



# Religious Liberty and Equality

## General Election 2017 Policy Paper

### Background

Religious belief is becoming more marginalised in the public sphere and there are stronger pressures to conform. There are pressures stemming from equality law, and also from measures to address violent extremism. This briefing will examine developments over the last Parliament and will consider what issues are important in protecting Christian civil liberties, in the Parliament to come.



### Equality

There are 9 protected characteristics under the Equality Act 2010, constituting part of the law in England, Wales, and Scotland. These include; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.<sup>i</sup> In theory all the protected characteristics should be treated as equally important and all rights protected but in practice these different rights often push in diametrically opposing directions. This is particularly problematic if one protected characteristic repeatedly clashes with and quashes another protected characteristic. This has happened again and again during the last ten to fifteen years through court judgements that have prioritised sexual orientation rights over religion and belief rights.

Case law indicates that Christians are increasingly having to choose between complying with popular opinion, contrary to their religious convictions or risk facing hardship (being dismissed from employment or harassed). In recent years we have seen cases like *Ladele v London Borough of Islington*<sup>ii</sup> in which Ms Ladele was dismissed from her job for standing by her beliefs. We have also seen cases like *Eweida v British Airways Plc*<sup>iii</sup> in which Ms Nadia Eweida was penalised for wearing a cross which she felt was fundamental to her faith.<sup>iv</sup> Existing conscience protections within certain professions are also being eroded. For example, in 2017 the General Pharmaceutical Council proposed changes to the code of practice for pharmacists which will mean they are no longer able to refuse to provide certain drugs.<sup>v</sup> For pharmacists working alone this could mean they are unable to continue within the profession.



In a similar way, Christian goods and service providers - be they businesses or charities - increasingly find themselves under pressure to provide services that are contrary to their beliefs. .

This is what happened in the Ashers Bakery case when the Bakery refused to bake a cake decorated with a message supporting same-sex marriage.<sup>vi</sup> As a consequence of their refusal to provide the cake, the Equalities Commission for Northern Ireland brought court proceedings against the

owners of the business. In 2016, the Court of Appeal upheld a High Court ruling that the Bakery's refusal to supply the cake was unlawful. Likewise, most adoption agencies previously linked with the Catholic Church have had to sever ties with the Church or have simply closed down. This is because the law was changed, requiring agencies to consider applications from same-sex couples on an equal basis to other prospective parents which does not fit the Catholic family ethos central to the identity of the agencies.<sup>vii</sup> If service providers holding religious convictions are forced to choose between abiding by their faith and following requirements under equality law, many will choose the former. This will result in a reduction in services provided in a religious ethos and would restrict diversity in service provision.

### Reasonable accommodation

Reasonable accommodation is a principle that recognises that in the same way a law designed for the majority can negatively impinge upon the interests of a minority, a law designed to protect one minority may negatively impact another minority group. The solution to this problem is to apply the law in a way that makes space for and reasonably accommodates the other protected characteristic.



Reasonable accommodation already exists in UK law in relation to disability. In other countries such as Canada reasonable accommodation has been extended to include many protected categories such as religion, disability, gender, national origin and age.<sup>viii</sup> Likewise in the United States reasonable accommodation was used to accommodate religious liberty in employment law before the concept was applied to disability.<sup>ix</sup> What's more, reasonable accommodation does not necessarily have to place additional burdens on employers; for example in *Ladele v London Borough of Islington* Ms Ladele was willing to swap shifts with other colleagues and work unpopular hours so that she did not have to officiate in a civil partnership which she morally objected to. In 2016, CARE published a major report with ResPublica bringing forward a proposal for 'reasonable accommodation' of people's religious beliefs when those may conflict with the rights of others especially in situations of employment and business.<sup>x</sup>

### Religious liberty in the UK in the 2010-2015 Parliament

CARE was pleased that the Equalities and Human Rights Commission held a consultation on the reasonable accommodation of religious belief in 2011 and that the Equality Commission for Northern Ireland indicated that it would recommend introducing an "anticipatory duty to make reasonable accommodations across all equality law protected characteristics"<sup>xi</sup> However, although the Equality and Human Rights Commission's consultation suggested that they were minded to adopt reasonable accommodation in this context, opposition from gay rights and secularist groups was fierce and the Commission subsequently decided to drop the proposal.

In the wake of the Trojan horse controversy, the Department for Education produced guidance that required all schools to actively promote equality and respect for all protected characteristics.<sup>xii</sup> The commitment to "active promotion" caused very real concerns as the Government made it plain that this would not be satisfied by arranging visits to places of worship but that further engagement would be required. In November 2014, the Department clarified its position on "active promotion". Active promotion would now be satisfied if schools encourage

*“further tolerance and harmony between different cultural traditions by enabling students to acquire an appreciation of and respect for their own and other cultures”<sup>xiii</sup>*

Despite the fact that this guidance now appears to reflect a softer approach in relation to what is meant by “active promotion” these requirements still pose a considerable threat to Christian schools. The case of a Christian school which was downgraded from “good” to “adequate” by Ofsted because it refused to invite an Imam into the school to lead assemblies is an example of this.<sup>xiv</sup>

### Religious liberty in the UK in the 2015-2017 Parliament



Since the last election the Government has been working on a number of issues which impact religious liberty, most notably, in relation to countering extremism and the promotion of equality and tolerance.

Following the last election the Government proposed to introduce legislation to “*prevent radicalisation, tackle extremism in all its forms, and promote community integration.*” In October 2015, the Government released its “Counter-Extremism Strategy.”<sup>xv</sup> However, as extremism is not defined in the document and the strategy does not focus exclusively on violent extremism, the proposed strategy is highly problematic. The strategy focuses on promoting so-called “British values” in an attempt to defeat violent and non-violent extremism. However, as the “British values” include the commitment to equality and tolerance, this is often erroneously interpreted as accommodating an obligation to promote equality for the price of religious freedom and living in accordance with religious values. Consequently, such an approach targets religious communities.

The strategy proposed a new mechanism of “Extremism Disruption Orders” (EDOs) that would allow the police to apply to the High Court for an order restricting “*harmful activities of the most dangerous extremist individuals.*”<sup>xvi</sup> However, without a clear definition of extremism and without focusing on violent extremism only, such a proposal is a slippery slope leading to targeting religious groups that may have views erroneously seen as contrary to the “British values.”

Another measure to address extremism was a proposal from the Department of Education that out-of-school educational setting where a child would participate in activities for six or more hours per week should be registered with and inspected by Ofsted. This proposal, which could have impacted church children’s and youth programmes, was strongly criticised by a number of MPs during a Westminster Hall debate in January 2016 and was the subject of a public consultation in winter 2015. As yet the proposed registration has not been introduced but nor has the plan been officially dropped and hence it may be re-visited in some form during the next parliament.

A report from Parliament’s Joint Committee on Human Rights published in July 2016 was highly critical of the Government’s plans to counter extremism strategy, in particular the lack of a clear legal definition of extremism and specifically opposed the plans for routine inspection of out of school educational settings.<sup>xvii</sup>

In December 2016, the Government published the Casey review, a review into “opportunity and integration” prepared by Dame Louise Casey DBE CB as requested by the then Prime Minister and Home Secretary.<sup>xviii</sup> The Casey review emphasises the need to promote so-called “British values” and proposes a recommendation for all public office holders to make an oath of allegiance to these values.<sup>xix</sup> CARE is concerned that living in accordance with religious values, and so objecting to providing certain services or promoting certain activities that are contrary to these religious beliefs may be interpreted as undermining or rejecting “British values.” Ultimately, public office holders may have to choose between being involved in public life and living in accordance with their religion.

### Sunday Trading

A separate issue related to religious liberty arose during this Parliament when the Government proposed giving new powers to local and regional authorities to set extended Sunday trading hours. The Government conducted a consultation on its proposals in August to September 2015 which received over 7,000 responses indicating a considerable degree of public concern about the proposals. However, the Government proceeded to introduce its proposal through a Committee stage amendment to the Enterprise Bill in the House of Commons, after the Bill had already passed through the House of Lords. A Report Stage amendment introduced by Conservative MP David Burrowes, removing the Government’s amendment was passed by 317-286 on 9 March 2016.<sup>xx</sup> This means that Sunday Trading hours were not further liberalised. In addition, further amendments to the Enterprise Bill were passed giving additional protection to workers who wish to opt-out of working on Sundays.

### Religious liberty in the coming Parliament – pressures for change

More needs to be done to:

- Change the law to introduce reasonable accommodation certainly for the religious belief protected characteristic but arguably across all nine equality strands.
- Ensure that any counter-radicalisation and extremism policy does not excessively infringe on the right to freedom of religion.
- Work with religious leaders to seek strategies that can both counter radicalisation and terrorism and enable individuals and groups to exercise their religious freedom.

### Key questions for candidates

1. Would you be willing to support the introduction of reasonable accommodation to protect religious freedom across the UK, and most notably, to protect individuals’ freedom to act according to their beliefs including in relation to their employment or business?
2. Would you act to ensure that counter-extremism measures are proportionate, focussed on violent extremism and that they will not result in the prosecution of people simply because they hold unpopular or non-mainstream (but non-violent) views?
3. Would you support churches’ ability to run children and youth programmes without needing to register and be inspected by Ofsted?



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- i S.4 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/4>
- ii *Ladele v London Borough of Islington* [2009] EWCA Civ 1357.
- iii *Eweida v United Kingdom* [2013] ECHR 37.
- iv Nadia Eweida was penalised by British Airways when she continued to wear a cross over her uniform after a change to their uniform policy prohibited it. When Ms Eweida refused to conceal the cross she was sent home without pay. The airline suggested that if she wished to continue working she would have to work in the back office, which she refused. Ms Eweida's appeal to both the Court of Appeal and Supreme Court was in relation to the loss of earnings she suffered during her time away from work. Whilst the English courts had held that Ms Eweida could have minimised her loss of earnings by taking the offer made by British Airways to work in the back office, the European Court of Human Rights did not agree. The British government was therefore advised to pay Ms Eweida 2,000 Euros (£1,600) in damages and to pay her costs totalling 30,000 Euros (£25,000).
- v Harry Farley, *Christian Today*, Will removing a 'conscience clause' force Christian pharmacists to dispense morning-after pills? 20 April 2017, <https://www.christiantoday.com/article/will.removing.a.conscience.clause.force.christian.pharmacists.to.dispense.morning.after.pills/107669.htm>
- vi Decision in *Ashers Bakery Appeal*, Summary of judgment, 24 October 2016, [https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Decision%20in%20Ashers%20Bakery%20Appeal/j\\_Summary%20of%20judgment%20-%20Lee%20v%20Ashers%20Baking%20Co%20Ltd%2024%20Oct%2016.htm](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Decision%20in%20Ashers%20Bakery%20Appeal/j_Summary%20of%20judgment%20-%20Lee%20v%20Ashers%20Baking%20Co%20Ltd%2024%20Oct%2016.htm)
- vii Martin Beckford, *The Telegraph*, Last Catholic adoption agency faces closure after Charity Commission ruling, 19 August 2010, <http://www.telegraph.co.uk/news/religion/7952526/Last-Catholic-adoption-agency-faces-closure-after-Charity-Commission-ruling.html>
- viii European Commission, Reasonable Accommodation beyond Disability in Europe? September 2013 [http://ec.europa.eu/justice/discrimination/files/reasonable\\_accommodation\\_beyond\\_disability\\_in\\_europe\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/reasonable_accommodation_beyond_disability_in_europe_en.pdf), p.15.
- ix *Ibid.*, p.12.
- x James Orr, *Beyond Belief* Defending religious liberty through the British Bill of Rights, *ResPublica*, November 2016, <http://www.respublica.org.uk/our-work/publications/beyond-belief-defending-religious-liberty-british-bill-rights/>
- xi The Equality and Human Rights Commission, Consultation response summary- legal intervention on religion or belief rights: seeking your views [http://www.equalityhumanrights.com/sites/default/files/documents/legal/consultation\\_response\\_summary.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/legal/consultation_response_summary.pdf)
- xii The Trojan horse controversy uncovered cases which suggested that some Muslim groups had gained control of a number of Birmingham schools by holding seats on governing bodies.
- xiii Department for Education, Promoting fundamental British values as part of SMSC in schools. Departmental advice for maintained schools, November 2014. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/380595/SMSC\\_Guidance\\_Maintained\\_Schools.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380595/SMSC_Guidance_Maintained_Schools.pdf) p.5.
- xiv John Bingham, *The Telegraph*, Christian School downgraded for failing to invite an imam to lead assembly, 19 October 2014, <http://www.telegraph.co.uk/news/religion/11173102/Christian-school-downgraded-for-failing-to-invite-an-imam-to-lead-assembly.html>
- xv Counter-Extremism Strategy, Home Office, 19 October 2015. <https://www.gov.uk/government/publications/counter-extremism-strategy>
- xvi *Ibid.*, para.112.
- xvii House of Lords House of Commons Joint Committee on Human Rights Report HL Paper 39 HC 105 Counter-Extremism 22 July 2016
- xviii The Casey Review: a review into opportunity and integration, 5 December 2016, <https://www.gov.uk/government/publications/the-casey-review-a-review-into-opportunity-and-integration>
- xix *Ibid.*, p.17.
- xx You can read the debate on the amendment in Hansard here: <https://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160309/debtext/160309-0002.htm#16030943000002>