

**CHRISTIAN CONCERN FOR OUR
NATION &
THE CHRISTIAN LEGAL CENTRE**

***Response to the Equality and Human
Rights Commission's Consultation on the
Equality Act 2010 Draft Non-Statutory
Guidance***

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About Us

Christian Concern for Our Nation (CCFON) is a policy and legal resource centre that identifies changes in policy and law that may affect the Judeo-Christian heritage of this nation. The team of lawyers and advisers at CCFON conduct research into, and campaign on, legislation and policy changes that may affect Christian freedoms or the moral values of the UK. CCFON reaches a mailing list of 25,000 supporters. <http://www.ccfon.org>

CCFON is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. <http://www.christianlegalcentre.com>

RESPONSE TO THE DRAFT NON-STATUTORY GUIDANCE DOCUMENTS

1. The Equality and Human Rights Commission (“EHRC”) is conducting a Consultation on the six Draft Non-Statutory Guidance documents relating to the Equality Act 2010.
2. The Six Draft Non-Statutory Guidance documents are:
 - i. The Draft Employment Guidance for Employers and Employees (“Employment Guidance documents”).
 - ii. The Draft Services, Public Functions and Associations Guidance for providers and those accessing such services (“Services Guidance documents”); and
 - iii. The Draft Education Provider and User Guidance (“Education Guidance documents”).
3. This response begins with a general overview of the Guidance documents and then provides a specific response to only one Guidance document from each of the groups (1) to (3) above, because the text in each group is essentially the same.

4. The Draft Guidance Documents

From a general overview of the Draft Non-Statutory Guidance documents we note the following:

A. Layout and Length

- The Draft Non-Statutory Guidance documents are far too long to be of practical use. The Education Guidance documents comprise 140 pages, the Employment Guidance documents 330 pages and the Services Guidance documents 263 pages. There are no available summaries. We suggest that the EHRC should consider following Government guidance on conducting Consultations, which states that “keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained”.¹

B. Remit as Non-Statutory Guidance

- The Draft Non-Statutory Guidance documents should provide a simple but accurate explanation of the Equality Act and assist in its understanding. Instead, the Draft Non-Statutory Guidance documents have, in places, extended the law beyond that intended by Parliament and established in the Equality Act and its Explanatory Notes.² In particular, like the Statutory Codes of Practice, the Non-Statutory Guidance documents extend the definitions of the protected characteristics as follows.

¹ Criterion 5 of HM Government’s *Code of Practice on Consultation*. The Service Provider Guidance states on page 4 of the foreword “That’s why the non-statutory guidance is designed to be down-to-earth, practical, and accessible”, yet the length of the document defeats that practical purpose.

² See the Explanatory Notes to the Equality Act 2010 at:
http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100015_en_1.

C. Definitions of Protected Characteristics

- The definition of “Religion or Belief” is too wide and out of line with the Act’s Explanatory Notes³; it may lead to uncertainty. We are concerned that the definition includes cults.⁴ We note that the Act’s Explanatory Notes have been changed to fall in line with the EHRC Guidance’s explanations in relation to the criteria for protected beliefs since the Bill’s passage through Parliament. The Explanatory Notes to the Act now suggest that “philosophical” beliefs excluding, for example “any cult involved in illegal activities” should be protected. In our view, all cults should be excluded, whether involved in illegal activities or not, in view of their harmful nature. Baroness Warsi expressed concern about including cults in the probing amendment she laid during the passing of the then Equality Bill.
- The definition of “sexual orientation” is also out of line with the original Explanatory Notes.⁵ The Explanatory Notes dated 4th December 2009 simply define the protected characteristic of “sexual orientation” as “a person’s sexual orientation towards people of the same sex, the opposite sex or both sexes as him or her”. The Draft Non-Statutory Guidance documents also state that sexual orientation, “...may include someone’s appearance, the places they visit or the people they associate with”.⁶ This appears to be a clear extension of the original definition. This statement, which also encompasses the manifestation of sexual orientation, should be deleted from the Guidance documents. It not only extends the definition, but may also result in enquiries by employers on such matters being seen as an interference with a person’s human rights to respect for private life.⁷
- The definition of “Gender Reassignment” is too broad. It is out of line with the examples given in the Explanatory Notes to the Equality Act 2010.⁸ It fails to maintain the need for a lifetime commitment to a person’s chosen gender and confuses

³ See the Explanatory Notes dated 4th December 2009 at:

http://www.publications.parliament.uk/pa/ld200910/ldbills/020/en/10020x-b.htm#index_link_27.

⁴ See pages 22 and 23 of the Education Provider Guidance and page 25 of the Service Provider Guidance.

⁵ See points 74 to 76 on Clause 12 of the current Explanatory Notes dated 4th December 2009 at:

http://www.publications.parliament.uk/pa/ld200910/ldbills/020/en/10020x-b.htm#index_link_27. See also the

Explanatory notes to the Equality Act 2010 regarding section 12, notes 55 to 57 at:

http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100015_en_1. We are concerned that the Service Provider

Guidance provides an example on page 26 in the definition of sexual orientation of “a hotel decides that it will let heterosexual couples share a room, but will not permit a same-sex couple to do so. This is direct discrimination because of sexual orientation.” There is currently a real life case defending this type of example on the grounds of the human rights of the Bed and Breakfast owners and this Guidance should not be permitted to prejudge that case, see: <http://www.christian.org.uk/news/gay-men-sue-guesthouse-over-double-rooms-policy>. The judgment in the Northern Ireland case supports the Bull’s case, see: *Christian Institute & Ors, Re Judicial Review* [2007] NIQB 66 (11 September 2007) at: <http://www.bailii.org/nie/cases/NIHC/QB/2007/66.html>. In view of there being conflicting rights, it is recommended that this example is deleted.

⁶ See pages 24, 26 and 27 of the Education Provider Guidance.

⁷ See Article 8 of the European Convention on Human Rights in the Appendix to the Human Rights Act 1998:

http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_3#sch1.

⁸ See also the Explanatory Notes to the Equality Act 2010 regarding section 12, notes 55 to 57, at:

http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100015_en_1.

transvestites with transsexuals. The Explanatory Notes to the Act clarify that gender reassignment protection is only meant to cover those people who intend to change sex, not those who cross-dress.⁹ The confusion and blurring is compounded in the Draft Non-Statutory Guidance documents by an unnecessary reference to a “trans person” which should remain as a “trans-sexual” person for the sake of clarity.¹⁰

D. Other Legal Definitions

- Whilst it is to be expected that the Draft Non-Statutory Guidance documents would provide a simpler explanation for legal definitions, such definitions should nevertheless be accurate.
- Courts and tribunals look at the terms “direct discrimination”, “indirect discrimination” and “harassment” as separate and distinct legal terms. The Non-Statutory Draft Guidance documents confuse the terms and blur their distinction.¹¹ In terms of the interpretation of these terms, EU Directives have always provided 3 distinct and separate definitions for these forms of discrimination.¹² We suggest that to do otherwise would be illogical, irrational and would defeat the purpose of having 3 distinct definitions. Whilst the EU Directive on goods and services is still being negotiated, there is no reason to expect that the traditional distinctions between the definitions of the forms of discrimination will not continue to be maintained. There is in fact every reason to suppose that the EU authorities will maintain the definitions on which so much European Union case law is established.
- “Harassment” is defined very broadly in the Draft Non-Statutory Guidance documents.¹³ It fails to take account of, or even to mention the important condition in section 26(4)(c) of the Equality Act 2010,¹⁴ that consideration has to be given to “whether it is reasonable for the conduct to have that effect”. This failure applies not only to the generality of the text, but also in the examples of harassment given.¹⁵

⁹ See section 7 Equality Act 2010 (press “Show EN”):

http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_3#pt2-ch1-11g7.

¹⁰ See pages 21, 29 and 30 of the Education Provider Guidance and pages 24 and 25 of the Service Provider Guidance. See pages 21 and 22 of the Education Provider Guidance.

¹¹ See for example, the first paragraph of page 48 of the Accessing Services Guidance. See also the text of pages 47, 53, 69, 100, 115, 118, 123, 135, 138, 149, 152, 166, 179 of the Service Provider Guidance. See the text of the Service User Guidance for chapters missing in the Service Provider Guidance, for example on page 195, 204. See pages 224, 236, 242, 245, 246, 253 of the Service User Guidance. See pages 49 and 65 of the Education Provider Guidance.

¹² See for example Article 2(2) of the EU Equal Treatment in Employment Directive 2000/78/EC, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF>.

¹³ See 1.7 in the Employer Guidance and page 58 of the Employee Guidance.

¹⁴ See section 6(4)(c) of the Equality Act 2010.

¹⁵ See the example of harassment on unpleasant remarks for gender reassignment on page 45, and the first paragraph of the example regarding Islam on page 57 of the Employee Guidance (it is not just a matter of degree, it is whether it is reasonable for the conduct to have that effect). See also pages 251 and 252 of the shorter explanation of harassment in the Employee Guidance, which also fails to mention the objectiveness caveat. Page 258 of the Employee Guidance on harassment and disciplinary matters also fails to mention this very important

- The definition of “indirect discrimination” has been construed widely and includes one-off matters.¹⁶ The statutory definition does not include such a concept, neither do the Explanatory Notes to the Act.¹⁷ It is of concern that many of the legal definitions in both the statutory Codes and the Draft Non-Statutory Guidance’s explanations are being widened above and beyond those stated in the Equality Act 2010.
- Examples of “victimisation” are included in the Employment Guidance documents, such as that of a person being victimised by someone else ignoring them.¹⁸ There may be many other reasons for ignoring someone and to say that this is “victimisation” may not be appropriate in different circumstances. For example, someone may at times appear to be ignored simply due to friendship preferences.
- The Draft Non-Statutory Guidance documents refer to “positive action” in terms that are too permissive and fail to heed the warnings in the Explanatory Notes of the need for caution. The examples in the Explanatory Notes to the Act relating to section 159 make the dividing line between positive action and unlawful discrimination clear and for section 158 adopt a much more cautionary approach than the Draft Non-Statutory Guidance documents. The Explanatory Notes to the Act relating to section 158 (general positive action provision) state the need to take account of the “seriousness of the relevant disadvantage, the extremity of need or under-representation and the availability of other means of countering them”. This provision will need to be interpreted in accordance with European Union law, which limits the extent to which positive action will be allowed.¹⁹ This compares with the less stringent measures suggested in the Draft Non-Statutory Guidance documents.²⁰
- There are incorrect references in several parts of the Draft Non-Statutory Guidance documents to a public authority’s duty to “promote equality”. This is an incorrect interpretation of the Public Sector Equality Duty (“PSED”) as outlined in the Equality Act 2010. The PSED includes “advancing the equality of opportunity” and fostering good relations. It does not include a duty to “promote equality”. Advancing the

caveat. See page 49 of the Service Provider Guidance, which fails to include this caveat. See also pages 49 and 50 of the Education Provider Guidance.

¹⁶ See page 39 of the Employer Guidance. See page 30 of the Education Provider Guidance.

¹⁷ See section 19 of the Equality Act 2010 (click on “Show EN”), at: http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_3#pt2-ch2-pb1-11g19.

¹⁸ See page 60 of the Employer Guidance.

¹⁹ See the Explanatory Notes to the Equality Act 2010 relating to section 158 at: http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100015_en_7.

²⁰ See page 130 of the Employer Guidance. See for example the less stringent approach to the whole topic on page 222 of the Employee Guidance: “Some evidence will be required to show this, but it does not need to be sophisticated statistical data or research. An employer could look at the profiles of its workforce or make enquiries of other comparable employers in the area or sector.” See also pages 234 to 239 of the Employee Guidance. See pages 85 to 96 of the Service Provider Guidance.

equality of opportunity is an entirely different concept from the promotion of equality as such, and the two terms should not be confused.²¹

- There is a significant difference between “respecting diversity” and “equality of opportunity” on the one hand and the “promotion of equality” on the other hand. Promoting equality is not a phrase used in the Act itself under the PSED. It should be removed from any further publications or Guidance documents, as it does not constitute a purpose of the PSED and the duty to “advance the equality of opportunity” substituted. For example, the January 2010 Government Equalities Office (“GEO”) publication on the then Equality Bill entitled *Making it Work: Policy proposals for specific duties—A policy statement*, which covers the PSED from a contractual perspective, correctly makes no reference to the phrase “promote equality”.²²
- The Draft Non-Statutory Guidance documents treat the Equality Act as if it overrides every other Act.²³ It does not. Schedule 22 actually says that a statutory exception applies if a person does anything he or she must do pursuant to a requirement in another Act. The Explanatory Notes state that Paragraph 1 of this Schedule provides exceptions from several Parts of the Act, “in relation to the protected characteristics of age, disability, religion or belief, sex and sexual orientation, for things done in accordance with what is, or may in future be, required because of some other law”.²⁴

E. Interpretation of Exceptions

- The Draft Non-Statutory Guidance, like the Statutory Codes, interprets exceptions in the narrowest terms. This is unnecessarily restrictive, as there is a legitimate need for

²¹ See page 128 of the Employer Guidance, which should refer to the duty to “advance equality of opportunity” as opposed to the fictitious duty to “promote equality”: “There is no legal requirement for an employer to take positive action, though if you are a public authority, positive action may help you meet your duty to promote equality”. See page 64 of the Employee Guidance. See pages 59, 60, 72 of the Education Provider Guidance, which refers to the need to “advance equality” rather than to “advance equality of opportunity”. See page 70 of the Service Provider Guidance, which states that; “Public sector organisations and others who deliver services for them may have to meet a duty to promote equality”. See page 88 of the Service Provider Guidance. See also the Explanatory Notes for section 149 of the Equality Act 2010, at:

http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100015_en_7. We note however, that the duty is explained correctly in the Service Provider Guidance at pages 14 and 15 in relation to this point.

²² See the Government Equalities Office (GEO)’s publication *The Equality Bill: Making it Work: Policy Proposals for Specific Duties—A Policy Statement* of January 2010, available at: http://www.equalities.gov.uk/pdf/psdresp_GEO_MakingItWork_acc.pdf.

²³ See page 65 of the Employee Guidance and page 55 of the Service Provider Guidance, which emphasise this override by saying that there is a very limited exception under statutory provisions where there is no choice but to discriminate or break the law. See page 55 of the Education Provider Guidance.

²⁴ For example, the Communities and Local Government Guidance on the sexual orientation regulations (“SORs”) makes it clear that the SORs “will have no effect on the legal framework for adoption and fostering, nor the criteria against which decisions are taken about the placement of children with prospective adopters/ foster carers”. It goes on to say that “The welfare of children in care is paramount in all placement decisions”. In other words, this Guidance takes account of the Children Act 1989, in which the welfare of the child takes precedence over discrimination law, see page 20 at the following link:

<http://www.communities.gov.uk/documents/communities/pdf/441528.pdf>. See also: <http://www.dailymail.co.uk/news/article-1197528/Council-halts-plans-boy-gay-foster-parents.html>.

exceptions that may arise in a range of circumstances, and exceptions are used to balance human rights against each other in equality legislation. In other words, to interpret exceptions narrowly runs the risks of upsetting the delicate balances established by Parliament and of infringing the rights of others. The assumption that for employees, exceptions are to be treated as of “limited effect” gives the wrong impression of their legitimate statutory importance.²⁵ In relation to occupational exceptions it is stated that “Applying the requirement must not be just a way of getting around the law.”²⁶ This again illustrates an adverse and restrictive attitude towards exceptions rather than a positive one.

F. Marginalisation of Christianity

- The examples in the Non-Statutory Draft Guidance documents could be perceived as reflecting a negative attitude towards Christians that tends to marginalise Christianity. There appears to be a firm assumption that it is largely those from minority religions who are the likely victims of discrimination.²⁷ However, this does not reflect the increasing number of recent cases where Christians have had to defend themselves against discrimination in areas as diverse as unfair treatment in employment, in fostering and in public funding opportunities. Local authorities have even been taking action to silence worship in churches by the use of noise abatement notices.²⁸
- There is a tendency to ignore and marginalise Christianity by portraying only minority religions as victims of discrimination.²⁹ In contrast, homosexuals, lesbians and those undergoing gender reassignment are consistently portrayed as the victims of discrimination,³⁰ and are treated in a positive and sympathetic light. We would like to see Christians portrayed in an equally positive and sympathetic light.

G. Fairness and Tone

- The approach of the Communities and Local Government Department (“CLG”) to equality, as illustrated in their recent consultation on the Single Equality Scheme, contains the central notion of fairness and considers diversity as well as equality. The

²⁵ See page 61 and point 1.9 of the Employee Guidance. See page 52 of the Service Provider Guidance.

²⁶ See pages 63 and 255 of the Employee Guidance. See page 53 of the Education Provider Guidance.

²⁷ See page 117 of the Employee Guidance on times to avoid for interview for a Jewish candidate. See also page 262 of the Employee Guidance on dress codes and being clean-shaven, which may be indirect discrimination. See pages 32, 39, 118, 131, 134, 140, 142, 143, 145, 148, 152, 182 of the Service Provider Guidance. See pages 209 and 228 of the Service User Guidance. See page 29 of the Education Provider Guidance.

²⁸ See the website of Christian Legal Centre, at: <http://www.christianlegalcentre.com>.

²⁹ See page 57 of the Employee Guidance. Also see “accommodating attitudes to minority religions on dress code, facilities and discrimination issues” on pages 137, 138 and 182 of the Employee Guidance. See pages 71 and 122 of the Service Provider Guidance.

³⁰ See pages 23, 45, 53, 262 and 296 of the Employee Code. See pages 140, 145, 149, 158, 168 of the Service Provider Guidance. See page 195 of the Service User Guidance. See pages 217, 228, 239, 253 of the Service User Guidance.

earlier CLG Guidance³¹ considers exceptions for religious organisations as necessary to meet legitimate needs. In our opinion, this reflects a more sensible approach than that taken by the Draft Non-Statutory Guidance documents, which interpret exceptions as narrowly as possible.

- The Draft Guidance documents have an unnecessarily authoritarian tone, in contrast to the user-friendly and helpful tone of the ACAS guides or the Guidance from the CLG on the Equality Act (Sexual Orientation) Regulations 2007.³² This comment applies both to the Statutory Codes and to the Draft Non-Statutory Guidance documents.

Summary of General Overview

The Draft Guidance documents increase the reach of the Equality Act by broadening many of its definitions and interpreting its exceptions restrictively. This approach goes beyond the remit of non-statutory material, which should seek to explain the law rather than to expand it. It could even be argued that the Draft Non-Statutory Guidance documents exceed the powers in the Equality Act. The proper protection of human rights requires well-balanced exceptions in equality legislation.

5. The Draft Non-Statutory Guidance for Employers and Employees

The following comments relate specifically to the Draft Non-Statutory Guidance for Employees (“Employee Guidance”), because the text in the Guidance for employers is similar and a separate response is not necessary.

A. Occupational Requirements

For the purposes of establishing an occupational exception, the description of the ethos of religious organisations should also include “values” which are an important aspect of religious faith and therefore of an organisation’s ethos.³³

There is no legislative requirement in Schedule 9, paragraph 3 that the occupation in question should be a leadership role, spiritual or otherwise in order to benefit from the exception. The example given in the Employee Guidance relating to the requirements in Schedule 9 states as follows:

A care home is managed by a religious charity. It only employs carers who are of the same religion as that followed by the charity and the care home residents because the carers’ duties

³¹ See *Guidance on New Measures to Outlaw Discrimination on Grounds of Religion or Belief in the Provision of Goods, Facilities and Services (Part 2 Equality Act 2006)*, at: <http://www.communities.gov.uk/documents/communities/pdf/325878.pdf>.

³² See *Guidance on New Measures to Outlaw Discrimination on Grounds of Sexual Orientation in the Provision of Goods, Facilities and Services Equality Act (Sexual Orientation) Regulations 2007*, at: <http://www.communities.gov.uk/documents/communities/pdf/441528.pdf>.

³³ See the Free Dictionary’s definition of “ethos”, at: <http://www.thefreedictionary.com/ethos>.

are intended to fulfil both the physical and spiritual needs of its patients, for example, carers will pray with and for patients and attend services with them. This type of discrimination could be lawful. However, the charity may not be able to justify a similar requirement for its maintenance or administrative staff whose jobs do not require them to provide spiritual leadership or support to the patients.³⁴

We suggest the last sentence of this example is substituted for the following one and that a further sentence is added as follows:

The charity may not be able to justify a similar requirement for its maintenance staff whose jobs do not require them to provide spiritual support to the patients or other staff, or to represent the ethos of the care home. However, the nature and context of any given job, even that of a maintenance person or cleaner has to be considered on an individual basis in order to answer the question of whether or not being of the same religion as the charity is an occupational requirement.

The reason for these suggested changes are, firstly, that the definition in this chapter of the Guidance for Schedule 9, paragraph 3 has failed to take account of the legal requirement to consider the nature and context of the work on a case by case basis. Secondly, there is no requirement in the legislation that such a post should encompass a “spiritual leadership” or indeed any leadership role. The new provisions in the Equality Act 2010 are similar to those in the current law. The current Department of Trade and Industry’s Guidance gives the example of a non-leadership role, namely that of a Christian counsellor, who fits within the exception due to the nature and context of the work.

In light of the amendments to Schedule 9, paragraph 2 of the Equality Act 2010, the description and examples provided in the Employee Guidance are no longer appropriate.³⁵

B. Equality Policies

There is no legal requirement to have an equality policy. The Employee Guidance assumes that having one will assist employers to avoid liability for their employee’s discrimination by ensuring that the reasonable steps required in section 109 of the Equality Act 2010³⁶ will be taken. However, the Employee Guidance defines an equality policy in a way that may in itself be indirectly discriminatory:

*An equality policy is a document that sets out an organisation’s commitment to tackle discrimination and **promote equality and diversity** in areas such as recruitment, training, and pay.³⁷ (Our emphasis).*

The emboldened phrase should instead read “to address inequality and respect diversity”.

³⁴ See page 67 of the Employee Guidance.

³⁵ See pages 67 to 69 of the Employee Guidance.

³⁶ See section 109 of the Equality Act 2010 (click on “Show EN”), at: http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_12#pt8-11g109.

³⁷ See page 73 of the Employee Guidance.

There is no legal requirement in Part 5 of the Equality Act 2010 for an employer to “promote equality and diversity”. If employers were required to “promote equality”, they could ask employees to promote other religions or beliefs or particular sexual practices contrary to their consciences. Such policies could result in indirect discrimination against employees because of their religion or belief. In our opinion, the whole of the section on equality policies should be deleted,³⁸ because of the extensive and all-inclusive nature of the examples given, and because it is likely to be indirectly discriminatory, not only to staff, but also to external contacts because of their religions or beliefs. The emphasis should be upon fairness; an equality policy should reflect a commitment to treat all employees, and potential employees, fairly and considerately. It should be regularly reviewed to ensure that it is not having a directly or indirectly discriminatory effect upon those who hold a religion or belief, including Christians.

We reiterate that employers are not required by law to put equality policies in place. We therefore strongly object to the suggestion in the Employee Guidance that such policies should form part of “contracts of employment”³⁹ or be provided in “application packs”. There are no such requirements in the Equality Act and employees who hold a “religion or belief” may come under pressure from employers to sign contracts that would require them to promote other religions or beliefs or particular sexual practices contrary to their consciences. Such policies could result in indirect discrimination against employees because of their religion or belief. It could result in the virtually universal refusal to employ Christians, which would itself be discriminatory. In addition, care needs to be taken that those who hold religious beliefs do not have to have trainers who do not take account of the importance of their human rights to freedom of thought, conscience and religion.^{40,41}

Article 10(2) of the Charter of Fundamental Rights of the European Union,⁴² which forms part of the Lisbon Treaty, states that the right to conscientious objection is recognised by the EU in accordance with national laws governing its exercise. Whilst the law on performing abortions in the UK includes the right to conscientious objection, the same right has not been drafted into our equality laws to date. However, in the interests of fairness, there is no reason why this right of conscientious objection cannot be incorporated into equality and diversity policies to allow for reasonable accommodation of religious beliefs.

We disagree with the advice made in this part of the Employee Guidance that an equality policy should extend to external matters in any shape or form. For example, the Guidance suggests that there should be “Extensive promotion of the policy both within the organisation and to potential employees, contractors and suppliers”.⁴³ Potential employees

³⁸ See 2.2 from page 73 to 75 of the Employee Guidance.

³⁹ See pages 78, 91, 250 and 254 of the Employee Guidance.

⁴⁰ See pages 78, 80 and 81 of the Employee Guidance on training and external training. Please see the case of the senior Christian teacher and the impact of inappropriate training, which was insensitive to his religious beliefs: “Christian Teacher facing sack for expressing Christian beliefs on homosexual practice to Colleagues is re-instated after threat of Legal Action”, at: <http://www.christianlegalcentre.com/view.php?id=790>.

⁴¹ See from page 81 in the Employee Guidance onwards.

⁴² See: http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

⁴³ See pages 75 and 254 (second bullet points) of the Employee Guidance.

could be discriminated against before they are employed. Religious organisations and individuals are already very concerned about all-inclusive equality policies and practices, because they are often discriminatory and require them for example, to remove the Christian element from their projects in order to obtain public funding. It would be advisable to remove this statement from this Guidance, because it does not take account of the more involved policy considerations in the GEO policy statement on contractual matters and would over-complicate matters in a document that is only Non-Statutory Guidance.⁴⁴

The Employee Guidance states⁴⁵ that: “If an organisation tenders for work in the public and private sectors, demonstrating awareness of these issues may help it win contracts. With equality increasingly prominent on the procurement agenda, having this data could (where equality issues are relevant) make the difference when contracts are being awarded.” This sentence should be deleted, because Article 53 of the EU Directive (2004/18/EC) on public procurement allows for contracts to be awarded on the basis of two award criteria only, namely, either the most economically advantageous tender (“MEAT”) or the lowest price. The UK’s policy is to use MEAT.⁴⁶ In our opinion, it is a misinterpretation of the EU Directive to assume that the word “quality” in Article 53 means “equality”.

C. Conflicts with Protected Characteristics

⁴⁴ See the Government Equalities Office (GEO)’s publication *The Equality Bill: Making it Work: Policy Proposals for Specific Duties—A Policy Statement* of January 2010, available at: http://www.equalities.gov.uk/pdf/psdresp_GEO_MakingItWork_acc.pdf. It contains particular reference to faith-based service providers regarding procurement. However, in our opinion the policy to include the equality criterion in procurement is contrary to an EU Directive (see text).

⁴⁵ See page 85 of the Employee Guidance.

⁴⁶ See *Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts*. Recital 46 states: “Contracts should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in **conditions of effective competition**.” (Our emphasis). As a result, it is appropriate to allow the application of two award criteria only: “the lowest price” and “the most economically advantageous tender”. See Article 53:

Contract award criteria

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

- (a) when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or
- (b) the lowest price only.

2. Without prejudice to the provisions of the third subparagraph, in the case referred to in paragraph 1(a) the contracting authority shall specify in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:NOT>.

The Employee Guidance comments on standards of behaviour in relation to conversion to a political party or football team allegiance discussions if they curtail work.⁴⁷ The Guidance compares these examples to staff conversations about their views on the different “protected” characteristics that distinguish people from each other and is based upon the underlying assumption that you cannot discuss conversion issues at work. This advice could curtail free speech relating to religion in the workplace and may infringe employees’ rights to manifest their faith by sharing it with others in accordance with the judgments of the European Court of Human Rights. The Guidance should instead contain the advice that reasonable discussion on all issues should be allowed, provided that it does not interfere with work unduly. Christians should have the right to discuss what they do in the evenings or at weekends with their colleagues in the same way that other employees talk about where they have been. The Department of Health document, *Religion or Belief: A Practical Guide for the NHS*, was criticised by the press for failing to state the limits of acceptable discussion about religion at work clearly.⁴⁸

We are very concerned about the following example in the Guidance: “In a local authority, an employee says that his faith does not let him work with a ‘gay’ colleague”. It is unlikely that a person of faith would adopt such a position. For example in the Christian faith, we are taught to love our neighbours as ourselves, including people of all sexual orientations. The only issue of conflict would be if a person of faith was asked to promote or to facilitate the practice of homosexuality, which is contrary to religious beliefs and would violate their consciences. This applies to other faiths as well. In a recent survey of Muslim attitudes in Europe, 100% of the UK population surveyed thought that the practice of homosexuality was morally wrong.⁴⁹ The freedom of thought, conscience and religion is a human right and it is relevant here.

D. Positive Action

In using positive action to recruit a wider range of people, the Guidance is again erroneous in referring to positive action as a means of helping employers who are public authorities to meet their duty to “promote equality”.⁵⁰ It should instead refer to the public authority duty to “advance the equality of opportunity”, not a fictitious duty to “promote equality”.

E. Human rights

The text incorrectly suggests that human rights in relation to dress codes are only applicable to public authorities or to those carrying out public functions.⁵¹ This is only a partial picture, because courts have to apply the Human Rights Act 1998 in reaching their

⁴⁷ See pages 89 and 91 of the Employee Guidance.

⁴⁸ See: <http://www.telegraph.co.uk/news/newstoppers/religion/4530384/NHS-staff-face-sack-if-they-discuss-religion.html>.

⁴⁹ See the Gallup Coexist Index 2009, page 31, figure 32, available at: <http://www.muslimwestfacts.com/mwf/118249/Gallup-Coexist-Index-2009.aspx>.

⁵⁰ See page 126 of the Employee Guidance.

⁵¹ See page 138 of the Employee Guidance.

decisions, whoever the parties are before them.⁵² Thus the courts regularly judge private organisations by human rights standards such as Article 9, which was applied to a commercial organisation in case law.⁵³

F. Working Hours and Time Off

There is an example given of an employee who agreed at the outset with her employer that she would not work on Sunday due to her active Christian faith. “She resigns when told that the change to working Sundays is non-negotiable. This will be indirect religion or belief discrimination unless the employer can justify it.”⁵⁴ This example should also add that this kind of unilateral change of contract by her employer would be likely to amount to a breach of contract and therefore constructive dismissal.

G. Training and Development

Concerning the delivery of training courses,⁵⁵ it may also be helpful to add to the list the need for employers to be mindful of avoiding Sundays so that courses will not conflict with the Christian day of religious observance. The paragraph that suggests that employees who hold a religion or belief should not be disadvantaged in employers’ arrangements for training makes allowances for Friday afternoon for Jews and for Ramadan for Muslims, but not Sundays for Christians.⁵⁶

H. Discipline and Grievance Procedures

It is important that the guidance makes it clear that disciplining employees who refuse to comply with equality law,⁵⁷ should not involve disciplining employees who are merely acting according to their religious beliefs. Otherwise, disciplinary action could infringe the human right to freedom of thought, conscience and religion.

In terms of the key points in this area, it is important to add that of “Making sure that equality and diversity policies do not indirectly discriminate against those employees with religious beliefs and that they are fair and do not result in a hierarchy of rights.”

I. Dispute Resolution and Enforcement

⁵² See *Human Rights in the UK: An Introduction to the Human Rights Act 1998*, David Hoffman & John Rowe QC, Harlow, Pearson Education, 2003, at page 63.

⁵³ See the case of the commercial printer *Brockie* described in relation to Article 9 in the Northern Ireland case on *Christian Institute & Ors, Re Judicial Review* [2007] NIQB 66 (11 September 2007) at: <http://www.bailii.org/nie/cases/NIHC/QB/2007/66.html>.

⁵⁴ See page 191 of the Employee Guidance.

⁵⁵ See page 213 of the Employee Guidance.

⁵⁶ See page 215 of the Employee Guidance.

⁵⁷ See 11.3 on pages 249 to 250 of the Employee Guidance.

The Guidance should concentrate more upon resolving matters informally when it makes reference to “considering your options apart from Employment Tribunals”.⁵⁸ Legal remedies should be the last, not the first resort in resolving work-related problems.

6. The Draft Non-Statutory Guidance for Providers and those Accessing Services

The following comments relate specifically to the Draft Non-**Statutory** Guidance for Service Providers (“Service-Provider Guidance”) as the text for those accessing services is similar.

A. Key Ideas

Places of worship are included in the list of service providers.⁵⁹ We recommend that “places of worship” be removed from this list. We note that Article 57 of the Lisbon Treaty provides that only services “normally provided for remuneration” are to be considered to be “services” within the meaning of the Treaty.

B. Equality Policies

The Service-Provider Guidance also refers to equality policies using the terminology of “promote equality”⁶⁰ rather than “address inequality and respect diversity”. Please see our comments under 5B (Employee Guidance). In addition, the central focus in the Guidance is upon “equality values” instead of upon “fairness”.⁶¹ The EHRC Guidance documents appear to refer to headings of an “equality policy” only, rather than an “equality and diversity policy”. The values of equality are not of themselves sufficient to ensure fairness if the importance of valuing diversity is not included.⁶² It is part of the Commission’s statutory duties in section 8 of the Equality Act 2006 to cover equality and diversity and to promote “equality of opportunity”, not to “promote equality” which is a fictitious statutory requirement not only for the Commission but also for Service Providers, Employers and Public Authorities in the relevant Equality law.⁶³

C. Equality Practice for Providers of Services

The suggested questions for monitoring suppliers are not required by law and appear to be overly intrusive,⁶⁴ particularly as there is no legal requirement to have either an equality policy, or an equality and diversity policy. The “one-size-fits-all”, generic approach to

⁵⁸ See page 289 of the Employee Guidance.

⁵⁹ See page 13 of the Service Provider Guidance: “places of worship (though not acts of worship such as church services)”.

⁶⁰ See page 71 of the Service Provider Guidance on “What an equality policy is”.

⁶¹ See page 72 of the Service Provider Code. Please compare this with the approach to equality and diversity adopted by the CLG in the Single Equality Scheme, which concentrates upon fairness and covers both equality and diversity: see pages 7 and 8 at: <http://www.communities.gov.uk/documents/communities/pdf/1522282.pdf>.

⁶² For example, the ACAS guidance is entitled “Delivering Equality and Diversity” not “Delivering Equality”: <http://www.acas.org.uk/index.aspx?articleid=818>. See pages 76 to 77 of the Service Provider Guidance.

⁶³ See section 8 of the Equality Act 2006, at: http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_43. Please note that the term “promote equality” is not in the Equality Act 2006 nor in the Equality Act 2010.

⁶⁴ See page 82 of the Service Provider Guidance on suggested questions to ask.

service provision “to improve service delivery for the whole community” is unhelpful because of the need to provide specialised services and the importance of a diversity of service provision⁶⁵. It is vital in a democratic society to ensure that there is diversity both of service providers and of service provision.

D. How Staff Deliver Services

There are a number of inappropriate and unlikely examples of the conflict between sexual orientation and religious belief.⁶⁶ The Service Provider Guidance suggests that, “a nurse who, for religious reasons, believes gay sex is wrong can’t refuse to treat ‘gay’ men who are patients on a hospital ward.”⁶⁷ The Guidance also suggests that a receptionist would hang up on a gay man needing to “consult his doctor about a sexual health matter or if he needs to go to a specialist clinic instead” for religious reasons. These examples should be deleted, because they portray traditional, religious beliefs in a negative and disrespectful light. They wrongly assume that people with religious beliefs would behave in such unreasonable ways and they fail to recognise the distinction many religious people make between sexual orientation and sexual practice.

The Service Provider Guidance should demonstrate how to resolve conflicts between protected characteristics reasonably, rather than how to exacerbate them. The examples given demonstrate a lack of understanding of such religious beliefs. For example, a Christian nurse with traditional Christian sexual ethical beliefs is highly unlikely to refuse to treat a homosexual patient on a ward, and a receptionist would be very likely to help with a sexual health matter that needed treatment, whatever its cause. The Christian faith requires us to show love to all regardless of sexual orientation. However, Christians may not wish to be involved in health activities or other matters that promote or facilitate the practice of homosexuality because these things would be contrary to their strongly-held religious beliefs and therefore require them to violate their consciences.

A substantial proportion of the Service Provider Guidance does not reflect what the law says, yet it is recommended as best practice. When faced with cases such as that of Lillian Ladele, the registrar who did not wish to perform civil partnerships, employers/service providers could accommodate such beliefs. In the case of Lillian Ladele, it would have been easy enough for them to do so by allowing for shifts to be changed so that she did not have to perform civil partnership ceremonies, particularly as the vast majority of services

⁶⁵ See page 83 of the Service Provider Guidance.

⁶⁶ For example, regarding on the supply of a bedroom to a same-sex couple, see page 149 of the Service Provider Guidance. This example and similar ones should be deleted due to conflicting human rights if the supplier refuses for religious reasons. There is currently a case in the court system that is attempting to defend B&B owners on the grounds of their human rights, see: <http://www.christian.org.uk/news/gay-men-sue-guesthouse-over-double-rooms-policy>.

The judgment in the Northern Ireland case would support the Bull's case, see above. See also page 206 of the Service User Guidance, which implies that religious beliefs motivate the following behaviour, although no reference is made to them: “A district nurse refuses to visit you to change your dressings because you are a lesbian and the nurse does not approve of your sexual orientation. This is discrimination and is likely to be unlawful.” This example should be deleted.

⁶⁷ See pages 100 and 123 of the Service Provider Guidance.

provided were for marriages. The need to consider the right to conscientious objection should be incorporated into equality and diversity policies to allow for reasonable accommodation of religious beliefs. To fail to do so is to fail to protect employees' rights to freedom of thought, conscience and religion. It is important for the EHRC to adopt this approach in their Guidance, particularly as the Commission is under a statutory duty in relation to human rights, to promote understanding of the importance of human rights, and to encourage good practice in relation to human rights. That duty includes encouraging good practice in relation to human rights, including the right to hold and to manifest religious beliefs. There is also a need for the EHRC's Guidance to foster fairness and to ensure that a hierarchy of rights does not develop. The approach taken in these examples does the opposite.

Mr Mark Harper MP (Conservative) in commenting on the Lillian Ladele case during Committee Stage for the Equality Bill sensibly stated that:

Where there are conflicting rights, one solution might be for the Equalities and Human Rights Commission guidance to advise employers and other organisations on how to behave and on possible steps to take to deal with employees sensitively. Rather than turning into divisive court cases, matters could be resolved internally within an organisation, with some give and take on the part of the organisation and the individual. That might be a proper subject for guidance.⁶⁸

Swapping rotas in Lillian Ladele's case would be just such a simple and satisfactory solution, because it would provide reasonable accommodation of her religious beliefs without any detriment to service provision for civil partnerships.

E. Examples of What Businesses Need to Do

The example of a shop asking a customer not to preach because it may offend other customers due to their humanist, atheist or other beliefs shows a negative attitude towards religion or belief and towards proselytising. We object to examples that attempt to silence the discussion of religion in everyday life and infringe the freedom of expression and the freedom of religion or belief in our democratic society, although of course the rights of the business owner have to be taken account of in that particular case.⁶⁹ Proselytism is a vitally important part of "advancing religion" within the common law. This is contrary to human rights case law,⁷⁰ which has upheld the right to religious freedom in the form of proselytising.

⁶⁸ See the comment at the top of the page in this report of the Public Bill Committee for the Equality Act 2010: <http://www.publications.parliament.uk/pa/cm200809/cmpublic/equality/090616/pm/90616s07.htm>.

⁶⁹ See page 133 of the Service Provider Guidance. "If a customer wants to preach to other customers in a shop, the owner is entitled to ask him not to do so and to refuse him entry if he insists: allowing people to preach is not part of the normal service the owner offers, and his other customers might object, for example, because they are humanist, atheist or have a different belief. But the owner may not refuse to admit him simply because he does not like the religion or belief of the customer."

⁷⁰ See case of *Kokkinakis v Greece* ECHR 143077/88 1993. That case involved a Jehovah's Witness trying to convert the cantor's wife from a local Orthodox Church in Greece, where certain kinds of proselytising were a criminal offence. However, the ECHR held that there was a violation of the Jehovah's Witness's Article 9 rights. See

F. Exceptions on Religious Organisations: Chapter 7

The negative description of exceptions for religious organisations in the Service Provider Guidance should be replaced by the more positive, user-friendly and helpful guidance provided by the Communities and Local Government Guidance.⁷¹ That Guidance recognises the legitimate need “to limit membership, or access to their activities, to people who wholly or partly share their religion or belief”.

The exception for religious organisations in 7.2 of the Service Provider Guidance states that the exception does not apply to an organisation whose sole or main purpose is commercial. The Guidance then gives the example of a trading arm of a charitable organisation, even if the main charity is a religious organisation. This example should be deleted, because it is a misinterpretation of the provision. Schedule 23, paragraph 2 of the Equality Act 2010 defines “religious organisation” broadly so that it encompasses any activity within the framework of a religion or belief. The exception applies to “participation in activities undertaken by the organisation or on its behalf or under its auspices” as well as “the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices”.⁷² The trading arm of a charitable organisation could fit within those definitions. The exception is stated simply: “This paragraph does not apply to an organisation whose sole or main purpose is commercial.” There is no reason whatsoever to assume that this determination does not apply to the religious organisation as a whole including its trading arm. Courts would have to determine on a case-by-case basis whether this exception did or did not apply. The Explanatory Notes to the Act simply state that: “Organisations whose main or sole purpose is commercial cannot use this exception”.⁷³

Even without taking the above considerations into account, the example itself is dubious and should be deleted. There are also social enterprise companies whose primary purpose is to carry out a not-for profit activity. The example also fails to appreciate the diverse nature of charitable and not-for-profit organisations. This was first discussed in a publication by the then Prime Minister’s Strategy Unit in 2002, in a document called “Private Action Public Benefit”, which called for different legal structures for not-for-profit organisations.⁷⁴ It is expected that the Charity Commission in 2010 will produce new Guidance on “Charitable

Article 9 of the ECHR in Schedule 1 of the HRA 1998 at:

http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_3#sch1.

⁷¹ See pages 15 to 17 of *CLG: Guidance on New Measures to Outlaw Discrimination on Grounds of Religion or Belief in the Provision of Goods, Facilities and Services (Part 2, Equality Act 2006)*

<http://www.communities.gov.uk/documents/communities/pdf/325878.pdf>. Compare the CLG’s Guidance with the unhelpful and overly technical legal description provided on pages 171 to 172 of the Service Provider Guidance.

⁷² See Schedule 23, paragraph 2 of the Equality Act 2010, at:

http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_40#sch23.

⁷³ See the Equality Act 2010, Schedule 23, paragraph 2 (click on “Show EN”), at:

http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_40#sch23.

⁷⁴ See Private Action-Public Benefit:

<http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/strat%20data.pdf>.

Incorporated Organisations”.⁷⁵ This illustrates how the distinction between commercial and non-commercial organisations is not clear-cut even for a given organisation. The example assumes that there is a clear-cut division when there is not.

G. Chapters 9 to 18 Have Only been Completed for Service Users:

I. Health and Social Care Services

The Service User Guidance explains that not all of us are able to give blood. A *Times* report on 4th November 2008 stated that “The Scottish National Blood Transfusion Service said in evidence to Holyrood’s Petitions Committee that HIV was rising in ‘gay’ men and donor selection was the only way to keep blood products safe... The service said 86 per cent of all new HIV infections occurring last year in Scotland were in ‘gay’ men.”⁷⁶ Despite this type of information, the Service User Guidance fails to warn of the public health risk of such blood donation in the examples given.⁷⁷ This appears to be an example of political correctness, which pervades the EHRC Guidance and continues to stereotype, by portraying people of non-heterosexual orientation in a positive light and Christians and those of religious belief in a negative light. We would like to see Christianity portrayed in a positive light.

2. Local Councils

The Service User Guidance incorrectly states that “Local councils have to meet a duty to promote equality.”⁷⁸ The Public Sector Equality Duty is not to “promote equality” but to “advance the equality of opportunity”. Please see our comments under 4D.

3. Immigration

Reference is made in the Service User Guidance to the exceptions on entry for religion or belief. For example, preventing a preacher who incites violence from entering the

⁷⁵ See *Incorporating an Existing Charity as a Company: Questions and Answers* on the Charity Commission’s website: “It is important to note that this guidance does **not** address the formation and transfer of an existing charity to a [Charitable Incorporated Organisation](http://www.charity-commission.gov.uk/charity_requirements_guidance/charity_governance/good_governance/incqanda.aspx#cio) (‘CIO’). It is anticipated that incorporation as a Charitable Incorporated Organisation will become an option for charities some time in 2010. Separate guidance in relation to transferring from an unincorporated charity to a CIO will be published at a later date.” Available at: http://www.charity-commission.gov.uk/charity_requirements_guidance/charity_governance/good_governance/incqanda.aspx#cio.

CIO: A Charitable Incorporated Organisation registered with the Charity Commission. A new form of incorporated charity provided for in the Charities Act 2006 but yet to be established. It is anticipated that incorporation as Charitable Incorporated Organisation will become an option for charities some time in 2010

See: http://www.charity-commission.gov.uk/charity_requirements_guidance/charity_governance/good_governance/incqanda.aspx#cio.

⁷⁶ See *The Times*, 4th November 2010, “Ban stays on “gays” donating blood”, at: <http://www.timesonline.co.uk/tol/news/uk/scotland/article5084550.ece>.

⁷⁷ See page 207 of the Service User Guidance.

⁷⁸ See page 215 of the Service User Guidance. This error is repeated again on page 243 of the Service User Guidance in chapter 15.

country would not be unlawful discrimination because of religion or belief.⁷⁹ However there is concern that the “red tape” of this exception is being used unfairly to prevent peace-loving Ministers from visiting churches or events in this country.⁸⁰

4. Repetition

The Guidance is too long because there is so much unnecessary repetition. On occasions, the same paragraphs are repeated on the very next page.⁸¹

7. The Draft Non-Statutory Guidance for Users and Providers of Education

The following comments relate specifically to the Draft Non-Statutory Guidance for Education Providers (“Education User Guidance”, because the text for students, pupils and parents is similar and it is therefore unnecessary to produce a separate response for the Education Users Guidance.

A. Key Ideas

Part 6 of the Equality Act 2010 deals specifically with education and this Guidance should be based on it. The Guidance incorrectly confuses education with services and public functions and therefore includes matters that may not be relevant to this Guidance. Section 29 of the Equality Act 2010 concerns goods and services, not education. The Explanatory Notes to the Act make it clear in section 29 that public functions cover matters such as law enforcement and revenue raising/collection. Public functions that involve the provision of a service, for example medical treatment on the NHS, are covered by the provisions dealing with services. Section 93 of the Equality Act 2010 is about recreational or training facilities provided by local authorities. This means that the text underneath the heading “Other providers of education or education-related services”⁸² needs to be deleted from the Education User Guidance.

B. School Duties

We strongly object to the recommendation that exceptions relating to religion or belief should be applied narrowly so that schools do not inadvertently discriminate against pupils, or miss an opportunity to promote equality. Firstly there is no provision in the Equality Act to say that exceptions should be narrowly interpreted, and secondly the duty to “promote

⁷⁹ See page 238 of the Service User Guidance.

⁸⁰ See *The Times*, 3rd October 2009, “Texas televangelist Benny Hinn refused entry to Britain”. See also the complexities of visas at the following links:

<http://www.ukba.homeoffice.gov.uk/workingintheuk/tier5/religiousworkers> and

<http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier5temporaryworkerguidance.pdf>.

⁸¹ For example see footnote 11.

⁸² See page 12 of the Education Provider Guidance and its list, which is not applicable.

equality” is fictitious. The duty is to advance equality of opportunity, which is an entirely different concept. The paragraph entitled “school duties” should be deleted.⁸³

C. FE and HE Providers

The text makes reference to equality issues in relation to curriculum design⁸⁴. This reference should be deleted, because section 94(2) of the Equality Act 2010 makes it clear that the Act does not apply to “anything done in connection with the content of the curriculum”. Therefore the suggestion that “The curriculum should seek to challenge stereotypes and address inequality, for example through positive representations of under-represented groups” should be deleted.

D. Chapter 8

We would query the contents of chapter 8, which should be deleted apart from those parts that specifically deal with Part 6 of the Equality Act 2010 for local authorities. This Guidance concerns education in relation to the Equality Act 2010. Student Unions may provide a service, but that is not an education matter. Non-statutory youth services, early years providers and providers of private training courses do not come under any of the sections in Part 6 of the Equality Act 2010, which deals with education. Their inclusion is liable to cause confusion. In addition, there is an incorrect reference to inclusion of the “school curriculum” as an example of a local authority duty under the Act, which is specifically excluded in the Equality Act 2010.⁸⁵

⁸³ See page 76 of the Education Provider Guidance, which states that: “As the exceptions deviate from the principle of equality it is recommended that these are applied narrowly so schools do not inadvertently discriminate against pupils or miss a chance to promote equality.” For the same reasons, we strongly object to the paragraph on page 77 of the Education Provider Guidance, which states: “This means that as a faith school you do not have to make special provision for pupils of a different faith or incorporate aspects of their faith into your curriculum, although this is recommended as good practice in order to promote equality and good relations under the equality duties”.

⁸⁴ See pages 89 and 106 of the Education Provider Guidance.

⁸⁵ See page 131 of the Education Provider Guidance and section 89(2) of the Equality Act 2010. It is also unclear and confusing as to where the reference to other matters as examples given on page 131 exactly comes from in specific relation to the Equality Act 2010.