



GOVERNMENT WHITE PAPER:

**FAIRNESS FOR ALL—
A NEW COMMISSION FOR
EQUALITY & HUMAN RIGHTS**

A RESPONSE FROM

THE MUSLIM COUNCIL OF BRITAIN

August 2004

***EXTRACT FROM FULL SUBMISSION –
INTRODUCTION & EXECUTIVE SUMMARY ONLY***



INTRODUCTION

This response is submitted by The Muslim Council of Britain (MCB). The MCB is the leading umbrella organisation representing the interests of Muslims in Britain, whilst working for the common good of society as a whole. In its short history, the MCB has built a reputation for consultation, co-operation and co-ordination amongst British Muslims, and a step change in contact between them and the wider society. The MCB has over 400 active affiliate organisations, some of them being umbrella organisations themselves.

This submission is made in the context of the Government's ongoing consultation on 'Equality and Diversity' over the last several years. We agree with the Government that a step change in how we promote, enforce and deliver equality and human rights is now necessary, if we are to achieve the cohesive and prosperous society we seek—a society that is at ease with itself. From our perspective, we have argued over the years that what is most required is a commitment to creating a space for religion in the public sphere, where the discourse around religion may develop sufficiently for Government to be able to finesse its approach to meeting the particular and specific needs of faith communities. We have found that 'religion-talk', even in the context of anti-discrimination and equality, receives a knee-jerk reaction in liberal circles generally and is treated with much nervousness in Government and policy circles. This manner of reaction, where religion today is an important marker of identity politics, both in terms of self definition of identity and identity as defined by others, not only undermines the dignity of those identified by reference to religions but has also delayed the much needed development of the discourse around religious discrimination and equality. This has in turn masked some very important distinctions between, for example, ethnic majority religions and ethnic minority religions, mono-ethnic religions and multi-ethnic religions, visible religions and non-visible religions, and 'traditional' religions and new age religions, that has served to hide the real and true nature of disadvantage based on religion suffered by some religious communities. We, therefore, welcome the Government's commitment to make a 'step change' in the promotion, enforcement and delivery of equality and human rights.

In particular, this submission will cover issues raised by the recent White Paper, *Fairness for All: A New Commission for Equality & Human Rights*. As Muslims constitute the largest non-Christian faith community in Britain and over a third of all ethnic minorities in Britain, this response is from the perspective of both the race and religion strands. The submission places the discussion in the context of the current situation of the Muslim community and its experiences in Britain, particularly in terms of the equality provisions presently available to them. In addition to describing the current situation and experiences of Muslims in Britain (Part I) and commenting on the specifics



of the White Paper (Part II), we also bring to the Government's attention in this response, an urgent and immediate need for legislation for better protection of British Muslims from discrimination and disadvantage. We highlight the most suitable options available for such protection (Part III).

We acknowledge the assistance we have received from the CRE, Equality & Diversity Forum, Interfaith Network, Law Society and Liberty in preparing this response.



EXECUTIVE SUMMARY OF KEY CONCLUSIONS & RECOMMENDATIONS

Muslims constitute approximately 50% of the non-Christian faith population and just under 40% of all ethnic minorities in Britain. There is now a growing body of evidence that British Muslim communities suffer some of the sharpest forms of discrimination and disadvantage in public life, socio-economic status and personal security. However, they still remain inadequately protected by equality legislation and without any institutional arrangement to assist them. Racial discrimination is often practiced against Muslim communities through the surrogacy of religion, and thus avoiding the remits of present race relations laws, and current provisions on religious discrimination are still extremely limited in scope.

Current race equality provisions in Britain are insufficient to ensure protection of all ethnic minority groups. The Race Relations Act 1976 outlaws discrimination on the grounds of colour, race, nationality and national or ethnic origin, but not on the grounds of religion or belief. This means that whilst the ethnic minorities community, as a whole, is given legal protection against discrimination, parts of the whole may nonetheless be discriminated against through the proxy of religion. This shortfall or loophole has been partially resolved for some religious communities by extending the case law definition of 'ethnic group' to mono-ethnic religious minorities. However, this partial solution has not helped to ameliorate the problem for all, and has indeed created another set of inconsistencies and inequities. These loopholes and inconsistencies are reinforced by the Race Relations (Amendment) Act 2000, which introduced a public sector positive duty to eliminate discrimination and promote equality.

Current provisions on religious discrimination are still extremely limited in scope. The Employment Equality (Religion or Belief) Regulations 2003 outlaw discrimination on grounds of religion and belief in relation to employment and occupation. They do not, however, deal sufficiently extensively with the breadth of the existing anomalies under our race relations laws and provisions, but create further and new inconsistencies and inequities between minority ethnic and faith communities. Even after the introduction of the new regulations, some faith communities, including Muslims, are still not protected from discrimination in goods and services available to the public, education, social protection and social advantages. They also have little protection from discrimination in other important areas of contact, e.g., law enforcement, regulatory and control functions. Perhaps the most significant shortfall for faith communities, however, is the lack of a positive duty as currently available for race and in the pipeline for disability and gender. Faith communities also feel the absence of any institutional arrangements to support them when faced with discrimination.



The lack of equality protection and provisions has left faith communities, and Muslims in particular, very exposed. The defining experience of large numbers of Muslims in Britain today is discrimination, marginalisation and disadvantage. This was highlighted and confirmed in no uncertain terms by a Cabinet Office report in 2002 on ethnic minorities in the labour force. The report suggests that overall Muslims are far more likely to live in impoverished and insecure circumstances than the general population. Marginalisation and disadvantage, or social exclusion, is, in our view, involuntary. However, extreme *involuntary* social exclusion can be a major contributory factor to the *voluntary* isolation of certain sections of the Muslim community. Social exclusion, leading to social isolation, is one of the major factors that contributed to the breakdown in community cohesion and national identification in some Northern cities in the summer of 2001. If Government is to achieve its vision of a cohesive and prosperous society, then it must redress the present inequities in equality of opportunities. It must also redress the shortfall in access to institutional arrangement for support against discrimination by some of the most vulnerable members of our society.

In view of the current position of the Muslim community in Britain and the paucity of equality provisions that meet their needs, the proposed new institutional arrangements would certainly be helpful. We share the Government's belief that a single Commission for Equality & Human Rights is the appropriate way forward, particularly welcoming the decision to include human rights within the remit of the new body. We recognise that a balance will need to be found between the needs of the different strands in terms of adoption by or transfer into the new body. This need not, however, hold up the overall proposed timetable for the new body in any way. We agree that a single commission would, in the longer term, bring great benefits for all: a strong and authoritative voice for championing equality and human rights and promoting cultural change; a strategic cross-cutting approach to enforcing discrimination legislation; a single point of contact and integrated advice for individuals and organisations; a more comprehensive means to address multiple discrimination; better prospects for a real challenge to institutionalised forms of discrimination; the ability to promote good relations among and across strand specific communities towards a greater cohesive society; and the ability to share the experience and expertise of existing commissions across the equality and diversity agenda. A single over-arching commission set up with expertise of the different strands would also remove hierarchies of protection afforded to different groups and avoid duplication of resources, thus increasing the proportion of funding going to front-line work.

We are, however, concerned that there are many shortfalls and gaps between the Government's proclaimed intentions with regards to the vision for equality and human rights and the objectives that are to be achieved by the proposed body through the duties and powers it will possess. **Foremost amongst our concerns are issues relating**



to integration, coherence and simplicity. We believe that to achieve the proclaimed vision it is essential to equip the single Commission with a single Equality Act from the start. We are concerned by the possibility of a single equality body which has no statutory powers in relation to goods and services and positive duty to promote equality for three of its strands: religion/belief, sexual orientation and age. The different levels of statutory powers for the different strands will, of course, have a significant impact on the functions performed by the new body with regards to each strand and the priorities of the organisation as a whole. We are concerned that a body built on and required to provide a hierarchy of equality provisions would foster divisions between the strands rather than the trust and cross-working that would be vital to the organisation's success, and that this could seriously undermine the organisation's credibility to those that may need it most. We also believe that a single Equality Act would help to reduce the complexities and inconsistencies that currently exist and make equality legislation easier to understand and implement, more effective, and thus, of greater benefit to employers and service providers, advice givers and members of the public. However, if the new body must proceed on the basis of the current equality legislation, then we agree that one of its earliest tasks must be to bring coherence and simplicity to such legislation.

We also have some concerns around the level of resourcing for the new body. Achieving the vision and functions described across the six strands of equality and human rights will not be done other than by an extremely well resourced organisation. We note that the Government recognises that the new body would 'need to be properly resourced'. However, there is no further indication as to what this might mean in practice save a lone reference in the partial regulatory impact assessment section at the end, which suggests that the annual expenditure on the CEHR will be higher than that of the existing commissions given its broader remit. There is little further detail. We believe that taking on three new strands and human rights, with additional duties and powers across the board, represents a significant broadening of 'the remit', and resourcing for the new body must reflect this fact. The Government's vision for equality and human rights, as the basis of a cohesive and prosperous society, will only become a reality if the new Commission is sufficient resourced, and not seen as a cost-cutting exercise.

Whilst we agree that the proposed new institutional arrangements for equality and human rights will certainly be helpful for British Muslims, and suggest how the proposals may be improved for all British citizens, **we stress that institutional arrangements in themselves, no matter how good, will not meet the urgent needs of British Muslims today. In view of the current dire equality position of the Muslim community in Britain, there is an URGENT and IMMEDIATE need for greater legislative protection of British Muslims from discrimination and disadvantage, as recently very persuasively argued by the Home Secretary.** It is only such legislation that will make the proposed new institutional arrangements for equality and human



rights at all meaningful to many British Muslims. We, therefore, recommend, in the strongest terms possible, that the Government urgently considers comprehensive protection for Muslims in all areas of life. It is essential that Muslims are protected against discrimination in areas beyond employment—particularly in their access to and use of public services (e.g. housing, social services and education) and from law enforcement, regulatory and control functions; and the main legal remedies for tackling the disadvantages and social exclusion faced by minorities, introduced in the Race Relations (Amendment) Act 2000 are also extended to Muslims.

We find that there are three available options by which Government may meet the urgent need of British Muslims:

- Introduction of comprehensive freestanding legislation against *religion or belief discrimination* generally
- Introduction of legislation against *religion or belief discrimination* ‘parallel’ to provisions on race, by amending the existing race relations instruments of law—that is, by adding ‘and religion/belief’, or similar appropriate terminology, wherever ‘race’ or related terminology appears in the body of all current legislation, but particularly the Race Relations Acts of 1976 and 2000
- **Clarification of the current anomaly in race relations law to include ‘racial discrimination on grounds of religion’ for all ethnic groups by adding ‘religion’ as an additional marker in the definition of ‘racial group’ under s3(1) of the Race Relations Act 1976.**

Given the political will, we believe that all three options are possible within limited timeframes. However, having considered the three options in detail, we recommend in particular the third option for the following reasons:

- It is not so much a development of the religion/belief strand as it is a clarification of race relations law developed by the courts that have left us with an anomaly: the extension of the law to effectively cover some faith groups from ‘racial discrimination on grounds of religion’ (eg, Jews and Sikhs), but not others (eg, Muslims). As it is not a development of the religion/belief strand per se, it would not be available to the other new strands as a basis for similar demands.
- It is recommended by the Council of Europe—see, for example, General Policy Recommendation No.7, ECRI, Council of Europe, Dec. 2002—and redresses our current position of standing in breach of Article 9 read with Article 14 of the ECHR, as recently highlighted by the House of Lords in its Select Committee report on Religious Offences.
- The option will be easy to progress within the legislation for the new single equality body, CEHR, or any other current or proposed Bill undergoing or awaiting passage through Parliament (e.g., the piece of legislation in which it is intended that the new provision on incitement to religious hatred will be included) — as all it will require is a single amendment to s3(1) of the Race



Relations Act 1976, as amended by the 2000 Act, to include religion as an additional 'marker' to the current list of markers for 'racial group': colour, race, nationality or national or ethnic origin. This would then automatically read across to all legislation on race without the need to amend each and every mention of race in legislation. This should take no more than a couple of clauses in any new legislation vehicle.

- It ought not to raise any concerns around 'wider implications', as the possibilities of any such wider implications have already been piloted for over 20 years around two religions without raising any due concerns. However, if concerns can be foreseen, then they can be addressed in additional limitation clauses.
- This simple amendment would address an urgent need to provide greater protection for British Muslims without unduly disadvantaging members of any other faith. Any further issues and concerns in the religion/belief strand more generally could then be addressed in the context of either more comprehensive freestanding legislation on religious discrimination as in the first option or the proposed single equality act at a later date.
- The option can be combined with ironing out certain other discrepancies introduced around the definition of 'racial group' through the adoption of the EU Race Directive via secondary legislation – e.g., the different thresholds for harassment and different approaches to burden of proof between racial discrimination on the grounds of race and ethnic origin and racial discrimination on the grounds of nationality and colour.

We cannot emphasise enough the need for urgent and immediate action to provide greater protection to British Muslims from discrimination and disadvantage. The Government has a number of clear options to respond. It must do so in a manner that is consistent with its own proclamations on equality and diversity, inclusion and citizenship, and good relations and community cohesion. It must also do so in a manner that is credible to British Muslims, particularly in light of other recent Government activities that are often seen as penalising or punishing Muslims.