

## Written evidence submitted by the British Humanist Association (BHA) (PCB 22)

### About the BHA

1. The British Humanist Association is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We promote Humanism, support and represent the non-religious, and promote a secular state and equal treatment in law and policy of everyone, regardless of religion or belief. Founded in 1896, we have around 55,000 members and supporters, and over 70 local and special interest affiliates.
2. The BHA is committed to ensuring that all people with non-religious beliefs have access to pastoral support in prisons, just as religious people have access to such support through chaplaincy. We are also committed to ensuring that non-religious people should be able to provide pastoral support to all those who want it. We are building a network of BHA accredited non-religious pastoral carers to provide that support, and have nearly 150 operating across a range of institutional settings throughout the UK.

### Summary

- This submission focuses on sections 7, 9, and 10 of the Prison Act 1952 which apply to England and Wales and addresses the provision of chaplaincy services in prisons.

#### **7. Prison officers.**

(1) Every prison shall have... a chaplain...

(3) A prison which in the opinion of the Secretary of State is large enough to require it may have... an assistant chaplain...

(4) The chaplain and any assistant chaplain shall be a clergyman of the Church of England...<sup>1</sup>

- We believe that pastoral support plays a crucial role in prisons. We are not proposing that the law on chaplaincy *per se* should be amended. However, all prisons are required to employ at least one chaplain of the Church of England or Church in Wales, regardless of the demographic of religious and non-religious belief within the prison or of the number of chaplains employed. Such a requirement is unique to prisons and exists in no other setting in which chaplaincy or pastoral support is provided.
- Anglican chaplains also get privileged rights over others to visit prisoners not of their religion, and all prisoners are allowed to attend chapel.
- The Anglican Church is thereby placed in a hugely privileged position; and the state is discriminating in the employment market against pastoral support providers from other denominations, faiths and non-religious beliefs. This is unlawful as the impact of this provision is that the prison pastoral support job market is disproportionately reserved for Anglican chaplains, which is out of step with equality legislation with respect to genuine occupational requirements.
- If, for example, a prison's population is overwhelmingly of no religion, or Muslim, but the

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<sup>1</sup> Prison Act 1952, section 7: <http://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/52/section/7>

prison's budget only stretches to employing one chaplain/minister - that chaplain must be an Anglican. The same is true if the prison employs more than one chaplain/minister, but demographics alone still don't support the employment of an Anglican. This could leave non-Anglican prisoners without pastoral support suitable to their belief systems. There is strong evidence from service users, both in prisons and other settings, that pastoral needs can not always be met by someone who doesn't share their worldview. It stands to reason just as Anglicans would value speaking to an Anglican, there are times when members of other belief groups would want to speak to someone who shares their worldview whilst facing the challenges associated with loss of freedom.

- We think that pastoral, spiritual and religious care should be available to all prisoners irrespective of their religion or belief and that this should be reflected in legislation. Therefore, we believe that the Prisons and Courts Bill 2016-2017 should amend the Prison Act 1952 to remove references to the Church of England and so put those of all religions and beliefs on an equal footing when it comes to the recruitment of chaplains or pastoral carers in prisons. Instead, the law should allow the Governor of each prison to request the appointment of individuals that better reflect the religious and non-religious pastoral needs of their populations. It would also give Her Majesty's Prison and Probation Service (HMPPS) an opportunity to send a powerful, positive message to prisoners, prison staff, religion or belief groups and the wider community that they seek to respect the humanity of everyone, equally, irrespective of their religion or belief.

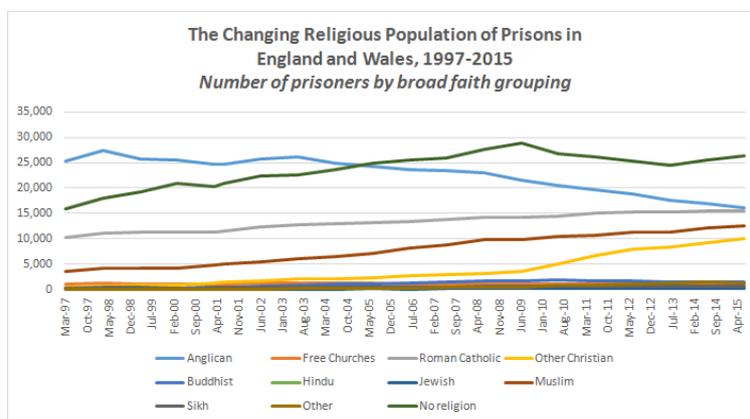
## Religious demographics in prisons

3. The religious composition of England and Wales and its prisons has changed significantly since the Prison Act was introduced over 60 years ago. The Act should be amended to reflect this change and allow access to pastoral support to the increasing number of non-Anglican prisoners. In England in March 2016, less than half (49.1%) of prisoners described themselves as Christians. This was a decrease of nine percent since 2002. Conversely, there has been an eight percent increase in the number of prisoners who describe themselves as Muslim over the same period, who now represent 15% of the overall prison population. By far the second largest belief group in UK prisons is the non-religious, representing 30.8 percent, or nearly one in three prisoners.<sup>2</sup>
4. Using Ministry of Justice data, tracking religious affiliation in UK prisons between 1997-2015, it is possible to break down the number of Christian prisoners by denomination. In June 2015, Anglican prisoners made up only 18.83 percent of the overall prison population, closely followed by Catholic prisoners at 18.06 percent.<sup>3</sup> In fact, Anglican prisoners are the only belief group in UK prisons that has shown a consistent decline in numbers over the past two decades, with the non-religious representing the largest single belief group when Christianity is broken down by denomination. The graph below shows numbers of prisoners by religion or Christian denomination out of a total of 57,970 prisoners in 1997 and 86,193 in 2015.

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<sup>2</sup> Grahame Allen Noel Dempsey, *Prison Population Statistics*, House of Commons Library Briefing Paper Number SN/SG/04334, 4 July 2016: p13:  
[researchbriefings.files.parliament.uk/documents/SN04334/SN04334.pdf](https://researchbriefings.files.parliament.uk/documents/SN04334/SN04334.pdf)

<sup>3</sup> British Religion in Numbers, 'Religion in Prison, 1975-2015': <http://www.brin.ac.uk/figures/religion-in-prison-1991-2015/>



5. It is clear that section 7(4) of the Prison Act 1952 is no longer reflective of the religious demographics of UK prisons, discriminating in favour of one Christian denomination. In cases where a prison is only able to employ one chaplain, it fails to provide a broad, inclusive, and diverse service that best reflects the changing needs and demographics of the population and risks alienating up to 81.17% of non-Anglicans. In cases where a prison is able to employ more than one chaplain or pastoral carer, it still may not be that the prison's demographics justify employing an Anglican.

## Legal background

6. There are three key pieces of legislation that are relevant to the recruitment of chaplains and pastoral support workers in prisons.

## Employment discrimination

7. Section 39 of the Equality Act 2010 states:

39. (1) An employer (A) must not discriminate against person (B) -  
 (a) in the arrangements A makes for deciding to whom to offer employment;  
 (b) as to the terms in which A offers B employment;  
 (c) By not offering B employment.<sup>4</sup>

8. This section expressly forbids discrimination on the basis of religion or belief, including non-religious worldviews. However, schedule 9 specifies that such discrimination is lawful if an employer can demonstrate a genuine occupational requirement for doing so. But it is not the case that section 7(4) of The Prison Act 1952 represents a genuine occupational requirement. Although it is accepted that it can be lawful to hire a chaplain who must be of a particular religion or belief, the requirement to always hire an Anglican chaplain as the first, and in some cases the only, provider of pastoral support is in breach of the anti-discrimination law found in the Equality Act.

## Public sector equality duty (PSED)

9. Furthermore, section 149 of the Equality Act 2010 (the public sector equality duty) also states that:

(1) A public authority must, in the exercise of its functions, have due regards to the need to -  
 (a) eliminate discrimination, harassment, victimisation and any other

<sup>4</sup> Equality Act 2010, section 39: <http://www.legislation.gov.uk/ukpga/2010/15/section/39>

conduct that is prohibited by or under this Act;

**(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;** (emphasis added)

...

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

**(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;** (emphasis added)...<sup>5</sup>

10. Plainly, section 7(4) of the Prison Act 1952 fails to advance equal opportunities for non-Anglican prisoners to access pastoral support that caters for their beliefs and thereby is in breach of the PSED s(1)(b). The fact that there is a legal requirement to recruit Anglican chaplains prevents prisons from taking steps to address inequalities both in terms of a prisoner's access to pastoral support and in the employment opportunities as mandated by s(3)(b). In the majority of cases, prisons will have no choice but to recruit Anglican chaplains whether that appointment advances equality or not.

### European Convention on Human Rights (ECHR)

11. It is unlawful for a public body, such as a prison, to act contrary to the European Convention on Human Rights (ECHR). Article 9 (freedom of thought, conscience and religion) states:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with other and in public or private, **to manifest his religion or belief, in worship, teaching, practice and observance.** (emphasis added)

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

12. Article 14 (prohibition of discrimination) states:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, **religion**, political or other opinion, national or social origin, association with national minority, property, birth or other status. (emphasis added)<sup>6</sup>

13. Similarly to the PSED, the ECHR forbids governments and public bodies from discriminating on the grounds of religion or belief or in any way preventing people from practising those beliefs. Section 7(4) of the Prison Act 1952 clearly breaches the ECHR by denying equal access to pastoral support for non-Anglicans.

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<sup>5</sup> Equality Act 2010, section 149: <http://www.legislation.gov.uk/ukpga/2010/15/part/11/chapter/1>

<sup>6</sup> European Convention on Human Rights, articles 9 and 14:  
[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

## Evidence of discrimination in employment

14. There has been significant progress, despite the Prison Act, to diversify the prison chaplaincy job market over the course of the past two decades. This suggests that the law has failed to keep pace with changing diversity in prisons and runs counter to the prevailing move towards multi-faith chaplaincy. Before this movement began, in 1998 'about 80 per cent of all full-time chaplains [were] Anglicans... not a single Buddhist, Hindu, Jew, Muslim or Sikh [was] employed as a full-time or part time chaplain.'<sup>7</sup> There was also no pastoral care specifically for non-religious prisoners.

15. Although the proportion of non-Anglican pastoral carers has increased since 1998, notably a rise in the number in Muslims, Sikhs, and Hindus able to apply for these roles, the Anglican Church unlawfully dominates the job market. A freedom of information request from March 2015 revealed that of approximately 360 full- or part-time prison chaplains employed, over one third were registered as Anglican, compared to 18 percent of prisoners - meaning about twice as many chaplains are Anglicans as proportionately should be.<sup>8</sup> Christian chaplains taken together still account for a hugely disproportionate 73.1% of all employed chaplains, whilst less than half of prisoners are register as Christian.<sup>9</sup>

16. Whilst the BHA welcomes this improvement in representation for other faiths, it is clear that the Prison Act still favours the Anglican Church in three key ways. Firstly, it still remains over-represented with a greater percentage of Anglicans employed than the percentage of prisoners of that faith. Secondly, the Act allows Anglican chaplains to visit prisoners of other faiths, whereas non-Anglican chaplains and pastoral carers may only visit with those who share their religion or belief. Thirdly, the continual exclusion of non-religious carers, when nearly one in three prisoners are non-religious, is a particular problem that remains to be tackled. This means in practice that non-religious prisoners are much more likely to be unable to access like-minded pastoral care.

17. A similar pattern of discrimination in employment can be seen in recent adverts for prison chaplains. From 1 August to 12 September 2016, the BHA conducted a survey of advertised vacancies for chaplains in prisons in England, Wales, and Northern Ireland. Of these 11 vacancies that were available in this period, eight were exclusively for Anglican chaplains, one required the applicant to be a Roman Catholic, one to be generically Christian and one to be generically religious. This results of this survey are below.

Your religion or belief	% of adverts specifically for you	% of adverts you can apply for
Anglican	73%	91%
Roman Catholic	9%	27%
Other Christian	0%	18%

<sup>7</sup> James A, Beckford, 'The Management of Religious Diversity in England and Wales 55 with Special Reference to Prison Chaplaincy', p59 in 'The Public Management of Religious Diversity', *International Journal on Multicultural Societies (IJMS)* Vol. 1, No. 2, 1999:

<http://unesdoc.unesco.org/images/0014/001437/143733e.pdf>

<sup>8</sup> Freedom of Information request from August 2015:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/455170/how-many-chaplains-and-assistant-chaplains-employed-by-hmps.doc](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455170/how-many-chaplains-and-assistant-chaplains-employed-by-hmps.doc)

<sup>9</sup> Dr Andrew Todd and Dr Lee Tipton, 'The Role and COntribution of a Multi-Faith Prison Chaplaincy to the Contemporary Prison Service - Final Report' Cardiff Centre for Chaplaincy Studies, p9:

<http://www.stpadarns.ac.uk/wp-content/uploads/2016/06/Todd-and-Tipton-2011-Report-on-Prison-Chaplaincy.pdf>

Muslim	0%	9%
Other non-Christian religious	0%	9%
Non-religious	0%	0%

15. Although it has a small sample and was only carried out over a two month period, the results show that a very high proportion (around three-quarters) of the employment market at this time exclusively discriminated in favour of the Anglican Church. Non-religious pastoral carers were entirely excluded, despite Her Majesty's Prison and Probation Service, in 2014, recognising that all prisoners should be able to request to speak with someone from their belief group. The lawfulness of this under human rights legislation is questionable.

### **Demand for non-Anglican pastoral support**

16. In March 1996, Buddhist, Muslim, and Sikh leaders presented a paper to the Secretary of State at the Home Office contending that 'the central role of one particular religious denomination in the prison system is unacceptable in a multi-faith society, and... that in the future when legislation is brought forward, it must ensure that all religions are treated equally.'<sup>10</sup> This demonstrates that there has long been broad support across different faith and belief groups that the Prison Act should be amended to be more inclusive and respective of the different religious and pastoral needs of prisoners.

17. Although the Prison Act 1952 remains in place, there is substantial evidence that on the ground that prisons are preferring to move towards a multi-faith model for chaplaincy. It was part of the brief of the Chaplain General of the Prison Service, upon appointment in 2001, which stipulated that prisons should 'better meet the needs of a multi-faith community'.<sup>11</sup> We contend that this can only be meaningfully achieved by removing the requirement for Anglican chaplains to be employed before all others and by allowing prison governors to determine the statutory pastoral, spiritual and religious services in their prison populations.

18. In 2001, the first full-time Muslim chaplains were appointed. This was followed in 2003 by the appointment of a new Prison Service Chaplaincy Council and the first national conference for chaplains, which was open to delegates from all faiths. Many prisons provide prayer spaces for other other religions in addition to Christian chapels. This demonstrates that the continuance of the Anglican Church's privileged position is out of step with the movement towards multi-faith provision that has been taking place within prisons for over a decade.

19. Finally, polling strongly suggests that there is a demand for non-religious pastoral support workers, who are currently entirely excluded from prison chaplaincy employment. In July 2016 YouGov, on behalf of the BHA, polled 4,000 British adults on whether they agreed or disagreed with the following statement:

'Prisons, hospitals and universities which have chaplains should also have a dedicated non-religious pastoral support provider as well'

<sup>10</sup> *Religion in the Prisons of England and Wales*, discussion paper presented by Lord Avebury, the Venerable Khemadhammo Mahathera, Bashir Ebrahim-Khan and Indarjit Singh, House of Commons, 27 March 1996.

<sup>11</sup> Irene Becci, Ton Bernts et al. *The Formatting of Religions: Religious Accommodation in Prisons and the Military Fact Sheet*: <https://www.eui.eu/Projects/ReligioWest/Documents/events/workshop/11-120213Formatting-TableofContents.pdf>

Strongly agree	26%
Tend to agree	43%
Tend to disagree	8%
Strongly disagree	4%
Don't know	20%

20. This suggests that there is strong support for non-religious pastoral support workers with 69% in favour to only 12% opposed. These results remained unchanged when the religions of the respondents were factored in. Both Christians and non-Christian religious respondents agreed with the statement by 66% supportive to 16% opposed. Indeed, in 2016, the Chaplain General commented, 'It can be especially valuable where humanists are part of the chaplaincy team. Including them can help some prisoners whose sense of themselves may not involve a 'higher power' but rather a renewed sense of faith in human potential to do good and of the dignity of human being apart from any notion of transcendence.'<sup>12</sup>

## Conclusion

21. **We recommend that sections 7, 9, and 10 of the Prison Act 1952 are amended to remove any privileged role for Anglicans. Instead, chaplains should be appointed from across religious and non-religious beliefs, to best reflect the demographics of each individual prison. We suggest the governor of a prison can most effectively perform this role.**

<http://www.humanism.org.uk/>

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<sup>12</sup> Mike Kavanagh, 'Contextual Issues: Justice and Redemption'. In: Swift, C., Cobb, M., Todd, A., (eds.) *A Handbook of Chaplaincy Studies*, p. 216. Routledge, 2016.