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it,*

*and this paragraph applies whether or not the employment is for purposes of an organised religion.*

(3) *This paragraph applies where—*

- (a) *the employment is for purposes of an organised religion;*
- (b) *the employer applies a requirement related to sexual orientation—*
  - (i) *so as to comply with the doctrines of the religion, or*
  - (ii) *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; and*

(c) *either—*

- (i) *the person to whom that requirement is applied does not meet it, or*
- (ii) *the employer is not satisfied (and in all the circumstances it is*

*reasonable for him not to be satisfied) that that person meets it.”*

#### **4. ECJ Cases**

Case C-293/83 *Gravier v. City of Liège* [1985] ECR 606:

*“any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary skills for such a profession, trade or employment”*

Case C-24/86 *Blaizot v. University of Liège* [1988] ECR 355:

*“...not only where the final examination directly provided the required qualification for a particular profession, trade or employment but also in so far as the studies in question provide specific training and skills, that is where a student needs the knowledge so acquired for the pursuit of a profession, trade or employment”.*

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## MEMORANDUM

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**DATE:** 10TH MAY 2004

**TO:** WILLIAM FITTALL

**COPIES:** ANTHONY HAMMOND; JOHN CLARK; SUE MORGAN; INGRID SLAUGHTER;  
JUDITH EGAR; ADRIAN ILES; SUE BURRIDGE; STEVE JENKINS

**FROM:** STEPHEN SLACK

**RE:** *R V SECRETARY OF STATE FOR TRADE AND INDUSTRY EX PARTE AMICUS AND OTHERS*

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I have now been able to consider the judgment of Richards J in these proceedings, brought by Amicus and a number of other unions including the NUT. Several Christian organisations (CARE, the Evangelical Alliance and the Christian Schools Trust) were given leave to act as 'interveners' in the proceedings and so to address the court on the legal issues.

The proceedings concerned the Employment Equality (Sexual Orientation) Regulations 2003. They of course gave effect to one aspect of the framework for equal treatment in employment and occupation embodied in the EC directive of November 2000. The unions argued that a number of aspects of the Regulations, and not just the exemption conferred by Reg 7(3), were incompatible with the Directive and with Articles 8 and 14 of the European Convention on Human Rights.

### General issues

Before turning to the main issues Richards J made a number of general observations, some of which are of interest. They included the statements that:

- For the purposes of the Convention, there is no distinction between sexual orientation and sexual behaviour. This was on the stated ground that "*Sexual orientation and its manifestation in sexual behaviour are both inextricably connected with a person's private life and identity.*"
- Under the Convention, any interference with an individual's right not be discriminated against on grounds of sexual orientation requires weighty reasons to justify it; but, equally, that right is not an absolute one.
- Questions could accordingly arise of how that right should be balanced against other Convention rights with which it might come into conflict; and "*in relation to employment for purposes of an organised religion ... issues of particular sensitivity and difficulty may arise*". The weight to be given to religious rights may depend on how close the subject-matter is to the core of the religion's values or organisation.
- The Court would not entertain a challenge by the NUT to the theological basis of the interveners' views on sexual morality: to do so "*would take the court beyond its legitimate role*".
- On s.13 of the Human Rights Act 1998 (which requires a court to "*have particular regard to the importance of [the right to freedom of religion]*") if its determination of any question arising under the Act might affect the exercise of that right by a religious organisation the judge recorded that it was common ground between the parties that "*whilst there is a need to have specific regard to the rights protected by Article 9 [of the Convention, which protects freedom of religion], section 13 of the 1998 Act does not give greater weight to those rights than they would otherwise enjoy under the Convention. But they are in any event important rights.*"

## Compatibility with the Directive

The judge considered the compatibility with the Directive of a number of the Regulations which the Unions argued were incompatible with it.

On Regulation 7(2), which confers a 'genuine occupational requirement', it was argued that, although the Directive had made provision for such a requirement, the way that it had been implemented was defective, both because Regulation 7(2) did not explicitly require the discrimination to meet a legitimate objective. That argument was rejected on the basis that the need to meet a legitimate objective was implicit, because the requirement had to be 'genuine' and 'determining' and had to be applied in a proportionate way.

The second argument, which had more weight, was that the genuine occupational requirement can apply not only where a person does not meet a requirement as to sexual orientation but also where it is reasonable for the employer not to be satisfied that the person meets it. However, the judge accepted the Secretary of State's submission that this was justified on the ground that it was intended to cover the case of an employee who did not wish to disclose his or her sexual orientation and that, in such a situation, it would help to avoid seriously intrusive questioning to determine that orientation. In dismissing the unions' argument, Richards J helpfully rejected their suggestion that any form of enquiry beyond the initial question whether a person met a requirement related to sexual orientation would involve unlawful harassment.

As expected, the unions also challenged Regulation 7(3), which protects the application of a requirement related to sexual orientation where the employment is for purposes of an organised religion, so as to comply with the doctrines of a religion 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. Richards J again rejected this, on the basis that, having to be construed both strictly and proportionately, the exemption provided by Regulation 7(3) was narrow and "*can be seen to afford an exception only in very limited circumstances*". Aspects of its narrowness were said to include: (a) the requirement for the employment to be "*for purposes of an organised religion*" (which the judge considered to mean, for example, that imposing a requirement related to sexual orientation on a teacher in a faith school would not be protected) and (b) that the requirements concerning doctrine or religious conviction would be difficult to satisfy – though "*a significant number*" of the followers of a religion need be no more than a significant minority.

Similarly, the judge dismissed a challenge to Regulation 25, which provides that nothing in the Regulations "*shall render unlawful anything which prevents or restricts access to a benefit by reference to marital status*". This was on the narrow basis that the EC's competence does not extend to access to benefits paid by reference to marital status. But the judge indicated that, even if he was wrong on that, he would not have accepted the unions' argument that to make pension benefits payable by reference to marital status was unlawfully discriminatory against homosexuals: it was plainly not directly discriminatory; and either (a) it was not indirectly discriminatory either because the consistent approach of the European Court of Justice has been to hold that married partners are not in a comparable position to same sex partners or (b) even if it did involve indirect discrimination, that could be objectively justified.

Finally on the Directive, the judge also rejected a challenge to Regulation 20(3) and an argument that the regulations were *ultra vires* because they represented a lowering of the standard of protection that applied to employees who suffered discrimination on grounds of sexual orientation before the Regulations came into force, contrary to Article 8(2) of the Directive: in his view they "*they add to existing rights, albeit that the exceptions limit the additional rights that they confer*".

## Compatibility with the European Convention on Human Rights

It was argued that the regulations were inconsistent with Article 8 of the ECHR, which protects the right to respect for private and family life. However, the judge held that there was no interference with Article 8(1) rights since the regulations added to existing rights, the exceptions in question simply limiting the scope of what was added. In any event, the judge considered that if there were an

interference with Article 8 rights that was justified under Article 8(2), which provides that such rights can be interfered with, *inter alia*, to protect the rights and freedoms of others: the case was saying so was essentially the same for saying that the exemptions under Regulations 7(2) and (3) were compatible with the Directive.

Finally, the unions also based an argument on Article 14, which prohibits discrimination in relation to the enjoyment of Convention rights. But the judge rejected this summarily on the basis that the Regulations do not produce any difference in treatment in the enjoyment of rights falling within the ambit of the Convention: they simply conferred certain rights not to be discriminated against.

### ***Comment***

In summary, whilst we shall need to consider its implications more fully, my first impression is that the judgment does not contain any real surprises. Even in the aspects in which it might be considered unsatisfactory – notably in terms of what is said about the lack of distinction between sexual orientation and practice and the narrowness of the protection afforded by Regulation 7(3) – the judge's analysis is broadly in line with our own understanding of what the position was likely to be. And there are some quite positive points, including the need to give proper weight to the right to freedom of religion when assessing the balance of conflicting rights under EC law and the Convention.

However, leave was of course given to appeal and it seems likely that the decision – careful as it evidently was – will be taken to a higher court and may not, indeed, be finally determined by a domestic court. So this is, I fear, likely simply to be the first stage of a rather drawn out process.

**S Slack**



**CATHOLIC BISHOPS CONFERENCE OF ENGLAND & WALES**  
**The Department for Christian Responsibility & Citizenship**

**A Response to the DTI White Paper**

*Fairness for All:*  
***A New Commission for Equality and Human Rights***

The Catholic Bishops Conference of England & Wales is grateful for the opportunity to respond to proposals for a new Commission for Equality & Human Rights (CEHR) as set out in the White Paper, *Fairness for All* (May 2004).

**1. Advantages of a single Commission for Equality & Human Rights**

As new regulations extend the scope of equality legislation to cover the six areas of *race, gender, disability, religion/belief, sexual orientation and age*, we see many advantages in the government's proposal for a single Commission:

- It is likely to reduce competition, fragmentation, duplication and confusion.
- It may help to create a culture of respect for diversity, equality and human rights among employers, service providers and the general public.
- The core values addressed by the new Commission (diversity, equality and human rights) provide a basis for a common citizenship and cohesive community.
- Employers and service providers will find it useful to relate to a single Commission for advice and for resolving difficulties.

In the longer term, with a single Commission in place, it may make sense to work towards a single Equalities Act, which could reinforce these advantages.

**2. Difficulties to be addressed in establishing a single Commission**

There are at the same time serious difficulties to be overcome in establishing a single Commission. The White Paper is not entirely convincing in its commitment:

- that the established Commissions will not lose the momentum and influence they have developed over the years,
- that the new strands will be given sufficient support to develop,
- that the new Commission will have adequate enforcement powers,
- that sufficient funds will be made available.

Despite the Government's best intentions, it is not clear that the CEHR will be able to give minority ethnic communities the kind of protection and support that the Commission for Racial Equality (CRE) has provided over the past twenty-five years. We would hope for further reassurances and more specific indications as to how this continuity might be achieved in relation to the three established Commissions (*race, gender and disability*).

It will be equally important to establish structures and provide resources for the three new strands (*religion/belief, sexual orientation and age*).

In order to make the new Commission effective across all six strands, a difficult balance must be struck between enforcement and persuasion. We agree with the Government that a culture of litigation could become counter-productive. Nonetheless, it is clear from the experience of the existing Commissions that enforcement powers need to be robust enough to persuade employers and service providers to make a serious effort to develop policies and practices which comply with the law.

The availability of good advice will be a key factor in persuading people to adopt good practice. Moreover, the quality of advice is important. It should aim to provide employers and service providers with a realistic range of legitimate options that are available to them.

To achieve all the above, considerable funding will be needed. The Government's commitment to adequate funding would be more convincing if it was based on an independent assessment of the funding required for the new Commission.

### **3. The six strands (race, gender, disability, religion/belief, sexual orientation and age)**

We are concerned as to how the six strands covered by the new Regulations will develop and interact within a new Commission.

The danger is that a single Commission (and if it materializes a single Equalities Act) could be developed on the mistaken assumption that the six strands are identical.

Clearly, there are similarities between the six strands, and it may be appropriate to have similar structures for each of them (e.g. six strand-specific units). Nonetheless, each strand has its own protected groups, culture, and particularities. Different strands also have different legitimate exceptions within the law. The new Commission, therefore, needs to be developed as a flexible, sometimes asymmetrical instrument with a staff who are sensitive to difference.

It is inevitable that there will be some competition between strands, but hopefully this will not be as great within a single Commission as it might be between separate Commissions.

The transitional arrangements for the three new strands will be especially important. Each of the existing Commissions have developed a culture of their own. With respect to the new strands that culture will become established over the next few years. Therefore, the transitional arrangements for the new strands must provide the space and support for an appropriate culture to develop.

#### **4. Religion and belief**

We welcome the new Regulations which prohibit discrimination on the grounds of religion/belief. This is an important protection that was not fully addressed by existing legislation.

The new Regulations will of course have to be interpreted with an eye to the important rights provided by the European Convention on Human Rights. These include *freedom of thought, conscience and religion* and the right *alone or in community with others and in public or private, to manifest one's religion in worship, teaching, practice and observance* (Article 9).

Some in the Churches and Faith Communities are concerned that these rights will not be fully acknowledged as the new Regulations are implemented. We share this concern; but we also believe that the new Commission creates a framework within which the complex rights and responsibilities of our communities are likely to be understood and respected.

The new strand of religion/belief brings together three broad groups, each of which have many sub-groups:

- Christian churches
- Other faiths
- Humanists, agnostics and atheists

Enabling representatives of these different groups to work together will be an important task especially during the transitional period.

We believe it would not be helpful to ask the CRE to provide support for the *religion/belief* strand during the transition. The different groups which make up this strand need a separate space in which to develop mutual respect, tolerance and a culture of their own.

#### **5. Promoting good relations and community cohesion and resolving conflicts**

The White Paper briefly mentions three roles of the new Commission but does not develop these in much detail:

- promoting good relations
- promoting community cohesion
- resolving conflicts

Each of the groups protected by the new Regulations has suffered prejudice and discrimination at the hands of others in society. In some cases that prejudice and discrimination comes from members of other protected groups.

A simple list of the groups protected by the new regulations makes their differing interests and the potential for competition and conflict clear:

- people of different ethnic backgrounds
- people with a variety of disabilities
- women and men
- Christian churches and other faith communities
- humanists, atheists and agnostics
- lesbian, gay and bi-sexual communities
- older people and young people

Antipathy toward some of the protected groups is quite strong even among those who support other protected groups. For instance, some people of faith are homophobic, and some who support women's rights and gay and lesbian rights are anti-religious. Some ethnic minorities are patriarchal and some older people are racially prejudiced. It would be foolish to ignore these realities or to assume that everyone who supports equality in one area is without some prejudice in another.

We must move beyond a situation where different groups are preoccupied with their own interests. The new Commission and the core values of diversity, equality and human rights are the foundation on which to develop a culture of mutual respect.

The new Commission's role in creating an atmosphere of mutual respect, cooperation and compromise should not be under-estimated or neglected. More thought needs to be given to the various ways in which this role might be exercised.

2 August 2004

*February 2005*

## **DIVERSITY AND EQUALITY GUIDELINES**

### **Foreword and Acknowledgements**

In recent years our society has struggled to come to terms with rapid social, cultural and demographic change. This struggle has driven us to seek effective ways to promote equality and social inclusion, especially in the workplace and more generally in society. We have seen the introduction of new laws against unjust discrimination. Catholic organisations and institutions have sought to respond creatively and positively to these initiatives, recognising that they are inspired by the profound moral value of respect for the human dignity of each person.

The purpose of these Guidelines on diversity and equality produced by the Bishops' Conference is to raise awareness, to explain some of the requirements of the law, and to encourage the Catholic community to respond to this new situation in a way that reflects our particular values and traditions.

The Guidelines provide a framework of principles rooted in Catholic teaching. From a legal perspective they are as accurate as possible at publication in January 2005, but they are not a substitute for taking legal advice or for Catholic organisations adopting and implementing their own specific policies, appropriate to their size and nature.

On behalf of the Bishops' Conference, I wish to thank the many individuals and organisations who have contributed to this publication. For their particular contribution, we are especially grateful to the Catholic Human Resources Network and the following individuals: Sarah Billington, Martin Bradshaw, Bishop Kieran Conry, Francis Davis, Margaret Ann Fiskin, Sheila Hughes, Phil King, Tom Linden, Joy Madeiros, Fr Keith Miles, Sean O'Donnell, Brian Palmer, Fr Kristian Paver, Primavera Quantrill, Brenda Roper, Liz Taite, Charles Wookey and Richard Zipfel.

We are also grateful to the DTI for their support with the production of this publication.

A handwritten signature in black ink, appearing to read 'Peter' with a small cross symbol to the left.

Most Rev Peter Smith

Chairman of the Department for Christian Responsibility and Citizenship  
Catholic Bishops' Conference of England and Wales

## Policy Statement

All human beings are endowed with a rational soul and are created in God's image; they have the same nature and origin and, being redeemed by Christ, they enjoy the same divine calling and destiny...forms of social or cultural discrimination in basic personal rights on the grounds of sex, race, colour, social conditions, language or religion, must be curbed and eradicated as incompatible with God's design. (*Gaudium et Spes, 29*)

The fundamental truths of Christianity, in common with other faiths, include the dignity and equality of all human beings. All of us are created in the image of God, are loved by God and are part of one human family. Thus every human being deserves respect and has fundamental rights.

This belief articulated by the Second Vatican Council, must be reflected in the vision and lived out in the practice of Catholic organisations and institutions. This is not an easy task. We live in a world which is complicated, diverse and unequal. Respecting diversity and promoting equality is complex and challenging.

Legislation in the UK deals with diversity and equality in six areas:

- race
- gender
- disability
- religion and belief
- sexual orientation
- age (by end 2006)

With a growing number of agencies and organisations involving, employing and serving more and more people, we must understand and comply with current legislation and good practice and reflect this in all we do.

This document sets out the policy of the Catholic Bishops' Conference of England and Wales. Our view is that those responsible for, or working in, Catholic organisations and institutions have twin duties. The first is to witness to the Gospel by striving always to be inclusive, respectful of the human dignity of all and in tune with the spirit as well as the letter of the law. The second is to safeguard and uphold the Catholic ethos and identity of the organisation in question.

In carrying out these twin duties, Catholics should always keep in mind:

- Our first obligation is to the values of the Gospel and the teachings of the Church
- It is fundamental to this teaching that every person deserves respect
- Catholic bodies should publicly acknowledge their commitment to both diversity and equality
- While people have a right to their private and family lives, at the same time a Catholic organisation needs to cultivate and preserve an ethos appropriate to its vision, mission and values and this will make demands on all involved in the organisation
- We value the contribution that talented and committed people, with different life experiences and abilities may be able to make in the life of the Church
- In a society in which relationships are increasingly fractured and complicated, it is only to be expected that this may at times be reflected in the lifestyles of those who serve the Church
- Where there is tension between discrimination law and the right of a Catholic institution to safeguard its ethos, Catholics should seek advice

We, the bishops of the Church, commend this policy to all the faithful as an expression of faith and witness in today's society. With this policy statement we have issued Guidelines demonstrating our determination to set an example of respect for all God's people and their contribution to the human community. As we take up this challenge, we must remain true to our own faith and traditions. We expect the freedom to live according to these, just as we recognise the same rights for other faith communities. Above all, we are called to be neighbour, friend and partner to all men and women, as we struggle together to create a more just society.

## Guidelines

We hope that these Guidelines on Diversity and Equality for the Catholic community in England and Wales will help us as we grapple with changing circumstances and legislation. The values upheld in this document should be reflected in our dealings with all people.

1. In addressing the issues of diversity and equality, our first obligation is to the values of the Gospel and the teachings of the Church.
2. We must also understand and comply with discrimination legislation. Where there is tension between discrimination law and the right of a Catholic institution to safeguard its ethos, relevant expert advice should be taken.
3. Catholic bodies should publicly acknowledge their respect for diversity and commitment to equality. Usually this will take the form of a Diversity and Equality Policy which will both shape and reflect the ethos and practice of the organisation. It will give confidence to all parts of society that participation in our organisations and institutions is both welcome and desired.

### Employment

4. There will be instances in most Catholic organisations where a particular job carries with it a 'genuine occupational requirement'<sup>1</sup> that the post-holder be Catholic. The new legislation makes explicit provision for this.<sup>2</sup> Other posts may require the post-holder to have knowledge of the Catholic Church. In many cases it will be appropriate to require that job applicants should be broadly in sympathy with the vision, mission and values of the organisation.
5. Every applicant and employee has a right to his or her private and family life and all Catholic employers must respect that right. At the same time, Catholic organisations and institutions will have expectations of their employees, and they should state explicitly what these are (e.g. 'not to bring the organisation into disrepute'). Candidates for appointment should be fully informed about the expectations of the organisation, and they should be given the chance to discuss these before offers are made either orally or in writing. This is particularly important in relation to leadership and pastoral roles. Any such expectations should, of course, be applied in a consistent and non-discriminatory way, and reference should be made to them in the contract of employment.
6. As employers, subject to limited and narrow exceptions, Catholic organisations must ensure that no job applicant or employee receives less favourable treatment than another on the grounds of race, gender, disability, religion or belief, sexual orientation or age. This is 'direct discrimination'.<sup>3</sup> Only a person's qualifications and ability to do their job should determine decisions about recruitment, retention and promotion.<sup>4</sup>
7. It is also important to avoid any requirements or conditions being applied to a job which would have the unintended effect of putting some individuals at a disadvantage because of their ethnic origin, gender, disability, religion or belief, sexual orientation or age, unless those conditions or requirements are clearly justifiable. This is 'indirect discrimination'.<sup>5</sup>
8. Employers must ensure that no employee suffers any form of bullying or harassment in the course of employment, and understand that action must be taken to address the situation whenever a person feels that he or she is being harassed. Catholic organisations should have a policy on both bullying and harassment.

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<sup>1</sup> See glossary for definitions and for an extended explanation of 'Genuine Occupational Requirement' (GOR)

<sup>2</sup> In addition, Section 60(5) of the School Standards and Framework Act 1998 remains in force whereby, in the appointment and promotion of teachers, governing bodies of voluntary-aided Catholic schools may give preference to those who are practising Catholics.

<sup>3</sup> See glossary for definition.

<sup>4</sup> When an employment vacancy is also an ecclesiastical office in canon law, the competent ecclesiastical authority must ensure that the requirements of both canon and civil law are carefully observed.

<sup>5</sup> See glossary for definition.

9. Employers should take seriously claims by individuals that they are encountering prejudice, discrimination or harassment in their work and must not dismiss these as over-sensitivity. An employee must not be penalised for raising these issues, unless the complaint is found to have been malicious.
10. Special attention needs to be paid to recruitment and advertising to ensure that potential candidates have a reasonable opportunity to know of vacancies. To ensure fairness in this area, for instance, recruitment by word of mouth only must be avoided, and communication of a vacancy should facilitate applications from a suitably diverse selection of people. In this way Catholic employers gain by attracting the best applicants for their vacancies.
11. In short listing, interviewing and appointment, those responsible for the process should be clearly aware of the criteria for selection contained in the agreed person specification and job description. These criteria should be applied consistently to different types of candidates. Where appropriate, those making an appointment should be given guidance concerning the possible effects of stereotypes, prejudices and misunderstandings on the selection process. Attention also needs to be given to the composition of selection panels to ensure the avoidance of bias. Selection procedures should be agreed prior to the commencement of the appointment process and applied consistently to all applicants.
12. Where members of certain groups are under-represented in particular work situations, it is permissible in law to provide training for employees to become credible candidates for promotion or transfer to another job. We would encourage this practice where it is appropriate.

#### **Representation on Catholic bodies**

13. Apart from employment, there are numerous situations in which people are selected for membership of committees, commissions, councils, boards and other bodies within the Catholic community. Those in authority are encouraged to examine selection procedures to ensure that they reach out to the full diversity of the Catholic community in their area or constituency. Where some groups are under-represented it will often be appropriate to make special efforts to encourage a wider participation.

#### **Voluntary participation in Catholic activities**

14. There are other situations which are in principle open to all but where some groups are under-represented (e.g. Parent Teacher Associations, Justice and Peace Groups and other voluntary associations). In such situations it is important to reflect on the reasons for any lack of participation by particular groups and to try to eliminate anything that unnecessarily discourages full participation. In some cases, it will be appropriate to make special efforts to encourage the participation of under-represented groups.

#### **Positive Action**

15. In so far as the law allows, Catholic bodies are encouraged to take reasonable initiatives to promote equality and full participation in the many activities of the Catholic community. 'Reverse discrimination'<sup>6</sup> is usually inappropriate and sometimes (in employment) unlawful; but there are many forms of 'positive action',<sup>7</sup> short of 'reverse discrimination', which promote inclusion, participation, diversity and equality.

#### **Monitoring**

16. We encourage those with authority at all levels of the Church to be more aware of whether different groups are represented in the many facets of the life of the Church (e.g. schools, parish councils, organisations etc). Sometimes this can be done informally; but in other situations formal monitoring will be needed. Schools are specifically required to monitor racial background and disability.
17. Moreover, formal monitoring of some kind may be appropriate beyond employment situations (e.g. monitoring the membership of large organisations, the clients who use a service, the admission and achievement of pupils of different backgrounds in schools etc.)

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<sup>6</sup> See glossary for definition.

<sup>7</sup> See glossary for definition.



## Key Issues

The issues of race, gender, disability, religion and belief, sexual orientation and age which are discussed below are both different and inter-related. Each has its own history and particular characteristics. At the same time, there are many similarities in the experience of prejudice and inequality and in the legislation to remedy it across these six areas. It is appropriate that the issues are addressed together; and it would be wrong to give some greater or lesser importance than others.

### **Race and ethnicity**

We believe that each human being is created in the image and likeness of God; has a dignity and value that must be respected, promoted, safeguarded and defended; that we are all equal in the eyes of God; and that we are all bound together by our common humanity. (*Charter, Catholic Racial Justice Congress, 2003*)\*

18. Over many years, Catholics have been involved with others in society in an effort to overcome racism. This has been only partially successful, and it has involved us all in a learning process. The murder of Stephen Lawrence and the inquiry into his death highlighted the reality of 'institutional racism'.<sup>8</sup> In an attempt to respond positively, the government has passed new legislation requiring public bodies (including schools) to be proactive in promoting equality. This is appropriate for Catholic organisations and institutions even where they are not bound by the legislation. We have addressed this matter in separate guidelines (*Serving a Multi-Ethnic Society*, November 1999).<sup>9</sup>
19. More recently, the Charter of the Catholic Racial Justice Congress 2003 has articulated the commitment which the Catholic community must make in order to become 'a truly inclusive Church'. We urge all Catholics to familiarise themselves with the Charter and to work with others for its full implementation.

### **Gender**

20. Some attitudes toward women in our society are inappropriate but deeply rooted. We are working and must continue to work to correct this situation. We recognise the gifts particular to men and women and the different roles that they are sometimes called to play.<sup>10</sup> At the same time, we recognise and uphold their fundamental equality and support society's attempt to give them full and equal rights. The Church must continue to support women and men in realising their full potential.
21. Catholics should be aware that it is unlawful to discriminate on the grounds of gender reassignment and the Gender Recognition Act 2004 allows people to have their birth certificates altered and makes it unlawful to disclose information about gender reassignment unless the person has given permission. This relatively new legislation allows some exceptions for faith communities, and Catholics in official positions may need to take advice.

### **Disability**

22. In 1998, the Bishops' Conference published *Valuing Difference: People with disabilities in the life and mission of the Church*.<sup>11</sup> At the heart of the document was the central role which people with disabilities should play in the life of the Church. New legislation concerning people with disabilities requires employers and providers of goods and services to make 'reasonable adjustments' to accommodate the needs of people with disabilities. This legislation is a welcome development and one which the Church must embrace wholeheartedly.

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\* The Charter can be found at [www.catholicchurch.org.uk/cn/03/030915a.htm](http://www.catholicchurch.org.uk/cn/03/030915a.htm)

<sup>8</sup> See glossary for definition.

<sup>9</sup> This publication is now out of print but is available at [www.catholicchurch.org.uk/resource/sames](http://www.catholicchurch.org.uk/resource/sames)

<sup>10</sup> All employees are entitled to fair pay and Catholic organisations should be sensitive to the requirements of the Equal Pay Act 1970. See Appendix IV.

<sup>11</sup> This publication is now out of print but is available at [www.catholicchurch.org.uk/resource/vald01](http://www.catholicchurch.org.uk/resource/vald01)

23. The Church strives to accommodate all people in its life and mission. We must seek to include people with disabilities in the pastoral, spiritual, liturgical, social and educational dimensions of Church life. 'Part of the Body of Christ is missing when an individual is excluded from Church Life' (*Valuing Difference*). Our Catholic organisations must be aware of this and make the appropriate adaptations and adjustments to include people with disabilities. Making changes to buildings, providing large print, Braille and audio resources, installing loop systems, etc is a start. Our attitudes, understanding and awareness of these issues must also be challenged, developed and improved. We will all benefit from making it possible for those with disabilities to offer their wide variety of talents and experiences in the service of the Church.

#### **Religion and belief**

24. Particularly since the Second World War, our traditionally Christian society has become increasingly secular as well as religiously diverse. Since Vatican II (and the publication of *Nostra Aetate*) the Catholic community has been more involved in dialogue and cooperation with people from other faith communities and with those of no formal religious faith.
25. Some faith communities, including the Catholic community, have not felt adequately protected by existing laws, and new legislation prohibiting religious discrimination in employment is most welcome.
26. It is entirely consistent with the spirit of this legislation that we insist on the right of faith communities to practise their faith freely and to engage in a range of religious, educational and charitable activities. This is a fundamental human right.<sup>12</sup> The Catholic community has traditionally been engaged in many activities, in parishes, schools and a variety of charitable organisations. Some of these are aimed primarily at Catholics and others are offered to the whole community.
27. On the whole, new legislation allows space for faith communities to carry out activities for their own members, but this may be a matter that will require continued negotiation with public authorities. The provision of services or activities for its own members by the Catholic community or any other faith community is not to be equated with religious discrimination.

#### **Sexual orientation**

28. The Catholic community includes people of heterosexual, homosexual and bi-sexual orientation. Every human being, whatever his or her sexual orientation, has the right to live a life free from discrimination and harassment, and we welcome new legislation which protects this right. Moreover, people of all sexual orientations have a right to take a full and active part in the life of the Catholic community.
29. Catholic teaching, of course, makes a distinction between sexual orientation and sexual activity, and it holds that all men and women are called to a life of chastity, and to fidelity if they choose to marry. Catholic organisations and institutions ask their members and staff to respect this teaching. In reaching a balance between individuals' private and family lives and their responsibilities within the organisation consideration may need to be given to the nature of the role and organisation in question.

#### **Age**

30. Ability rather than age must be the primary consideration when asking people to fill roles within the Church. We therefore welcome new legislation which (from 2006) will protect all of us against discrimination on the grounds of age, including a bias against young people. Catholic organisations must regularly review their policies on retirement and other age-related issues. We urge all Catholics to seek ways to encourage, support and fully involve people of all ages in the life of the Church.

#### **Conclusion**

31. Finally, we call upon all Catholics to make a real effort to be open to the challenge of the new legislation. This is an appropriate time to reflect deeply and to welcome the social and cultural

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<sup>12</sup> The European Convention on Human Rights and the Human Rights Act 1998 guarantee the freedom, either alone, or in community with others and in public or private, to manifest one's religion or belief in worship, teaching, practice and observance (Article 9).

changes that are required of us. Catholic organisations and institutions will want to review themselves in the light of these Guidelines and take appropriate action. They will want to check their own policies and practice against the values outlined here and against discrimination legislation. Organisations, institutions and dioceses should consider appointing or entrusting someone with responsibility for diversity and equality. Those producing their own policy and guidelines should ensure that they meet the standards laid down in this document and that effective steps are taken to ensure their implementation.

32. For ourselves, we hope to have given renewed emphasis to the process of creating within the Church a pattern of life founded on the love of God for each person – a place of welcome that enables all who wish so to respond to the invitation of faith. In doing this we will also contribute to the attempt of our society to become truly inclusive.
33. It is our desire that this document should be a catalyst for real change in our Church and the society we seek to serve. We intend to encourage this process in our own dioceses and to review progress in England and Wales through the Bishops' Conference after two years.

## Appendix I: Glossary

The following definitions are simplified and the relevant legislation should be consulted in each case:

**Affirmative action:** a term used to describe law and practice in the United States where a degree of positive and reverse discrimination is permitted and sometimes required (but see notes regarding UK legislation under 'positive action' below).

**Direct discrimination:** where one person treats another less favourably than others on grounds of his or her sex, race, sexual orientation, disability, age or religion. An act may be discriminatory if it is based on, for example, sex- or race-based generalisations, assumptions or stereotypes.

**Genuine Occupational Qualification (GOQ) or Genuine Occupational Requirement (GOR):** an exception incorporated within discrimination legislation to allow preference (discrimination in favour of) to be given by employers to persons of a particular gender, religion, sexual orientation or race in limited circumstances. Specialist advice should be sought to establish whether Catholicism is a GOR for a particular post under the Employment Equality (Religion or Belief Discrimination) Regulations 2003. See Appendix II for an extended discussion of the GOR.

**Harassment:** behaviour or remarks, possibly based on a person's race, sex, religion, appearance or sexual orientation, perceived to be unpleasant, threatening, offensive or otherwise to undermine the dignity of the recipient or subject. The new legal definitions under the Race Relations Act, and the Religion and Sexual Orientation Regulations define harassment as 'unwanted conduct which has the purpose or effect of violating dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment'. The law requires consideration of the perception of the individual to be taken into account, and the test for harassment has both subjective (the 'effect') and objective (whether an independent party would consider the alleged effect reasonable) elements, making this a particularly complex area of discrimination law. Outside the legal framework of discrimination law, employers have a duty to prevent harassment in the workplace on any grounds. Harassment does not need to be ongoing or repeated – one incident alone may be sufficient to constitute an act of discrimination. Employment Tribunals and the courts have strong powers to take action in cases of discrimination and harassment. There is no limit to the financial penalty that can be awarded in such cases.

**Indirect discrimination:** where a neutral policy, criterion or practice is applied which is more difficult for people of a particular gender, race, religion, age or sexual orientation to comply with than others. In some cases, a defence may be raised that the policy, criterion or practice is justifiable.

**Institutional racism:** the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin.

**Positive action:** action taken by an employer to help redress any imbalances that may have arisen in the workplace as a result of past discrimination or disadvantage. The law allows employers to take measures in which people from a particular under-represented group are encouraged to apply for jobs in which they are under-represented or given training to help them develop their potential and improve their chances in competing for particular work. Positive action could therefore include targeted advertising or single-sex training opportunities. Once applications are received, all applicants must be judged equally on job-related criteria. Employing someone because they come from a particular group, regardless of whether the person has the relevant skills and qualifications, is positive discrimination and may be unlawful.

**Positive discrimination and reverse discrimination:** related concepts pertaining to activities which are likely to be unlawful under UK legislation. Action taken by an employer to favour the disadvantaged is positive discrimination. Action which disadvantages a normally privileged group may be reverse discrimination.

**Reasonable adjustments:** steps taken by an employer or service provider in accordance with the Disability Discrimination Act 1995 to prevent a substantial disadvantage being caused to a person with a disability. The steps taken must be such as are reasonable for the employer to take in all the circumstances and could relate to either a physical feature of premises or any arrangements (for instance, the way work is to be carried out) made by or on behalf of the employer.

**Victimisation:** action taken by an employer to the disadvantage of an employee on the grounds that the employee is seeking in good faith to rely on legal rights under discrimination legislation or intends to do so or is suspected of intending to do so.

## **Appendix II: Genuine Occupational Requirement (GOR) Religion or Belief**

In any organisation, it is lawful for an employer to discriminate where being of a particular religion or belief is a 'genuine and determining occupational requirement' and where 'it is proportionate to apply that requirement in the particular case having regard to the nature of the employment or the context in which it is carried out'. For instance, one could require a Catholic Hospital Chaplain in an NHS Trust to be Catholic.

In organisations with an ethos based on religion or belief, it is lawful to discriminate where 'being of a particular religion or belief is a genuine occupational requirement for the job' and where 'it is proportionate to apply that requirement in the particular case'.

Where an employment is for the purposes of an organised religion, the law also allows an employer to apply a requirement related to sexual orientation so as to comply with the doctrines of the religion or (where the nature and context of the job warrant) so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers. It is important to note that the courts have interpreted this exception very narrowly and to seek advice before relying on it.

When applying a GOR, an employer must be clear as to which specific duties associated with a job require a person of a particular faith or belief. The employer will also be expected to be able to show that others in the organisation cannot carry out those duties. Moreover, the justification for a GOR must be made in relation to each job and must be re-examined each time the post is advertised to see whether circumstances may have changed.

It will be useful for an organisation to produce a statement of its vision, mission and values and a description of the ethos of the organisation. The description of specific jobs and specific duties can then be linked to the organisation's values and ethos, and it will be possible to decide which jobs in the organisation are most closely linked to its ethos and whether a GOR should be associated with those jobs.

Faithworks\* has suggested that the following job functions might give rise to GORs in Christian organisations:

- leading the Christian purpose of the organisation
- developing or delivering the main Christian activities
- representing the Christian purpose of the organisation
- being the face and voice of the organisation
- being responsible internally for promoting the ethos of the organisation
- leading or supporting the spiritual life of the organisation

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\* Both ACAS and Faithworks have produced useful guidance relating to the GOR. See Religion or Belief and the Workplace: a guide for employers and employees, ACAS (2003). Also see Christian Ethos Audit: a guide for Christian organisations to explore religious discrimination legislation and Christian ethos, Faithworks (2003) adapted by the Archbishops' Council of the Church of England in consultation with Churches Together in England. See website: [www.faithworks.info](http://www.faithworks.info)

## **Appendix III: Expectations of Teachers in a Catholic School**

### **Teaching in a Catholic school Contractual Responsibilities: ethical behaviour**

#### **Statement of Principles Regarding Catholic Education**

The task of the Catholic school is to provide an education which combines sound knowledge and skills with an overall personal development rooted in the fundamental truths of the Gospel. Such an education involves a high level of interpersonal transaction between staff and pupils. While the Catholic school is accountable to the general community for the provision of quality education to young people, it is also accountable to the Church community for providing this within the context of Gospel values. The goal of integrating religious truth and values in daily life and learning distinguishes Catholic schools from other institutions. In Catholic schools, students experience learning and living in the light of faith first and foremost through the witness and example of the teachers and leadership of the school.

#### **Legal Background**

The head teacher and all teaching staff in a Catholic school are employed by the Governing Body. It is the responsibility of the Governing Body to comply with all legal obligations in fulfilling its responsibilities towards Catholic education as well as observing good employment practice.

The Human Rights Act 1998 (which incorporates Art.8 of the European Convention on Human Rights) states that everyone has the right to respect for their private life. The EU Directive 2000/78/EC implemented in part through the Employment Equality (Sexual Orientation) Regulations 2003, in force since 1 December 2003, makes it unlawful to discriminate on the grounds of sexual orientation.

Some decisions in this area remain relatively straightforward. Others, for example where the conduct of a teacher is under consideration, are less clear-cut. Governors should be extremely careful not to make hasty judgements about conduct which is seemingly at odds with Church teaching. Every case will be different and must be considered on its own facts and merits following advice and guidance from the diocesan office and where appropriate the LEA.

#### **Points to consider:**

##### *Fair Appointment Procedures*

1. Treat all candidates for employment and all employees equally.
2. For any appointment, prepare a matrix of essential and desirable qualities and qualifications to ensure candidates are judged on objective criteria. Only legal and fair criteria must be used, applicable to all candidates.
3. During the recruitment process, ensure that all candidates are aware of the school's Catholic ethos and the conduct that can be expected from teaching staff.

##### *Potential discipline and dismissal problems*

4. Where concerns come to the attention of the governing Body or head teacher about the conduct of a teacher allegedly being incompatible with the teaching of the Church, consider:
  - the source of the information – distinguish between malicious gossip, hearsay and established fact,
  - whether the conduct, if substantiated, would in fact be incompatible with the teaching of the Church,
  - whether the alleged behaviour is, or could be, prejudicial or detrimental to the interests of the school.

Further guidance in each individual instance is available to Governing Bodies from the diocesan office.

## **Appendix IV: Summary of main legislation**

A fuller version of this appendix is available in the publications section on the CatholicHR website: [www.CatholicHR.net](http://www.CatholicHR.net)

### **Article 13 European Council Directive 2000/78/EC**

Proposals from the European Commission for combating discrimination: Without prejudice to the other provisions of this Treaty, and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission, and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

### **Disability Discrimination Act 1995 (DDA)**

The DDA deals with discrimination against disabled people in the areas of employment, the provision of goods, facilities and services and premises, education and public transport. The DDA places a duty on public bodies to eliminate unlawful discrimination and promote equality of opportunity

### **Employment Equality (Religion or Belief) Regulations 2003**

Make it unlawful to discriminate directly or indirectly against anyone, or to subject them to harassment or victimisation because of his or her religion or belief.

### **Employment Equality (Religion or Belief) (Amendment) Regulations 2003**

### **Employment Equality (Sexual Orientation) Regulations 2003**

Make it unlawful to discriminate directly or indirectly against anyone, or to subject them to harassment or victimisation because of his or her sexual orientation.

### **Employment Equality (Sexual Orientation) (Amendment) Regulations 2003**

### **Employment Rights Act (1996)**

### **Employment Act (2002)**

### **Equal Pay Act 1970 (EPA)**

The EPA gives an individual a right to the same contractual pay and benefits as a person of the opposite sex in the same employment, where the man and the woman are doing:

- like work; or
- work rated as equivalent under an analytical job evaluation study; or
- work that is proved to be of equal value.

The employer will not be required to provide the same pay and benefits if it can prove that the difference in pay or benefits is genuinely due to a reason other than one related to sex.

### **Gender Recognition Act 2004**

This gives transsexual people the right to appear before a gender recognition panel which will consider their case and may issue a Gender Recognition Certificate. This Certificate will be physically indistinguishable from a Birth Certificate and will indicate the new legal gender and name. Information about a person's gender history is then regarded as 'protected information' under the Act, and it is prohibited for a person who has acquired such information in an 'official capacity' to reveal it. The Secretary of State may by Order allow exceptions where disclosure of protected information is permitted.

### **Gender Recognition (Exceptions to Offence of Disclosure) Order 2004/5**

### **Human Rights Act 1998 (HRA)**

This incorporates rights under the European Convention of Human Rights into domestic law. Individuals can bring claims under the HRA against public authorities for breaches of Convention rights. UK courts and tribunals are required to interpret domestic law, as far as possible, in accordance with Convention rights. Previous case law may be overturned if there is a breach of Convention rights and the relevant law can be reinterpreted in a way which is compatible with Convention rights.

39 Eccleston Square, London SW1V 1BX

Email: [gensec@cbcew.org.uk](mailto:gensec@cbcew.org.uk) Tel: 0207 901 4812 Fax: 0207 901 4819



Convention principles include a general prohibition on discrimination – i.e. the freedom to enjoy the rights and freedoms in the European Convention on Human Rights without discrimination on any ground. Examples of grounds of discrimination are given but are only illustrative.

**Maternity and Parental Leave etc Regulations 1999**

These contain the detail of the rights to maternity and parental leave contained in the Employment Rights Act 1996 (ERA). They also prescribe the circumstances in which a dismissal will be automatically unfair for the purposes of the ERA if the dismissal is for a reason related to pregnancy, childbirth, maternity leave, parental leave, or time off for dependants.

**Maternity and Parental Leave (Amendment) Regulations 2001**

**Maternity and Parental Leave (Amendment) Regulations 2002**

**Pensions Act 1995**

This requires occupational pension schemes to observe the principle of equal treatment between men and women.

**Race Relations Act 1976**

This prohibits discrimination on racial grounds in the areas of employment, education, and the provision of goods, facilities and services and premises.

**Race Relations (Amendment) Act 2000**

Following changes made by the Race Relations (Amendment) Act 2000, there is also now a positive duty on public authorities to monitor, eliminate unlawful discrimination and promote equality of opportunity.

**Race Relations Act (Statutory Duties) Order 2001 (S1 2001/3458)**

**Sex Discrimination Act 1975 (SDA)**

The SDA prohibits sex discrimination against individuals in the areas of employment, education, and the provision of goods, facilities and services and in the disposal or management of premises. It also prohibits discrimination in employment against married people. It is not unlawful to discriminate against someone because they are not married. Victimization because someone has tried to exercise their rights under the SDA or EPA is prohibited.

**Sex Discrimination (Gender Reassignment) Regulations 1999**

**Social Security Contributions and Benefits Act 1992**

**Statutory Maternity Pay (General) Regulations 1986**

**Statutory Maternity Pay (General) (Modification and Amendment) Regulations 2000**

These contain the provisions relating to entitlement to Statutory Maternity Pay.

**Canon Law references**

- Can.208 'Flowing from their rebirth in Christ, there is a genuine equality of dignity and action among all of Christ's faithful. Because of this equality they all contribute, each according to his or her own condition and office, to the building up of the Body of Christ.'
- Can.220 'No one may unlawfully harm the good reputation which a person enjoys, or violate the right of every person to protect his or her privacy.'
- Can.222 §2 '[Christ's faithful] are also obliged to promote social justice and, mindful of the Lord's precept, to help the poor from their own resources.'

## Appendix V: Contacts and useful addresses

ACAS is the employment relations service for England, Scotland and Wales offering advice to employers, employees and their representatives.

Address: Brandon House, 180 Borough High Street, LONDON SE1 1LW

Tel: 08457 47 47 47 National Helpline

Textphone: 08456 06 16 00

Website: [www.acas.org.uk](http://www.acas.org.uk)

### **Catholic Association for Racial Justice (CARJ)**

Address: 9 Henry Road, LONDON N4 2LH

Tel: 020 8802 8080

Fax: 020 8211 0808

Email: [info@carj.freeseve.co.uk](mailto:info@carj.freeseve.co.uk)

Website: [www.carj.org.uk](http://www.carj.org.uk)

### **Catholic Bishops' Conference of England and Wales**

Address: 39 Eccleston Square, LONDON SW1V 1BX

Tel: 020 7901 4828 or 020 7901 4831

Fax: 020 7901 4821

Email: [taitel@cbcew.org.uk](mailto:taitel@cbcew.org.uk)

Website: [www.catholicchurch.org.uk](http://www.catholicchurch.org.uk)

### **Catholic Education Service**

Address: 39 Eccleston Square, LONDON SW1V 1BX

Tel: 020 7901 4880

Fax: 020 7901 4893

Email: [general@cesew.org.uk](mailto:general@cesew.org.uk)

Website: [www.cesew.org.uk](http://www.cesew.org.uk)

### **Catholic HR**

The network for those involved in people management issues in Catholic organisations in England and Wales

Chair: Sheila Hughes ([Sheila.Hughes@CatholicHR.net](mailto:Sheila.Hughes@CatholicHR.net))

Secretary: Phil King ([philipking@supanet.com](mailto:philipking@supanet.com))

Communications: Fr Keith Miles ([Fr.Miles@CatholicHR.net](mailto:Fr.Miles@CatholicHR.net))

Website: [www.CatholicHR.net](http://www.CatholicHR.net)

### **Catholic Interdiocesan Disabilities Network**

Secretary: Seán O'Donnell

Tel: 0121 441 5577 / 07973 908 274

Fax: 0121 441 5599

Email: [seanodonnell@goretti.plus.com](mailto:seanodonnell@goretti.plus.com)

### **Church Action on Disability (CHAD)**

Address: PO Box 10918, BIRMINGHAM B14 7YD

Tel: 0870 243 0678

Fax: 0121 441 5599

Email: [coordinator@chaduk.org](mailto:coordinator@chaduk.org)

Website: [www.chaduk.org](http://www.chaduk.org)

### **Commission for Racial Equality**

Address: St Dunstan's House, 201-211 Borough High Street, LONDON SE1 1GZ

Tel: 020 7939 0000

Fax: 020 7939 0001

Email: [info@cre.gov.uk](mailto:info@cre.gov.uk)

Website: [www.cre.gov.uk](http://www.cre.gov.uk)

### **Disability Rights Commission**

Address: DRC Helpline, FREEPOST, MID02164, STRATFORD-UPON-AVON CV37 9BR

39 Eccleston Square, London SW1V 1BX

Email: [gensec@cbcew.org.uk](mailto:gensec@cbcew.org.uk) Tel: 0207 901 4812 Fax: 0207 901 4819

Tel: 08457 622 633  
 Textphone: 08457 622 644  
 Fax: 08457 778 878  
 Website: [www.drc-gb.org](http://www.drc-gb.org)

**Department of Trade and Industry**

Website: [www.dti.gov.uk/er/equality/eeregs.htm](http://www.dti.gov.uk/er/equality/eeregs.htm)

**Equal Opportunities Commission (EOC)**

Address: Arndale House, Arndale Centre, MANCHESTER M4 3EQ  
 Tel: 0845 601 5901  
 Fax: 0161 838 1733  
 Email: [info@eoc.org.uk](mailto:info@eoc.org.uk)  
 Website: [www.eoc.org.uk](http://www.eoc.org.uk)

**EOC Wales Office:**

Address: Windsor House, Windsor Lane, CARDIFF CF10 3GE  
 Tel: 029 2034 3552  
 Fax: 029 2064 1079  
 Email: [wales@eoc.org.uk](mailto:wales@eoc.org.uk)

**Equality Direct** is an England-wide telephone advice service and supporting website for business, offering advice about equality issues.

Website: [www.equalitydirect.org.uk](http://www.equalitydirect.org.uk)

## **Publisher's Information**

### **Diversity and Equality Guidelines**

Prepared by the Department for Christian Responsibility and Citizenship and approved for publication by the Catholic Bishops' Conference of England and Wales

Published by Colloquium (CaTEW) Ltd  
 Company number 4735081  
 VAT registration number 223547084  
 39 Eccleston Square, LONDON SW1V 1BX

Email: [ccs@cbcew.org.uk](mailto:ccs@cbcew.org.uk)  
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Designed and typeset in L Frutiger Light by Primavera Quantrill

Printed by Hastings Printing Company

This book is available in audio and Braille versions.

For more details please contact: Catholic Communications Service

Tel: 020 7901 4800

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Production of this publication has been made possible with funding from the Department of Trade and Industry.

4 February 2005

Ann Holland  
Gender Recognition Project  
Department for Constitutional Affairs  
6<sup>th</sup> Floor Post Point 1C  
Selborne House  
54-60 Victoria Street  
London SW1E 6QW

Dear Ms Holland

I am writing on behalf of the Catholic Bishops Conference of England & Wales. We are grateful for the opportunity to respond to the DCA Consultation on the draft *Gender Recognition (Exceptions to the offence of disclosure) Order 2005*.

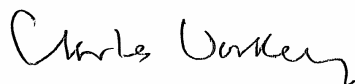
We recognise the right of transsexual people to their private and family lives. At the same time, you will see from the enclosed submission that we feel the proposed exceptions are much too narrow and would effectively criminalise key areas of the religious practice of the Catholic Church in England & Wales.

We have tried to outline some of the areas which need to be covered by exceptions. They include baptismal and confirmation registers and certificates, marriage and annulment of marriages, ordination and suspension from the exercise of orders, religious life and other appointments.

We are concerned about the timetable for getting appropriate exceptions approved, with other pressing legislation and the prospect for a general election in the coming months. We assume that the Act will not come into force until appropriate exceptions have been approved.

We would be happy to discuss these and any other relevant matters at any time.

Yours sincerely



Department for Christian Responsibility & Citizenship  
Catholic Bishops Conference of England & Wales

## Department for Christian Responsibility and Citizenship

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### Response to the DCA Consultation Exercise on draft Statutory Instrument *Gender Recognition (Exceptions to Offence of Disclosure) Order 2005*

#### Introduction

1. We are grateful for the opportunity to respond to the Department for Constitutional Affairs (DCA) Consultation, and we welcome the DCA's intention in the draft Order to provide reasonable exceptions for faith communities to the offence of disclosure under section 22 of the *Gender Recognition Act 2004*.
2. It is appropriate that such exceptions are permitted. They are an acknowledgement of the right of faith communities to operate freely in our society. The European Convention on Human Rights and the Human Rights Act 1998 guarantee the freedom either alone or in community with others and in public or private, to manifest one's religion or belief in worship, teaching, practice and observance (Article 9). In addition, section 13 of the Act obliges the courts to have particular regard to the importance of this right.
3. In order to understand what this freedom might imply in terms of the Catholic community, it is important to keep in mind that Catholics operate within a worldwide framework of doctrine and canon law which is binding on all.
4. Catholic law and teaching acknowledges the right of transsexual people to their private and family lives. It also recognises that they are fully entitled to help and support from the Christian community and from society at large.
5. From the perspective of Catholic teaching, marriage can only be between a man and a woman. And in the present state of uncertain knowledge in which there is no clear biological basis for saying otherwise, the gender of a transsexual person is that which they have when they are born, and gender reassignment surgery must therefore be seen as morally questionable. There is no convincing evidence that a gender can really be changed or acquired, much less chosen. Furthermore, many Christians would hold on theological grounds that gender is given before birth and cannot be changed. For both these reasons those who receive gender recognition certificates from the state under this Bill would not be able to marry in a Catholic church in their acquired gender. For the same reason, a transsexual person who came forward in their acquired gender for ordination to the Catholic priesthood would not be able to be ordained.
6. There are other areas of Catholic life and teaching where gender reassignment would be an issue and where the disclosure of a person's gender history might be necessary or unavoidable in order for the Catholic community to operate freely in this country.

#### Exceptions contained in the draft Statutory Instrument

7. We are concerned that the exceptions contained in the draft Statutory Instrument are too narrow and in their present form will criminalise key aspects of the religious practice of the Catholic community in England & Wales.
8. The exception regarding marriage, as drafted, is pastorally insensitive and individualistic. For instance, the exception would only allow an official to disclose protected information to someone who had agreed to perform a marriage if he had publicly stated an objection to marrying transsexual people. However, a blunt public statement of unwillingness to marry

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transsexuals, because it would be pastorally insensitive, would tend to undermine the wider ministry of the clergy to both transsexuals and others. Moreover, virtually every Catholic clergyman in England & Wales would be obliged to make such a statement. The individualistic approach of the Regulations fails to recognise the universal nature of the Catholic Church's teachings. We submit that this approach does not accord to Catholics the freedom to manifest their religion in community with others as guaranteed by the Human Rights Act.

9. The exception relating to marriage also concentrates very narrowly on marriage as a religious ceremony associated with a particular local church. The Catholic Church teaches that marriage is a sacrament and an institution, but also recognises the validity of a wide range of marriages other than those celebrated according to Catholic rites. For instance, Catholic teaching recognises the marriage of a Catholic who, with the proper permission, gets married according to the rites of another church. Catholic teaching also recognises marriages of non-Catholics, which would be of significance if they later wished to marry a Catholic.
10. In the case of a transsexual person, the exception relating to marriage would not cover the process of obtaining the appropriate permissions in these situations, nor would it cover the whole process of annulment of marriages.
11. The exception relating to those who are being considered for ordination or appointment as a minister of religion might be effective in covering that narrow area, but it would not cover the process of suspending a person from exercising his orders, returning a person to the lay state or examining the validity of an ordination.
12. There are many other areas of Catholic life that fall outside the scope of the proposed exceptions.

## **Key areas of Catholic life subject to the non-disclosure provisions**

13. We have tried to identify a few key areas where Catholic teaching, law or practice might make disclosure of protected information about a transsexual person's gender history inevitable: these include baptism and confirmation, marriage, holy orders, religious life and other ministries and appointments.

### **a. Baptism and Confirmation**

14. Baptism is the sacrament of entry into membership of the Catholic community. Most Catholics are baptised as infants.
15. When a person is baptised, his or her name and the date of the baptism are recorded in the Baptismal Register, which is required by Catholic canon law to be kept in the parish where the baptism was held. The Baptismal Register cannot be altered, but an annotation can be made. The Baptismal Register is examined by the Bishop and by the Dean during their periodical visitations, and it is passed on to a new parish priest when he takes over the parish. When requested, for various purposes, the parish is obliged to issue a certified copy of the entry in the Baptismal Register. All annotations must be included in any Baptismal Certificate that is issued.
16. Approval for Confirmation requires a Baptismal Certificate. In the Catholic Church in this country, it is the custom at Confirmation for the candidate to take an additional name. A Confirmation Register is required by law to be kept in the parish or diocese where the person is confirmed and a Confirmation Certificate is issued as appropriate. The parish of confirmation is obliged to inform the parish of baptism, and the record of the confirmation is added to that person's entry in the Baptismal Register.

17. In the case of a transsexual person whose gender history is evident from the Baptismal Register and Certificate or from the Confirmation Register or Certificate the whole process described above would involve *disclosure* under the Act and would be criminalised.

#### **b. Marriage**

18. In the Catholic Church, a person wishing to be married must produce a recent Baptismal Certificate and a Confirmation Certificate, or for non-Catholics a letter from their parents testifying that they have been baptised (or not) and have not been previously married.
19. A *letter of freedom* is also required from the parish priest in every place that they have lived for six months or more indicating that there is no evidence of a previous marriage or other impediment or bar to marriage.
20. Any of these marriage papers might contain evidence of a person's gender history. As part of the marriage preparation process it is often required that the marriage papers are passed to officials in other parishes or dioceses.
21. The process of examining the validity of a marriage is a particular area of concern. This process, commonly called 'annulment' in the Catholic Church, exists to determine whether a particular marriage corresponds to the understanding of the sacrament of marriage in Catholic doctrine. This is not always the same as the State's understanding of marriage. The Catholic Church affords the right to any baptised person to have the validity of their marriage investigated by a Catholic marriage tribunal. In some cases the marriages of the non-baptised can also be investigated.
22. When a person seeks a *declaration of nullity*, the marriage tribunal examines the marriage, the background of the parties and the causes for the break up of the marriage. Witnesses give evidence and papers are passed from one official to another. If a transsexual person were involved, the whole process of the marriage tribunal would almost certainly involve *disclosure* and would therefore be criminalised.

#### **c. Holy Orders**

23. Approval for ordination involves a lengthy process, which takes place in stages and over a number of years involving assessment by a number of people (e.g. seminary staff, rector, Bishop and others co-opted by the seminary). This process appears to be adequately covered by the exception in the draft Statutory Instrument, section 2 (1) (b).
24. The proposed exception, however, does not cover the process of a tribunal examining the validity of an ordination. Nor does it cover the processes of suspending a person from exercising orders or returning an ordained person to the lay state. These can either be carried out as an administrative process (by the Bishop) or as a judicial process (by a Tribunal). If a transsexual person were involved, his or her gender history would be a relevant issue and would have to be disclosed in the necessary exchange of information which the process involves.

#### **d. Religious Life**

25. There are many religious orders in the Catholic Church. Each has its own specific constitution, process of governance and administrative practice. Many would be based on a commitment to voluntary poverty, chastity and obedience and life in community. Most of these have a form of life exclusively for men or women.
26. The process of approval for acceptance into religious life is complex and involves (in addition to evidence of baptism and confirmation) various stages of preparation and an ongoing assessment of a person's motivation, maturity and suitability for the life. If a transsexual person wished to enter a religious community, his or her gender history and its impact on the whole person could not be excluded from the assessment process.

27. Similarly, the process of a person being dismissed from religious life and dispensed from their vows is complex and involves a judgment of unsuitability for the life. If a transsexual person were involved in this process, his or her gender history would be relevant to the judgment of suitability or unsuitability and would need to be revealed in the necessary exchange of information involved in the process.

**e. Appointments**

28. There are a variety of other ministries and appointments within the Catholic community which require the production of a Baptismal Certificate or evidence that a person is a practicing Catholic or an assessment of a person's suitability. Information may have to be exchanged in the process of this assessment and, in the case of a transsexual person; information about his or her gender history might be inescapably involved in the process.

29. Examples of the above might be approval for the formal conferment of stable ministries (e.g. lector or acolyte) or an employment situation where there is a genuine occupational requirement that the person appointed should be a Catholic or an appointment to an unpaid post like a foundation governor of a Catholic school.

**Need for a broader exception for organised religion**

30. The above examples demonstrate that the proposed exceptions are much too narrow to provide the freedom necessary for the Catholic Church to operate as guaranteed by the ECHR and the Human Rights Act 1998. The life of the Catholic community and the framework of doctrine and canon law in which it operates require a broader exception if the law is not to criminalise many crucial aspects of our worship, teaching, practice and observance. After consultation with representatives of other faith communities we agree that the following draft might be more likely to cover the range of concerns we have outlined above:

*It is not an offence under section 22 of the Act to disclose protected information if the disclosure is made by a person acting in his official capacity within an organised religion, so long as the disclosure is in compliance with the doctrines, teachings, traditions or practices of the religion or in accordance with the religious susceptibilities of a significant number of its followers.*

31. *If a broad exception like the above were included in the statutory instrument, care would still need to be taken to ensure that the wording of the exception covered the variety of concerns we have described above, including:*

- *keeping and examining of baptismal and confirmation registers and issuing baptismal and confirmation certificates in various situations,*
- *permissions to marry, marriage papers, agreement to perform marriages and the whole process of annulment,*
- *approval for ordination, examining the validity of an ordination, suspending a person from exercising orders or returning a person to the lay state,*
- *entry into and dismissal from religious life,*
- *other appointments where evidence of Catholic practice is appropriate.*

32. *We are also specifically concerned as to whether the phrase within an organised religion is broad enough to cover the situations outlined above (e.g. in relation to religious life and appointments).*



33. *We have seen drafts of the Church of England's submission and some of their specific concerns would apply to us as well. At the same time, we would call attention to the differences in our two traditions, and we would warn against any assumption that specific exceptions which would cover their needs would also cover ours (e.g. the issuing of baptismal certificates).*

### **A wider concern**

34. *We wish to raise a wider concern which, though not directly relevant to this Consultation, is related to these issues. We are concerned as to how the Sex Discrimination Act, extended to cover the provision of goods, facilities and services, will operate when taken together with the provisions of the Gender Recognition Act. Given that, once issued with a full gender recognition certificate, a person's gender becomes for all purposes the acquired gender, we feel issues of conflict may arise between the law on gender discrimination and the freedoms guaranteed to faith communities under the Human Rights Act.*

### **Conclusion**

35. *We want to make clear our commitment to the rights of privacy, family life and non-discrimination which have led to current changes in legislation. Indeed, these general principles are reflected in the Church's teachings. At the same time, we are aware that these rights may sometimes appear to be in conflict with the freedom to practice religion, and it is not always easy to find the appropriate balance between these rights and freedoms. We are currently preparing Guidelines for the Catholic community on these issues, and we are committed to working with the government and all sectors of society to find that appropriate balance*
36. *If it would be helpful for officials of the DCA to meet with us to explore in more detail some of the aspects of Catholic doctrine, law and practice referred to in this paper, we would very happy to participate in such a meeting.*

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Contact:  
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5 October 2005

Baroness Patricia Scotland QC  
Minister of State  
Home Office  
2 Marsham Street  
London SW1P 4DF

Dear Baroness Scotland,

Over recent months, staff at the Bishops Conference together with colleagues from the Church of England and other Churches have been involved in discussions with civil servants at the Home Office concerning Part II of the Equality Bill. You will understand our concern that a Bill which is intended to protect people from discrimination and harassment on the grounds of religion or belief should not seriously curtail the right of Churches and faith communities to practice their religion as guaranteed under Article 9 of the European Convention and Article 13 of the Human Rights Act.

To date, these discussions have been very productive, and I am writing now to raise a few outstanding matters which concern us and which we feel have not been sufficiently addressed in the most recent text of the Bill.

1. The definition of *harassment* - Section 47.

The definition of harassment has been discussed at some length, and you will be aware of concerns about the subjective element in the definition which includes the 'perception' of the person claiming harassment.

We are especially concerned about situations where someone, who is not a Catholic, chooses to attend a Catholic school, or receives services through a Catholic agency, or uses Catholic premises. In such a situation the Catholic ethos, Catholic practice or the presence of Catholic symbols and resources in the school, agency, or premises should not in itself constitute harassment. Would we be correct in assuming that the definition of *harassment* in the Bill, which requires a reasonable calculation of all the relevant circumstances, would take into account that person's autonomous decision? We would like to see this spelled out explicitly in the Bill: i.e. it should be given equal weighting to the person's perception of harassment.

2. Schools with a religious character – exception for harassment - Section 52 (1-3)

In its current form, the legislation recognises the need for generous exceptions for religious schools in section 52 (1 and 2). If amendment is made to section 47 along the lines we suggest, we believe we will not need a defence of, in effect permitted harassment in 52(3). We recognise, however, that there are significant differences

between Catholic and Church of England schools and we support their view that section 52(3) is necessary for them to maintain their position and develop their mission.

### 3. Public authorities - Section 54

We are concerned that some Catholic agencies which receive public funding for some of their activities might be deemed to be public authorities and that some aspects of their ethos or activity might be interpreted as discrimination or harassment under section 54.

Under the law as it currently stands (taking case law into account), we do not believe that Catholic agencies would normally be considered to be public authorities. However, we understand that the Government would like to see the current interpretation of the law regarding public authorities broadened to include voluntary and religious bodies that receive public funding to provide public services. We feel that this needs further consideration and the practical implications need to be fully assessed.

Even if the law were to interpret religious organisations as public authorities only in respect of the specific function for which public funding is received, it would cause problems for organisations which received any funding towards their core costs, for instance start up funding. It would also be difficult, within an integrated service, to draw a precise line between the public function and the rest of the service.

Consider the example of a home for the elderly, run by a religious order, where three quarters of the residents are Catholic, where residents pay fees but the home receives public funding for each resident's assessed level of *nursing care*. In such a situation, how does one judge where *nursing care* ends and other activities begin? When the Bishop comes to give a talk, the chaplain makes his rounds, a few sisters in full garb perform their allocated tasks alongside many other members of staff, medication is given, people go to meals, some go to Mass, the doctor is called in, a resident is helped to wash - how does one separate legally the public from the private without destroying a holistic service with its Catholic ethos?

We find it inconsistent that, unlike religious schools (which are also publicly funded and where the Bill provides generous exceptions) there are no exceptions for religious organisations under this section.

### 4. General exceptions – sections 59 –62

We are happy with the exceptions provided in these sections but we would like clarification as to whether these general exceptions apply to public authorities (section 54). We assume they do apply to section 54, given the phrase 'nothing in this part shall make it unlawful...' which is reiterated in each section (59-62). However, we have received ambiguous messages from officials on this point.

We are grateful for the Government's willingness to consult about this important Bill, and we would welcome an opportunity to discuss these issues with you further.

Yours sincerely

With best wishes

A handwritten signature in black ink that reads "Peter". The letter 'P' is large and stylized, with a small cross-like mark to its left. The name "eter" is written in a cursive style below the 'P'. A horizontal line is drawn under the word "Peter".

+Peter Smith  
Archbishop of Cardiff  
Chairman, Department for Christian Responsibility and Citizenship

9<sup>th</sup> June 2006

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Ms Melanie Field  
Director: Discrimination Law Review Team  
Women and Equality Unit  
1 Victoria Street  
London SW1H 0ET

Dear Ms Field,

**“Getting Equal” Consultation**

I am enclosing with this letter a response on behalf of the Catholic Bishops’ Conference of England and Wales to the above mentioned Consultation. We are most grateful to you for allowing us to submit this slightly later than required by the deadline.

As you will see, we have serious concerns about these proposals which we believe, as they stand, could gravely infringe the rights of Churches, religious organisations and other major Faiths, recognised by the Human Rights Act 1998. As you will also be aware, similar concerns have been raised in the submissions of the Church of England, the Catholic Bishops’ Conference of Scotland, Caritas-social action, as well as other Christian Churches and groups, and we would think by those representing other major Faiths.

We should be happy to discuss all these matters more fully with Ministers and officials so that suitable exceptions can be made before the draft regulations are laid before Parliament.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Peter", enclosed in a thin black rectangular border. The signature is written in a cursive style with a small cross-like mark to the left of the first letter.

Archbishop Peter Smith,  
Chairman, Department for Christian Responsibility and Citizenship



**“Getting Equal”**  
**Proposals to Outlaw Sexual Orientation**  
**Discrimination**  
*In the Provision of Goods and Services*

*A Submission to the DTI Consultation*  
**From the Catholic Bishops’ Conference of England &**  
**Wales**

**June 2006**

**Introduction and summary**

1. Every human being has a right to live a life free from unjust discrimination and harassment.<sup>13</sup> In particular, as the Bishops of England and Wales stated in their recent teaching document **Cherishing Life**<sup>14</sup>: *“The Church utterly condemns all forms of unjust discrimination, violence, harassment or abuse directed against people who are homosexual. Consequently, the Church teaches that homosexual people ‘must be accepted with respect, compassion, and sensitivity’ (Catechism of the Catholic Church 2358). In so far as the homosexual orientation can lead to sexual activity which excludes openness to the generation of new human life and the essential sexual complementarity of man and woman, it is, in this particular and precise sense only, objectively disordered. However, it must be quite clear that a homosexual orientation must never be considered sinful or evil in itself.”*<sup>15</sup>
2. The Catholic Church teaches that all men and women are called to a life of chastity. If they choose to marry they are also called to fidelity to each other. Catholic teaching therefore regards as morally wrong genital sexual activity

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<sup>13</sup> The Bishops of England and Wales are committed to promoting equality in the Catholic community. This was spelled out in detail in our Diversity and Equality Guidelines (2005). However, those Guidelines also made it clear that the right to equal treatment must be balanced with the right to manifest one’s religion guaranteed by the European Convention on Human Rights and the Human Rights Act 1998

<sup>14</sup> Cherishing Life, Catholic Bishops’ Conference of England and Wales (2003)

<sup>15</sup> Ibid para 111

outside marriage. Catholic teaching also makes a distinction between sexual activity and sexual orientation. The civil law in the UK does not appear, however, to make this same crucial distinction between orientation and activity<sup>16</sup>. These proposals, therefore, although couched in the language of ‘sexual orientation’, would effectively outlaw any restrictions which religious organisations or others may make in the provision of goods and services on the basis of the sexual conduct or lifestyle of the recipients of those services. In this crucial respect, the proposals are different from other anti-discrimination regulations on grounds of race or gender where no issue of conduct arises.

3. 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.
4. The possible exceptions envisaged in the proposals concern religious observance and practice that arise from the basic doctrines of a faith. They are too limited. Catholic organisations will by their nature seek to promote and uphold the Church’s teaching, and to be guided by it in the way they work as well as worship. For Catholic organisations the goods and services they may provide, and the manner in which this is done, will often be as much a manifestation of doctrinal beliefs as matters of religious observance and practice. A number of examples are given below. These rights are protected by Article 9 of the European Convention of Human Rights, and the importance of safeguarding the rights of religious organisations when a conflict of rights arises is explicitly recognised in Section 13(1) of the Human rights Act 1998.
5. We think there is a fundamental contradiction in current government policy relating to faith communities. On the one hand, both local and national government recognise the contribution of faith communities to the wider society and encourage us to become more active. At the same time, the proposed regulations and other aspects of policy seem designed to make it more difficult for faith communities to become involved in the wider society. The government cannot expect that, in offering welfare and other services, we can lay aside our moral and religious beliefs.
6. Moreover, there appears to be little recognition in the consultation document of the difference between *homophobia* and a conviction, based on religious belief and moral conscience, that homosexual practice is wrong.
7. Alongside the Church of England and many other Churches and religious organisations we urge the Government to reconsider these proposals insofar as they affect religious organisations, and to ensure that sufficient exemptions are provided to enable them to safeguard their legitimate rights and to continue to

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<sup>16</sup> See *R on the application of Amicus and others v Secretary of State for Trade and Industry and others* [2004] EWHC 860 (Admin) per Richards J at para 29

be able to act with integrity as religious organisations in the provision of goods and services. Catholic parishes, dioceses, schools, organisations and agencies cannot be expected to act or speak in a way that is contrary to Catholic teaching.

8. In what follows, we set out briefly the core teaching of the Church and identify some of the areas where *Sexual Orientation Regulations* might conflict with Catholic doctrine and practice including:

- The local church
- Catholic schools
- Catholic organisations and charities
- Adoption and fostering
- Preparation and support for marriage
- The use of premises
- Other Catholic services

9. We conclude with recommendations regarding changes which we believe are needed to the proposals, which we believe should broadly parallel those already contained in Part II of the *Equality Act*.

### **Catholic doctrine on sexuality, marriage and homosexuality**

10. Catholic teaching on sexuality and marriage is part of a much larger body of Catholic social and moral teaching which includes respect for the dignity of the human person, respect for individual conscience and the pastoral care of the Church for all, especially the poorest and most vulnerable. The Church's teaching on sexuality and marriage must be understood in that wider context.
11. An authoritative summary of that teaching, and of the question of homosexuality, is given in the Bishops' of England and Wales recent teaching document *Cherishing Life*. It states:

*“As marriage is such a fundamental form of human relationship, it is vitally important to establish an adequate understanding of its meaning or purpose. The Church has consistently argued that the meaning of marriage is not set by society alone. The essential meaning of marriage is given in God's plan of creation. In the beginning God created human beings 'male and female' (Genesis 1:27). It is from the personal union of man and woman that new life is born and it is within the loving context of such a relationship that a child can be welcomed and nurtured. Marital love involves an essential complementarity of male and female.*

*The Church teaches that sexual intercourse finds its proper place and meaning only in marriage and does not share the assumption common in some circles that every adult person needs to be sexually active. This teaching applies to all, whether married or unmarried, homosexual or heterosexual, engaged, single through choice, widowed or divorced. Everyone needs to develop the virtue of chastity so as to live well in his*



*or her own situation. Moreover, there is more to a person than sexual inclination and more to love than sexual desire. The late Cardinal Hume emphasised the message of the Gospel that all love is from God and that each person is precious in the eyes of God. 'The love which one person can have for and receive from another is a gift of God' (A Note Concerning the Teaching of the Catholic Church Concerning Homosexual People, 1997), paragraph 17). The Church recognises the value of friendship between homosexual people when it is lived chastely in accordance with her moral teaching. What the Church does not countenance is any attempt to express this love in a sexual way.*

*The present state of the law and common public opinion reflect the immemorial belief founded on the natural law that only a relationship between a man and a woman can be a marriage. There may be people, who hold this view out of fear or prejudice, but the position is not itself arbitrary or unfair and it should not be regarded as discriminatory. Furthermore, attempting to create a legal category of 'same-sex marriage' threatens to undermine the meaning and status of marriage. Nonetheless, it may be necessary, as many have argued, to remedy by law unjust situations in which the bonds of friendship are improperly disregarded (for instance, being excluded from appropriate consultation regarding medical care or from funeral arrangements). In such cases the right to justice is founded on the dignity of every human being and citizenship and not on sexual activity or orientation”<sup>17</sup>*

12. The genuine, committed and exclusive love between a man and a woman, grounded in marriage, is the foundation of family life and it promotes the welfare and development of children. For Catholics, marriage takes on a further level of meaning within the context of the Church, as it is one of the seven sacraments. The sacrament strengthens and deepens the relationship and gives it an added dimension.
13. The Church welcomes people into full participation in the Catholic community, whatever their sexual orientation, and condemns unjust discrimination, violence, harassment or abuse directed against people who are homosexual. But homosexual acts, like all sexual acts outside marriage, are morally wrong. However, a homosexual orientation (understood as an inclination or tendency), if integrated into a life of chastity, is neither morally wrong nor sinful.
14. As noted in paragraph 10 above, the Church's teaching on marriage and sexuality is part of a much larger body of teaching embracing also respect for, human dignity, conscience and pastoral care for all. Drawing out the implications of the Church's teaching for policies and practices in different situations in Catholic parishes, schools and organisations, will require prudent judgement in the light of all the circumstances.

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<sup>17</sup> Cherishing Life paras 112-114

## The local church

15. A parish is a specified community of Catholics, stably established, whose pastoral care under the authority of the diocesan bishop is entrusted to a parish priest as its proper pastor.<sup>18</sup> The local parish church is where Catholics congregate on a weekly and even a daily basis for worship, sacraments, study, fellowship and mutual support. Parishes will typically engage in pastoral outreach and social action to meet needs in the wider community.
16. Whilst parishes should be communities in which all people feel welcomed and supported, there are inevitably restrictions on the full participation of some people, whether Catholics or others. Catholic worship is regulated by the universal law of the church, and in certain cases the law itself will restrict participation in the full sacramental life of the church to those who are in full communion with the church, and whose lives and beliefs are at one with Catholic teaching.
17. Parishioners will use their parish premises (e.g. the parish hall) for their own social events. In many cases they will also allow groups closely associated with the parish or even outside groups to use or hire the premises. It would be unjust to compel a parish to allow the premises to be used by campaigning groups, or for events, seriously and publicly at odds with Catholic teaching and practice, such as a group or event that was publicly perceived as advocating abortion or promoting gay 'marriage'.

## Catholic schools

18. The vision, mission and values as well as the teaching and practice in Catholic schools must be consistent with the teaching of the Catholic Church, and all those involved in a Catholic school (governors, senior staff, teachers, parents and students) must respect this. This was summarised in the Bishops' *Diversity & Equality Guidelines*:

The task of the Catholic school is to provide an education which combines sound knowledge and skills with an overall personal development rooted in the fundamental truths of the Gospel. The goal of integrating religious truth and values in daily life and learning distinguishes Catholic schools from other institutions.<sup>19</sup>

19. *Catholic teaching includes doctrinal beliefs about the equal dignity of every human person and respect for conscience. Consequently, in Catholic schools:*

- All pupils and their parents and guardians are encouraged to participate fully in the life of the school.
  - All pupils are offered appropriate pastoral support according to their needs.
  - All types of bullying are dealt with firmly.
20. At the same time, Catholic schools must be free to use appropriate means to promote Catholic teaching and values, including those that are pertinent to marriage and sexuality. This will take place across the curriculum and particularly in Religious education and PSHE, as well as in assemblies and in other aspects of school life. Catholic schools should not be required to promote values relating to marriage and human sexuality which are inconsistent with Church teaching.
21. Catholic schools must also be free to refuse the use of school premises to groups which promote views contrary to the teachings and values of the Church. To be unable to do so could bring them into conflict with the Trust deeds under which they operate.

### **Catholic organisations and charities**

22. In offering their services either to Catholics or to the wider society, with or without public funding, Catholic organisations and charities will act in accordance with their Trust deed and their stated charitable purposes. It would be quite unjust, and may well conflict with such Trust deeds, for a Catholic organisations or charity to be required by law to act in a way that is inconsistent with Catholic teaching or would cause offence to a significant number of other Catholics.

### **Adoption and fostering**

23. Catholic voluntary agencies are involved in a variety of work with children and families in England & Wales. They would be directly affected by these proposals and in a separate submission prepared by *Caritas-social action*, an official agency of the Catholic Bishops' Conference of England and Wales, the serious implications of these proposals as they stand are set out in detail.
24. The *Caritas-social action* submission states in its introduction the key concerns the Catholic adoption agencies in England and Wales have:

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<sup>18</sup> Canon 515§1 Code of Canon Law (1983)

<sup>19</sup> Equality and Diversity Guidelines Appendix III page 18

*“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. This would open a huge gap in service provision for many of the most vulnerable children in the UK and be at variance with Government policy to find placements for children in care who cannot live with their birth families. It would also entail that there would be less choice in the adoption and fostering sector as a whole for both children and prospective adopters, especially when we consider the ability of the Catholic fostering and adoption sector to tap into resources offered in the diverse Catholic population.”<sup>20</sup>*

### **Preparation and support for marriage**

25. The Catholic community in England & Wales includes a variety of organisations, networks, teams and movements that provide preparation and support for marriage. The following are some examples:
- Most Catholic dioceses in England & Wales have diocesan marriage and family advisers and, associated with them, teams of people who offer marriage preparation to couples intending to marry.
  - Catholic Marriage Encounter and Engaged Encounter are worldwide movements that have a strong base in this England and Wales. Marriage Encounter offers weekends for married couples to deepen and strengthen their marriage. Engaged Encounter offers weekends for couples intending to marry. Though these movements have a strong Catholic ethos, they are open to couples who are not Catholic.
  - Marriage Care is an organisation within the Catholic Church in England & Wales that offers marriage preparation and relationship counselling. It has 57 regional centres, 325 trained counsellors and sees 3,500 new clients a year. Approximately one third of its clients are Catholic, one third from other churches and faiths and one third from outside the faith communities. Marriage Care receives some public funding and, while seeking to promote marriage, it offers at least an initial interview, and also counselling to all who come seeking help.
26. These teams, movements, networks and organisations, and many other similar marriage and family life ministries, work within a context of Catholic values

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<sup>20</sup> Submission to the DTI consultation from Caritas-social action, 1<sup>st</sup> June 2006 page 2  
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and teaching on sexuality and marriage. While they all work to promote marriage, some of their services are offered to all and other services are restricted to married couples, or to a couple who are intending to marry.

### **The use of premises**

27. Anecdotal evidence suggests that issues around the use of premises are not uncommon. Any Catholic organisation which regularly or occasionally allows others the use of its premises might want to refuse groups that are publicly at odds with Catholic teaching. This is true not only of parish halls and schools, but also conference centres, retreat centres, offices of Catholic organisations and other premises.

### **Other Catholic services**

28. There are other services, provided by Catholic bodies which might in very specific cases be restricted by Catholic teaching on human sexuality and marriage. The following are two examples.
- Catholic residential centres which provide retreats and conferences may have some accommodation for married couples and it would be invidious to place on these centres a legal obligation to provide the same accommodation for unmarried and same sex couples.
  - The Catholic press should not be required to print or carry advertisements for groups that wish to advocate ideas or behaviour that is clearly contrary to Catholic teaching.

### **Conclusion and recommendations**

29. Every human being has a right to live a life free from unjust discrimination and harassment. Catholic teaching over many centuries, however, makes a fundamental distinction between sexual orientation (understood as an inclination or tendency) and sexual activity. It holds that all men and women are called to a life of chastity, and to fidelity if they choose to marry.
30. No Catholic agency or organisation should be legally required to act in a way that is contrary to Catholic teaching or in a way that implies a disregard of Catholic teaching. Catholic churches, schools, organisations, charities and in some cases enterprises like conference centres or the Catholic press might face specific situations where they would feel obliged to restrict the services they offer.
31. In this submission we have concentrated on some of the particular concerns of the Catholic community. However, clearly the principles underlying what we have submitted would apply, *mutatis mutandis*, to other Christian denominations and other major religions.

32. Accordingly, exceptions are necessary:

- a) to ensure that no religious organisation is legally required to act in a way that is contrary to its religious doctrine and identity, or that implies a disregard of that identity, or to avoid causing offence to a significant number of members of that faith community;
- b) in relation to Catholic schools, so that the contents of the curriculum, acts of worship or other practices are not required to contradict the teaching of the Church and the religious ethos of the school;
- c) to enable a religious organisation to be free to refuse the use of its premises to groups whose aims are perceived to be seriously at odds with the teachings of that religion.

33. We urge the Government to consider incorporating into the new *Sexual Orientation Regulations (Goods and Services)* exceptions to cover these which broadly parallel those in Part Two of the *Equality Act*. We would welcome the opportunity to discuss these and related matters with Government.

Archbishop Peter Smith  
Chairman, Department for Christian Responsibility and Citizenship  
Bishops' Conference of England and Wales  
8<sup>th</sup> June 2006

Mr D Singh  
The Commission on Integration and Cohesion  
Seventh Floor  
Eland House  
Bressenden Place  
London SW1E 5DU

26 January 2007

Dear Mr Singh,

I am writing on behalf of the Catholic Bishops' Conference of England and Wales. The Bishops attach considerable importance to the Commission's work and we are grateful for this opportunity to respond to your consultation.

Our response highlights the many different groups in our society who, for different reasons, are separated and in some cases alienated from the mainstream. We outline the role the Catholic community has played over 150 years in supporting migrant, ethnic minority and other marginalised groups and helping them to integrate into society. With the current arrival of many new migrants in the UK, the Church here is being called on to play a similar role today.

Finally, we are concerned about relations between faith communities and secular authorities, who too often work with a narrow concept of *secular society* which would exclude religion from the public arena. We feel that there is an urgent need for a more inclusive concept, and we hope that the Commission will address this question.

I hope that our response, alongside others, will be of some use to your Commission in clarifying the role that churches and faith communities may play in the future.

With kind regards,

Yours sincerely,

Peter Smith  
Archbishop of Cardiff  
Chairman of the Department for Christian Responsibility and Citizenship  
Catholic Bishops' Conference of England and Wales

**Commission on Integration & Cohesion  
Response to a Consultation**

**CATHOLIC BISHOPS CONFERENCE OF ENGLAND & WALES  
DEPARTMENT FOR CHRISTIAN RESPONSIBILITY & CITIZENSHIP**

We are grateful for this opportunity to respond to the consultation initiated by the Commission for Integration and Cohesion. Our response is 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. We believe the Catholic Church is one of those institutions.

Our response, therefore, concentrates 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, we 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*

**1. Social cohesion and the common good**

The Catholic Church is committed to *social and community cohesion*, to *human rights* as a legally enforceable articulation of shared values and to the creation of an ethic of mutual respect and solidarity across society.

In 1996 the Catholic Bishops Conference of England and Wales (CBCEW) published *The Common Good*, a statement commenting on British society from the point of view of *Catholic Social Teaching* in anticipation of a general election. The statement was released five years before the disturbances in Oldham, Burnley and Bradford and the fateful events of 11 September 2001. However, it is extremely relevant to current discussions of social and community cohesion.

*The Common Good* emphasised the importance of two principles in the organisation of a healthy society:

- subsidiarity – a principle of appropriate decentralisation
- solidarity – a principle of mutual concern and cooperation

The Bishops quote Pope John Paul II, who in his encyclical *Sollicitudo Rei Socialis* had stressed the importance of *solidarity* and defined it as:



*.. a firm and persevering determination to commit oneself to the common good; that is to say, to the good of all and of each individual because we are all really responsible for all' .*

It is this obligation of *solidarity*, which is written in the hearts of all men and women, that is the true foundation of social and community cohesion.

The Catholic Church accepts *human rights* as the foundational principles for a shared citizenship. This commitment to *human rights* was most recently reiterated in a Vatican statement on *Terrorism and Human Rights*<sup>1</sup>

We also believe that members of society should ask of one another a degree of *mutual respect and cooperation* as a basic requirement for community. This ethic of mutual respect and cooperation cannot be legally enforced but must be created out of the good will of the people. It should be encouraged in the media, in government and politics, in public services and voluntary associations as well as among individual citizens in local communities.

In *The Common Good*, the Bishops made a comment about the pessimism which was increasingly evident in our society and which was undermining the common good and social cohesion.

*The British have always had a feeling for 'the common good' even if they have not expressed it in those terms. They are no longer sure that that principle can be relied upon. They hear it questioned in theory and ignored in practice. It increasingly appears to be an illusion. This loss of confidence in the concept of the common good is one of the primary factors behind the national mood of pessimism. It betrays a weakening of the sense of mutual responsibility and a decline in the spirit of solidarity – the crumbling of the cement that binds individuals into a society. .... We view with particular concern the danger that our young people will turn their backs on the political process because they see it as selfish, empty and corrupt. At the same time young people often show remarkable generosity and commitment to particular causes. It is important that they be encouraged to build on that generosity and see that the good of society as a whole deserves their commitment and idealism. 2*

**We would ask the Commission to consider whether the undermining of social and community cohesion, which has since 2001 become focused narrowly on Muslim communities, goes much deeper and should be addressed in the wider context suggested in this paper.**

<sup>1</sup> See Appendix for Statement of Vatican Observer to the United Nations on *Terrorism and Human Rights*

<sup>2</sup> *The Common Good*, Catholic Bishops Conference of England & Wales, 1991. p 116

## 2. Integration - addressing inequality and different histories of marginalized groups

Integration is a constant and complex process in which differences are overcome, divisions bridged and newcomers and marginalised groups take their place in and are accepted by society.

Underlying other divisions in our society is the fundamental gap between rich and poor. There is evidence that inequality leads to mental and physical ill health, increased rates of violent crime, racism, low life expectancy for the poor, a lack of trust and alienation. The UK is one of the most unequal societies in the European Union, and among the poorer sectors of our society there are a number of groups which have become alienated from the mainstream.

The process by which a particular national, ethnic, religious or other group becomes integrated into British society is extremely complex. It is related to their particular history and identity and the particular nature of their separation or alienation, which may be different for each group. The following are some specific groups which must be taken into account in the current discussion:

- **Irish immigrants** came to the mainland UK over many generations. Some brought with them negative feelings about British government policy in Ireland. They often lived in poverty and met strong anti-Irish and anti-Catholic prejudice. However, partly because they were not visibly distinct, second and third generation people of Irish heritage tended to become indistinguishable from the white majority.
- Some second and third generation **Black British** people of Caribbean and African heritage have become more alienated than their parents and grandparents, despite being born and growing up in this society. Their alienation is a reaction to the racism they see around them and was symbolised in the 1981 disturbances in Brixton, Toxteth and other areas that culminated in the Scarman Inquiry. Their alienation has eased with time but can still be seen in the continuing educational under-achievement of some Caribbean boys in schools.
- The alienation of some younger **British Muslims**, as symbolised in the 2001 disturbances in Oldham, Burnley, Bradford and other towns and cities, is related to cultural and religious identity, poverty, educational under-achievement and the international tensions surrounding Islamic militancy.
- **Asylum seekers and undocumented migrants** live, sometimes for many years, without the legal status that would allow them to participate fully in society. They often meet considerable animosity and cannot rely on the services and supports that ordinary citizens expect.
- The separation of the **Gypsy and Travelling communities** from the mainstream is based on culture and life style as well as on the racism they experience. Their nomadic existence poses problems in accessing health services, schools and other provision. It also makes participation in the political process more difficult. Their children have been identified as those most at risk of failure with the education

system.<sup>3</sup> Despite the CRE estimating that they are similar in size to the Bangladeshi community in the UK, they are often lost in official monitoring and statistics and little is known of the full extent of their disadvantage. All this is exacerbated by the prejudice and discrimination they experience from all sides, not only from local residents but also from those responsible for delivering services. Moreover, inadequate site provision too often places them outside the law and in confrontation with the police.

- The **young unskilled, homeless and/or unemployed** can find themselves leading a separate existence, unable to access services and feeling that they are unable to participate and make a contribution to society. Some become involved in gangs, in crime and in using or dealing drugs. Most are unable to access good education – the Connexions programme was supposed to help resolve this, but Connexions is used primarily by young people who are already in education.
- Some **poor, white working people** can become seriously alienated. Their alienation is caused by poverty and by the perception that they are the last to be given support. It can be seen in the educational under-achievement of white working class boys and is sometimes expressed in a BNP style nationalism.
- **New migrants** (e.g. from Europe and other places) often need help in learning English, understanding how society works, finding housing and a job, meeting people and forming relationships.

While new migrants may need only short term support, the other groups listed above may be more seriously separate and alienated, and the process of support and integration may have to address fundamental problems of history, identity, political and religious values, culture, racism, legal status, lack of skills and the absence of life chances.

Both groups need to find support from a variety of sources – e.g. social services, schools, the police, charities, churches and faith communities. When that support is available and given in a spirit of acceptance and mutual respect, their integration is facilitated. On the other hand, if they meet institutional racism and other forms of prejudice and discrimination, they may become even more alienated.

**We ask the Commission to consider the effect that income inequality has on community cohesion and how we might become a more equal society.**

**We also suggest that the Commission carefully consider the variety of groups who need support, their different histories and needs and the many different institutions from which they may receive support to become fully integrated into British society.**

*3 Provision and support for Traveller pupils, Ofsted (2003)*

### 3. The Catholic Church in England – a support for people in transition (1850-2007)

The Catholic community worldwide numbers more than a billion members and has a strong presence on every continent, with growing congregations in Africa and Asia. It is not surprising, therefore, that the Catholic Church in England is a very multi-ethnic community. For some 200 years, the Catholic Church through its parishes, schools and organisations has been an important support for a number of immigrant and ethnic minority communities and other marginalized groups in this country.

By the beginning of the 19th century, after two centuries of persecution, the Catholic community in England had dwindled to an estimated membership of perhaps 100,000. The Emancipation Act of 1829 and the restoration of the Hierarchy in 1850 gave new life to the Church. These developments along with Irish immigration helped to increase RC membership. The numbers of **Catholics arriving from Ireland** increased rapidly after the famine of 1845. A second wave of Irish immigration came after the establishment of the Irish Free State and the troubles surrounding the Easter Rising of 1916; and a third wave followed the Second World War drawn by a labour shortage in Britain. Some speak of a fourth wave since 1980. The earlier Irish immigrants settled for the most part in major urban areas. Like other immigrant groups since, they tended to be concentrated in certain areas, seeking out people from their own localities in Ireland. They often lived in squalid and overcrowded housing, did the jobs that others did not want and were frequently in trouble with the police. Finding in the church a home away from home, they made sacrifices to contribute to the building of schools and churches which were needed by their growing community.

During the 20th century, the Catholic community became more middle class, less Irish and more integrated into British society. At the same time, the post war migrations left a strong Irish presence in British society and in the Catholic Church. At the time of the 1991 census, 1.5% of the population had been born in Ireland; and the first and second generation Irish population taken together formed almost 5% of the population of the UK. Some of these remain concentrated among the most deprived social classes, while newer Irish immigrants arriving since 1980 tend to be more highly qualified.

After the Second World War, in addition to the Irish migration, an influx of immigrants from the Commonwealth, brought **Catholics from the Caribbean, Africa and Asia** (e.g. from Goa, Kerala, the Philippines, Vietnam, etc) . Many, at first met racism in the Church as well as in the wider society. However, those that persisted found in Catholic parishes, schools and organisations an important support, as the Irish had before them.

*Then in 1969, I met a most charismatic man... He invited me to join Pax Christi, the Catholic peace movement. I went along and met with Catherine and Joe, and later on, Valerie, Mark, Richard, Jim, Tarcissius, Catherine, Gerry, Elizabeth and Deirdre. At last I had arrived. I will be forever grateful to them, at no time did they make me feel misplaced, misunderstood.... At all*

*times I was treated like a brother. I felt Christ was there among us. (a Catholic from Mauritius) 4*

*Since my arrival in the United Kingdom in the early 60's ... I had the opportunity of belonging to a group representing the ethnic minorities in the Archdiocese of Southwark, under the Caribbean Chaplaincy ... Being with members of the West Indian Community, I came to discover their vibrant worship, most gripping and full of zest for life. Their story of faith has served to sustain them in the midst of struggle, with hope and perseverance. (a Catholic from Goa) 5*

In recent years, there has been a further influx of **new migrants** from Eastern Europe, Africa, Latin America and other countries, including significant numbers of Catholics. There is a danger that young people who have their roots in Eastern Europe, will go through the same cycle that young people from Ireland and young Black British people went through, in terms of sub standard education, bullying, racism etc leading them to become alienated and to join the young homeless and/or unemployed.

In many places, new migrants have filled Catholic churches where congregations had been dwindling. A recent article by Ed Vulliamy in *The Observer* described graphically the new situation which the Catholic Church in this country faces, with migrants from new accession countries like Poland alongside others from every part of the globe. He described St Peter's Woolwich, as an example:

*St Peter's counts about 75 nationalities, mostly from across Africa but also South America, Asia and Europe, among its congregation. On Advent Sunday there was an extended Mass featuring music and later food from 34 of them. This is where Monya the Rastafarian from Zimbabwe, with his locks and tri-coloured beads, takes communion along with the Filipino ladies who work on the ticket counter at Tower Bridge and in local hospitals. This church is where Cliff Pinto from Uganda met Eva Krejcarova from the Czech Republic. 'We were married here, and soon our child will be baptised here,' says Pinto, patting Eva's stomach. This is where the local Ghanaian community does its business in the church hall, while Hannah Mulvihill, who cleaned the local library at 6am every morning for 25 years, reflects, in her Irish accent: 'It was a full church but then the Irish died or went back to Ireland and it emptied. Then they all started coming. At first it was a bit...er, well, I'm not very good at expressing myself... But now it's lovely, having the church full again and these people from all over.' 6*

The arrival of new migrants has been noticed not only in London and other large cities, but even in smaller towns and rural areas. An article in a recent issue of the Catholic weekly, *The Tablet*, described the *Parish of Our Lady* in Stowmarket, Suffolk, where families from Kerala, the Philippines and Poland are increasingly an important part of parish life:

4 *Black Catholics Speak*, CARJ (1991), p 33.

5 *Ibid*, pp 41-43.

6 *The Observer*, 17 December 2006.

*Fr Lloyd had noticed that something remarkable was beginning to happen in his parish: people from other countries arriving, settling – and reinvigorating the community they join. We often hear of such migration to London and other major cities, but this was happening in the heart of Suffolk. Here, the Catholic Church has been instrumental in helping people adjust to life in a new country, and develop a sense of belonging. 7*

On the 1st of May this year, Cardinal Cormac Murphy O'Connor, with the Archbishop of Southwark and the Bishop of Brentwood, held a Mass for Migrants at Westminster Cathedral. This was meant to acknowledge the presence especially of those who had come in the last ten years. Some 2,000 people, representing communities from across the world attended the Mass. The Cardinal used his homily at this Mass to call for the regularisation of undocumented migrants. The three dioceses sponsoring the Mass also commissioned research into the situation of new migrants and their connection to the Catholic Church. The research, undertaken by the Von Hügel Institute at St Edmund's College Cambridge will be published in the near future. Southwark Diocese is in the process of developing a policy statement on the integration of new migrants into the Catholic community. The following sets out the aim of the policy:

*What do we want to achieve? Our aim is the full integration and participation of migrants in the life of the diocese. To give migrants a strong sense of belonging and ownership of the Catholic Church in Southwark by making them feel a valued part of the Church to which they belong by baptism and confirmation. To welcome their participation in the mission of bringing Christ to our local community and holding with them our common vision for the future of the Diocese. We welcome and appreciate their diversity and the expression of that diversity in their Masses, prayer meetings and conventions. Integration does not mean assimilation ..... Our aim is the full integration and participation of migrants not only as individuals but also as communities and families into the life of the diocese. This policy document is offered to assist the process of integration ... and together we will be an instrument for building social cohesion which contributes to the Unity of all God's people. This will be a particular and significant contribution to the life of our society from the Catholic Community.8*

**We suggest that the history of the Catholic Church in this country over the past two hundred years is a good example of how an institution helps its members, from a variety of backgrounds, to go through different stages of integration. The role that the Church has performed in the past, first with the Irish and then with the post war migration, it is again having to perform with new migrants.**

7 *The Tablet*, 16/23 December 2006, pp 10-11.

#### 4. Parishes

It would be wrong to depict local parishes as universally places of welcome to the newcomer. There are stories of people (especially those coming from the Caribbean, Africa and Asia after the Second World War) receiving a cool reception and meeting rejection and racism. Some drifted away from church or moved to black-led churches. Like the society around them, Catholic parishes have changed dramatically over the past 50 years – some churches where black Catholics met prejudice a generation ago are now the home to majority black Catholic congregations.

Whatever their initial experience, most Catholics from migrant and ethnic minority communities have, over time, found in their local parish a place of support and acceptance which has facilitated their integration into the local community and wider society.

It is not surprising that migrant communities from Catholic backgrounds look to the Church for support. The Catholic community globally sees itself as a single family. The Pope is a symbol of their unity. Communities everywhere accept the same core teaching. People, coming to the UK from across the world, walk into a local church and participate in essentially the same Sunday Mass that they participated in at home. It may be said in a different language, with different hymns, but it is recognisable world wide as the same Eucharistic celebration – and it makes the parish community a home away from home.

In local parishes, migrant and ethnic communities find not only a place for worship but a community of people of different ages and backgrounds with whom they have various opportunities for involvement in addition to Sunday Mass – e.g. through choirs, parish councils, preparation of children for sacraments, prayer groups, family groups, pilgrimages, social events, visiting the house-bound, campaigning groups etc. In all these activities they are gradually able to form close relationships with a cross section of local people, who were either born here or are thoroughly rooted in the local neighbourhood and town or city.

Since January 2006, the Catholic Church has been engaged in a process of supporting parishes to become more welcoming, friendly and family-sensitive to all kinds of families. Under the *Everybody's Welcome* initiative a range of resources have been produced and promoted to assist parish leaders to consider the practicalities of making everybody feel at home in a parish setting. The needs of those most marginalised are an integral part of this initiative: a number of groups with particular needs, for example, disabilities and mental health needs, have shared the story of what their life is like so that parishes can respond. This work is still in development, but has an important and increasing contribution to make to social cohesion and integration. Through the local parish, therefore, newcomers develop a bond with local people, make a variety of social contacts and find support for their specific needs as they go through the transition to becoming full members of society. At the same time the parish itself is often given new life by welcoming these migrants and incorporating their energy and the styles of liturgy and spirituality that they bring with them.

8 *Towards a Diocesan Policy on Welcoming and Integrating Migrants*, Canon James Cronin, Coordinator for BME Chaplains, Southwark Diocese.

**We suggest that integration is a multi-level process, happening locally, institutionally and nationally. The local process happens both in the neighbourhood and the wider town or city. At neighbourhood level the local church or faith community, which is essentially meant to be for worship and fellowship, often plays an important role in supporting new people and bringing them together with others from different backgrounds.**

## **5. Schools**

We understand that the Commission will not address what is often known as the “faith schools debate”. In this context, however, it is relevant to draw attention to the frequently inaccurate portrayal of Catholic and other schools with a religious character in the media and other elements of the public sphere.

There are 1,723 Catholic primary schools and 352 Catholic secondary schools in England. The **percentage of ethnic minorities** in both Catholic primary schools and Catholic secondary schools **9 is above the national average** overall. In addition, the wide catchment area from which the majority of Catholic secondary schools draw their pupils contributes to a true social mix with pupils typically travelling to the school from a variety of neighbourhoods.

The makeup of ethnic minority populations in Catholic schools is slightly different from other schools: Catholic schools have a higher percentage of Black pupils and a lower percentage of Asian pupils than other schools on average, and higher percentages of Irish, White other, Gypsy & Traveller and mixed-heritage children. <sup>10</sup>

Catholic schools give priority to Catholic children and consequently Asian pupils, who are often from Muslim, Hindu and Sikh communities, are under-represented overall in Catholic schools. Pupils from other denominational, faith, or non-faith backgrounds are welcome in, and make an important contribution to the vast majority of schools which are not oversubscribed with Catholic applicants. This is the case nationally. For example, at St. Mary’s College in Middlesbrough, Ofsted found that half of the students are from denominations or faiths other than Catholicism and that the number of minority ethnic students was double the proportion in the local population. The College attracts a large proportion of students from disadvantaged areas.

<sup>9</sup> The percentage Black and Minority Ethnic Pupils: Catholic Primary 18.2, National Average 16.7. Catholic Secondary 20.0, National Average 16.0. *Quality & Performance: A Survey of Education in Catholic Schools*, CES, 2006.



Staff members in Catholic schools represent not only the Catholic faith but other world faiths and none. They also reflect changing migrant communities. For example, many Catholic schools have started to employ Polish teaching assistants or take in volunteers to aid pupils from new EU countries, including St. Catherine's Primary in Penrith, Cumbria, St. Mary's Catholic College, Hull, The Trinity Catholic School, Nottingham, St. John Houghton, Ilkeston, Sacred Heart Primary School, Leicester and St. Anthony's Catholic Primary, Slough.

In October 2006, Archbishop Vincent Nichols and the Secretary of State for Education and Skills agreed to make the contribution of Catholic schools to community cohesion more transparent. The frameworks of the inspections which seek to assess the religious life of the school<sup>11</sup> are currently being revised so that all schools and colleges are obliged to be evaluated specifically on their contribution to community cohesion.

A few examples taken from the range of work that Catholic schools undertake to contribute to community cohesion through the curriculum and otherwise, demonstrate the kinds of activities in which Catholic schools are engaged:

- St. Gregory and St. Patrick's Catholic Infant School in Whitehaven has changed its name to St. Gregory and St. Patrick's Catholic Community School to reflect their role in the local area; they are building a children's centre and community facility.
- The Headteacher of St. Anne's Catholic Primary School in Tower Hamlets is a National Leader of Education, and works with the leadership team of a predominantly Muslim community school nearby.
- Bishop Ellis Catholic Primary in Leicester is embarking upon an email project focusing on culture, between Year 6 pupils and a local community school with pupils from a predominantly Asian background.
- The Headteacher at St. Mary's Catholic Primary in Hornchurch is a primary school consultant leader and thus supports local primaries irrespective of denomination. The school welcomed a visit from Ilford Jewish Primary and the Rabbi from Ilford Synagogue and the school is liaising with staff at the Gurdwara and Mosque in Ilford.

10 *Quality & Performance: A Survey of Education in Catholic Schools*, CES, 2006.  
 11 Section 48 (England), section 50 (Wales) Education Act 2005.

### **Case study: St. Catherine's Catholic Primary School, Sheffield**

The school is situated in a multi-cultural area and supported by funding from Burngreave New Deal for Communities – this enables the school to provide a wide range of adult and family learning activities and extended school provision. Adult provision is available to the whole community, including parenting classes, English for Speakers of Other Languages, ICT, Creative Arts and First Aid. The RE curriculum learning about other faiths is carried out with the help of Speakers visit from other faith groups and supplemented by trips to the local Mosque, Synagogue, Sikh Temple and Hindu Temple. The headteacher is working with the local Islamic community to ensure that Muslim pupils are supported in their spiritual development. The admissions policy gives priority to 10% from other world faiths and in response to a school places crisis in Burngreave, the school governors worked with the local authority to agree a temporary expansion for the next 3 years (extra reception class of 30):

*The Governors took this decision in the interests of the common good and to aid social cohesion and in order that a) local families could have access to a local school and b) we would be able to help reduce the number of families who had to place their children in more than one school. As a staff we feel that the majority of our work on social cohesion is delivered and evidenced in the incidental teachings and quality of relationships which exist in school between children of all faiths, staff of all faiths and parents of all faiths.*

Catholic schools are also much engaged with community-facing initiatives such as Extended Schools and Not in Education Employment or Training and we also wish to highlight the work that the Church does through education to the marginalised and the poor, for instance, schools serving or located on very deprived estates. In some cases, the Catholic school will be the only accessible civic facility and serves as a focus for the local community.

**The view of Church schools as divisive, elitist and closed is a very inaccurate stereotype. The issue seldom gets unbiased consideration. The Commission is not addressing the question of *Faith Schools*.**

**Nonetheless, we would like it to be acknowledged that the activities in which many Catholic schools are engaged and the overall ethnic mix of these schools indicates that they play a very positive role in achieving the cohesive communities which are our shared goal**

### **6. Chaplaincies to immigrant and ethnic communities**

Often the pattern has been that newly arrived immigrant communities begin by attending an ethnic or national chaplaincy. Later, as they become acclimatised to a new life in the UK, they gradually make a more permanent home in a local parish. People from the Caribbean, Africa and the Indian subcontinent, who arrived in the

decades after the Second World War, are now mainly settled into parishes. More newly arrived migrants, however, are in some cases still being served by chaplaincies.

At the moment, Catholic Chaplaincies to immigrant and ethnic communities include: African, Albanian, Asian, Austrian, Belorussian, Brazilian, Chaldean, Chinese, Croatian, Czech and Slovak, Eritrean, Filipino, French, German, Ghanaian, Hungarian, Iraqi – Chaldean, Iraqi – Syriac, Irish, Italian, Keralan, Korean, Latin American, Lebanese, Lithuanian, Maltese, Melkite, Nigerian, Polish, Portugese, Romanian, Slovene, Spanish, Sri Lankan – Sinhalese, Sri Lankan – Tamil, Vietnamese and Caribbean.

**There is a place for organisations (like chaplaincies) which bring people of a similar background together, sometimes offering Mass in their native language. This can be the first stage (mutual support in a new situation) in a process of integration into a new society. It is important, however, that Catholics eventually find a home in a local parish where they will mix with people from a variety of backgrounds.**

## **7. Catholic agencies, organisations and associations**

There are a vast number of Catholic agencies, organisations and associations which provide services for the poor, children and young people, families, the elderly and other vulnerable groups from many backgrounds. Some Catholic bodies provide services or campaign more specifically on behalf of migrants, ethnic minorities and other marginalized groups. These services are normally offered to anyone in need without distinction. The following are just a few examples:

- The Catholic community has a strong and growing network of **family support**, including a national Project Office for Marriage and Family Life, a network of regional coordinators offering relationship and practical support across the life-cycle, links with a range of Christian and other faith family organisations and contacts with teams and individuals across the countries of England and Wales.
- The Catholic community has an extensive network of **youth provision**, including a national office of Catholic Youth Services linked to the Bishops Conference, other national bodies offering activities and services for young people, youth centres and youth officers and teams in each diocese.
- **The Depaul Trust, the Passage and the Cardinal Hume Centre** offer accommodation and support for homeless and disadvantaged young people, including advice and support with housing, numeracy and literacy, mental and physical health, training and employment opportunities, etc.
- **The London Irish Centre** offers advice and support to the Irish community in London. Originally established by the Catholic hierarchies of Britain and Ireland, it is now an independent charity which offers a number of services and houses a number of agencies, including the Irish Chaplaincy.

- A **Catholic Support Network for Travelling People** brings together priests, religious and lay people who support Gypsies and Travellers and work closely with Catholics among them.
- **The Jesuit Refugee Service (JRS)** is an international Catholic non-governmental organisation, at work in over 50 countries, with a mission to accompany, serve and defend the rights of refugees and forcibly displaced people. JRS UK supports and advocates on behalf of asylum seekers from their first arrival until they are satisfactorily settled.
- **The Catholic Association for Racial Justice (CARJ)** is an independent charity established to support black and minority ethnic Catholics and to work with all for racial justice in and outside the church. It has organised support programmes for black and minority ethnic people in parishes and Catholic schools. It is currently organizing a series of local seminars on *The Changing Face of Britain* to promote a serious reflection on how the arrival of new migrants and the highlighting of the Muslim communities and other changes should be addressed 30 years after the original *Race Relations Act 1976*.
- **Brushstrokes** is a project for asylum seekers, refugees and newcomers run by one Catholic agency out of a local church in Birmingham. It provides ESOL for up to 70 people at any one time, drawing participants from Eastern Europe, Africa, Iran and many other countries including local Asian women who have lived in the area for a long time. While it is Esol which draws people in to the Community Project, the team then invite them to take part in all the other groups and activities in the Centre which are used by the wider community –such as NVQ’s in Childcare, IT classes, Parenting groups and events such as Healthy Living days (which attract up to 200 people).
- **The Hope Project** is run by a Catholic agency on Heath Town Estate in Wolverhampton. Of the 1200 properties on the Estate 200 are reserved for use by Asylum seekers and Refugees families. The HOPE team of six staff and four volunteers visit all these homes twice each year. They then visit on a regular weekly or fortnightly basis 150 of these to offer more intensive support; 75 of these are Refugee and Asylum seeker households. Hope believes that to integrate newly arrived families it is vital to do home visiting and to reach out, to take the first step. One of the great successes of HOPE has been the development, over the last two years, of five very ethnically diverse children’s groups and youth groups.
- **Housing Justice** (formerly the Catholic Housing Aid Society and now merged with Churches National Housing Coalition) campaigns on homelessness and bad housing and supports networks of church-based homelessness projects, of housing advice centres and of resident-led regeneration projects. All the services provided by groups linked to Housing Justice are available to everyone who needs them regardless of ethnicity or religion. A key aspect of the work is to encourage and enable church-based projects to work with statutory bodies and with groups from other faith traditions – practical integration in action.

**The services provided by Catholic organisations to support migrants, ethnic minorities and other marginalized groups and to help them integrate into mainstream society should be acknowledged, and it should be recognised that for the most part these are available to anyone in need.**

## **8. Relations between people of different faiths and none**

There is a fairly widespread feeling in society that religion is often divisive; and historically there is some truth to that belief. However, on the whole, relations between churches and faith communities in this country tend to be amicable and are growing closer. Many people of faith find in other believers a respect for their religious convictions which they appreciate.

It is possible that, in some situations, relations between faith communities and secular authorities are becoming more strained. The joint statement from Bishop David Gillett (Chair) and Dr Ataullah (Vice Chair) of the Christian Muslim Forum speaks of the negative impact of some public authorities attempts to secularise religious festivals to avoid offence to members of minority faith communities. *Those who use the fact of religious pluralism as an excuse to de-Christianise British society unthinkingly become recruiting agents for the extreme right. They provoke antagonism towards Muslims and others by foisting on them an anti-Christian agenda which they do not hold.*

The Catholic Church's attitude towards people of other faith traditions changed dramatically during the Second Vatican Council in the early 1960s. The publication of the council document *Nostra Aetate* represented a milestone in the process. It has now become accepted as good practice within the Catholic community to engage in religious dialogue with people of other faiths. Catholics have come to see inter-faith dialogue as an opportunity for mutual enrichment where we learn to appreciate our own faith by sharing and listening to others speak of their faith. We also find in dialogue an opportunity to discover the important core values which we share and this discovery enables us to engage in a deeper dialogue and to work together more effectively.

Much work is currently being done to encourage the Catholic community to respond to the challenge of our diverse society by actively engaging with people of different faiths and to view this as an intrinsically Christian endeavour. Catholics are actively encouraged not only to participate in local Faith Councils and Faith Forums but to initiate outreach to members of other faith communities in every way possible. Every diocese in England has an inter-faith adviser and a network of Catholics engaged in dialogue in different ways. The following are a few examples of inter-faith activity.

- In **Bradford**, Catholics are heavily involved in a monthly gathering for interfaith prayers for peace and a shared meal. The group 'come together to pray' (rather than 'pray together'). People listen to someone from each faith tradition say, recite, sing or proclaim a prayer / meditation / reflection on a theme of peace for the city, the nation and the world. This short formal prayer (plus silences) is followed by personal contributions. The group usually numbers 30 to 40 Christians, Muslims, Hindus, Sikhs, Buddhist and Bahai's together in prayer and

friendship – facilitated by the Columba Community – an ecumenical Christian group set up in Bradford to support Christians in the work of interfaith dialogue.

- A Catholic church in **Preston**, where the local population changed and there is now a sizeable Muslim population, has gone through considerable change. It is not a prosperous area as the current parish priest discovered on his arrival. From a scene of devastation, with a crumbling church, dwindling numbers of churchgoers in a poor area he set about his outreach by opening up the school to the point that its intake is now half Muslim, a few Hindus and the remainder Catholic children. The school employs a Muslim teacher who advises on the curriculum. Parts of the church premises have now been transformed into a multi-faith leisure centre complete with conference facilities, a gym for local youth and swimming facilities with private bathing area for Muslim women.

A parish priest, in **Oldham** tells of arriving at his parish a few years ago to find a virtually all-white congregation of some 3-400 people, most of whom were older than himself. Now the congregation includes about 15 Indians, 30 Africans and 45 Filipinos. There is an African choir, a Filipino choir and a mixed choir, and each does one Mass a month. When he came to the parish, the primary school was also virtually all white. It is now approximately 25% Muslim. This parish priest plays a leadership role in the community cohesion process in the area, and has received two awards from the local council for his contribution to community cohesion through involvement in the local interfaith forum.

Moreover, anecdotal evidence suggests that the numbers of inter-faith marriages are increasing, with Muslim/Catholic marriages being most in evidence in requests for advice and support. Catholic Marriage Care, the Department for Dialogue and Unity and the marriage and family Life Project office at the Catholic Bishops' Conference are urgently seeking ways to provide couples and their families with appropriate support, in order to sustain family and social relationships.

**We ask the Commission to explore whether, on the whole, relations between faith communities are improving and instances of dialogue increasing, while relations between people of faith and secular authorities may in some situations be more polarised.**

**In view of the fact that the UK is home to a rich variety of faith communities, the Commission is urged to explore the possibility of capitalising on the 'shared faith' component of this mix and the potential for dialogue, collaboration and mutual support between faith communities.**

**We believe the Commission will find that there is considerable common ground between different faith communities. They often share a number of fundamental beliefs and core values and engage in similar spiritual devotions and practices (e.g. prayer, meditation, fasting, celebration, etc). This religious common ground is a foundation on which better relationships can be built.**

## 9. Broad-based community organising - a model of good practice

There are some places where people from faith communities work together with one another and with people involved in a variety of secular organisations – one of these is in broad-based community organisations. These organisations draw together people from a variety of local churches, mosques, synagogues, temples, trade union branches, voluntary associations, schools and community groups.

The best example of such an organisation is London Citizens (a federation of three organisations - TELCO, South London Citizens and West London Citizens). London Citizens has been very successful in getting people from different communities and groups to work together for the good of all the people of the area. For reasons not fully understood, both here and in the United States, broad-based community organising has attracted a considerable Catholic involvement. London Citizens currently has 84 member bodies, including 31 Catholic parishes, schools and organisations from east, west and south London. There is a similar broad-based organisation in Birmingham and another in north Wales. However, most of the other attempts to build these community organisations (e.g. in Bristol, Liverpool and Sheffield) have not been sustainable because of lack of long term funding.

**We suggest that the Commission make an effort to find examples of organizations and initiatives where people of different faiths and of no faith are working together for the common good. These may be the seeds of greater social and community cohesion in our society. If, like broad-based community organising, they face major problems of sustainability due to lack of funding, this would be an important issue to address.**

## 10. A vision for the future – an inclusive concept of secular *society*

Cohesion is ultimately based on the commitment of members of society to the common good. Human rights are the legally enforceable foundation of our shared citizenship, but our solidarity with one another must also be expressed in a common ethic of mutual respect and cooperation. We believe that the forces undermining this cohesion have been gathering over a number of years and are much wider than the current focus on Muslim communities. As a people we must rediscover our common bond.

We have indicated some of the many groups who are separated or alienated and who need support. The integration of these groups may require short term support (in language, information, housing, jobs and supportive relationships) or they may require dealing with deeper issues (history, identity, racism, legal status, life chances, etc).

**The Catholic Church**, like other institutions in our society, **has played a significant role in promoting the integration of marginalised groups** without being acknowledged because that is not our primary function.

The Catholic community is committed to building good relations with other churches and other faith communities. In fact, we believe those relations are steadily improving. There may, however, be growing divisions between faith communities and

secular authorities which need attention. Above all we need **organisations that enable people of all beliefs and none to work together** for the common good.

We suggest that the Commission should address the important question of the relation of faith communities to *secular society*. The concept *secular* can have different meanings. For some it means the marginalisation of religion, its exclusion from public space. For others it may mean a strict separation of church and state. We believe that these concepts of a Britain as *secular society* are too narrow. They may undermine cohesive community by marginalizing people of faith and allowing them access into the public space only if they come stripped of their fundamental identity and values.

There is a **more inclusive concept of *secular society* as ‘one in which religion does not define or determine the public space but is included within it’**. It is a place where people of all beliefs and none can come together, associate with one another and cooperate without leaving their religious or non-religious beliefs behind and in an atmosphere of mutual respect and cooperation.

British society has a history which invites such an inclusive concept of *secular society*. By historically allowing a close relationship between parliament, the monarchy and the Church of England, and by creating a dual system of education (Voluntary Aided schools within a larger state system), we have laid the foundations for a new concept of secular society which is inclusive of all faiths and none. These particular historical developments may need to be modified, but the concept of a society which is both secular and inclusive should not be abandoned. It should be developed and articulated widely as the foundation of cohesive society.

19 January 2007

## APPENDIX

### **Antiterrorism Measures Must Not Jeopardize Human Rights**

VATICAN CITY, OCT 17, 2006 (VIS) - Archbishop Celestino Migliore, permanent observer of the Holy See to the United Nations in New York, yesterday addressed the sixth committee, of the 61st U.N. General Assembly, which is discussing measures to eliminate international terrorism. Terrorism, said the papal nuncio speaking English, "has developed into a sophisticated network of political, economic and technical collusion which crosses national borders to embrace the whole world." This illustrates, he continued, "the importance of an internationally binding Comprehensive Convention on International Terrorism."

"It is fundamental to affirm from the very outset that effective counter-terrorism measures and the protection of human rights are not conflicting goals," said the archbishop. "The absolute unacceptability of terrorism lies precisely in the fact that it uses innocent people as means to obtain its ends." However, "counter-terrorism strategy must not sacrifice fundamental human rights in the name of security. Rather, it must refrain from selective implementation of measures; otherwise, it would corrode the very values that it intends to protect."



"Terrorists must never be allowed to point to this kind of deficiency on the part of States for their actions. ... On the other hand, not even the terrorists' contempt for human life and dignity can justify denying them treatment according to international humanitarian and human rights norms."

"The Comprehensive Convention on International Terrorism should make clear that no cause, no matter how just, can excuse or legitimize the deliberate killing or maiming of civilian populations. Even the legitimate right to resist unjust authorities and the right to self-determination and national liberation, must not threaten social fabric and domestic public order."

"Terrorism," Archbishop Migliore went on, "is a cultural manifestation ... of warped perceptions of reality, of xenophobic complexes, of contempt for the other, ... of cynical abuse of religion," and must be faced with "cultural instruments," and with "a courageous and resolute political, diplomatic and economic commitment to relieve situations of oppression and marginalization which facilitate the designs of terrorists." "It must be firmly stated that the injustices existing in the world can never be used to excuse acts of terrorism, and it should be noted that the victims of the radical breakdown of order which terrorism seeks to achieve include above all the countless millions of men and women who are least able to withstand a collapse of international solidarity. The terrorist's claim to be acting on behalf of the poor is a patent falsehood."

"Religions and inter-religious dialogue," he concluded, "have a fundamental role to play in contrasting the terrorists' preaching of hate and violence as antithetical to authentic religion."

## RELIGION AND THE PUBLIC FORUM

*An address by the Archbishop of Westminster, Cardinal Cormac Murphy-O'Connor, on the occasion of the Corbishley Lecture, 28 March 2007, Westminster Cathedral Hall.*

Dear friends,

The challenge to the freedom to manifest religious belief.

I am delighted to be invited to give this lecture in honour of that great Jesuit priest, Fr. Thomas Corbishley. The subject I have chosen is, indeed, a topical and serious one. I address you as a Catholic Christian, as a Bishop and a Citizen of our great British democracy. All these roles are entwined in the heritage and the culture of our nation and our Church. It is not my intention tonight to speak against any political party but, rather, to make a contribution to a debate, it seems to me, that needs urgently to take place. I think we Catholics have much to offer within this pluralistic society in which we live and also much to learn. But I am asking myself tonight, ‘What kind of a culture are we developing which wants increasingly to divorce religion from the public forum?’ I do not believe that the public sphere should be free of practical expressions of religious convictions. But it does seem as though there is a growing reluctance to bare the face of religious conviction in the public realm. Of course, I am not claiming here that there is an attempt to suppress the basic freedom of religious belief; but freedom of religion is much more than the freedom to worship; it is the freedom to act according to that belief in the service of others.

Essentially, I want to appeal tonight for the freedom to believe and the freedom to serve the common good according to the convictions of our faith. For it is in the nature of who we Christians are to serve society, to be recognised by the sign of love, and to discover for ourselves and lead others to discover the inviolable dignity of every human person. Here is the central and unifying task of the service which the Church is called to render to the human family. When I speak of the Church I mean of course all within it, clergy and laity, with common beliefs to be put into practice in the service of the common good. In his exhortation *Christifideles Laici*, Pope John Paul II emphasised the unique character of the vocation of the laity within the Church. That vocation is “not only of belonging to the Church, but of being the Church, that is to say the community of the lay faithful under the leadership of the Pope and with the Bishops in communion with him.” Thus it is that the world “becomes the place and the means for the lay faithful to fulfil their Christian vocation”.

Tonight, I want to appeal for that freedom to serve in the public sphere; not just for our own beliefs, nor even solely for the good of those we serve; but also for the sake of our democracy.

### Church and State

A PERFECT relationship of religion with the public forum has never yet been discovered. There is always a tension. The attempt by a state to proclaim a particular religion as true and to force its observance on people is inimical to Christianity itself. Truth and freedom need each other, which is why from its beginnings the Christian Church proclaimed the distinction between temporal and spiritual, between what St Augustine described as the City of God and the Earthly City. The Catholic Church has not in the past been innocent in this regard; which is why the clear principle articulated at the Second Vatican Council that the Church should not resort to temporal power to persuade people was one of the great developments of the twentieth century. The freedom and dignity of every person – a freedom and dignity which reside in our being made in the image of God himself – are sacrosanct before the power both of Church and State.

At the other extreme, some hold that nothing matters except individual autonomy, and that the state must be entirely neutral. This means that religion must be excluded from public life. Ever since the Romans, the State has been wary of Christianity, because Christianity defends the law of God, which places limits on the state's power. Faith points to a power and authority which the state cannot control. In late nineteenth and early twentieth-century European history, at a time of economic and technological progress not unlike our own today, the state in some countries sought to stand apart from religion, to make of faith a purely individual matter. This meant, in practice, that the state was self-sufficient, answerable to no higher authority. This is why, in some European countries, the step from a liberal to a totalitarian state was so easily made. In stark contrast, Britain resisted this trend by its continued inclusion of religion in the public sphere, and we remained democratic.

### The secular state

But the secular state, which we now risk adopting in Britain, seeks a politics entirely independent of religion, in which religious principles have nothing to say in the "real" world of political action. The choice of the State to side with the secular is said to be neutrality; and it is usually justified by an appeal to equality. But this is in itself ideology, divorcing religion from the public realm on the pretext that religion is divisive. This sets up great tensions in society. The more determinedly secular a state becomes, the more pressure mounts for religious beliefs to assert themselves. We then no longer have a common search for truth on the basis of shared reason, but a series of monologues in which each side excludes the other. People talk past each other. There is little reasoned thinking. There is no adequate civil discourse. Society is then at risk of the fragmentation of its moral structure.

What concerns me is that we are travelling in that direction blindly, without stopping to look back to the democratic ways from which we are departing. The United Kingdom, said a House of Lords Select Committee in 2003, “is not a secular state.” Indeed, the Lords went on, “the constitution of the United Kingdom is rooted in faith – specifically the Christian faith, exemplified by the established status of the Church of England.” The Glorious Revolution of 1688 was made in the name of rights in general and of religious freedom in particular. However, I should point out that Catholics and Jews were not part of this tolerance. For us eventually, though, it led to the Catholic Emancipation Act and our integration back into the life of the nation. Our democracy has always believed passionately in that religious freedom, not because our forbears regarded the state as neutral but because their faith taught them that our choices in daily living determine our eternal destiny and that we are responsible for our choices. The idea of divine judgement presupposes freedom. We cannot be held responsible for that which we were coerced into doing. Our human freedom mirrors the freedom of God. It is not the freedom to dispense with God. Religious freedom, in other words, is not a by-product of democracy but a driving force of it. And that religious freedom includes the right to manifest our beliefs.

Indeed, the founders of our western democracies warned against the possibility that diversity, when taken to an extreme, could destroy the very means by which diversity could be tolerated and promoted. It is a large leap from the view that religion and politics operate in distinct spheres, to the view that therefore the State must exclude religious beliefs from the public sphere. How paradoxical it is that in the name of a principle of equality so consonant with religion, the state seeks to separate itself from religion.

#### Moral framework of democracy

Our democracy has a moral purpose. The concept of community reflects the reality of human existence. T.S. Eliot in “Choruses from the Rock” wrote:

“What life have you if you have not life together?

There is no life that is not in community,

And no community not lived in praise of God.”

The political community exists for that common good in which the community finds its justification and meaning, and from which it derives its proper and lawful arrangement. According to the Second Vatican Council, “The common good embraces the sum total of all those conditions of social life by which individuals, families and organisations can achieve more thoroughly their own fulfilment.” All our freedoms are underpinned by a vision of the dignity of the human person. We may disagree about what that dignity implies or entails; and we may argue about what best enhances or protects that dignity. But our common assumption is that the community of persons and religious beliefs which makes up our nation has a role to play in enhancing that dignity.

We do not always agree, but we try to seek agreement through our laws, customs and institutions. The emphasis, rightly, is on freedom, because people flourish more in freedom than not.

As the Chancellor of the Exchequer said only weeks ago, there is a golden thread which runs from the Magna Carta to the first Bill of Rights in 1689 and through to the present, namely a history of challenging tyranny, and of service. Freedom and fairness, duty and service: these, he said, were our great British values.

Ours is not, however, a history of maximising freedom as if freedom was the only objective of politics. Genuine politics – and here I quote the Czech playwright-president Vaclav Havel – is “a matter of serving those around us: serving the community, and serving those who will come after us. Its deeper roots are moral, because it is a responsibility, expressed through action, to and for the whole, a ‘higher responsibility’ because it has a metaphysical grounding.”

#### The freedom to manifest religious belief in a democracy

Now, we may not agree between ourselves on what is good. But we can agree at least that what is good is not irrelevant to our public policy decisions. In this regard religion has always had a vital contribution to make. We do not inflame our exchanges with the passion of dogmatic presuppositions. The Church claims only its legitimate part in the political process – to assist the very reasoning which is fundamental to the pursuit of justice. The Church’s task is not to propose technical solutions to questions of governance or economic activity, but to help to form a social culture based on justice, solidarity and truth, for the common good. That is a culture that can form the kind of people who can develop those solutions against a transcendent moral horizon. The Church’s task is of nurturing, to assist a public debate that is tolerant, reasoned and inclusive, but within a moral framework which seeks to defend and promote justice and human flourishing. We assist in this not just by what we say but by what we do. It is why Cafod, the Catholic aid and development agency, exists. It is why our centres for homeless people exist. It is why our schools exist. It is why our adoption agencies exist. They exist to meet human needs, yes, but their purpose goes much deeper. They are means of making present here and now the love which human beings need. They help to build a civic order built on that love. They are much more than services. They assist the transformation of our society. It is in our nature, as Catholics, to offer these works for the good of society simply because “the love of Christ urges us on” (2 Cor 5:14).

Again this need for spirituality in pursuing the common good reflects human reality. Robert Fogel in his book *The Fourth Great Awakening and the Future of Egalitarianism* wrote as a Nobel Prize winner in economics about the effect of religion and moral values upon issues in our society and economy. He firmly concluded that there is a lack of what he refers to as a distribution of spiritual resources and assets. He concludes there is a void in the development of character and in the spiritual dimension of life in modern western society.

Pope Benedict XVI has described the interdependence of faith and politics with characteristic precision. Justice, he said in his encyclical *Deus Caritas Est*, “is both the aim and the intrinsic criterion of politics.” But, he goes on to ask, “what is justice? The problem is one of practical reason. But if reason is to be exercised properly, it must undergo constant purification, since it can never be free of

the danger of a certain ethical blindness caused by the dazzling effect of power and special interests. Here, politics and faith meet. From God's standpoint, faith liberates reason from its blind spots and therefore helps it to be more fully itself."

Pope Benedict rightly emphasises the use of reason. Reason informs discussion and reasonable decisions. The public sphere is the locus of a discussion in which society seeks a common mind about important matters. The importance of religion to that discussion is vital, because religion is, fundamentally, concerned with truth. Truth is not something we construct, but something we seek together. The right to religious freedom and to respect for the exercise of conscience on its journey towards the truth has been increasingly recognised as the foundation of the cumulative rights of the person. There can only be a democratic discussion when truth is a matter of universal concern. That is why freedom of religion cannot be a relative value. Freedom of religion is not unconditional, of course; but it cannot be made relative to other rights on the grounds that truth is not the concern of the state. A state which denies the freedom of religion is not a religiously neutral state, but a state which upholds relativism. Relativism takes its stand on a desire for equal treatment of different beliefs in the conviction that these beliefs are relative. Yet, in contradictory fashion, it does so because of a belief in human equality and dignity, which are not relative values. Relativism is no friend of true democracy. By banishing religion from the public sphere in the name of equality, it discounts religious perspectives from debate, banishes truth to a private sphere, labels it "religious" and infers it to be irrational, and solidifies disagreements into divergent strands of belief. Debate is thereby impoverished, and democracy weakened.

The assertion of truth is not an obstacle to freedom but its precondition. If we allow religious perspectives in debate, we can discuss issues about truth on the basis of reason. We can search for the truth together, using reason in freedom.

#### The need for democratic values to be observed

There is sometimes an assumption today that democratic civic dialogue is a sort of teenage "whatever" – or, in a phrase made popular in surprisingly high places, "I ain't bovvered". We all believe whatever we like, and nobody imposes a view on anybody else; what matters is the freedom of each person to choose. In its political expression, this means that the assertion of individuality becomes a substitute for the search for justice. Democracy is reduced to mere co-existence, government to little more than an arbitration of opposites. Equality is asserted as if it were antagonistic towards religious morality. Yet the drive towards equality in western societies has been a fundamentally moral enterprise, in line with Christian doctrines. The abolition of slavery and the legislation of American civil rights were brought about by many people who believed in the freedom and dignity of all human beings under God. The Church is the sign and safeguard of that dignity. It is the reason why we defend migrants as well as the unborn. It is the reason why we promote the social dimension of the person in the marriage of a man and a woman in the family, which for us is the basic cell of society, the seed-bed

of human dignity. Our freedom to act according to our rights is necessary not just for us but for justice, democracy and equality.

The Church's commitment to universal human rights has always been implicit in its upholding of human dignity. In modern times, Pope Leo XIII in 1891 with his social encyclical *Rerum Novarum* said, "Rights by whomsoever possessed must be religiously protected." And then came one of the great encyclicals in the history of the Catholic Church, *Pacem in Terris* by John XXIII. Firstly, it was an encyclical that was unique because it was written to the whole world, not just the Catholic Church. Secondly, it endorsed the Universal Declaration of Human Rights. In the Pope's words, "the genuine recognition and complete observance of all rights and freedoms outlined in the declaration is a good to be sought by all peoples of all nations". The two key points he identified are the equal dignity of every human being, and the defence and protection of these rights for us all.

Are rights solely a matter of what I am entitled to? What do I owe to others? John XXIII gave some powerful examples.

The right to live involves the duty to preserve life. The right to a decent standard of living involves the duty to live in a becoming way. The right to be free and seek the truth involves accepting and upholding the same right for everyone else. Each right has its corresponding duty and unless both are observed neither will have real value. In a brilliant phrase he put it this way: "To claim one's rights and ignore one's duties or only half fulfil them, is like building a house with one hand and tearing it down with the other." These rights and duties, he said, are universal and inviolable.

In 1991 John Paul II on the centenary of *Rerum Novarum* issued a further encyclical in which he said the mission of the church has two related dimensions: the preaching of Christ and the public commitment to social justice and human rights. These he made the platform of his preaching to the world.

So the freedom to put religion into practice is vital to the health of British democracy. True democracy offers a framework for a peaceful exchange of differences, because in the civilised interplay of opposed beliefs, truth and justice have a better chance of being discerned. A democracy is, essentially, an act of faith in human goodwill and reason. The faith that what we have in common is greater than what divides us, and therefore in the public sphere we must always seek to include rather than exclude what we disagree with. As a lawyer wittily concluded, we should not show "liberal tolerance only to tolerant liberals".

If modern Britain faces a challenge today, it is to recover the language and the spirit of the age of democracy, to forge a meeting place for all citizens where firmly-held beliefs are not disqualified because they are seen as "outmoded" or "dogmatic". The public sphere is the forum of collective reasoning, and it cannot be a space empty of tradition and particular belief. A tolerant society is not one without constitutive beliefs, since its tolerance flows from a very constitutive belief. There is an ethical hunger in our society today and it would be tragic if religious convictions did not have a voice in meeting that hunger.

### Catholics and the Human Rights Act

Article 9 of the European Convention on Human Rights is aware of that danger, which is why it upholds the freedom of “thought, conscience and religion”, of everyone, “either alone or in community with others, and in public or in private, to manifest his religion or belief in teaching, practice, worship and observance”. Article 9 goes on to say that the freedom to “manifest one’s religion 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.”

What are these limitations? The law has to decide. Public safety, order, health and morals, the protection of the rights and freedoms of others – these considerations are not self-evident; they depend on judgements about what is in the interests of human beings, which in turn rest on a prior vision of the world and the place of all of us in it. Under Article 9 any limitation on the manifestation of religious belief can only be justified where it is prescribed by law, and where it is necessary, by which is meant “that the interference corresponds to a pressing social need and in particular that it is proportionate to the legitimate aim” (my emphasis). That is an exacting requirement, which must be fully understood and recognised by the state, the legislature, the courts and the people. To quote the House of Lords in the recent case of Williamson, it is a bedrock principle of human rights law “to afford practical and effective protection to human rights.” That is a high threshold indeed for any proposed limitation. On the question of the balance to be struck in relation to this limitation, I would concur with the conclusion of the Constitutional Court of South Africa in the Christian Education South Africa case. The court said:

“Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law”.

What is the right response of the law when faced with a choice, for example, between a child’s welfare and the free exercise of religion? If a member of a religious group sees the material world as a mere projection of the mind, and refuses medical treatment for his or her child, the law might step in and coerce the parent into allowing doctors to treat the child. But what if a Christian parent regards their daughter in a persistent vegetative state as living and human, and disagrees with a doctor who wishes to withdraw food and water, so bringing about her death? Is this not a legitimate exercise of religious freedom?

It is hard for the law to be neutral on these questions, for they involve questions about life and death and the purpose and meaning of suffering.

Such choices are not made easier by the attempt to exclude religious arguments. Absolute neutrality is impossible. No society, and no system of law, can exist without being based on substantive beliefs about what is good and bad for human beings. Without some conception and acceptance of human nature and what allows it to flourish, the law is blind. But nor should Christians be blind to the



fact that there have been developments in public opinion in recent times on these and many other matters and that there is room for mature debate requiring genuine dialogue.

Tolerance of informed and reasoned public debate

I HAVE SPOKEN often these past years against euthanasia, abortion, and embryonic stem-cell research. I have called for a National Bioethics Council. I have spoken against the exploitation and scapegoating of migrants. I have deplored the growing gap between rich and poor. I have spoken against the threat to the family from long working-hours and a culture of immediate satisfaction. In speaking on all of these issues I have spoken for the dignity of every human being. I have done so because I have seen these as part of a pattern in which the sacred inviolability of the human person has been challenged by a materialism which seeks to treat people as commodities. This Lenten season is an appropriate time to be reminded that our desires are not always ordered to their true end; and that what is desirable to me may be bad for the wellbeing of others.

The criterion of the common good warns us against bending our laws and our resources to accommodate the relentless pursuit of autonomy. The task of the State is to seek the common good - the good which helps us to live better in common. That which serves the common good and that which serves the good of particular groups may sometimes enter into conflict, but they should not, ultimately, be in contradiction. When the conflict between them is resolved, and they are allowed to remain in harmful contradiction, it is surely a moment for us all to pause and ask whether it is not time to think again. If equality can only be promoted at the expense of the freedom to manifest our religion, we have reason to question the nature of that equality. It is not, surely, an equality which adequately recognises the common dignity of all.

Britain's democracy has stood out among nations both by its tolerance and its traditional respect for the value of religion in the public sphere. These are not principles in contradiction. Indeed British democracy has been exemplary precisely because these two principles are mutually reinforcing. There is no room for intolerant secular dogmatism or cynicism towards Christians. But I fear we may be seeing now exactly the appearance of such attitudes. So when Christians stand by their beliefs, they are intolerant dogmatists. When they sin, they are hypocrites. When they take the side of the poor, they are soft-headed liberals. When they seek to defend the family, they are right-wing reactionaries.

I do not think it an accident that this new secularist intolerance of religion has been accompanied by the state's increasing acceptance of anti-religious thinking. There is a modern British law, not actually on the statute book but widely observed, that politicians, in the famous words of Alistair Campbell, "don't do God". Politicians should stay clear of religion, and treat all religions alike. They are free to believe what they like, because the state "has no beliefs".

What looks like liberality is in reality a radical exclusion of religion from the public sphere, and such an exclusion does deep harm to the tolerance and inclusivity which has worked so well for so long. Yet this doesn't sit easily with what the state often wants from religion. If one looks at Catholic schools, for example, one cannot deny that they are among the most popular schools in British society. Most of them are over-subscribed, they work hard at integrating pupils and are among the most socially

diverse. Where they can, they are happy to receive a significant number of people from other faiths – or from none. Whenever I meet politicians, of whichever particular party persuasion, they invariably comment on how much admired our Catholic schools are. But I always say to them, “You cannot have the fruits without the roots”. Catholic schools are rightly recognised as gems in our education system but we must bear in mind that they are underpinned by a community of faith lived by ordinary families, families who are happy to contribute to the common good of our society. Remove the faith which motivates those parents’ choice of a school and you remove the heart from those very schools.

How strange that our Catholic adoption agencies, which seek homes for some of the most vulnerable and difficult-to-place in our society, should be seen as discriminatory, when in accordance with religious belief and practice they ask only for the freedom for themselves to choose for those children an environment which in their professional wisdom is the one most likely to promote their happiness and well-being.

I begin to wonder whether Britain will continue to be a place which protects and welcomes the works of people shaped and inspired by the Church.

I wonder how far we can still claim as British the assumption that if a religious organisation serves the public interest according to its own rights, it has a legitimate claim on public resources.

I wonder also how far we will be able to continue proudly to declare that the respect of the State for the exercise of religion in the public sphere recognises the energy and the commitment of the religiously-motivated to serve society to the benefit of the common good.

### Christian Witness

Many in the voluntary sector are dedicated to public service because of the dictates of their conscience; and even when others do not operate under the same beliefs, they benefit from the energy and vision of those who do. Not everyone shares the view that Jesus Christ was the Son of God; yet without the contribution of those who do, what would our history have looked like?

If we praise religion when it delivers slaves from bondage, we should not forget that that same belief also insists on the sacredness of life - from the unborn child to the moment of death. Tolerance of the Church when it opens centres for the homeless can become intolerance when the Church asks *why* they are homeless. The freedom of religion in the public sphere is much more than the freedom to do the things which the State, or so-called mainstream society, believes in. The freedom of religion in the public sphere is also the freedom to witness to values which may not be popular. We must be free not just to be priests and preachers, but to be prophets too.

### Freedom of conscience

THE FREEDOM OF RELIGION in the public sphere has its limits, of course, limits which the Church has always defended in its theological distinction between the temporal and spiritual. When a

religious person enters into the public sphere, he or she must abide by the rules. An education minister might view as certain the Resurrection of Jesus Christ on the third day, as long as in the allocation of the education budget he did not prefer schools which taught this belief.

Inclusion of religious belief and practice allows a reasonable degree of choice in the public sphere in matters where a religious conscience can be considered to hold a primacy of value. Legitimate democratic pluralism is not solely a question, therefore, of private religious conscience adapting to the legitimate needs and requirements of the public sphere. It is also a question of the public sphere making room for the sometimes uncomfortable exercise of religious conscience. Our country and its parliament have established experience in striking any necessary balance between conscience and the law. In both World Wars, Acts of Parliament of 1916 and 1939 allowed for conscientious objection to military service. The well known conscience exemption of the Abortion Act 1967 is mirrored by a similar exemption under the Human Fertilisation and Embryology Act 1990 – each statute referring to the very words “conscientious objection”.

It is on this basis that Catholic doctors, for whom the act of an abortion directly contradicts their belief in the sacredness of life, are allowed in law to refuse to perform such an act. Their view may not be shared by their fellow doctors. Indeed, their fellow doctors may themselves have vigorously opposed views of what being a good doctor involves. But no one can argue that Catholic doctors’ objection to abortion contradicts the Hippocratic Oath. There is room, within the NHS, for doctors who see the performing of abortions as part of their mission as doctors, and for other doctors who take the opposite view. That understanding is well put by Professor Ronald Dworkin in a recent article for *Prospect* magazine. “Respect for religious freedom”, he writes, “does not mean accommodating any preference that anyone dresses as conviction, or any preference that a religious group chooses to call religious. It means respect for convictions that are matters of central concern across religious traditions because they touch the meaning of human life, generation and death. Bigotry”, he writes, “is not among those issues, but war, sexuality and procreation are.” And he concludes that Government “should try to accommodate strongly held and genuine religious conviction when accommodation would not significantly impair important government policy or significantly damage anyone.”

### Meeting the challenge

DEAR FRIENDS, it is for this balanced, respectful, inclusive, accommodation between religion and the public sphere that I plead tonight. I said at the beginning that I was addressing you as a Catholic, a cleric, and a citizen. I asked how easily these could continue to overlap. For my own part, I have no difficulty in being a proud British Catholic citizen. I have always believed in the traditions of British justice and equality, seeing in these the fruit of the free exercise of religious conscience. But now it seems to me we are being asked to accept a different version of our democracy, one in which diversity and equality are held to be at odds with religion, and indeed the justification for putting religion in a box marked “private”. We Catholics – and here I am sure I speak, too, for other Christians and all

people of faith – do not demand special privileges, but we do claim our rights. We come not to impose, but to serve, according to our beliefs; and to be given the freedom and support to do so, as long as these do not undermine the rights and freedoms of others. I appeal to the good sense and fairness of the British people, and to the traditions which have shaped this great nation. I appeal to the need to keep faith with those traditions, lest we pass into a new intolerance which will over time shake the tree of our democracy free of its spiritual fruit.

My fear is that, under the guise of legislating for what is said to be tolerance, we are legislating for intolerance. Once this begins, it is hard to see where it ends. While decrying religion as dogmatic, is dogma to prevail in the public square, forcing to the margins the legitimate expression and practice of genuine religious conviction? My fear is that in an attempt to clear the public square of what are regarded as unacceptable intrusions, we weaken the pillars on which that public square is erected -- and we will discover that the pillars of pluralism may not survive.

The question is whether the threads holding together pluralist democracy have begun to unravel. That is why I have sounded this note of alarm. It is as a British Catholic citizen, pleading for the continuation of our proud democratic tradition of respect for the exercise of religious belief, that I have spoken before you tonight. I am conscious that when an essential core of our democratic freedom risks being undermined, subsequent generations will hold to account those who were able to raise their voices yet stayed silent. Christian witness does not permit us to be silent on the fundamental importance of the free exercise of religious belief. Those who proclaim Britain as a nation under God must be allowed to continue to work freely for His Kingdom here in Britain. That is our tradition. And I believe it is the tradition which British people wish to maintain. We should now engage in tolerant, reasoned and democratic debate on what is clearly the beginning not the end of this question.

Thank you.

## ***Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain***

### **Response to the Consultation from the Department for Christian Responsibility & Citizenship Catholic Bishops' Conference of England & Wales**

We welcome the opportunity to respond to the government's proposals for a *Single Equality Act for Great Britain*.

#### **1. Introduction**

In general terms we support the government in its intention to consolidate, and simplify legislation on equality across the areas of *race, sex, disability, religion or belief, sexual orientation and age*. The Church opposes unjust discrimination and fully supports effective efforts to remove it.

We would, however, urge caution in the way in which those intentions are brought into effect. In the area of discrimination there has already been major and recent legislation, for example the Sexual Orientation Regulations and Gender Equality Duty. The Gender Equality Duty has placed requirements upon public authorities which they are currently implementing and the ramifications have yet to be assessed. There is also a danger in an overuse of legislation and over regulation particularly in areas where there is no significant evidence that discrimination exists.

We are also concerned that any further regulation will place additional burdens upon public authorities and business. Whilst the consultation paper does comment about the wish to differentiate between larger public authorities and smaller concerns, such as the not-for-profit sector including charities and schools, we are concerned to ensure that should any further legislation ensue it will not place untenable burdens upon the already overstretched resources of the voluntary sector. We are mindful of the fact that much of the work within that sector is often provided on a voluntary basis by individuals who are not remunerated for that work and recruited without any reasonable expectation of any employment law or human resource background. We would in particular highlight the role of school governors. The valuable work carried out by them is already subject to extensive regulation and we would suggest that further regulation is unnecessary and not proportional in terms of need.

The existing legislation is complex. Whilst the Government's intention to simplify the law should be welcomed that simplification will need to be carefully scrutinised to ensure that the existing protection within the law is at least maintained if not strengthened, in particular the protections in existing legislation pertaining to religious institutions, the right to religious freedom and the right to manifest religious belief. The discrimination law as it impacts upon the Education legislation must also be borne in mind and any legislation that results from this overview should ensure that the protections for faith schools are retained.

#### **2. The Vision - a culture of *fairness, participation and mutual respect***

The Catholic Church teaches in common with other Christian churches and other religions, the intrinsic dignity and equality of all human beings. "All human beings are endowed with a

rational soul and are created in God's image; they have the same nature and origin and, being redeemed by Christ, they enjoy the same divine calling and destiny...forms of social or cultural discrimination in basic personal rights on the grounds of sex, race, colour, social conditions, language or religion, must be curbed and eradicated as incompatible with God's design." (Gaudium et Spes, 29)

The Church supports a culture of fairness, participation and mutual respect. However, it needs also to be noted that the legal basis of these new laws covering the six strands brings together both intrinsic attributes (such as a person's sex, age, race or disability) and also others which at least in part are a matter of individual lifestyle choice (in civil law, 'sexual orientation' has been held to include behaviour or lifestyle<sup>21</sup>). From a moral point of view these do not give rise to equivalent rights.

The Human Rights Act 1998 sets out clearly the basic rights and freedoms of our society including the rights to privacy and to practice one's religion. If we wish to counter prejudice and prohibit unjust discrimination, as well as safeguarding the rights of privacy, free expression and religious practice, the new law will have to find the right balance between these sometimes conflicting rights. Each of the six strands, which the new law will attempt to bring together, has unique characteristics. A rigid consistency is inappropriate, and some *exceptions* will continue to be appropriate, if the law is to be *fair and equitable for all*.

### **3. Promoting compliance with the law (1.1 – 1.8)**

We agree that the simplification and harmonisation of equality legislation will promote compliance, making it easier for people in all sectors of society to understand their rights and responsibilities. We do however have concerns that additional legislation may have the effect of diverting organisations, particularly the not-for-profit sector including charities and schools from their core work.

The aim which we all share – the creation of a culture of *fairness, participation and mutual respect* – will best be achieved by legislation which works together with other measures and which will be most effective if it commands a consensus of support from all sectors of society. We are moving in the direction of such a consensus, but it has not yet been achieved – especially in relation to the rights and obligations of religious groups in our society.

Once the law is passed, compliance will depend partly on the availability of reliable guidance and advice. Faith communities are not well understood, and much work will need to be done to ensure the quality of advice that will be available regarding *religion and belief*.

Finally, it will undermine compliance as well as good relations if we drift towards a culture of litigation. We, therefore, welcome the emphasis in the Consultation Paper in finding effective ways to promote the early resolution of disputes.

#### **Definitions and Tests – Direct Discrimination (1.9 – 1.16)**

We would agree that the current requirement for a comparator should be retained. Removal of the requirement to show "less favourable treatment" thus allowing people to bring claims on the basis simply that they have been treated badly is the wrong approach as it is far too subjective. We would suggest that the very nature of discrimination is that there has been a significant difference in treatment.

#### **Perception and Association- (1.19 – 1.25)**

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<sup>21</sup> See R (Amicus) v. Secretary of State for Trade and Industry [2004] [England and Wales High Court 860 Queens Bench Division (Administrative Court)], para.29 & 119

We would agree with the cautious approach in extending protection on the basis of perception and association. As stated any extension of existing legislation should be proportionate.

#### **Extending protection against indirect discrimination (1.33 – 1.35)**

In accordance with the current legislation a refusal to comply with a request from a transsexual person to alter religious records to reflect their acquired gender would not be unlawful on the basis that amendment to the registers are not permissible and therefore there is no direct discrimination. It is possible that an extension of the protection to indirect discrimination may lead to claims that a transsexual person is placed at a disadvantage by such refusal. Appropriate exceptions would, therefore be required to cover registers kept by religious organisations and ministers of religion. The wording of the exception would need to address a number of concerns, including:

- Keeping and examining of baptismal and confirmation registers and issuing baptismal and confirmation certificates in a variety of situations,
- Permissions to marry, marriage papers, agreement to perform marriages and the while process of annulment,
- Approval for ordination, examining the validity of an ordination, suspending a person from exercising orders or returning a person to the lay state,
- Entry into and dismissal from religious life,
- Other appointments where evidence of Catholic practice is appropriate.

#### **A Single Objective justification test (1.50 – 1.53)**

Whilst the logic of a single objective justification test can be seen care must be taken as to how this would work. We would in particular urge caution in relation to education. Under current legislation schools are not required to alter any physical feature or provide auxiliary aids and services, for example extra equipment or staff. Aids and auxiliary services should be considered within the SEN framework. Under the reasonable adjustment duty schools are not required to remove or alter physical features. Whilst this does not mean that a school should do nothing where there is a physical barrier, and there is a positive duty to make reasonable adjustments to ensure that a disabled pupil is not at a substantial disadvantage, the improvement of the physical environment of schools in order to increase access for disabled pupils is covered by the duties of schools and local authorities to draw up accessibility plans and strategies. In most cases schools would be dependent upon Government funding to carry out necessary works to provide facilities for disabled pupils.

#### **A genuine occupational requirement test for all grounds (1.70)**

In general terms we would have no difficulty in accepting the introduction of a genuine occupational requirement test for all the grounds of discrimination provided that any such provisions are clear in retaining the current specific exemptions available in relation to organised religion and for schools with a religious character. Any provisions would need to be carefully scrutinised to ensure that the appropriate safeguards in existing legislation were at least retained if not strengthened.

#### **Genuine service requirement test (1.71 – 1.76)**

We would support the introduction of a genuine service requirement test for the provision of goods, facilities or services as a way of ensuring that services can be provided to people of a particular sex where there is a genuine requirement for such service to be provided and with the appropriate exemptions where goods, facilities or services are provided by religious organisations.

#### **Specific exemptions (1.77 – 1.81)**

We would agree in broad terms that a unified approach would appear sensible. Again we would apply the caveat that in doing so it will be necessary to ensure that all existing legislative protections are retained. It would also be necessary to give careful consideration as

to whether different grounds require the same list of exemptions. In listing the exemptions by reference to specific provisions there may be a risk that some are inadvertently omitted.

The specific exemptions will need to be carefully considered. Whilst we would agree in general with retaining the specific exemptions listed in Table 1 of Annex A we also wish to include Regulation 10(5) of the Employment Equality (Sexual Orientation) Regulations 2003 which applies the exception contained in Regulation 7 in relation to employees of religious organisations to office holders.

#### **4. Harmonising the law**

We would agree that it appears sensible to adopt a harmonised approach to the way goods, facilities and services and public functions provisions are structured across the protected grounds, subject to the exceptions relating to the specific grounds in accordance with Government intention.

##### **Goods, facilities and services, and public functions -Streamlining exceptions (2.12)**

As with previous comments any streamlining would need to be carefully approached to ensure that appropriate exceptions are retained in respect of all functions and services.

#### **5. Equal Pay (3.1 – 3.22)**

We agree that the distinction between contractual and non-contractual approaches should be retained as to adopt a different approach would place an excessive and unfair burden upon employers for the reasons stated.

##### **Equal Pay – Clarifying and simplifying the law (3.21 – 3.24)**

Certainly guidance on the settled legal principles would be helpful. The existing legal position can be confusing, particularly as it relates to comparators. There are increasing areas where there are employees employed by different employers in the same establishment carrying out the same or similar work and this will be particularly true bearing in mind the current proposals for provision of ICT under BSF projects.

##### **Equal Pay – Hypothetical comparators (3.25 – 3.29)**

We feel strongly that hypothetical comparators should not be allowed as the use may lead to uncertainty and an increase in litigation without any perceived benefit.

#### **5. Balancing measures (positive action) and meeting particular needs (4.1 – 4.58)**

We agree with the Consultation Paper that any new law should not allow *positive discrimination* (e.g. mandatory quotas of ethnic minorities, women, etc). The experience of the United States in this area is complex; but it suggests that *affirmative action*, when it extends to *positive discrimination*, can become counter-productive. Our own law has moved close to this in the area of *disability* (and we are not suggesting that this should be reversed), but on the whole we consider *positive discrimination* to be a step too far.

At the same time, we agree that the law should allow for balancing measures in certain areas (*positive action*) to address disadvantage and under-representation. Key public institutions such as the police, the civil service and parliament should be representative of the communities they serve or represent. It is important that any proposals in this regard do not



place compliance burdens upon the not-for-profit sector that are out of proportion, particularly where there is no evidence that there is a particular need.

Within the churches and faith communities there exists a number of charities and other voluntary organisations that support women, ethnic minorities, people with disabilities and young people. A few examples of Catholic organisations which support groups protected under equalities legislation are:

- Catholic Association for Racial Justice (CARJ)
- Ethnic Chaplaincies (e.g. Nigerian or Caribbean Chaplaincy)
- Catholic Youth Services (CES)
- Diocesan Deaf and Blind Services
- National Board of Catholic Women

Current equality legislation allows for such organisations to operate relatively freely. It is important that they should have at least a similar freedom under a single equalities act.

Clear guidance in relation to positive action would be welcomed to avoid situations where the “positive action” may become unlawful positive discrimination. We would agree that a role of approving positive action programmes by the CEHR may not be appropriate but an advisory service would be helpful.

## **6. Promoting equality and good relations – the public sector duty (5.1 – 5.100)**

The Macpherson Report, the *Race Relations Amendment Act (2000)* and the introduction of a public sector duty in the area of *race* represented a watershed in society’s attempt to address institutional racism. Since then, somewhat different forms of the public sector duty have been extended to the areas of gender and disability.

The obligation placed on public bodies to promote equality and good relations in these three areas has been a positive development.

### **The case for a single public sector equality duty (5.21 – 5.24)**

Whilst it might seem sensible to replace the existing race, disability and gender equality duties with a single duty on public authorities for the reasons set out in the consultation paper, each of the separate duties does have different features and the reasons for those differences needs to be considered to ensure that if differences need to be retained then they are. We would also stress the importance of the provision of very clear and accessible guidance to ensure that the requirements of any new legislation can be easily understood.

Consistency might suggest that the public sector duty should be extended; but there are difficulties in extending the public sector duty in particular to the areas of *religion and belief and sexual orientation* which are set out below

The Consultation Paper raises important questions as to the **form** that a single public sector duty might take. There are strengths in each of the existing duties (race, gender and disability) and a single public sector duty should, as far as possible be specific, strategic, include the most disadvantaged (e.g. Travellers) and involve protected groups in the formulation and implementation of the policy.

The proposed statement of purpose for a public sector duty in the Consultation Paper (5.29) needs careful examination. At present it is stated that a public sector duty should require public authorities to:

- address disadvantage;
- promote respect for the equal worth of different groups and foster good relations;
- meet different needs while promoting shared values; and
- promote equal participation.

The suggested wording of the proposed duty – *to promote respect for the equal worth of different groups* – could be problematic. We welcome the government’s assurance that such a duty would not require a public authority to ‘promote homosexuality’; but might it require a public authority to treat and promote civil partnerships as equivalent to marriage?

#### **Purpose of a single equality duty (5.28 – 5.30)**

We would refer in particular to the four areas set out in paragraph 5.29 and the impact of those areas particularly as they relate to organisations with a religious ethos. We are concerned in particular with the reference to “promoting respect for the equal worth of different groups...” and “promoting equal participation”. We would in particular highlight the position in relation to schools with a religious character. By their very nature and trusts their purpose is to promote the religion of the organisation. Specific exemptions in current legislation allow this distinction in employment and provisions relating to the delivery of teaching and the curriculum. In particular the recent “Guidance on New Measures to Outlaw Discrimination on Grounds of Sexual Orientation in the Provision of Goods and Services” makes reference to “Teaching and the Curriculum” and “Conflict with Religious Freedom.” The guidance makes it clear that the protection allowing voluntary aided schools to continue to teach in accordance with the tenets of their faith is maintained, and this must be evidenced in any new legislation and its accompanying guidance.

A single public sector duty to promote *equality* would, therefore, have to be fashioned with great care. It must promote greater equality without demanding the unrealistic. It must encourage an inclusive public space, where people of different beliefs and practices can participate fully, sharing some values while disagreeing about others. Finally, it must allow bodies like faith schools and religious charities and voluntary associations to operate in a way that is consistent with their ethos, alongside other similar bodies with a different ethos.

#### **A Proportionate Duty (5.34 – 5.35)**

It is important to have regard to the effect that the imposition of a general duty will have upon the wide range of public authorities. We would agree wholeheartedly with the comments in paragraph 5.35 that what is proportionate for a small public authority such as a school will differ hugely from what is proportionate for a large public authority such as a government department. Any legislation must address this distinction to ensure that expectations from the various authorities are clear.

#### **Which public authorities should the duty apply to (5.47 – 5.56)**

We would strongly urge that the proposed public sector equality duty should not apply to all public authorities. Any such duty we believe should be restricted to large public authorities with government functions rather than to voluntary and charitable bodies. Again we would particularly refer as an example to voluntary aided schools. Schools already have policies in place to address these issues in relation to areas such as anti bullying. Schools also have a general responsibility in legislation to care for the health and welfare of their pupils. We would question the need to place yet further burdens upon the already overstretched resources of governing bodies when the need may not be there. There is a danger in applying

the requirements across the board without taking need into account proportionality and the impact upon voluntary and charitable organisations operating with public funds.

#### **Extending the coverage of the duty (5.57 – 5.72)**

We agree that the same level of protection would not be required for all areas of discrimination. Priorities would depend upon the particular circumstances of the particular authority and the identified need.

It is only recently that the public sector duty has been extended to cover disability and gender. There has not been sufficient time to establish the implications and effectiveness of the implementation of these measures.

We are concerned about the possible impact that an extension of a single equality duty may have particularly in relation to sexual orientation and religion or belief. Should public authorities be subject to a general duty of this nature this may conflict with the exemptions currently set out in legislation in relation to religious organisations, in particular schools.

In the field of sexual orientation we have already referred to recent guidance and the confirmation that faith schools can continue to teach in accordance with the tenets of their faith. The existing exemptions in relation to both sexual orientation and religion or belief must be preserved and there must be no danger that any general public sector equality duty would override the specific exemptions. Care must be taken to guard against any unintended impact so that any single equality duty would not upset the existing equality legislation in all areas including employment.

For these reasons there are clear disadvantages in extending the duty further and we would therefore not support any further extension.

## **7. The Grounds of Discrimination (8.1 – 8.31)**

#### **Updating the definition of disability to remove the list of capacities (8.3 – 8.6)**

We would agree to consideration of removing the list of “capacities” from the definition of disability. Clear guidance would be required as to how normal day-to-day activities would be measured. This would be particularly relevant in the field of education where behavioural difficulties may or may not be covered depending on, in accordance with the DDA 1995 Code of Practice whether behavioural difficulties arise for a reason other than a disability (e.g. social or domestic circumstances).

#### **Married persons and civil partners**

We favour retention of the protection for married persons and civil partners. Whilst the “marriage bar” in employment no longer exists there is no reason to specifically remove this protection as it would clearly be wrong to discriminate on this ground. There should be protection for couples who are married and work together save in circumstances where an employer can show a genuine business need.

#### **Genetic predisposition (8.23 – 8.31)**

For the reasons set out in the consultation paper we would agree that there is no present need for extending legislative protection to cover genetic predisposition.

## **8. Gender reassignment (10.1 – 10.15)**

We support the government's intention to protect transsexual people from unjust discrimination and to enable them to access essential services and to play a full role in society. However, this is an area where the beliefs of protected groups differ and their rights conflict.

Many Christians believe, on strongly held religious grounds, that gender is given before birth and cannot be changed. There are a number of areas of Catholic life and teaching where gender reassignment would be an issue. In many situations the disclosure of a person's gender history would be necessary or unavoidable, and often a transsexual person would not be accepted in their acquired gender. For instance:

- baptismal records (which can be annotated but not changed) make disclosure unavoidable when one seeks approval for marriage, ordination or entry to a religious order;
- a transsexual person would not be able to marry in a Catholic church or be ordained to the Catholic priesthood in their acquired gender;
- many religious orders are specifically for men or women, and the process of approval for entry into a religious order is lengthy and complex – it would, at the very least, involve disclosure; and it is likely that a transsexual person would not be accepted into a religious order in their acquired gender;
- the formal processes of annulment of marriages, returning an ordained person to the lay state and dispensation from religious vows would all involve disclosure.

These issues were carefully discussed in the consultations for the *Gender Recognition Act 2004* and the *Gender Recognition (Exceptions to the Offence of Disclosure) Order 2005* and exceptions for organised religion are contained in existing legislation. Such exceptions need to be retained.

### **Schools (10.12)**

We would agree that discrimination on grounds of gender reassignment should not be extended to education in schools for the reasons specified in the consultation paper. We agree that such legislation is unnecessary, and would not be proportionate or appropriate.

### **Organised religions (10.13 – 10.14)**

We note that whilst it is the intention that the Gender directive will not extend to goods, facilities or services of the type provided at places for the purpose of organised religions, which is welcomed, we are concerned as to how the Single Equality Act may affect this.

The Catholic Church acknowledges the right of transsexual people to their private and family lives. It also recognises that they are fully entitled to help and support from the Christian community and from society at large.

From the perspective of Catholic teaching, marriage can only be between a man and a woman. In the present state of uncertain knowledge in which there is no clear biological basis for saying otherwise, the gender of a transsexual person is that which they have when they are born, and gender reassignment surgery must therefore be seen as morally questionable. There is no convincing evidence that a gender can really be changed or acquired, much less chosen. Furthermore, the Catholic Church would hold on theological grounds that gender is given before birth and cannot be changed.

We would certainly agree that the Single Equality Act should strike a balance between the rights of transsexual people and freedom of religious expression. How that balance is achieved must be carefully scrutinised. This need to strike a balance has been recognised in existing legislation concerned with gender reassignment and the exemptions included for organised religions. Those existing protections should be safeguarded to ensure that there

would be no suggestion that, for example, a minister of religion would be required to solemnize the marriage of a person who had undergone gender reassignment which would be contrary to the tenets of their faith.

## **9. Pregnancy and Maternity (11.1 – 11.9)**

Whilst we would support the intention to make less favourable treatment of a woman on the grounds of pregnancy and maternity unlawful we would agree that it is not appropriate to extend that protection to school pupils and education in schools. As the consultation paper has highlighted the needs of individual pupils will vary and schools need the flexibility to consider pupils on a case by case basis to ensure that the support and education provided to each pupil is appropriate.

## **10. Private Clubs and associations (12.1 – 12.14)**

Any legislation in this area must be carefully considered to ensure that the protection for religious organisations is sufficiently addressed.

## **11. Harassment (14.1 – 14.31)**

We welcome the government's intention to promote a culture of mutual respect, to promote good relations and to protect people from harassment, especially at work.

Some religious groups are particularly vulnerable to prejudice, discrimination, hate crime and harassment. These tend to be groups which are either themselves ethnic minorities (Jews and Sikhs) or which (in the UK) are substantially made up of ethnic minorities (Muslims and Hindus). It is sometimes difficult to disentangle whether the prejudice, discrimination, hate and harassment they suffer is on the grounds of race or religion, but Muslim communities are particularly vulnerable, as they are often targets; and they are not covered by legislation against racial harassment.

Alongside the deeper antipathy experienced especially by Muslim communities, there is also a not uncommon prejudice against religion more generally (especially against the mainstream Christian churches). It can be very divisive, and could undermine attempts to establish a context of mutual respect.

The problem, in attempting to give greater protection to the most vulnerable groups, is that legislation against harassment may too readily conflict with other basic rights. It will be difficult for anyone to be clear where harassment ends and where legitimate free expression or the legitimate practice of religion begins. In the end, the law could become counter-productive, with increased litigation and a worsening of relations.

We would agree with the comment in paragraph 14.27 of the consultation that "...it is not our intention to protect people against merely being offended by the expression or manifestation of differences in beliefs." Presumably it also follows from this comment that there is no suggestion that the public expression of belief, including Christian teaching regarding homosexual behaviour, could of itself be interpreted as harassment.

On balance, if legislation against harassment is to be extended beyond the workplace to areas of *religion and belief and sexual orientation*, great care must be taken to protect the rights of free expression and the free practice of religion.

## **12. Exceptions (Annex A)**

A strong law is not to be equated with a rigid law. Some argue that exceptions to the law should be minimised – that each exception is derogation from the principle of non-discrimination. We disagree.

We have argued throughout that the law must be *fair for all* and able to cope with the complexities of conflicting rights. Law is always a somewhat blunt instrument, and exceptions in equalities legislation acknowledge particular circumstances where there is a conflict between competing rights.

We broadly agree with the proposals in the Consultation Paper concerning the exceptions that should be retained and those that should be removed.

We would argue, however, that further exceptions should be considered (in relation to the provision of goods, facilities and services) in order to give religious communities the freedom to practice their religion and to participate fully and make their positive contribution to the life of our society. Government has acknowledged the contribution that religious communities can and do make in a variety of areas, and they have encouraged these communities to participate more fully. However, they cannot be expected to put aside their fundamental beliefs when doing so.

The public debate over Catholic adoption societies is an example of the problems that religious communities sometimes face in offering specific types of services to the general public. Where basic religious teaching is relevant to the service being offered (e.g. marriage, family and reproduction) there must be some scope in the law for religious communities to make a contribution without sacrificing their integrity. This very specific debate about adoption highlights an area of principle and practice that needs to be further clarified and where further exceptions may be appropriate.

### **13. Conclusion**

We welcome this consultation and hope that the above comments are helpful. However to build on the consensus already achieved in many areas, it is important that there be a further substantial consultation once the draft Bill is published.

**September 2007**

## INCITEMENT TO HATRED ON GROUNDS OF SEXUAL ORIENTATION

### *Memorandum to the Public Bill Committee* on the Criminal Justice and Immigration Bill

**from the Department for Christian Responsibility and Citizenship,  
Catholic Bishops' Conference of England and Wales,  
and the Mission & Public Affairs Council of the Church of England**

We write concerning the Government's plans to amend the Public Order Act 1986 to create a new offence of *incitement to hatred on grounds of sexual orientation*.

1. We welcome and support the Government's policy of promoting equality and good relations between different groups in society and protecting people from discrimination, hatred and harassment on account of their particular characteristics. We affirm in particular the importance of protecting people from hate crimes, and recognise that lesbian, gay, bisexual and transgendered people are likely to be victims of such crimes. Legislation is only one means of achieving those aims, however, and any proposed legislation must be assessed in terms of its likely effectiveness.
2. We have some reservations about creating new offences based on the law of incitement when words, behaviour and display of written material which are intended to cause harassment, alarm or distress, or which occur in the hearing or sight of a person likely to be caused harassment, alarm or distress, are already prohibited by the ss.4A and 5 of the Public Order Act 1986. We wonder whether these provisions are being enforced effectively and equitably in order to combat hate crimes.
3. The present proposal has to be seen in the context of the offences of incitement to racial hatred, first enacted in the Race Relations Act 1965, and incitement to religious hatred, in the Racial and Religious Hatred Act 2006. The debates on the latter illustrated the need to balance protection of vulnerable groups with safeguards for freedom of expression, which is particularly difficult to achieve in the field of religion. It was for this reason that we supported the principle of the legislation on incitement to religious hatred but expressed anxieties about the threshold of the offence and its possible inhibiting effects upon freedom of speech.
4. Provisions on incitement to hatred must take account of the similarities and differences between race, religion and sexuality. It was argued during the religious hatred debates that whereas race involves characteristics which an individual cannot change, religion is (at least in part) a matter of choice. Issues arising from sexuality raise their own distinctive considerations. The Churches draw a clear distinction between sexual orientation and behaviour based on that orientation.
5. In the religious hatred debates, both supporters and opponents of the Bill maintained a distinction between protection of people from personal attack, which was agreed to be desirable, and protection of their beliefs and practices from criticism or satire, which was generally thought to be undesirable. A similar distinction should be maintained in the field of sexuality. Sexual activity and lifestyle, as distinct from sexual orientation, are matters of choice and impinge upon the public sphere. As such they are subject to evaluation and criticism, and freedom to discuss them must be preserved.
6. The Christian churches hold a set of beliefs about human sexuality, marriage and family which represents a strong consensus through time and space. This tradition teaches that human sexuality is a gift of God which finds its proper expression in marriage, the exclusive, freely-accepted and permanent bond between a man and a woman, and that sexual relations outside marriage fall short of God's purpose. Moreover, while Christian tradition recognises the contribution of sexual relations to personal growth and well-being, it does not believe that an active sexual life is necessary for human fulfilment. The single life of chastity is valid and fulfilling in its own way.

This tradition forms a coherent and important part of Christian teaching and informs Christian practice. It would be impossible for Christianity to be practised and taught without these convictions being widely and freely discussed within the churches and in the wider society.

7. Our main concern is that any legislation on incitement to hatred on the grounds of sexual orientation permits the expression of traditional Christian (and other) opinions on sexual behaviour and consequent criticisms of particular forms of behaviour or lifestyle. As with incitement to religious hatred, we believe it is vital that there should be the **maximum possible clarity** about what is forbidden and what is permitted. Christians engaged in teaching or preaching and those seeking to act in accord with Christian convictions in their daily lives need to be assured that the expression of strong opinions on marriage or sexuality will not be illegal.
8. We also draw attention to the possible “chilling effect” on free speech, which formed part of the debates on religious hatred. Uncertainty in the law has the effect of inhibiting behaviour which may not in fact be illegal. People holding firm opinions on sexuality will generally be reluctant to risk the emotional and financial costs of being challenged by a neighbour or colleague and investigated by the police, even if this does not lead to prosecution or conviction. We are not encouraged by some examples of over-zealous action by the police, apparently under current legislation, against Christians who have publicly expressed traditional views on sexuality. We also fear that uncertainty might provoke divisive attempts to test the law, whether by Christians courting “martyrdom” or anti-Christian groups wishing to restrict the expression of opinions which they find offensive.

## Conclusion

9. This submission was prepared before the publication of the text of the Government amendment in the form of the new Schedule 2. We **welcome** the narrow focus of the amendment on the use of *threatening* words or behaviour which are used with the *intention* of stirring up hatred. This goes a considerable way towards meeting our concerns.
10. In earlier debates concerning *incitement to religious hatred*, however, a further safeguard was considered necessary to protect freedom of expression. This is found in the new Section 29J of the Public Order Act 1986:

Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.

11. We believe it would be helpful for the Committee to explore safeguards along these lines, bearing in mind the differences between religion and sexual orientation. One possible wording, reflecting both 29J above and previous Regulations concerning sexual conduct would be:

*“Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion of, criticism of or expressions of antipathy towards, conduct related to a particular sexual orientation, or urging persons of a particular sexual orientation to refrain from or modify conduct related to that orientation.”*

This would protect expressions of opinion directed against conduct rather than against the person themselves. We have no fixed or final view on this matter but we believe that such an addition could remove any remaining objections to the provision.