

BHA BRIEFING: Localism Bill, Commons 2nd Reading

17th January 2011



Briefing from the British Humanist Association (BHA)

1 About the BHA

- 1.1 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.
- 1.2 The BHA is deeply committed to human rights, equality, democracy, and an end to irrelevant discrimination, and has a long history of active engagement in work for an open and inclusive society. In such a society, people of all beliefs would have equal treatment before the law, and the rights of those with all beliefs to hold and live by them would be reasonably accommodated within a legal framework setting minimum common legal standards.
- 1.3 Our expertise lies in the ‘religion or belief’ equality strand, which includes non-religious beliefs such as Humanism, and how that strand relates to and intersects with other protected characteristics. We also work closely with others on wider equalities issues in a range of forums.

2 The Localism Bill

- 2.1 The Localism Bill provides the legislative foundation for the government’s plans to decentralise power to local communities, as part of its ‘Big Society’ agenda. The Localism Bill covers a large number of areas, from community empowerment to homelessness housing.
- 2.2 The government ‘is committed to ensuring that charities, social enterprises and cooperatives have a much greater role in the running of public services’¹, with an aim of awarding ‘25 per cent of government contracts to SMEs, which will also benefit small and medium civil society organisations’². Particularly under the new provisions for ‘community empowerment’ and the ‘community right to challenge’³, the Localism Bill opens up local public services to competition from local bidders including voluntary and community bodies.

¹ *Building a Stronger Civil Society: A strategy for voluntary and community groups, charities and social enterprises*. Office of Civil Society, 2010

² *Modernising Commissioning: Increasing the role of charities, social enterprises, mutual and cooperatives in public service delivery*. Green Paper. Cabinet Office, 2010

³ Part 4, Chapter 3

3 Public services

- 3.1 Effective and adequate public services are essential in a modern society. They can promote wellbeing, combat serious inequality and enable people to be effective as citizens and so ensure greater social cohesion. In brief, public services can enhance social capital. However, if they are not fairly provided and fairly distributed they may instead be the occasion of dissatisfaction and resentment, eliciting division rather than helping create a healthy and happy community.
- 3.2 The BHA makes no judgment on the desirability or otherwise of a mixed economy policy in the provision of public services. However, the recent Labour governments' and the present coalition government's enthusiasm for placing contracts with religious organisations, for example, commissioning public services including 'free schools' from faith groups, gives rise to significant issues of principle and to substantial practical problems. Our concern is the freedom granted to religious organisations under present law to discriminate against both employees and service users on grounds of religion or belief.
- 3.3 We believe that, without amendments to suspend the exceptions for religious groups in the Equality Act 2010 during delivery of public service contracts, the Localism Bill will increase greatly the risk and practice of religious discrimination in local public services.

4 Communities, individuals and equalities

- 4.1 Government should recognise the value of communities as a whole, not focus on communities of identity such as exclusive 'faith communities'. It should recognise those who contribute to the wider community regardless of religion or belief.
- 4.2 We want communities where people of all different backgrounds and beliefs engage and work with each other for the benefit of the whole community and work together on issues of shared concern, starting from a truly level playing field of equality before the law.
- 4.3 The government's focus on 'community' throughout its decentralisation and localism programme, including in the Localism Bill, is in contrast to its vision for equality⁴, which seems to be rooted in promoting equality of individuals, with a stated intention to move away from seeing and treating people simply on the basis of one arbitrary marker of identity, such as religion. Although the Equality Strategy does include reference to community groups, including faith groups, running public services, its focus seems to be on improving chances of individual people rather than groups.
- 4.4 A focus on communities and groups rather than on the needs of individuals is undesirable and can compromise and threaten individual equalities and liberties. The previous government further identified community groups by their religious affiliation and were in danger of splitting the community sector into two – with or without a religious identification. This cut support for secular (neutral) groups as funding was aimed at 'faith groups' and 'faith communities.'
- 4.5 There is every indication⁵ that the coalition government intends to continue a policy that is uncritically supportive of 'faith' in our communities, particularly by encouraging 'faith' groups to take on the provision of public services on behalf of the state, without recognising the risk of thereby creating resentment and division.
- 4.6 We believe that the Localism Bill risks focusing on groups and communities and in so doing compromises equalities and rights for individuals.

⁴ *The Equality Strategy – Building a Fairer Britain*, HM Government, December 2010

⁵ See, for example, statements by CLG Ministers showing faith and faith communities to be at the heart of the government's vision for the 'Big Society', including through the provision of public services.

5 Part 4, Chapter 3: Community 'right to challenge'

- 5.1 The provisions in this section of the Localism Bill create a new right to challenge for contracts to deliver public services on behalf of a public or local authority. In chapter 4, a similar right is created for a community right to buy assets of value.
- 5.2 A relevant authority must consider an expression of interest by a relevant body, if that request meets basic time and format requirements.

'Relevant authority' means: (a) a county council in England, (b) a district council, (c) a London borough council, or (d) such other person or body carrying on functions of a public nature as the Secretary of State may specify by regulations.

Given d), this definition could extend to private organisations that are performing public functions.

'Relevant body' means: (a) a voluntary or community body, (b) a body of persons or a trust which is established for charitable purposes only, (c) a parish council, (d) in relation to a relevant authority, two or more employees of that authority, or (e) such other person or body as may be specified by the Secretary of State by regulations.

'Voluntary body' refers to not-for-profit organisations and 'community body' means a body that carries on activities primarily for the benefit of the community.

These definitions are broad – for example, not-for-profit organisations are not necessarily registered charities and(e) allows further extension at the discretion of the Secretary of State to any individual or group.

We can expect further regulations with more details about these provisions which are not already in this Bill.

- 5.3 The government sees this new right to challenge as part of its wider programme to diversify the supply of public services, which also includes its new 'free schools' policy⁶. Free schools can be established by anyone approved by the Education Secretary. There are particular concerns with religious free schools: they are largely unregulated and outside local authority control, so that there is little to prevent groups with an extreme or discriminatory religious beliefs and agendas taking over schools and running them at public expense. The government seems entirely complacent about this risk.
- 5.4 Similar concern must arise over religious groups using the new 'community right to challenge': will there be any requirement that they are fully committed to equality and diversity, that they will not use the service as a vehicle through which to promote their own religious perspective or practice?
- 5.5 There are no current legislative or policy measures to prevent groups with extreme agendas from making expressions of interest, nor to assist relevant authorities in identifying such groups or excluding them.
- 5.6 We recommend that the government sets up transparent and rigorous processes to ensure the credibility of community groups wishing to take on services, with clear measures to ensure they are committed to inclusion, equality and the human rights of both employees and service users.

⁶ 'Decentralisation and Localism Bill: an essential guide'

6 Public services and equality law

- 6.1 The Equality Act 2010 contains significant exceptions that exempt religious organisations from significant parts of the law, permitting potentially wide discrimination by those organisations in employment and service provision.
- 6.2 In employment, the Equality Act fails to protect the rights of employees working for religious organisations, even organisations working under public contract. Religious organisations are granted an exception to allow them to discriminate widely in employment on religious grounds, even against workers transferred from the public authority. TUPE protections may not apply in a number of circumstances, including if a contracted religious organisation chooses to place a religious requirement on a previously secular position⁷.
- 6.3 Service users are also put at risk of religious discrimination if the public service they are accessing, such as a local healthcare service, has been contracted out to a religious provider. Religious organisations are granted an exception to allow them to discriminate in the provision of services on religious grounds, which they are not permitted to do on other grounds including sexual orientation. This is not just a theoretical concern: elsewhere religious providers of health services have not hesitated to ban services offensive to their particular religious sensibilities.
- 6.4 There is an urgent need for legislative reform to make such discrimination the provision of public services unlawful. It is not known how many religious organisations are already working under public contract to provide services. Local authorities and government departments do not even know, ask or record if bodies they are contracting with are religious.

In 2010, the BHA made a Freedom of Information request to over 300 local authorities asking them about their contractual relationships with religious organisations. Of those that replied, 81% did not know if any of the organisations with which they had contracts to run services were religious. They therefore had no way of monitoring to see if such organisations were using – let alone using legitimately – their legal exemptions in delivering services on behalf of and at the expense of the council. Only 3% of the local authorities which answered our request said that their contracts with external organisations running services on their behalf explicitly disallowed any discrimination in delivery and employment above that of legal duties.⁸

- 6.5 This indicates that there may be many authorities that are contracting with religious organisations, or could be in the future, but have no way of monitoring or knowing if they are using their legal exemptions to discriminate.
- 6.6 In the context of the government's commitment to increasing the role of voluntary and community sector and civil society in the provision of public services, including a focus on handing the provision of public services to religious organisations, it is more urgent than ever before to ensure that staff and service users are treated equally regardless of religion or belief.

⁷ For more details on TUPE and contracting with religious organisations, please see the BHA's response to *Modernising Commissioning* <http://www.humanism.org.uk/documents/4789>

⁸ Contact BHA for more details

- 6.7 Under *Clause 68*, ‘*Consideration of expression of interest*’, the relevant authority must consider ‘social, economic or environmental well-being of the authority’s area’. However, this is vague as set out in the Bill, which states that grounds for rejection are specified by the Secretary of State through regulations which are not yet published.
- 6.8 If the Bill is not amended to prevent religious groups discriminating in the provision of public services, we believe that relevant authorities will have difficulties in meeting their duties under Clause 68. Religious discrimination in public services, whether in employment, against service users, or by preferring religious groups over secular groups, will be damaging socially and economically to local areas. For example, if there is a religious test for receiving a service (something permitted under the Equality Act 2010), then the service will not be inclusive nor accessible to all people in the area. Similarly, if a group will only hire staff of their own religious denomination, only a minority of people in the area would ever be able to apply for a job, severely restricting economic opportunities and potentially leading to the appointment of less qualified staff, as has happened already in cases of which we know.
- 6.9 Amendments to the Localism Bill to overrule the exceptions in the Equality Act 2010 when religious organisations are working under contract are necessary in order to prevent discrimination occurring.

They are also necessary to reduce the burden and bureaucracy on ‘relevant authorities’ as defined in the Bill, who will not then have to invoke costly monitoring to find out if a ‘relevant body’ discriminates on religious grounds.

Such amendments would also help relevant authorities meet their duties under Clause 68, as they would not have to take into consideration the impact of religious discrimination on the social, economic or environmental well-being of their area.

7 Single equality duty

- 7.1 The Equality Act 2010 contains a single public sector equality duty across the protected characteristics, as defined by the Act. The duty is set to come into force in England and Scotland in April 2011 and in spring/summer in Wales.
- 7.2 Provisions in the Equality Act allow religious organisations to discriminate widely on religious grounds in service provision, even when working under contract, which we strongly oppose. This together with a requirement on public authorities to advance equality of opportunity through meeting the needs of persons who share a religion or belief, risks a balkanisation of public services. In order to meet their new duties, relevant authorities may feel under pressure to contract with religious groups in preference to inclusive secular groups if they exercise their new ‘right to bid’, in a mistaken attempt to meet the ‘needs’ of faith groups⁹.
- 7.3 The creation of parallel religious and secular services is surely antithetical to the government’s aims of modernising and making more efficient, representative and responsive public services.
- 7.4 We believe that the existence of these exemptions from equality law, and many religious organisations’ desire to use them, even when working under contract, will make it difficult for public bodies to work to the highest equalities standards however much they wish to do so.

⁹ The Joint Committee on Human Rights warned of this misinterpretation of the duty combined with the exception. See BHA Briefing on public sector duty for Equality Bill, Lords Committee Stage, for more details <http://www.humanism.org.uk/documents/4583>.

- 7.5 We recommend that the Localism Bill is amended to ensure that these exceptions for religious organisations do not apply when religious organisations are working under public contract to provide services.

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