

COMPLAINT
TO THE COMMISSION OF THE EUROPEAN COMMUNITIES
CONCERNING FAILURE TO COMPLY WITH COMMUNITY LAW

1. Surname and forename of complainant:

British Humanist Association.

2. Where appropriate, represented by:

Andrew Copson.

3. Nationality:

British.

4. Address or Registered Office:

1 Gower Street, London, WC1E 6HD.

5. Telephone/fax/e-mail address:

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andrew@humanism.org.uk.

6. Field and place(s) of activity:

The British Humanist Association (BHA) operates throughout England and Wales, where it promotes Humanism and supports and represents people who seek to live good lives without recourse to religious or superstitious beliefs. The BHA also provides educational resources on Humanism and humanist funerals and other ceremonies, and campaigns against religious privilege and discrimination on the grounds of religion or belief.

7. Member State or public body alleged by the complainant not to have complied with Community law:

UK Government.

8. Fullest possible account of facts giving rise to complaint:

Our complaints concern:

(a) Section 60(5)(a) of the School Standards and Framework Act 1998¹ (SSFA) and the power it grants to voluntary aided schools with a religious character in England and Wales to show preference in connection with the appointment, remuneration, and promotion of *all* their teachers to persons on the basis of religion or belief. Voluntary aided schools with a religious character comprise over 20% of the state maintained schools in England².

(b) Section 60(5)(b) of the SSFA³ and the power it grants to voluntary-aided schools with a religious character in England and Wales to have regard in deciding to dismiss a 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 specified in relation to the school under section 69(4) of the Act.

(c) Section 60 (3) which applies the same framework on religious appointments, remuneration, promotion and dismissal to reserved teachers in voluntary controlled schools as applies to all teachers in voluntary aided schools. Over 12% of state maintained schools in England are voluntary controlled schools with a religious character, and these schools are able to “reserve” one in five teaching posts for teachers selected for their fitness to give religious education in accordance with the school’s religious denomination.

(d) Sections 58 and 60 of the SSFA⁴ were amended by Section 37 of the Education and Inspections Act 2006 to extend to voluntary aided schools in England with a religious character the power to disqualify a person from being employed for the purposes of the school otherwise than as a teacher by reason of his religious opinions, or of his attending or omitting to attend religious worship. It also removed the prohibition on reserving the headship of a voluntary controlled school for a teacher “selected for their fitness...to give

¹ Source: http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980031_en_6#pt2-ch5-pb3-11g60. Last accessed 10th March, 2010.

² Source: http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000843/SFR08_2009_NationalTables.xls - table 2b. Last accessed 10th March, 2010.

³ Source: http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980031_en_6#pt2-ch5-pb3-11g60. Last accessed 10th March, 2010.

⁴ *ibid*

religious education...in accordance with...the school's specified religion". We believe that the passing of this amendment breached the principle of non-regression in European law.

(e) Although this Complaint will focus on employment in state maintained schools, it should be noted that the SSFA as amended by the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations (2003)⁵ grants to independent religious schools the same powers to give preference to teachers according to their religion or belief as apply to voluntary aided schools. We believe that the criticisms that we make of the law as it applies to employment in maintained schools would also apply to independent schools.

Teaching Posts

We accept that Article 4.2 of the Council Directive 2000/78/EC⁶ allows organisations with an ethos based on religion or belief, such as voluntary aided schools with a religious character, to treat persons differently in recruitment and employment on the grounds of religion or belief where there is 'a genuine, legitimate and justified occupational requirement'.

However, Section 60 (5) SSFA permits complex religious conditions to be applied to a wide category of posts - namely all teaching posts at voluntary aided schools with a religious character and all reserved teaching posts at voluntary controlled schools with a religious character. (Reserved teachers are appointed "for their fitness and competence to give such religious education": it is not at all apparent that this requires the onerous conditions permitted under Section 60(5) SSFA.)

Although the Employment Equality (Religion or Belief) Regulations 2003 prohibit direct discrimination on grounds of religion or belief other than in cases where there is a proportionate genuine occupational requirement⁷, Sections 58 and 60 of the SSFA were exempted from the scope of those Regulations⁸. An equivalent exemption has been included in Schedule 22 (4) of the Equality Bill that is currently being considered in parliament⁹, meaning that the passing of the Bill will not affect the issues that we raise here.

The consequence of this exemption is that all teaching staff in religious voluntary aided schools and all reserved teachers in voluntary controlled schools can be discriminated against without reference to the genuine and proportionate occupational requirement test set out in the Employment Equality (Religion or Belief) Regulations 2003; nor will they

⁵ Source: <http://www.opsi.gov.uk/SI/si2003/20032037.htm>. Last accessed 10th March, 2010. Last accessed 10th March, 2010.

⁶ Source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>. Last accessed 10th March, 2010.

⁷ Source: <http://www.opsi.gov.uk/SI/si2003/20031660.htm#7>. Last accessed 1st April, 2010.

⁸ Source: <http://www.opsi.gov.uk/SI/si2003/20031660.htm#39>. Last accessed 1st April 2010.

⁹ Source: http://www.publications.parliament.uk/pa/ld200910/ldbills/020/10020_209-215.html#j092s. Last accessed 1st April, 2010.

be subject to Schedule 9 (3)¹⁰ of the current Equality Bill if it is passed into law. We appreciate that the ‘genuine, legitimate and justified occupational requirement’ formulation of 2000/78/EC stops short of mandating proportionality as required under British domestic law (other than for teachers). Our concern is that the SSFA fails to meet even the more limited genuine occupational requirement required under 2000/78/EC, since British law mandates no occupational requirement test or equivalent whatsoever for religion or belief discrimination against teachers and all other staff in voluntary aided schools and reserved teachers in voluntary controlled schools.

Reasons why Section 60 contravenes 2000/78/EC:

Article 4.2 of 2000/78/EC allows a “difference of treatment based on a person’s religion or belief 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.”

1. The SSFA allows blanket discrimination instead of a genuine occupational requirement approach.

The references in Article 4.2 to “the nature of activities”, their “context”, and the particular “organisation’s ethos”, in relation to an individual “person’s religion or belief” make clear that genuine occupational requirements should be applied carefully, on a case by case basis, and only where a difference of treatment can be justified. This is not the approach taken under the SSFA. Thus a school with a religious ethos can specify that an exacting list of narrow religious requirements be met by all teachers, whether or not their particular posts require any involvement in religious education, worship or pastoral care. It is important to note that the employer in a voluntary aided school is the governing body and thus the “organisation’s ethos” to which Article 4.2 would refer is that of the school and its governing body, not, for example, any national or diocesan organisation.

2. The SSFA sanctions dismissal and disciplinary procedures on grounds of conduct which is “incompatible with the precepts” of the school’s religion, not simply on grounds of religion or belief.

The difference of treatment described in Article 4.2 is on the grounds of “a person’s religion or belief”. By contrast, Section 60 (5)(b) SSFA allows schools to dismiss teachers for “conduct on his part that is incompatible with the precepts or with the upholding of the tenets of the religion or religious denomination so specified”, rather than their religion or belief as such. This goes far beyond the important and reasonable provision in Article 4.2 allowing organisations with an ethos based on religion or belief “to require individuals working for them to act in good faith and with loyalty to the organisation’s ethos”.

Indeed, Section 60 (5)(b) SSFA makes no reference to the right of religious schools to protect their ethos, instead focusing on whether conduct (including private conduct) is incompatible with the precepts of the particular religion. Thus, while a teacher may consider himself to be a Catholic, be employed as such, and

¹⁰ Source: <http://www.publications.parliament.uk/pa/ld200910/ldbills/020/10020.161-167.html#j010s>. Last accessed 1st April, 2010.

strive in every way to uphold the ethos of the Catholic school at which he works he may also have remarried after becoming divorced. While private conduct such as remarriage, not keeping the Sabbath, use of contraceptives or laxity in following dietary rules would not be grounds for dismissal under Article 4.2, they could be considered so under the SSFA.

Furthermore, it should be remembered that Section 60 (5)(b) SSFA can be applied to all teachers in voluntary aided religious schools, even if when they were originally appointed no regard was had to their religion. The law thus allows a voluntary aided school to, for example, discipline an openly atheist maths teacher for attendance at a legal and peaceful pro-choice rally in her personal time.

Attached is correspondence between the BHA and Schools Minister Vernon Coaker which makes clear the extent of discretion afforded to school governing bodies when dismissing teachers according to Section 60 (5)(b) SSFA. It also states that disciplinary actions short of dismissal are permitted under the Act.

3. The SSFA does not specify that no discrimination on any other ground is allowed, and nor do the exemptions of it from subsequent equality laws.

Article 4.2 does not allow discrimination on any other ground. The British government also claims¹¹ that the SSFA must be read as being compliant with Article 4.2 in this regard and that discrimination on grounds of sexual orientation is therefore forbidden. However, the exemption of the SSFA from the Employment Equality (Religion or Belief) Regulations (2003) (and similarly its exemption in the Equality Bill) includes “conduct on his part that is incompatible with the precepts or with the upholding of the tenets of the religion or religious denomination so specified” which may plainly include conduct related to his sexual orientation or indeed his gender. The exemption should make clear that it applies only in respect of religion or belief.

The discrimination permitted against teachers affects recruitment, employment and dismissal on the basis of religion or belief. Whereas it is reasonable to apply certain religious provisions to teachers who have a pastoral role or responsibility for providing religious worship, religious education or religious instruction, the Act applies to them across the board with no requirement to demonstrate that there is ‘a genuine, legitimate and justified occupational requirement’ for such discrimination.

Regression due to amendment made by Section 37 of the Education and Inspections Act 2006

We further argue that the amendment of Sections 58 and 60 SSFA by Section 37 of the Education and Inspections Act 2006¹² are an independent breach of the Directive according to the principle of non-regression as set out in Recital (28) 2000/78/EC. This is

¹¹ Source: <http://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100127-0006.htm>. Last accessed April 1st, 2010.

¹² Source: http://www.opsi.gov.uk/acts/acts2006/ukpga_20060040_en_5#pt3-pb1-11g37. Last accessed April 1st, 2010.

because the effect of the amendment was to disapply in England a safeguard that had previously protected non-teaching staff in voluntary aided schools and head teachers in voluntary controlled schools from religious discrimination. These categories of employee had therefore been protected from religious discrimination at the time that 2000/78/EC came into force (27 November 2000), but are no longer. Head teachers at voluntary controlled schools had previously been subject to the requirement of SSFA section 60(4) that:

“In connection with the appointment of a person to be head teacher of the school . . . regard may be had to that person’s ability and fitness to preserve and develop the religious character of the school”,

but this falls far short of the more extensive requirements applied to reserved teachers that the amendment now allows them to be subjected to.

Broader Support

The British Humanist Association is not alone in considering that aspects of Sections 58 and 60 of the SSFA may be incompatible with Community law. The Joint Committee on Human Rights of the UK Parliament wrote in their first report¹³ on the proposed Equality Bill published in October 2009, that:

‘We consider that substantial grounds exist for doubting whether sections 58-60 of the School Standards and Framework Act 1998 (SSFA) as currently framed are compatible with the requirements of Article 4(2) of the Framework Equality Directive 2000/78/EC. We also consider that the provisions of section 60(5) SSFA permit Voluntary Controlled and Voluntary Aided Schools to impose wide-ranging requirements upon employees to adhere to religious doctrine in their lifestyles and personal relationships which may go beyond what is permitted under Article 4(2).’ (p96 Legislative Scrutiny: Equality Bill. Twenty-sixth Report of Session 2008-09).

In March 2010 they released their second report¹⁴ on the Equality Bill and reaffirmed this view. They found that:

‘We note that further issues exist in respect of sections 58 and 60 of the School Standards and Framework Act 1998 (SSFA), which in reserving a certain proportion of posts in state-maintained or aided 'faith schools' for individuals who adhere to the religious beliefs and ethos of the school in question may be in breach of the Framework Equality Directive 200/78/EC, on the basis that the reservation of such posts is not restricted to circumstances where it can be shown that a genuine, legitimate and justified occupational requirement to adhere to a particular religious belief can be said to exist.

It is also worth noting that the provisions of s. 37 of the Education and Inspections Act 2006, which repealed original s. 58(4) of the SSFA, have made it possible for all headships in faith schools to be designed as Reserved Teacher posts, except where the current incumbent objects. Other provisions of Section 37 of the 2006 Act have also widened the ability to reserve certain posts filled by non-teaching

¹³ Source: <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/16915.htm>. Last accessed 10th March, 2010.

¹⁴ Source: <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/73/73.pdf>. Last accessed 12th March, 2010.

staff. These provisions may constitute a breach of the principle of non-regression in EU law.

We question why sections 58 and 60 of the School Standards and Framework Act 1998 are exempted from the Equality Bill.’

(p6-7 Legislative Scrutiny: Equality Bill (second report); Digital Economy Bill. Fourteenth Report of Session 2009–10)

The Equality and Human Rights Commission, which is a non-departmental Government body in England, Scotland and Wales tasked to eliminate discrimination and promote human rights, has also stated in a letter to the Accord Coalition (of which the BHA is a founder member) that they “consider that there is a strong case for arguing that Section 60(5) of the SSFA is incompatible with the Framework Directive.” A copy of this letter can be found enclosed.

Conclusion

For the reasons outlined above, we believe that the aspects of the School Standards and Framework Act 1998 are contrary to Council Directive 2000/78/EC in a way that could undermine the employment rights of a large minority of teachers in Britain.

We therefore refer this matter to the Commission for its consideration.

- 9.** As far as possible, specify the provisions of Community law (treaties, regulations, directives, decisions, etc.) which the complainant considers to have been infringed by the Member State concerned:

Recital 28 and Articles 2, 3 and 4.2 of the Council Directive 2000/78/EC.

- 10.** Where appropriate, mention the involvement of a Community funding scheme (with references if possible) from which the Member State concerned benefits or stands to benefit, in relation to the facts giving rise to the complaint:

Not applicable.

- 11.** Details of any approaches already made to the Commission's services (if possible, attach copies of correspondence):

None.

- 12.** Details of any approaches already made to other Community bodies or authorities (e.g. European Parliament Committee on Petitions, European Ombudsman). If possible, give the reference assigned to the complainant's approach by the body concerned:

None.

- 13.** Approaches already made to national authorities, whether central, regional or local (if possible, attach copies of correspondence):

The BHA met with Baroness Thornton on January 14th 2010, who is one of the Government's Ministers tasked with getting the Equality Bill through parliament. We set out our concern that Sections 58 and 60 of the School Standards and Framework Act 1998 were exempted from the Equality Bill and that these Sections did not comply with Article 4(2) of the Framework Equality Directive 2000/78/EC. However, Baroness Thornton rejected that this was the case.

- 13.1** Administrative approaches (e.g. complaint to the relevant national administrative authorities, whether central, regional or local, and/or to a national or regional ombudsman):

Her Majesty's Solicitor General for England and Wales has made it clear in public that the UK Government believe that Section 60(5) of the SSFA complies with article 4.2 of the Council Directive 2000/78/EC. On July 2nd, 2009 she stated in a parliamentary debate that:

'The UK negotiated the inclusion of article 4(2) of the framework directive with the intention of preserving the provisions in the School Standards and Framework Act, and we are satisfied that they are compliant.'¹⁵

- 13.2** Recourse to national courts or other procedures (e.g. arbitration or conciliation). (State whether there has already been a decision or award and attach a copy if appropriate):

None.

- 14.** Specify any documents or evidence which may be submitted in support of the complaint, including the national measures concerned (attach copies):

¹⁵ Source: <http://www.parliament.the-stationery-office.com/pa/cm200809/cmpublic/equality/090702/am/90702s04.htm>. Last accessed 10th March, 2010.

Please find enclosed a copy of the text of the original Section 60 of the School Standards and Framework Act 1998¹⁶ and also the text of Section 37 of the Education and Inspections Act 2006¹⁷, which amended Section 60 of the SSFA.

As mentioned, please find enclosed a copy of the letter from Schools Minister Vernon Coaker to the BHA setting out the discretion afforded to school governing bodies when dismissing and disciplining teachers according to Section 60 (5)(b) of the SSFA, as well as a copy of the original letter that the BHA sent to him on this issue.

Please also find enclosed the letter from the Equality and Human Rights Commission to the Accord Coalition, which notes the Commission's view that "there is a strong case for arguing that Section 60(5) of the SSFA is incompatible with the Framework Directive."

15. Confidentiality (tick one box):

"I authorise the Commission to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."

16. Place, date and signature of complainant/representative:

Signed: 
Andrew Copson

Date: April 16th 2010

¹⁶ Source: http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980031_en_6#pt2-ch5-pb3-11g60. Last accessed 10th March, 2010.

¹⁷ Source: http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060040_en.pdf. Last accessed 1th April, 2010.

Section 60 of the original School Standards and Framework Act 1998 - from http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980031_en_6#pt2-ch5-pb3-11g60

60 Staff at foundation or voluntary school with religious character

- (1) This section applies to a foundation or voluntary school which has a religious character.
- (2) If the school is a foundation or voluntary controlled school, then (subject to subsections (3) and (4) below) section 59(2) to (4) shall apply to the school as they apply to a foundation or voluntary controlled school which does not have a religious character.
- (3) Section 59(2) to (4) shall not so apply in relation to a reserved teacher at the school; and instead subsection (5) below shall apply in relation to such a teacher as it applies in relation to a teacher at a voluntary aided school.
- (4) In connection with the appointment of a person to be head teacher of the school (whether foundation or voluntary controlled) regard may be had to that person's ability and fitness to preserve and develop the religious character of the school.
- (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
- (b) 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.
- (6) If the school is a voluntary aided school, no person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed for the purposes of the school otherwise than as a teacher.
- (7) Where immediately before the appointed day a teacher at a school which on that day becomes a school to which this section applies enjoyed, by virtue of section 304 or 305 of the [1996 c. 56.] Education Act 1996 (religious opinions of staff etc.), any rights not conferred on him by this section as a teacher at a school to which it applies, he shall continue to enjoy those rights (in addition to those conferred by this section) until he ceases to be employed as a teacher at the school.
- (8) In this section “reserved teacher”, in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of section 58(2).

Section 37 of the Education and Inspections Act 2006 - from
http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060040_en.pdf

37 Staff at foundation or voluntary schools with religious character

(1) In section 58 of SSFA 1998 (appointment and dismissal of certain teachers at schools with a religious character), omit subsection (4) (which prevents the head teacher of a foundation or voluntary controlled school being a reserved teacher).

(2) In section 60 of SSFA 1998 (staff at foundation or voluntary school with religious character)—

(a) in subsection (4), after “(whether foundation or voluntary controlled)” insert “in a case where the head teacher is not to be a reserved teacher”, and

(b) in subsection (6), after “voluntary aided school” insert “in Wales”.



2009/0084808POVC


Vernon Coaker MP

Minister of State for Schools and Learners

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Mr Andrew Copson
British Humanist Association
1 Gower Street
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RECEIVED
15 OCT 2009

 October 2009

Dear Mr. Copson,

Thank you for your letter of 18 September in which you ask for clarification on the written answer I provided to Evan Harris MP on Wednesday 9 September regarding teacher conduct in voluntary-aided schools with a religious character.

Voluntary aided schools with a religious character provide an important element of choice within our diverse education system. In particular, they provide a popular choice for many parents who want their children to be educated in a school with a particular religious character.

In order to preserve that religious character, which is fundamental to the ethos of such schools, the governing bodies of these schools are allowed greater flexibility when it comes to employing teaching staff. For example, they are permitted to apply religious criteria in connection with their appointment. They may also apply religious criteria in connection with the employment of support staff, where there is a genuine occupational requirement (GOR) for that person to be of a particular faith to carry out that job.

This greater flexibility also allows the governing bodies to take into account any conduct on the part of teachers which is incompatible with the religion or religious denomination of the school when engaging them or terminating their employment. We believe this to be compatible with EU law.

In response to the specific questions you have raised I have chosen to answer these using the same format in which they were asked.

1. This is a decision that falls to the governing body of the school to make in its capacity as the employer.
2. This will be for the governing body of the school to determine in accordance with the religious denomination of the school.



department for
children, schools and families



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18th September 2010

I am writing to you to seek further clarification to the written answer you provided to a question from Evan Harris MP on Wednesday September 9th regarding teacher conduct in voluntary-aided schools with a religious character.

Hansard recorded the question from Evan Harris MP and your reply as follows:

Dr. Evan Harris: To ask the Secretary of State for Children, Schools and Families whether teachers can be dismissed for conduct incompatible with the tenets of the religious denomination specified in relation to voluntary-aided schools with a religious character. [290664]

Mr. Coaker: Voluntary-aided schools with a religious character do have the ability to have regard to the conduct of a teacher which is incompatible with the tenets of the religion of the school when considering the termination of employment of any teacher.

I firmly believe and trust in the professionalism of our head teachers and in the skill and abilities of governing bodies across the country to ensure that they conduct the employment process fairly and in line with relevant legislation.

Your answer appears to suggest that voluntary-aided schools have enormous and potentially arbitrary legal powers over the way they treat staff which goes far beyond what domestic and EU law provides. As a consequence, your response provoked a great deal of concern for us and begged many unanswered questions.

Therefore, we would like to understand in greater detail how the legal right that voluntary-aided schools with a religious character have to dismiss teachers for conduct incompatible with the tenets of their religion operates, and what its limits are.

To help us develop a better understanding could you tell us:

1. Who can and should determine if a teacher's conduct is incompatible with the tenets of a school's religion?
2. Who can and should establish what is and is not proscribed by the tenets of a school's religion? You will be aware that religious teaching is often contradictory and not constant.
3. Are there any procedural or legal limitations to the scope of what conduct can be considered as conduct against a religious tenet? If so, can the DCSF provide us with information setting out what they are?
4. What process of redress do staff or their representatives have to challenge disciplinary procedures made about their conduct on the basis of the tenets of a religion? If there is a recognised appeals process could you set it out for us?
5. Are we correct to assume that voluntary-aided schools with a religious character can also discipline and reprimand their staff if their conduct is deemed incompatible with the tenets of the school's religion?
6. What exactly is meant by a teacher's conduct? i.e. Does this religious scrutiny only apply to a teacher's conduct in their professional capacity, or potentially to any part of their private life as well, whether that be in the past, present or proposed for the future?

I will look forward to receiving your full reply in due course.

Yours sincerely,

Andrew Copson
Director of Education and Public Affairs

**Equality and
Human Rights
Commission**

equalityhumanrights.com

Alex Kennedy
Accord
1 Gower Street
London
WC1A 6HD

19 January 2010

RECEIVED

21 JAN 2010

Dear Alex

I write further to your meeting with Jayne Hardwick and Paola Uccellari, in which you asked the Commission to support amendments to the Equality Bill to delete the exception for action permitted by sections 58 and 60 of the Schools Standards and Framework Act 1998.

We consider that there is a strong case for arguing that section 60(5) of the SSFA is incompatible with the Framework Directive. We have, therefore, raised this issue with GEO. Further, we intend to brief in support of any amendments tabled during the remaining stages of the Equality Bill which would address this issue.

Your concerns do not relate solely to the incompatibility point in relation to section 60(5). You argue that sections 58 and 60 should be deleted in their entirety: faith schools' right to discriminate on grounds of religion in employment decisions should be limited to the extent permitted for other organisations with a religious ethos. The Commission's over-arching position in relation to the Equality Bill is that it is essential that the Bill should pass. The value of the Bill in harmonising and strengthening our

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