

**BACKGROUND PAPER TO PRIVATE MEMBER'S MOTION:**

**THE PUBLIC MANIFESTATION OF CHRISTIAN FAITH**

**Background note by the Secretary General**

1. The motion affirms the duty of Christians to govern our lives by scriptural teaching, to manifest our faith in private and public life, to express our beliefs in words and deeds of service. Such a duty would be accepted by all Christians, though there would be differences of view within and among churches about the implications of scriptural teaching for particular areas of public policy and personal conduct; the use of military force for self defence is just one example of where Christians have come to different conclusions, in that instance over many centuries.
2. The accompanying paper makes it clear that the context of the motion is disquiet at the alleged marginalisation and restriction of Christian belief and practice as a result of various cultural and legal changes - primarily the operation of the 1950 European Convention on Human Rights and the Human Rights Act 1998, and the impact of equalities legislation. It is undoubtedly true that the creation of new, quite broadly framed legal rights and the advent of a more litigious culture have drawn the courts and tribunals into disputes that were not previously justiciable and, until case law has developed further, have created a degree of uncertainty about what is and is not lawful.
3. In this complex, new and rapidly evolving situation it can be challenging to discern what exactly is happening, not least when media reports often provide a less than secure basis for understanding the issue of principle or law that may be at issue in any particular case. There can as a result be a perception that particular laws require the suppression of any manifestations of religious belief, when this is not in fact so. This perception is then fuelled if public servants interpret the public sector equality duty, particularly in relation to religion and belief, in a narrow and defensive way.
4. Constitutionally we continue to be governed 'by the Queen in Parliament under God' and this is reflected by the continuing practice for proceedings in both Houses of Parliament to begin each day with Christian prayer. The National Anthem is a Christian prayer. Significant moments of national life (such as the annual service at the Cenotaph on Remembrance Sunday) include a Christian act of worship.
5. Decisions about prayer at a public occasion are, however, the responsibility of the body supervising the event. Some local authorities have voted down attempts to abolish prayers at their meetings. Many others do not start meetings with prayer. An action challenging the principle of prayer at council meetings by an atheist councillor from Devon is pending. Similarly, decisions about the display of Christian symbols are for decision by the relevant body. A recent Italian case in the European Court of Human Rights rejected the argument that the display of a crucifix in all state schools in Italy was unlawful.

6. It is sometimes argued that, while the intentions underlying human rights law were benign, in practice the interpretation and operation of it has not produced a balanced outcome when different rights have come into conflict. In other words, while it is accepted that there is nothing intrinsically wrong with the fact that Article 9.2 of the European Convention qualifies the freedom to manifest religion by various considerations- including the protection of the rights and freedoms of others- the suggestion is that in practice these qualifications are applied too extensively.
7. As a result, so it is claimed, Christians no longer have the freedom they once did to live according to their faith. The fact that individuals have, in particular cases, found themselves caught up in especially painful disputes has undoubtedly been a matter of real concern. Nevertheless, arriving at an assessment of the overall situation is not straightforward and there is a range of views on how significant any such encroachment on traditional religious freedoms has been.
8. In addition, when considering questions of human rights and equality, Christians have always to keep in mind the implications of Jesus' teaching that we should love our neighbour as ourselves, and the "Golden Rule" (not exclusive to Christianity) that we should act towards others as we should wish them to act towards us.
9. This has led many Christians to be cautious over claiming rights and freedoms that we are not prepared to allow to others. This country ceased to be a confessional state in the 1820s. The nature of the Church of England's role as the established church and the position of Christianity as still by far the largest faith within the nation have necessarily evolved further over recent decades as society has become more diverse in terms of religion and belief. While there are undoubtedly those whose convictions lead them to campaign for the elimination of Christianity from public life it is important to see this as a campaign rather than a conspiracy.
10. Lord Justice Laws' judgment in the *McFarlane* case<sup>1</sup> has been the subject of a good deal of comment since it was delivered, not all of it well founded. The substance of the judgment was that Mr McFarlane, as a counsellor working for Avon Relate, did not have the right to refuse to counsel same-sex couples on the grounds that to do so was contrary to his religious convictions.
11. Lord Justice Laws held that Avon Relate was entitled to require its employees to comply with its equal opportunities policy, under which no one was to "receive less favourable treatment on the basis of characteristics such as sexual orientation". It was, according to the judgement, for Avon Relate to decide whether individuals working under its auspices should be allowed to excuse themselves from certain types of case but in law Mr McFarlane had no *right* to be so excused. It is clear that that position would have been the same, in the Court's view, whatever Mr McFarlane's religious adherence.
12. The particular statement quoted from Lord Justice Laws' judgment in GS Misc 1859A needs to be understood in the context in which it was made, which was that of responding

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<sup>1</sup> *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 880 (Court of Appeal)

to the argument advanced by Mr McFarlane's counsel that the courts should be more sympathetic to the *substance* of the Christian beliefs referred to in the evidence led in that case and should be readier than they are to uphold and defend them.

13. In response to that argument Lord Justice Laws observed that an important distinction had to be drawn between the law's protection of *the right to hold and express a belief* and the law's protection of *that belief's substance or content*: the law protected the former but not the latter. So in his view: "*The common law and [the European Convention on Human Rights] offer vigorous protection of the Christian's right and every other person's right to hold and express his or her beliefs, and so they should. By contrast, they do not, and should not, offer any protection whatever of the substance or content of those beliefs on the ground only that they are based on religious precepts.*"
14. Thus it was not Christian principles as such which Lord Justice Laws characterised as "*divisive, capricious and arbitrary*" but the promulgation of a law that conferred legal protection or preference on a particular moral position *simply because* it was espoused by the adherents of a particular faith.
15. Whatever the merits of the *McFarlane* case or of Lord Justice Laws' wider reflections there is a broader issue for the churches over the extent to which human rights and equality legislation reflects a view of society which is inimical to genuine pluralism and the right of communities, not least faith communities, to order their affairs according to their consciences and beliefs.
16. The Christian understanding of the Church does not equate unity with uniformity but sees unity being created and sustained in diversity. Similarly, our vision of society is of unity in diversity, of a "community of communities" which need to learn to live in peace and justice. The American political theorist, William Galston, usefully distinguishes between "liberal egalitarianism", which seeks to eliminate differences and to impose common standards on the institutions of civil society, and "liberal pluralism", which respects differences and seeks to protect diversity of beliefs, values and practices within a framework of law and policy designed to secure justice and to protect the common good.
17. Submissions that have been made to Government in recent years on behalf of various Church of England bodies in connection with particular pieces of legislation have reflected a preference for "liberal pluralism" over "liberal egalitarianism". This has been on the grounds that this is beneficial not only for the churches and Christians but for all faiths and beliefs, and all citizens. It could be said that "liberal pluralism" is the guiding principle of the European Convention on Human Rights and Fundamental Freedoms – to give it its full title.
18. The question is whether the interpretation of the European Convention and the operation of equality legislation have substituted "liberal egalitarianism" for "liberal pluralism" as the dominant social norm. There is clearly a need to be vigilant about the threats to religious freedom and diversity whether from legislation or the courts' interpretation of them. But in general the courts have shown themselves willing to grapple with the balance that has to be

struck between conflicting rights and to give proper weight to the importance of religious liberty. In addition Christians have to be sensitive to the fact that their public actions and utterances may sometimes require a greater measure of sensitivity and self-restraint than was the case in a less diverse society – back to the “Golden Rule”.

19. In September 2011, the MPA Council made a response to a consultation by the Equality and Human Rights Commission in which it cast doubt on the usefulness of the principle of “reasonable accommodation” for religious beliefs as a legal norm. It argued that, so long as the possibility exists of rights conflicting, the courts have to adjudicate on cases and perform their balancing function. Religious rights and freedoms can claim no special exemption from this process.
20. In questioning the applicability of “reasonable accommodation” in this context as a legal principle the MPA response was not, however, calling into question its relevance to conduct prior to litigation. In that context it is a principle to be welcomed wholeheartedly. One of the dangers of the human rights culture is that recourse may be had to law before other options have been properly explored.
21. A society in which conflicts of values are approached through processes of discussion, mediation and conciliation and, where necessary, compromise is arguably close to Christian principles than one where a litigious culture produces what the political philosopher Thomas Hobbes called “the war of each against all”.
22. The tense nature of much public debate today has led to some misrepresentation of the Christian faith and, indeed, of other religions too. Equally there has been a certain amount of misrepresentation of human rights and equality legislation too, not least among sections of the media.
23. The consistent approach of the Church of England in submissions on equality and human rights issues has been to argue strongly for all churches and faiths to be able to apply their own policies and have their own rules on eligibility for their equivalent of the priesthood in accordance with the convictions and tenets of that faith, even where these may be at variance with current secular expectations. At the same time our submissions have recognised human rights as a force for justice and the common good, and equality legislation as an area in which Christians have a positive contribution to make to a flourishing society.

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