

**The Communities and Local Government Committee Inquiry into Localism
Memorandum from the British Humanist Association, October 2010**

1) Summary

- 1.1) We understand that the localism agenda will lead to public services that are currently provided by the state being run by voluntary organisations. We are concerned that this will mean that public services will be run by religious organisations.
- 1.2) This is a concern because such organisations have exemptions in equality law which may put service users and employees at risk of discrimination on grounds of religion or belief.
- 1.3) Further concerns about this aspect of the localism agenda are that services may become 'balkanised' on the grounds of religion or belief which will be both uneconomical and divisive. Organisations may also use their status as service providers to proselytise.
- 1.4) It is the duty of local and central government to protect the rights of service users and employees not to be discriminated against on the grounds of religion or belief.
- 1.5) We therefore propose legislative change to decrease the risks caused by the localism agenda in this regard.

2) About the British Humanist Association

2.1) The British Humanist Association (BHA) is the national charity representing the interests of the large and growing population of ethically concerned non-religious people living in the UK. It exists to support and represent people who seek to live good and responsible lives without religious or superstitious beliefs. It is committed to human rights and democracy, and has a long history of active engagement in work for an open and inclusive society.

2.2) The BHA's policies are informed by its members, who include eminent authorities in many fields, and by other specialists and experts who share humanist values and concerns. The BHA itself is deeply committed to human rights and advocates an open and inclusive society in which individual freedom of belief and speech are supported by a policy of disinterested impartiality on the part of the government and official bodies towards the many groups within society so long as they conform to the minimum conventions of the society.

3) Introduction

3.1) We welcome the opportunity to submit evidence to the Communities and Local Government Committee Inquiry into Localism. The BHA has extensive experience in this area and has been working on related issues for a number of years.

3.2) The relevant legislation, the Decentralisation and Localism Bill as announced in the Queen's Speech, is not yet published and no White Paper is planned. However, the government have announced their plans in part via the Queen's Speech, the document entitled *The Coalition: our programme for government* and the *Department for Communities and Local Government Structural Reform Plan*.

3.3) One of our largest areas of concern regarding localism is that of public service reform – and specifically the contracting out of public services to religious organisations.

3.4) We expect to have further comments once the Bill has been published and will submit further observations in due course.

3.5) We are available to submit further evidence, both written and oral, to the Committee on this or related subjects.

4) Background to our position

4.1) Our firm position is that state-funded, inclusive public services should be secular. We advocate for the shared institutions of society – its laws, governance and public services – to maintain a careful neutrality on disputed matters such as religion and belief. Religion may motivate people to public service, but public services should not be delivered in the name of religion.

4.2) The BHA has serious concerns that allowing religious organisations to run publically funded statutory services could leave service users and employees at risk of discrimination on the grounds of religion or belief. The government has given clear indications that the localism agenda will include contracting services to community organisations.

4.3) For example, the Decentralisation and Localism Bill announced in the Queen’s Speech will “give communities the right to bid to take over local state-run services.”¹ The exact nature of such services is not clear, but it is likely that they will include general public services such as healthcare, prisons, welfare to work, probation and justice services, adult education and housing. For example, the health section of the coalitions programme for government states “we are committed to the continuous improvement of the quality of services to patients, and to achieving this through much greater involvement of independent and voluntary providers.”²

4.4) It is highly likely that some of those providers will be religious organisations.³ The government has also given an indication that they will specifically support religious groups to be part of the ‘Big Society’ “unhindered by the barriers many of them currently negotiate.”⁴

4.5) We are also aware that religious organisations may seek to discriminate, even when running a service under contract to a public authority.⁵ In 2006, in a memorandum to the Joint Committee on Human Rights, the Salvation Army stated, “Whilst it is appropriate for the state to be religiously neutral, this is impossible for an organisation such as The Salvation Army, which delivers its services as a direct outworking of the Christian faith.”

¹ Localism Bill- Queen’s speech, May 2010

² *The Coalition: Our Programme for Government*, May 2010

³ As defined by the Equality Act 2010

⁴ Greg Clark, Minister for Decentralisation, speaking at a discussion hosted by the Archbishop of Canterbury, July 2010

⁵ As defined by the Human Rights Act 1998

4.6) This shows the clear distinction between a secular service run by the state and a service run by a religious organisation. It is our position that the current state of equality legislation in the UK causes the religious ideology of some organisations to be incompatible with the provision of secular public services on behalf of the state.

5) Our position

5.1) It is therefore our strong position:

- that all public services should be open and accessible to all citizens and be provided on a non-discriminatory basis;
- that organisations in receipt of public funding to provide public services should be bound in their provision of those services by the same legal obligations to avoid discrimination in dealing with their clients as are public providers of the same services;
- that those organisations should be bound in their provision of those services by the same legal obligations to avoid discrimination in their employment practices as apply to public providers of the same services;
- that those organisations should be bound, as public authorities, in their provision of those services by the Human Rights Act 1998;
- that such organisations should be required to respect the privacy and autonomy of their clients.

6) Our specific concerns

6.1) We consider that discrimination against employees by religious organisations contracted to run public services is a real threat. Current law⁶ allows such organisations to put Occupational Requirements on posts even when that post and the service it is delivering is part of a public service contract which aims to meet the needs of all sections of society.

6.2) This will become increasingly problematic as services are passed from state to local control. If, for example, a local religious organisation wins a contract to take over a service that is currently being run by the local authority, public sector workers who have been transferred with the contract may find their working conditions or chances of promotion severely affected by their religion or belief. Discrimination which would be unlawful for the local authority to undertake would be legal for the new service deliverer. This is unacceptable.

6.3) Similarly, we are concerned that there is a real possibility that discrimination against service users because of their religion or belief will no longer be prevented because services are being run by organisations which have exemptions⁷ in law. It is quite possible that local state funded services could become effectively inaccessible to people because of their religion or belief because the service is being run by a religious organisation which is restricting services lawfully by using an exemption.

⁶ Equality Act 2010 Schedule 9, Part 1 Paragraph 3

⁷ Equality Act 2010 Schedule 23, Paragraph 2

6.4) During the discussions on the Equality Act it was recognised that similar exemptions on grounds of sexual orientation should be unlawful if the service was being run under contract to a public authority as this would be incompatible with the rights of service users not to be discriminated against. As far as we are concerned, this same argument must extend to religion or belief.

6.5) The move to contracting public services to organisations other than those recognised as public authorities may also result in reduced rights for service users more generally. Case law has shown that the definition of 'public authority' under the Human Rights Act 1998 can mean that services contracted to other organisations may not be covered by the Act.⁸ This leads to service users having no recourse to law if their human rights are abused by organisations running services on behalf of the state.

6.6) Where the service is being run by a religious organisation, a service user being discriminated against because of their religion or belief may have no recourse to either the Equality Act or the Human Rights Act. This lack of legal protection is unacceptable.

6.7) As well as the risk of discrimination, the localism agenda may lead to an uneconomic duplication of services. When talking about the use of exemptions in public services, The Equality and Human Rights Commission (EHRC) non-statutory guidance on the Act states that targeted services are, "only allowed if the public body makes arrangements so that people not of that religion or belief can receive the same services by another route."⁹ This suggests that the localisation of services may result in 'parallel services' i.e. a number of similar services run by different organisations for different religion or belief groups rather than one secular service accessible to all.

6.8) Such a situation would go against one of the stated aims of the localism agenda; that of saving public funds through efficient use of voluntary and community sector providers. For example, the *Total Place* initiative aims to "identify and avoid overlap and duplication between organisations – delivering a step change in both service improvement and efficiency."¹⁰ This would not be achieved by contracting different organisations to supply services for different sections of the community.

6.9) This would also lead to increased competition within the voluntary and community sector with divisive effects on the community which have implications for social cohesion and equality. Shared local communities who are fully empowered to make decisions about their lives cannot become a reality if they are split along religious lines via service delivery.

6.10) Finally, we believe there to be a real risk that service users and employees may find themselves at risk of proselytisation. Religious activities – staff inviting clients to take part in religious worship or praying for clients while providing services – are at best an unwelcome intrusion for many people, at

⁸ please see the 2007 Joint Committee on Human Rights on *The Meaning of Public Authority under the Human Rights Act* available from <http://tinyurl.com/2asueg>

⁹ EHRC non-statutory guidance on the Equality Act, *Your rights to equality from voluntary and community sector organisations (including charities and religion or belief organisations)*, pg22

¹⁰ Total Place website, <http://www.localleadership.gov.uk/totalplace/>

worst enough to deter them from taking up the service at all. Many religious organisations who may become service providers on behalf of the state have the duty to proselytise written into their mission statement.

6.11) For example, the mission of the Salvation Army is “to proclaim his gospel, to persuade people of all ages to become his disciples and to engage in a programme of practical concern for the needs of humanity.”¹¹ Such an agenda is not compatible with state provision of public services, particularly where service users and employees do not have recourse to legal action if they feel that they have suffered discrimination.

6.12) Further, this problem has been recognised by religious groups themselves as being unacceptable with *Faithworks* (an umbrella group for religious organisations) feeling the need to write a charter asking organisations to sign up to certain principles including, “Never imposing our Christian faith or belief on others.”¹² The BHA believes that organisations who wish to proselytise should not be given the opportunity to do so via public services as this would amount to a misuse of public funds and seriously question the legitimacy and accountability of public services.

7) Role of local government and central government in localism

7.1) From the perspective of the concerns listed above, the role of both local and central government in public service provision when provision has been contracted to third party organisations is one of regulator.

7.2) Both local authorities and central government have responsibilities as public authorities to protect citizens from discrimination and to uphold citizen rights, as outlined in the Human Rights Act 1998 and the Equality Act 2010. From April 2011, they will have additional duties to demonstrate that they are taking action on specific equality issues under the Public Sector Equality Duty.

7.3) Localism must not be allowed to become the mechanism by which public authorities ‘contract out’ these responsibilities, thus diluting the protection of citizens’ rights. The responsibility to regulate public service providers, increase equality of access to services and educate providers about equalities issues must therefore rest with the public authorities. This will help to maintain both equal and good quality services.

8) Examples- UK and overseas

8.1) The inquiry specifically asked for examples of localisation from the UK or overseas. The UK is yet to see large scale contracting with religious organisations to the extent that other countries have making examples from the UK difficult to find. However, both the USA and Australia have undertaken national programmes which include ‘faith-based’ welfare provision. It is useful to look at the situation in both countries.

¹¹ *What does The Salvation Army do?*, Salvation Army Website – www.salvationarmy.org.uk

¹² *The Faithworks Charter*, <http://www.faithworks.info/Standard.asp?id=7432>

8.2) Many of Australia's public and welfare services are provided through religious, particularly Christian, organisations. For example, the Catholic Church is the biggest operator in health and education.¹³ The employment service has been outsourced to the not-for-profit sector and the Salvation Army runs Employment Plus, the country's biggest employment service, offering welfare-to-work services for the unemployed.

8.3) Other Christian organisations, such as Mission Australia, also have a very large involvement in welfare and employment services. Like religious organisations in the UK, they are allowed to discriminate in their employment practices. For example, all Mission Australia employees must read, and agree with, their Christian values statement and demonstrate that they are able to work in an organisation with an overriding Christian ethos.

8.4) Because of these legislative exemptions, religious organisations can and do discriminate on grounds of religion or belief in their employment practices when running publically funded services. This leads to reduced employment opportunities for many people on the grounds of their religion or belief.

8.5) In the US, Under the Civil Rights Act 1964, religious organisations have a special exemption, allowing them to discriminate in their hiring on the grounds of religion, so that they may 'maintain their religious liberty and identity'. Further, religious organisations providing public services are allowed to prescribe the lifestyle of their employees outside of the work environment, such as abstaining from alcohol.¹⁴

8.6) Although it is illegal for religious organisations in receipt of Federal funds to discriminate against service users on religious grounds, or make participation in a religious activity a condition of receiving a public service, it is not clear that these stipulations are closely monitored in all areas.

8.7) The policy outcome is that many public or 'social' services in the US are becoming more openly religious. Religious organisations providing such services do not have to remove religious symbols, art and icons, or forgo religious ceremonies such as collective praying before meals. Therefore, it is left to the service user to have to refuse to take part in religious activities, which is a very troubling (and presumably difficult to monitor) situation, especially for more vulnerable individuals.

8.8) In the UK, there are no provisions in contracts or legislation to prevent money from the state being 'creamed off' and used for religious purposes. If there are problems of accountability in the US where there is clear legislation against such activity, it does not bode well for the UK.

8.9) Moreover, it is not just a theoretical worry that public services might be provided in religious settings or in ways that encourage participation in religious activities. At a Department for Work and Pensions event on 7th June 2007 for faith-based organisations, the officials were clear that once welfare-to-work and other services had been contracted out, they did not know how the money was spent. Nor could the officials say how many religious organisations had contracts or subcontracts, or how many services were actually provided in churches or other places of worship.

¹³ Ferguson, A., (2005) 'Not-for-profit organisations are a big part of the economy, yet they are virtually unaccountable' Business Review Weekly, 27 (11).

¹⁴ Cnaan, R. (1999) *The Newer Deal. Social Work and Religion in Partnership*. New York: Columbia University Press

9) Recommendations

9.1) To mitigate the risks identified by the localism agenda, the BHA recommends the following:

- We recommend that the Equality Act be amended to prevent the use of Occupational Requirements on grounds of religion or belief if the purpose of the employment is to deliver services under contract to a public authority.
- We recommend that the Equality Act be amended to prevent religious organisations from discriminating on the grounds of religion or belief in service provision when under contract to a public authority.
- We recommend that the Human Rights Act be amended to make it clear that those contracted to run services on behalf of a public authority are recognised as a public authority for the purposes of the Act.
- We recommend that mechanisms are put in place to allow and support Local Authorities to monitor the satisfaction of service users with service delivery in order to make Local Authorities accountable.
- In the absence of legislative change, we recommend that all contracts with third party organisations contain a stipulation that they must not use exemptions in equality law when under contract to a Local Authority.
- We recommend that all contracts with third party organisations contain a stipulation that they must not use public money to further any religion or belief by proselytising to service users or employees.

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