



Religious Diversity
and Secular Models
in Europe
Innovative Approaches
to Law and Policy



CHALLENGES OF RELIGIOUS ACCOMMODATION IN FAMILY LAW, LABOUR LAW AND LEGAL REGULATION OF PUBLIC SPACE AND PUBLIC FUNDING:

UNITED KINGDOM SOCIO-LEGAL RESEARCH REPORT

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Executive Summary

This report presents a selection of results from the sociological survey conducted as part of the RELIGARE project during 2011. It reveals the views of opinion formers interviewed as part of the survey. Interview participants included members of religious organisations, individuals who work in official and semi-official capacities connected to religious issues in general, a judge, a member of the British House of Lords, members of the press, and public intellectuals. See Annex I for a list of interviewees. This report first presents a background to ethno-religious diversity, starting with a brief history of recent immigration into Britain, and the current picture of ethno-religious diversity, including the role of the Census. It then provides a brief legal context explaining the relevance of the anti-discrimination and human rights legislation and a short discussion of legal pluralism in the UK. The interview results are then presented according to the areas of importance for each of the Work packages: 3 Family, 4 Workplace, 5 Public Space, and 6 State Support.

While summaries for each work package are summarized in the Conclusion, general observations pertinent to the overall UK study show through a range of responses that religion is treated as a relatively marginal issue in various, arguably ‘public’, areas of life and that it needed to be seen as positive and as an issue relevant to law and policy. It needs to be acknowledged that British culture is much more than a white middle class culture. Furthermore, several respondents also expressed concern that there was an encroachment by state laws in the affairs of the religious communities and examples of this included the potential action in some countries to ban the production of *kosher* or *halal* food, and the widening scope of equality law in such a way as to jeopardize socially beneficial activities of religious groups, while concern was also expressed at the criminalization of certain practices specific to some communities.

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Introduction

A super-diverse Britain

The UK is a richly diverse society with a multiplicity of religious and ethnic groups represented in its population. This diversity is chiefly the result of post-war streams of immigration, but also has a long recorded history (Fryer 1984, Holmes 1998, Kershen 2005, Visram 2002). While these streams at first consisted primarily of Caribbean and South Asian immigrants, immigration and asylum migration has diversified intensely in the last few decades adding to the plurality of the UK's population, leading to the characterisation of British (and other European) urban spaces as 'super-diverse' (Vertovec 2007). This richness has also led to a whole range of questions of multicultural accommodation being raised in the UK and, as with other European countries, the legal sphere has not remained immune from some of those questions entering its practices and discourses, with increasing literature often linking to developments in other, similarly situated countries (Poulter 1986, 1990, 1998, Bradney 1993, Pearl and Menski 1998, Shah 2005, Shah and Menski 2006, Shah 2007, Grillo et al 2009). Although the discourses about, and legal responses to, alterity were initially formulated in terms of 'race' and then 'ethnicity' (Ballard 1992) in recent years, 'religion' and 'faith' (Grillo 2010) have come to the fore as 'identity markers' (Bhamra 2011) in unprecedented ways, thus challenging a whole range of established understandings and practices concerning the relationship of state and religion, the salience of secularism and/or secularisation in a diverse society, the role of 'secular law' amidst societal diversity, how courts and legislation, and official practices more generally, take into account the presence of an ethnically and religiously diverse society.

It is difficult to imagine a field of life in its inter-relationship with the law which has remained untouched by religious questions being brought to attention. All fields of importance to the RELIGARE project have gained some attention although the emphasis among them has varied. Thus questions about the family, the work place, the 'public' and 'private' spheres, and state support have risen to the surface in connection with religion. The manner in which such questions have arisen is naturally conditioned by the constraints and conventions of public discourse and the opportunity structures offered by British legal systems. These are influenced by factors such as the established manner in which state-religion relationships were conducted, primarily through the prism of Anglo-Protestantism and the gradual spread, since the nineteenth century, of non-sectarian public sphere marked by an ethic of toleration (but see Colley 1992); the post-war devising of policies of multiculturalism (Modood 2007, Pitcher 2009); and the manner in which certain spaces were recognised historically as being of importance for religion, for instance, within the education sphere. The shape of the anti-discrimination law has also been an important factor in British multicultural policies and the ways in which religious issues have come into the domain of the official legal sphere. Other important dimensions, perhaps more diffusely structuring the ways in which issues are thrown up to the surface, include the training of the legal professions, the selection and background of the judiciary, and the fact that the UK has a significant colonial history which has, in turn, shaped the nature of migration, the spread of ethnic and religious diversity, as well as the ways in which discourses are constructed about the components of that diversity. In recent years, the civic public sphere is being reshaped, particularly in the period since 9/11 and 7/7 which has seen rising tensions concerning the presence of Muslims, a ratcheting up of political rhetoric against multiculturalism, an emphasis on social cohesion, the promotion of a state feminism (see Pitcher 2009), and conformism to a framework of national values and civic identity. These changes may mean a lower willingness to make concessions to ethnic and religious alterity in public policy and practice and, in a post-multicultural Britain, may mean greater conformism to a cosmopolitan, liberal conception of identity, and enforced through equality law (McCrudden 2011). They may also be an indicator that Britain is

now at a crucial point: the frequency of concessions to ethno-religious alterity (and demands for such concessions) shows a slide towards a variant of an officially recognised personal law system.

Besides the kinds of opportunity structures mentioned above, academic legal debates, disputes, litigation and legislation have also followed the various phases of immigration from different regions of the world to the UK. As noted, the post-war period has seen the most significant phases of immigration, although it should be noted that Jews and Irish Catholics are long standing components of the picture of ethno-religious and immigration-inspired diversity in the UK. While their ‘whiteness’ has meant that some of the politicised questions of ‘race’, as they began to arise with significant Commonwealth immigration in the post-war period, obscured their ethno-religious otherness, it is by no means the case that their members have abandoned their distinct concerns and expectations from the larger society and British legal order (see for Jews recently, Herman 2011). Such questions remain on the agenda and are possibly amplified with the recent focus on ‘religion’. Caribbean immigration, mostly (although not completely) composed of people of African origins, has given rise to some questions of religious otherness. Although many belonged to various Christian denominations and thus did not give rise to major questions within respect to the dominant Anglo-Protestant cultural order other than in connection with discrimination on grounds of skin-colour, the presence of Rastafarians among them has given rise to questions of accommodation on ethnic and religious grounds (Poulter 1998: ch. 9).

Following the peak in Caribbean immigration to the UK, the main source turned to South Asia (see Ballard 1994), where recruitment either by employers or self-recruitment was done for work primarily in private industries. This differed from the Caribbean immigration where the settlers primarily aimed for work in state or para-statal industries. South Asian immigration had its origins mainly from parts of Pakistan (including Kashmir), Punjab and Gujarat in India, and what later became Bangladesh (mainly from the Sylhet area). It continued in various phases and was augmented by constructive or actual expulsion of South Asians from East African countries. A rough correlation can be made with the advancement of family reunification among South Asian migrants and the making of identity related legal claims. Among the ‘Indian’ migrants and their offspring, such claims were made mainly by Sikhs. Similarly, the somewhat later reunification of Pakistani, followed by Bangladeshi families, can also be linked to the greater visibility of legal identity claims by Muslims. Although Hindus are well represented in the British population, they have, by contrast, maintained a relatively lower legal profile. These observations are not to suggest that members of all these South Asian groups are not litigators within official courts in different ways. Although their cases may not necessarily or always provide a space to air specific identity related claims, issues about ethnic or religious alterity will play a role in some ways.

Another part of the Commonwealth with strong migratory connections to Britain lay in the West African countries of Nigeria and Ghana. Initial emphasis on migration for educational purposes has changed over time to migration for settlement through various immigration routes and by people with varying socio-economic profiles. These migrants have been joined by others from African countries, also having a potentially significant effect on the Christian and Muslim population of the UK (Nzira 2011). The figures on African settlement in the UK will be a key item of interest when the next Census 2011 results will be published. Especially since the 1980s, while family reunification by the older migrant communities was continuing, the UK experienced a series of asylum migration streams, prominent among which are Tamils from Sri Lanka, Iranians, Kurds from Turkey, Somalis, Congolese, Afghans, Iraqis and Zimbabweans. A range of other groups have also migrated, alongside these asylum seeking groups from the same countries and others, not least after the expansion of the

EU of May 2004, justifying the epithet of ‘super-diversity’ in the British context (Vertovec 1997). They are also figuring in litigation and a widening of the categories of claims making of various types, while also engaging in new types of legal navigation (for Poles in the UK, see Kubal, forthcoming).

Members of all these groups have sooner or later experienced the necessity of accessing public services, including welfare benefits, housing and education, employment or self-employment, planning with respect to community centres, mosques, temples, building of schools, etc. Their interaction in these contexts has inevitably brought the need for negotiating official requirements, explaining their needs to a wider public, and making accommodations of various kinds, while also generating identity claims. Much of this negotiation occurs at a local level and below the radar of national policy making (Nielsen 1992, Saggar 1996), although, at times, some events have seeped out into the wider public arena and out of the control of the parties. These events then play a role in shaping the public imaginary of particular ethno- religious groups within society. It is, however, by no means the case that members of such groups, whether or not representative of ‘their’ communities, do not take the advantages offered by wider public profile to engage in interest group politics at national policy levels. Such engagement is not always problem-free and can be highly controversial as seen in the Satanic Verses protests in the late 1980s which saw the presence of Muslims catapult into the national or larger European arena (see for legal analyses, Bradney 1993: 82-103, Jones and Welhengama 2000: 179-202). Litigation, which is often a component of a larger strategy adopted by some groups, then also plays out in the national and European scene as publicity is generated through the media and various opinions are voiced. Some such cases, like the Satanic Verses controversy exposed transnational dimension which complicates matters somewhat but also demonstrates that the British legal and other fora may be instrumentalized for wider aims. The European setting provides greater scope for such instrumentalization because of the interconnectedness of EU and Council of Europe states. Thus, a legal ruling in one place may impact on how litigation strategies are formulated in another place.

Ethno-religious diversity of the UK: Demographics

While a matter of debate through the post-war decades, ethnic and religious diversity in the UK was not easily discernible until the Census of 1991 collected figures on ‘ethnic group’. Prior to the Census of 1991, ‘country of birth’ statistics were the main basis for measuring how ethnically diverse the UK might be. While measuring ethnicity on this basis was a difficult affair, it was even more difficult to estimate religious group membership in the UK’s population. The 2001 Census then collected figures on ‘religion’, a move stated by Modood (2005: 165) to have been ‘unpopular outside the political active religionists, among whom Muslims were foremost’. This again shows how interest group lobbying by some spokespersons, in this case Muslims, achieves results applicable at national level. The 1991 and 2001 Censuses have improved somewhat our vision of how diverse the UK is and what UK diversity is composed of. Table 1 broadly shows the results of the 2001 Census, with ethnicity and religion matched in terms of absolute reported numbers; Table 2 allows a view of how each religious group is broken down ethnically in percentage terms; and Table 3 shows each ethnic group is broken down by religion in percentage terms.

Table 1: Religion (Numbers): by detailed ethnic group, April 2001, Great Britain

	Christian	Buddhist	Hindu	Jewish	Muslim	Sikh	Any other religion	No religion	Not stated	Total
White British	38,137,157	51,006	5,981	224,467	63,891	6,770	115,876	7,886,968	3,874,381	50,366,497
White Irish	592,218	1,208	148	1,189	906	159	1,767	42,569	51,068	691,232
Other white	895,729	4,487	1,293	33,126	117,713	580	8,224	228,646	133,673	1,423,471
Mixed	352,616	4,759	5,779	3,187	65,592	2,801	3,988	157,271	77,805	673,798
Indian	52,128	1,921	471,480	682	132,566	307,096	18,243	18,803	48,925	1,051,844
Pakistani	8,349	188	583	364	686,179	382	340	4,150	46,084	746,619
Bangladeshi	1,471	176	1,724	127	261,380	116	25	1,268	16,524	282,811
Other Asian	33,319	11,951	65,175	746	92,761	15,256	2,352	8,779	17,131	247,470
Black Caribbean	417,053	978	1,667	544	4,489	142	3,326	63,645	73,777	565,621
Black African	333,530	344	1,003	251	97,109	419	1,054	11,484	39,589	484,783
Other Black	64,621	190	349	136	5,833	72	633	11,808	13,556	97,198
Chinese	51,387	36,809	164	123	796	88	1,243	128,935	23,713	243,258
Other Ethnic Group	75,233	35,140	2,996	2,431	59,675	2,298	2,096	32,162	17,294	229,325
Total	41,014,811	149,157	558,342	267,373	1,588,890	336,179	159,167	8,596,488	4,433,520	57,103,927

Source: Census, April 2001, Office for National Statistics; Census, April 2001, General Register Office for Scotland

Naturally, all these measures can be, and have been, criticised for their methodological deficiencies (see e.g. Ballard 1997, Aspinall 2000, 2007). The UK may, however, be the only RELIGARE fieldwork country in which such figures are likely to be available (Ringelheim and De Schutter 2009, Simon 2011). This also reflects the specific nature and development of British multiculturalism whereby the state demonstrates an interest in assessing the nature of ethno-religious diversity as a means of allocating resources. As noted, the 2011 Census results are currently awaited. The new Census 2011 questions will enable us to have a more updated picture of ethno-religious diversity in the UK. The 2011 Census also asked a question about ‘main language’ which should furnish an improved understanding of linguistic diversity in the UK, and also links with wider debates in Europe about the use, recognition and stigmatization of non-dominant languages. How that maps on to the other indices will also provide some important information not previously available. Annex III shows the question format in the 2011 Census inter alia for ‘ethnic group’, ‘religion’ and ‘main language’ in Great Britain (therefore excluding data for Northern Ireland).

Table 2: Religion (Percentages): by detailed ethnic group, April 2001, Great Britain

	Christian	Buddhist	Hindu	Jewish	Muslim	Sikh	Any other religion	No religion	Not stated	Total
White British	92.98	34.20	1.07	83.95	4.02	2.01	72.80	91.75	87.39	88.20
White Irish	1.44	0.81	0.03	0.44	0.06	0.05	1.11	0.50	1.15	1.21
Other white	2.18	3.01	0.23	12.39	7.41	0.17	5.17	2.66	3.02	2.49

Mixed	0.86	3.19	1.04	1.19	4.13	0.83	2.51	1.83	1.75	1.18
Indian	0.13	1.29	84.44	0.26	8.34	91.35	11.46	0.22	1.10	1.84
Pakistani	0.02	0.13	0.10	0.14	43.19	0.11	0.21	0.05	1.04	1.31
Bangladeshi	0.00	0.12	0.31	0.05	16.45	0.03	0.02	0.01	0.37	0.50
Other Asian	0.08	8.01	11.67	0.28	5.84	4.54	1.48	0.10	0.39	0.43
Black Caribbean	1.02	0.66	0.30	0.20	0.28	0.04	2.09	0.74	1.66	0.99
Black African	0.81	0.23	0.18	0.09	6.11	0.12	0.66	0.13	0.89	0.85
Other Black	0.16	0.13	0.06	0.05	0.37	0.02	0.40	0.14	0.31	0.17
Chinese	0.13	24.68	0.03	0.05	0.05	0.03	0.78	1.50	0.53	0.43
Other Ethnic Group	0.18	23.56	0.54	0.91	3.76	0.68	1.32	0.37	0.39	0.40
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Base (Numbers)	41,014,811	149,157	558,342	267,373	1,588,890	336,179	159,167	8,596,488	4,433,520	57,103,927

The base is the total number of people from which calculations have been made.

Source: Census, April 2001, Office for National Statistics; Census, April 2001, General Register Office for Scotland

Table 3: Detailed ethnic group (Percentages): by religion, April 2001, Great Britain

	Christian	Buddhist	Hindu	Jewish	Muslim	Sikh	Any other religion	No religion	Not stated	Total
White British	75.72	0.10	0.01	0.45	0.13	0.01	0.23	15.66	7.69	100.00
White Irish	85.68	0.17	0.02	0.17	0.13	0.02	0.26	6.16	7.39	100.00
Other white	62.93	0.32	0.09	2.33	8.27	0.04	0.58	16.06	9.39	100.00
Mixed	52.33	0.71	0.86	0.47	9.73	0.42	0.59	23.34	11.55	100.00
Indian	4.96	0.18	44.82	0.06	12.60	29.20	1.73	1.79	4.65	100.00
Pakistani	1.12	0.03	0.08	0.05	91.90	0.05	0.05	0.56	6.17	100.00
Bangladeshi	0.52	0.06	0.61	0.04	92.42	0.04	0.01	0.45	5.84	100.00
Other Asian	13.46	4.83	26.34	0.30	37.48	6.16	0.95	3.55	6.92	100.00
Black Caribbean	73.73	0.17	0.29	0.10	0.79	0.03	0.59	11.25	13.04	100.00
Black African	68.80	0.07	0.21	0.05	20.03	0.09	0.22	2.37	8.17	100.00
Other Black	66.48	0.20	0.36	0.14	6.00	0.07	0.65	12.15	13.95	100.00
Chinese	21.12	15.13	0.07	0.05	0.33	0.04	0.51	53.00	9.75	100.00
Other Ethnic Group	32.81	15.32	1.31	1.06	26.02	1.00	0.91	14.02	7.54	100.00
Total	71.82	0.26	0.98	0.47	2.78	0.59	0.28	15.05	7.76	100.00

Source: Census, April 2001, Office for National Statistics; Census, April 2001, General Register Office for Scotland

Anti-discrimination law in the UK

Another feature of British multiculturalism is its long standing preference of dealing with issues of racial, ethnic and religious diversity through a series of anti-discrimination legislative measures - the Race Relations Acts. The first Race Relations Act 1965 was introduced in the midst of immigration becoming a more salient political issue in Britain, civil rights activism and reform in the United States, and the larger context of decolonisation (Füredi 1998). This legislation was at first concerned with access to public places and overt discrimination. It was supplemented by the Race Relations Act 1968 which sought to make discrimination unlawful also in employment and housing. The remedial structure was very much focused on alternative dispute resolution outside of the court system, in local conciliation committees. This structure was revised in the Race Relations Act 1976, which allowed most employment-related disputes to be heard in the Employment Tribunal and, through appeals, to the higher courts. Non-employment disputes were allowed to be brought to the County Court and, through appeals, up the hierarchy of the court system. This system allowed the award of civil damages for discrimination unlike models elsewhere in Europe which appear to have focused on criminal sanctions for race-related infractions. Court judgements accumulated under this legislation, although a sample reading shows that in most cases, of which employment cases were by far the largest sub-set, the courts tended to take a pro-employer position. A study by McCrudden et al (1991), not so far replicated, showed that chances of winning race a discrimination claim were slim although they could be influenced by having legal assistance which was then (and still remains) difficult because of the lack of legal aid access. The evidence was therefore that having legislation to contain discrimination

was one thing, but to use the law as an instrument to battle against it, at a personal level and a wider societal level, may not necessarily work to the level that its framers may have wished (also Bindman 1992, Hepple et al 1997).

The Race Relations Act 1976, applied a more sophisticated concept of discrimination in that it specified and made unlawful both direct and indirect discrimination, and these formulae have subsequently been significant in influencing the scope of the EU legislation on the issue. One hurdle set into the 1976 Act was that, while overt forms of discrimination (direct discrimination) attract civil damages, indirect discrimination did not except where an ‘intention to discriminate’ was additionally demonstrated. While most discrimination claims were and are claims of indirect discrimination, proving it and additionally proving intention meant that it became fairly difficult to establish a claim for damages, thus reducing incentives for litigation.

The Race Relations act 1976 also set out the grounds upon which acts of discrimination were actionable. It had to be demonstrated that discrimination was done on racial grounds and membership of a racial group was defined (in section 3) as follows:

“racial group” means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person’s racial group refer to any racial group into which he falls.

In this sense, the 1976 Act was designed to ‘catch’ discrimination on a number of inter-related grounds. It was not then realized that religion would become the prominent issue that it later has, and the courts initially used ‘ethnic origins’ to bring Jews and Sikhs within the scope of the legislation. Muslims were, however, not deemed to be a racial group within the Act’s scope and this led to the build-up of frustration among Muslim organizations who perceived an exclusionary mechanism in the anti-discrimination legislation (Modood 1993, Menski 2001: 138). It was only with Council Directive 2000/78/EC and its implementation in November 2003 as a matter of UK domestic law that partial coverage for religion and belief in the employment field was made. The Equality Act 2006 extended this coverage for religion and belief beyond the employment context, to the provision of goods and services generally. This finally brought into line acts of discrimination on religion or belief grounds and the ‘racial grounds’ which the 1976 Act referred to.

After the publicized murder of Black teenager Stephen Lawrence (in 1993) and the public inquiry into the handling of the murder investigation which led to the criticism of the Metropolitan Police as ‘intuitively racist’ (in 1999), the Race Relations (Amendment) Act 2000 brought the provision of public services under the scope of the 1976 Act, thus closing a glaring gap that had allowed public authorities to evade anti-discrimination law. Council Directive 2000/43/EC (the so-called ‘race Directive’) and Council Directive 2000/78/EC (the so called ‘employment directive’, covering religion and belief) were implemented in 2003 under the structure already established by the Race Relations Act 1976. Thus, the litigation route was subsumed under the older structure, although this led to a messy system of discrimination claims of different kinds which were subject to slightly differing criteria. The Equality Act 2010 then set out a unified structure for discrimination claims and, inter alia, spelled out race (including colour, nationality, ethnic or national origins) and religion or belief as its ‘protected characteristics’ (as well as age, disability, gender reassignment, marriage and civil partnership, sex and sexual orientation). It also reformulates the definitions of direct and indirect discrimination and adds ‘combined discrimination’ after some academic and policy discussion of ‘intersectionality’. It sets out a stronger ‘public duty’ (section 149) as follows:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to—
- (a) eliminate discrimination, harassment, victimisation and any other 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;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The same section also spells out what is entailed by this public duty:

- (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;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

This duty therefore imposes a more ‘activist’ role on public authorities to take specific action to tackle disadvantages consequent to people having one or more of the ‘protected characteristics’. Although it came into force on 5 April 2011, it is not yet clear how, and to what extent, this duty is being implemented in practice.¹ It is conceivable that discrimination claims on grounds of the protected characteristics may come into conflict within one another and the same tension may be imported to the exercise of the public duty which poses a challenge for public authorities. Some of those tensions, particularly between the duty of equality to homosexuals and the freedom to act in accordance with one’s religious belief, have already been dealt with by the courts particularly as regards faithful Christians, and test litigation is now being brought to the European Court of Human Rights.²

Human rights law

While the anti-discrimination legislation has been developing rapidly during the past decade or so, the UK also enacted the Human Rights Act 1998, which allowed the domestic courts and tribunals to use the European Convention of Human Rights and the Protocols thereto (ECHR) to which the UK is a party. The same act also imposes a duty on public bodies to ensure compliance with the ECHR. The ECHR contains provisions that are clearly relevant to questions of religion, most important of which

¹ The implications of the public sector duty are explained at the website of the Equality and Human Rights Commission: <<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/>> last accessed 20 December 2011.

² For the domestic cases, see *Islington London Borough Council v Ladele* [2009] EWCA Civ 1357, [2010] 1 W.L.R. 955 (registrar refusing to perform registration of civil partnership for homosexual couples on grounds of belief); *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 880, [2010] I.R.L.R. 872 (relationship counselor refusing to provide sex counseling for gay couples on grounds of belief); *Catholic Care (Diocese of Leeds) v Charity Commission for England and Wales* [2010] EWHC 520 (Ch) (Catholic adoption agencies not exempt (Catholic charity’s application to maintain adoption services to heterosexual couples only rejected)). The first two of these cases are coming up before the European Court of Human Rights: *Lillian Ladele and Gary McFarlane v the United Kingdom* (Application nos. 51671/10 and 36516/10). The JFS case, referred to below at [note 6??](#), involves another kind of conflict because the Supreme Court felt that a religious preference for school admissions can involve racial discrimination if that preference depends on descent.

are Article 9 (freedom of thought, conscience and religion), Article 1 of Protocol 2 (parents right to ensure education in conformity with their own religions and philosophical convictions), and Article 14 (enjoyment of Convention rights without discrimination). Since the Human Rights Act 1998 came into force, in October 2000, litigation concerning religious claims has often proceeded either on the basis of (1) the Human Rights Act (2) the anti-discrimination law, or (3) both the Human Rights Act and the anti-discrimination law. Thus, within UK law, multiple avenues exist for claims making regarding breaches of religious rights and discrimination in the enjoyment of those alleged rights. Where they are capable of so doing, litigants may also bring challenges after the exhaustion of domestic remedies to the Strasbourg Court.

Law as a plural phenomenon

While the Race Relations legislation, its extensions covering religion and belief, and the human rights framework, have mainly tended to structure the ways in which the official legal order has engaged with ethno-religious diversity in the UK, the realization that ‘law’ is more than just ‘state law’ has been slow in coming onto the agenda. Much theorising about and the studying of actual cases of legal pluralism has tended to involve a focus on non-Western countries. Early prognostications that South Asians, in particular, would carry their customs over to Britain, and that this would affect legal policy, were not given much attention. Similarly, demands in the 1970s by the Union of Muslim Organisations that a personal law should be applied to Muslims in Britain were ignored by the British government (Nielsen 1993, Nielsen 1995: 53, Menski 2001: 141). The emerging dominant perspective concerning concessions that the legal system should make to ethnic minorities was encapsulated by Poulter when he wrote:

Legal recognition must be afforded to many ethnic minority customs on grounds of practicality, common sense, individual liberty, religious tolerance and the promotion of racial harmony. However, a few restrictions and limitations must equally be imposed, in the interests of public policy, to protect certain core values in English society and to obviate any genuine and reasonable claim by the majority that ethnic minorities are obtaining preferential treatment or special dispensations which cannot be justified by reference to established legal principles. (Poulter 1986: v-vi)

This attitude, couched in the tenets of British liberalism, and advocating the protection of core English values, has more or less tended to inform public policy and law towards ethnic and religious minorities, in effect entailing the use of those values as the acceptability-index of minority practices. In practice, this has occurred in a haphazard manner given the availability of information about the cultural background of the relevant group and the willingness of public authorities to make concessions in particular situations. Legal education has largely remained out of touch with socio-legal practices of ethnic minorities and is still playing ‘catch up’.

Since the 1990s, however, some emerging writing (Menski 1993, Ballard 1994, Pearl and Menski 1998) highlighted the fact that ethnic minorities have not abandoned their traditions but rather combined them with British norms in sophisticated ways, leading to hybrid laws which the dominant policy and legal frameworks have not been able to appreciate. The non-assimilation of British-born or -raised generations is now a widely acknowledged fact, and the lack of interest in ethnic minority laws which followed the assumption that the migrant generation’s customs and traditions would eventually be phased out as their youth adapted to British norms has not proved a reality. Indeed, many recent legal cases involving identity based claims have been brought by younger people when clashes have

occurred, for instance, at school or in the workplace. Evidently, some lawyers and judges (see McFarlane 2011) have become increasingly conscious of these pluralities, not least given their daily exposure to such developments. An expression of such consciousness of the implications of such diversities at the judicial level is given in a passage by Munby J (now Lord Justice Munby in the English Court of Appeal) in *Singh v Entry Clearance Officer New Delhi* ([2004] EWCA Civ 1075 at para. 67), a case concerning a Sikh family involved in a trans-jurisdictional adoption:

I have referred to the increasing religious diversity of our society.[...]. We live, or strive to live, in a tolerant society increasingly alive to the need to guard against the tyranny which majority opinion may impose on those who, for whatever reason, comprise a weak or voiceless minority. Equality under the law, human rights and the protection of minorities have to be more than what Brennan J in the High Court of Australia once memorably described as “the incantations of legal rhetoric”. Although historically this country is part of the Christian west, and although it has an established church which is Christian, we sit as secular judges serving a multi-cultural community of many faiths in which all of us can now take pride. We are sworn to do justice ‘to all manner of people’. Religion -- whatever the particular believer's faith -- is no doubt something to be encouraged but it is not the business of government or of the secular courts, though the courts will, of course, pay every respect and give great weight to a family's religious principles. Article 9 of the Convention, after all, demands no less. So the starting point of the law is a tolerant indulgence to cultural and religious diversity and an essentially agnostic view of religious beliefs. A secular judge must be wary of straying across the well-recognised divide between church and state. It is not for a judge to weigh one religion against another. The court recognises no religious distinctions and generally speaking passes no judgment on religious beliefs or on the tenets, doctrines or rules of any particular section of society. All are entitled to equal respect, whether in times of peace or, as at present, amidst the clash of arms.

With the creation of *shariah* councils in the UK since the 1980s, greater attention has focused on the salience of Muslim religious law, and its interaction with the official order, especially in the family sphere. The phenomenon of religious law in general, and Islamic law in particular, was highlighted by the Archbishop of Canterbury, Dr Rowan Williams, in his lecture of February 2008 in London (see Shah 2009). That lecture was followed some six months later by another high profile speech by Lord Phillips, then Lord Chief Justice of England and Wales, and currently the President of the UK Supreme Court, supporting the use of alternative dispute resolution by Muslims subject to the official law – this would seem to be unique within the framework of European judiciaries. A series of conversations at semi-public level, involving legal professionals and academics, Muslims spokespersons, and individuals from other religious (especially Jewish) communities to assess how far English law needs to have regard to *shariah* in its functioning have since taken place. The focus on *shariah* councils has also meant that other long-functioning religious courts such as the Jewish *Batei Din* and Catholic Tribunals have attracted scholarly attention (Douglas et al 2011). A risk of these debates and discussions is that, while they may facilitate greater knowledge of legal doctrines and associated practices of such bodies, it says little about how families and communities have actually retained or changed their customs. There is a long way to go before a fuller picture can be obtained on how legal hybridity, in the sense of the living law among different ethno-religious communities, actually functions. The higher public profile of *shariah* has arguably also done some damage. The reactions to the Archbishop's speech were mainly critical and a primarily negative portrayal of Muslims has been continuously generated in the media, adding to the already somewhat denigrated picture of Muslims, which has led some observers to suggest the rise of Islamophobia (Runnymede Trust 1997, Allen 2010). Proposed legislation currently going through parliament – the Arbitration

and Mediation Services (Equality) Bill –threatens to impede *shariah* councils from performing their tasks and basically aims at taking them out of the picture altogether.

General picture concerning attitudes to religion

Before turning to the issues raised in the interviews that are specific to the concerns of each Work Package we considered that it might interest readers that some of the interviewees made remarks that are salient to the more general situation of religious diversity. We select some of these remarks here.

Several respondents underlined the importance of cultural traditions and religion to society and to individuals. However, as one respondent saw it, the value of religion and cultural traditions are underestimated and the ‘positive story’ is obscured:

I guess the whole ignorance around faith is absolutely shocking. Faith is a very important part of many minority communities. It's a very strong part of their cultural identity. It's also a very important way in which they build social cohesion and effectively save the government a lot of money in terms of social welfare – by looking after their families, looking after the elderly, by improving mental health etc. etc. But very little of this is being recorded, is being noted, the positive story is not being acknowledged.[...] There is a lot of work to be done if the law is to change because faiths have a strong influence on the moral order of Britain. Recently, the Cabinet Minister, Saida Warsi, made a very strong announcement saying the British government has hitherto got it completely wrong about faith and the contribution of faith to British civic life and that now things will change – that there is now an acknowledgement of faith communities and their contribution in building civic society.³ That has so far proved to be rhetoric, unfortunately, because the actions haven't followed. But this kind of U-turn is urgently necessary. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

The necessity for the state and its legal to consider customs and religious values was underlined by a National Hindu Students Forum representative:

I think they have to consider people's customs and religious values. The state can say ‘this is the law’ but people are still going to have faith and they're still going to have the values and traditions that they've always grown up with. The state can't govern what goes on in your own household and what you're taught by your parents and what goes on in your family for generations. Therefore, I think the state should have a bit more tolerance and understanding of what people believe. I don't think secular law works completely, I think it requires people to possess and observe morals and those come from religion. Obviously there's humanism but I think a lot of the morals come from religion and therefore I think the state should be a bit more discreet. (Dhanisha Patel, Legal Co-ordinator, National Hindu Students' Forum)

Another interviewee linked the question of greater attention to religion with multiculturalism, indicating that civic engagement with the law of the state needs to be supplemented by a focus on religious values and traditions:

³ Baroness Warsi has made a number of speeches with respect to the importance of faith and religion. See ‘The importance of faith to life in Britain’, 15 September 2010, http://www.conservatives.com/News/Speeches/2010/09/Sayeeda_Warsi_The_importance_of_faith_to_life_in_Britain.aspx and the 2011 University of Leicester Sir Sigmund Sternberg lecture, 20 January 2011, <http://www2.le.ac.uk/offices/press/media-centre/baroness-warsi-speech/sayeeda-warsi-delivers-2011-university-of-leicester-sir-sigmund-sternberg-lecture>.

Recently I read David Cameron's Multiculturalism is Dead speech⁴, following on from Angela Merkel addressing the same issue, Multiculturalism is where we are at – it's a fact, it's in the streets, it's in every aspect of our lives – how's it dead and what's been put in its place? Militant nationalism, Norwegian style? Nobody's going to advocate that, God forbid. But there is lack of thinking as to what the vision for society is. My vision would honour Samuel's 'the law of the land is the law', an engagement in civil society, an engagement in the democratic and the civic process, a welcoming of the freedoms that the West offers, but focusing on the religious tradition, the religious language, the religious community, the moral traditions and guidelines of traditions. Finding the balance between those could be working towards allowing [multiculturalism] to flourish. I don't see that discourse happening in the way that it could and should. (Rabbi Jonathan Wittenberg, New North London Synagogue)

Rabbi Wittenberg's position would seem to imply that, in lived experience, a plurality of norm systems is at play in helping individuals to achieve legal equilibrium. Sayyid Yousif Al-Khoei sees the problem as one of marginalizing Muslim needs in mainstream service provision:

Society at the moment is so diverse – multicultural and multi-faith – it is important that every community is given the choice of practising, dressing, eating etc. according to their beliefs. Nowadays, wherever you go, you can see that vegetarians are well catered for. There is always a vegetarian option in restaurants, vegetarian sections in supermarkets. But the same cannot necessarily be said about *halal* food, for example. It is still very difficult to get *halal* food in restaurants and shops not operated by Muslims. This, in itself, tells us much about the status of Muslims in British society and can also go some way of subtly explaining why Muslims are [erroneously] accused of being ghettoized. (Sayyid Yousif Al-Khoei, Director of Public Affairs, Al-Khoei Foundation)

This observation would seem to underline that the absence of consideration of religion in general or the needs of one specific, and fairly large community work to a kind of social exclusion. The non-provision of certain specific services might also go towards establishing the non-observance of the public duty in the Equality Act 2010 (mentioned above). It might also lead to the non-realization of economic opportunities. For example, the Meat and Livestock Commission produced information in October 2001 that although Muslims make up just five per cent of the population they consume an estimated 20 per cent of all lamb and mutton produced in Britain.⁵

Atul Shah noted that the general understanding of minority cultures and faith communities tends to be based on Christian presuppositions:

And also faith is very grossly misunderstood and misrepresented. It's very often seen from a Christian lens – other faiths are being interpreted from a Christian lens. To give a very simple example, if I tell somebody I am a Jain, the next set of questions will be around "what is your Bible?"; "where do you worship?"; "how often do you worship?" The questions themselves are loaded in assumptions about the nature of different faiths, about the authenticity of a book. We are a very strong oral tradition, we have books, we have plenty of Bibles, not one. We worship at home as much as the temple, we have home shrines as well. So, many of these concepts, even the basic concepts are quite difficult to articulate but they are usually being asked from a very arrogant perspective and a very ignorant perspective as well. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

⁴ This is a reference to the speech given by David Cameron at the Munich Security Conference on 5 February 2011: <http://www.number10.gov.uk/news/pms-speech-at-munich-security-conference/>.

⁵ Cited at: <http://www.mcb.org.uk/library/statistics.php#11>

Such difficulties of explaining the basics of one's cultural traditions, amidst a more generalized lack of awareness, can be predicted to be a further factor in the marginalization of people of some communities.

Several respondents went beyond the marginalization of religion or religious identity in the public sphere and noted that the encroachment by the state in the affairs of a community was a real and tangible issue of concern:

Well, largely-speaking, there are no real constraints on keeping Jewish tradition. There are encroachments the whole time, or attempted encroachments. There are three main issues; one is equality law (as a result of the JFS case that prevents Jews from defining themselves in ways that they have always defined themselves, which I can come back to in a moment).⁶ At the moment Jews have total freedom of religion in Europe; there are encroachments being made, in common with the Muslim community, against both [2] circumcision and against [3] ritual slaughter. As far as ritual slaughter is concerned, thank God, it is still permitted in Europe, but there are countries where there are proposals either for banning it or introducing certain stunning requirements which might prevent ritual slaughter from taking place.⁷ There are proposals for labelling of food stuffs as having been killed for ritual slaughter which could price ritual slaughter out of the market. So, those are the possible encroachments of which we are ever-vigilant and ever-fighting. Circumcision is another area where there are no bans, as such, but we know that there are people within the medical community and elsewhere, who are trying to ban circumcision. These are the areas where we are most at risk, I would say, in the carrying-out and observation of our religion. (David Frei, Registrar, United Synagogue *Beth Din*)

Another Jewish interviewee, when asked specifically about the impending ban on *kosher* meat slaughter in the Netherlands and a controversy about the legitimate Jewish organisation for slaughter in France, noted:

I do think that there is this, sort of, ground swell of opinion and Britain itself is pretty strong on this whole animal-loving thing and I don't think it's very well informed. You put the word 'humane' in an argument and everybody says 'oh yes, it's got to be humane'; they're completely swayed by that word on its own. It seems like there is misinformation out there as to what all these slaughtering issues are and I think the more the Jewish community, presumably also the Muslim community, try to educate the public, the more this tag of being inhumane will be overcome. I think it's a difficult atmosphere out there and I don't envy the people who are fighting that battle. Of course, Jews don't have to eat meat, they can be vegetarian [...] I think there is also an attitude of 'why can't they [Jews and Muslims] be like everyone else?' 'Why do they have to make all this fuss?' And also, you hear that about *halal* meat; the school that served *halal* meat to all its kids because it was simpler that way etc. and when that got out, there was an uproar; 'why are you giving our kids *halal* meat?!' Is it going

⁶ This is a reference to the decision by the UK Supreme Court judgment in *R (on the application of E) v JFS Governing Body* [2009] UKSC 15, [2010] 2 A.C. 728, [2010] 2 W.L.R. 153 in which it was held that to reject a pupil from admission to a Jewish school partly maintained by state funding on the basis that his mother was a convert to Judaism was a breach of the Race Relations Act 1976 (amended as a result of Directive 2000/43/EC).

⁷ This must be a reference to the legislative proposal in the Netherlands banning the slaughter of *kosher* and *halal* food. The proposal appears not to have succeeded in being passed through the upper house of the Dutch parliament in the end (http://www.dutchnews.nl/news/archives/2011/12/senate_says_no_to_ban_on_ritua.php). The UK provision dealing with exemption from the general slaughter rules are the Welfare of Animals (Slaughter or Killing) Regulations 1995 (implementing Directive 93/119/EC), Schedule 12 which refers to the Jewish and Muslim methods of slaughter but also provides specific rules about how such slaughter should be carried out and by whom.

to poison them?⁸ I think there is a sense that it's all too "other". (Judith Russell, Development Director, Institute for Jewish Policy Research)

The relevant EU instrument which comes into effect on 1 January 2013 is Council Regulation 1099/2009. Like the currently prevailing instrument, Directive 93/119/EC, it allows Member States to derogate from the general slaughter rules on pain, distress and suffering caused to animals. This would appear to enable different rules to operate in different member states whereas it might have been more advisable for European rules to have been agreed, perhaps based on best practice models available in domestic legislation where *kosher* and *halal* slaughter methods are provided for. Sayyid Yousif Al-Khoei, who also highlighted the necessity of greater options being made available:

They should definitely apply more sensitivity. For example, it is not unreasonable for Muslim women to demand single-sex swimming pools, or female doctors to deliver children or *halal* food in most communal places. In that regard, most certainly there needs to be a debate and serious consideration for the needs of Muslims. The Shia community is particularly marginalized to this extent; our specific needs are not recognized at all. Ultimately, however, it's a question of choice. People should be able to choose between observing secular law or religious law in areas where there aren't irreconcilable differences. (Sayyid Yousif Al-Khoei, Director of Public Affairs, Al-Khoei Foundation)

Interestingly, Al-Khoei also points out the risk of smaller communities more or less being ignored or marginalized as the larger or more influential ones manage to obtain recognition of their concerns.

Another instance of encroachment recently came about as a result of the Equality Act 2006 and the secondary legislation made under it, the Equality Act (Sexual Orientation) Regulations 2007, being applied to adoption agencies so that they could no longer refuse to provide adoption services to homosexual adopters.⁹ Charles Wookey explained the impact on adoption services provided by Catholic agencies:

I do think a better solution could have been found by the legislators[...]The single biggest issue was that it was a mistake to ever allow the legal system surrounding the whole question of adoption ever to come into the ambit of equality legislation[...] the purpose of adoption is to provide something which is in the best interest of the child – that is the beginning and the end of what adoption is about. It's not about providing a service to potential adopters. The problem about allowing adoption as a social reality to be brought within the ambit of equality legislation is that it completely switched around the focus. The focus of attention became the rights of potential rights of adopters. The legislation should have focused, all the time, on what was in the best interests of the children. That's the first mistake that was made. You then had a situation where the adoption legislation falls within the ambit of policy legislation. At the time the Adoption Act was brought in, previous to that, you had to have a married couple or a single person to adopt and the scope of potential adopters was widened by the legislation to include gay couples – a "couple" was deliberately defined in the legislation as being open to interpretation. What happened very quickly then was a move from it being possible for a gay couple to adopt, to a legislative framework in which it became illegal for an adoption agency to "discriminate" between a gay couple and a heterosexual couple as potential

⁸ This is a reference to the decision in some London Borough of Harrow schools to serve *halal*-only meat options: <http://www.bbc.co.uk/news/uk-england-london-10884787>

⁹ As noted at note 2, court litigation has also ensued but without the result that the Catholic charities wanted. See *Catholic Care (Diocese of Leeds) v Charity Commission for England and Wales* [2010] EWHC 520 (Ch) and, for the follow up, see *The Guardian*, Tuesday 26 April 2011.

adopters, on those grounds. I'm making a sociological point here, rather than anything else: you had a situation where, within ten years, you had a move, as a matter of law, from something which was legally forbidden to it being legally almost compulsory – which is a massive shift. There's a huge social shift that's taking place there. Again, and this is a sociological observation; you have these agencies which, in the beginning of the millennium, were operating perfectly consistently and according to the law, and all of a sudden, ten years later, their activities are discriminatory because they're not open to adoption by gay couples. How would one characterize the dispute? The dispute was well known at the time, but, broadly-speaking, what you have here is a clash of rights. You have two conflicting rights. On the one hand, the right of a gay couple, who may wish to become potential adopters, to go to any agency they wish, including a Catholic adoption agency – which, of course, is operating within local authorities and would be paid through public funds when an adoption takes place. So, there is a relationship with state funding and it is right that the state legislation should come into play. You have the right of a potential adopting couple not to be discriminated against when it comes to seeking the services of any adoption agency and helping them to become potential adopters, and you have to say 'yes, that is a *prima facie* right'. On the other hand, you have the desire of these agencies – which don't have the freedom under their own charitable trusts, because they can't choose not to be what they're not. They want to operate according to the Church's teaching, working with married couples and sometimes with single people, for the best interests of the children – because that's the way in which they want to operate. Thus you have an actual clash of rights. In the discussions we had with the government at the time, we proposed a compromise; which was that the Catholic agencies should be made to have a statutory requirement to refer any gay couple who came to them onto somebody else who would be prepared to help them. That would have allowed the Catholic agencies to continue to operate with integrity to their own ethos, and it wouldn't have, in any way, disadvantaged any gay couples who sought to become potential adopters. [...] the twelve Catholic agencies constitute only four per cent of the available agencies, so there was no practical sense in which any gay couple, who really wanted to become a potential adopter, was actually disadvantaged by the fact that some small number of Catholic agencies felt that they couldn't work with them and enable them to become potential adopters. So that was the dispute. I think there were several things that went wrong; one of which is that, in summary, it was a mistake that it was ever brought within the ambit of equality legislation – that's the biggest single thing. That having happened, I think the government, for whatever political reasons, didn't strike a proper balance between how do deal with these conflicting rights. Human rights legislation has very good phraseology around this: under the articles where one has qualified rights, is it a legitimate means of achieving a proportionate aim? [...] I think a reasonable, objective view of this would be to say it was a disproportionate reaction to actually say to these agencies: 'no, you cannot operate in accordance with your ethos.' It has produced great difficulty within the Catholic community; not all the agencies have actually closed - a number of them have, as it were, gone independent of the Church in order to continue to work with local authorities – but that's produced some difficult internal tensions which continue to be there. These agencies are having to struggle with competing goods; on the one hand, they're continuing services because adoption is a long-term business – you work with the children you placed and you continue to support them, and our agencies are very good, partly because they provide that long-term support for adoptive couples. So the whole affair was very sad and very difficult and it was actually avoidable. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

Suresh Grover, an anti-racism activist, spoke against the non-criminalisation of cultural practices, an issue which is relevant when considered in light of such a trend within the British and European legal contexts:

I think they should exercise more discretion and sensitivity, without any doubt. My proviso is that customs, practices, including religious ones, cannot and should not be interfered with by

the government. It cannot interfere with the privacy of family life; which may be based on religious customs and practices [...] How do you ban that cultural practice which still goes on? Do you criminalize it? No. I think you need to look at how you implement it rather than criminalize it. I am opposed to the criminalization of cultural practices. In fact, I am opposed to the criminalization of other [non-religious] practices as there is no sufficient educational value. The policies of anti-social behaviour which are criminalizing young people are absurd and counter-productive [...] I would have a constitutional framework where religious practices are allowed without discriminating against one spouse over the other. I think there needs to be a public discussion on this. (Suresh Grover, Director, The Monitoring Group)

Grover's comments, made in a more general sense here, are echoed by others in the specific discussion on banning of items of clothing (see further below). Tariq Ramadan also spoke against a restrictive approach and advocated the need for flexibility within the existing legal framework, thus:

We need to get a clear sense of what the laws are supposed to do – to get a sense of the cultures etc. We should now acknowledge the fact that British culture is more than white, middle-class culture; it's wider than that, so we have to take this into account. Not within the law, but the latitude offered by the law. We are strict with the law because we are scared when faced with these cultures or foreign religions. We are very restrictive with laws because we think Islam is a foreign religion. I think that attitude is wrong; it [Islam] is a British religion and this is why there is mistrust and lack of confidence.¹⁰ We should look within the law for room for manoeuvre; there are many ways we can find solutions, if only we want. (Professor Tariq Ramadan, Contemporary Islamic Studies, University of Oxford)

Ramadan takes the approach here that one should look for flexibility within a legal system rather than advocating changing it structurally to accommodate religious law, and issue which pertains to the discussion further below regarding the application of personal laws.

In other instances, concerns and apprehensions about the nature of legislation concerning family and marriage may be seen as a more subtle longer term issue about the type of signals the state is sending to society about what is acceptable and what is not. For instance, a Catholic representative noted:

One of the trends in this country, which is slightly complicated, is around co-habitation and the drift towards the Law Commission looking at making some kind of legal consideration for co-habiting relationships (for couples, for whatever reasons, who don't want to get married). The Church's view here on that would be: 'what is it about marriage that the couple don't like?' and 'why is it that they would want to co-habit rather than marry?' If you start by creating a legislative structure whereby there is some legal recognition given to co-habiting couples (a) there is an issue about whether you want to co-habit, or don't want even that; and (b) there is an issue about 'are we setting-up two institutions now, one called marriage and the other called marriage-*light* or something?' I think where there would be continuing discussion around the signal that's being sent by the civil law; law always sends signals to society – it's a key function that it has – about the importance of marriage and the place that it has in the long-term. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

The position taken here reflects some unease about the drift in Western legal systems towards cohabitation and away from the type of marriage relationship which the Churches would have sanctioned, and which Western legal systems have historically co-opted by their legislation.

¹⁰ The idea that Islam is a foreign religion has been expressed occasionally by British judges. See for instance *A.M. v A.M.* [2001] 2 FLR 6, Hughes J at p. 23, a case of an unregistered Muslim marriage.

One respondent put the issue in terms of the concept of ‘reasonable accommodation’ which is gaining ground in European jurisprudence:

I think there should be reasonable accommodation. I think the law should make some accommodation where it can, and where it’s not hurting anybody. How do you define that? Well, that’s difficult [to do]. The law should try to take into account peoples’ beliefs and allow them to be treated slightly differently, if it’s not going to put anybody out. That principle should [then] apply equally to everybody. (Paul Pettinger, Chief Co-ordinator, The Accord Coalition)

The question of reasonable accommodation came up again with respect to finding the correct balance for religious concerns within the workplace, and it is addressed further below.

Methodology

The interviews

The UK team conducted 27 full interviews during the period March to September 2011. A list of the interviewees, their backgrounds and contacts is provided in Annex I of this report. The selection of interviewees primarily depended on our being able to reach respondents within the various categories originally agreed upon. For example, with some exceptions, we could find few politicians (either at the local level, or in the House of Commons, or the House of Lords) or judges at any level who were open to an interview. Those in trade unions were difficult to reach while some business persons are included even though their main occupation might be described more appropriately, for example, as media representatives. Our group of interviewees is therefore mainly composed of persons who work directly on behalf of a religious or ethnic community as functionaries within their organisations, as educators, or as public intellectuals who take a particular interest in that field. While not perfectly ‘grassroots’ voices, these interviewees were on the whole, and subject to a lack of knowledge of particular specialized fields, fairly informed about the affairs of the religious communities with which they were concerned. There are few representatives of outwardly ‘secular’ organisations among the interviewees. A chief reason for this is that our efforts were directed to securing as wide a picture of diversity of belief and background as possible and we did not want to over-represent secular spokespersons within this array of voices. It is far from clear who such secular people represent and whether they have a constituency beyond their members although they are often the most keen to make their voices heard on religious issues.

WP3: Family law

The judicial role in the context of diversity

Asked about the general approach of the courts with respect to cultural and religious diversity issues, a Court of Appeal judge, in somewhat of a contrast to the view taken by Munby LJ (above), stated:

We don't have any problems [with people from different cultures] because we are quite rigid in applying the law. We're very firmly resistant. We only refer to English law. We are not prepared to co-opt in negotiation - we do that in commercial [law] not in family [law]. In our system, foreign law has to be proved but very seldom do we look at it, unless there is a special application – but this is very rare, virtually non-existent. I haven't had any appeal in the past 15 years that deals with this area.

This image of a more or less uniform system is possibly explained by the fact that very few issues that directly raise cultural and religious diversity issues tend to come before the Court of Appeal while the lower courts may have to deal with such issues much more frequently. Although, the view taken somewhat differs from the expectations that other interviewees had of the legal system and its need to retain flexibility, the same judge, when pressed on the question of how cultural and religious issues can be dealt with by the courts, noted:

If the court is inexperienced or ignorant in any area that must necessarily be investigated, [which is] influential in judgment, [then] the availability of an expert is crucial. A judge who is unfamiliar is eager to find an expert. And if they felt the need [for experts] they will consult [...] [As a Court of Appeal judge] I don't sit at first instance, but all family judges are extremely experienced in receiving expert knowledge – in the case of a child; a treating doctor, social worker, etc. We're used to very high quality expert evidence [...] The bulk is medical evidence. But if there were some cultural elements in need of exploration, then you instruct an expert with a profound understanding of that culture [...] The important thing is to identify risks against which the child needs to be protected. I think it's quite rare. Expertise, for example, on *shariah* is easy to come about (SOAS) [...] A member of the bar is also a relevant avenue to explore. There are plenty of capable, competent barristers from that particular background [...] I've never heard of any complaint in the lack of expertise. In my opinion, it works out pretty well.

Some background factors here may explain the general thrust of this judge's responses. The English legal system applies the *lex fori* in matters of private international law but does not treat the *application* of foreign law as being of importance (as it is in some continental European jurisdictions), except where the issue is the evaluation or recognition of a legal act abroad (is it a valid marriage, etc.). These issues of foreign law, which are generally regarded as matters of fact for English law, remain important in transnational cases. However, issues of culture and religion also come up as a matter of ethnic minority customs, cultures or religions rather than as 'foreign laws'. When they do, it can become a matter for expert evidence on cultural/religious background and, as the judge points out, this often occurs in children cases.

A Jewish Reform rabbi took the following position in trying to balance the expectations of respect for culture and the difficulties that judges might face:

I think there has to be sensitivity to everybody's cultural status when they come before a law court, for any reason. But I think that it is within a judge's right – and has to be – to be able to say "I can only understand this to a limit" - they can't be expected to understand two thousand

years of a religion they've never been part of, and I think that's okay as long as there is a sensitivity that they are acknowledging that they are unable to get past a certain degree of what is required. It's the job of judges to uphold British law. Therefore, it shouldn't be that they cannot uphold British law if they can't understand the sensitivities in their entirety. (Rabbi Miriam Berger, Principal Rabbi, Finchley Reform Synagogue)

On the same point, Tariq Ramadan noted, also highlighting the need for judicial latitude within a general framework of law:

There are two things, we have to be very cautious [about this]; first, the law of the country should prevail. Now, within the law of the country, there is room for interpretation, in which way you can learn how to integrate – so it's not black and white. There is room for manoeuvre [but] the law of the country should prevail. But still, sometimes you have to get a better understanding of the customs and traditions [...] as in anything that involves imposing decisions, we should look at the latitude before we make a decision, which I think what judges are or should be doing. (Professor Tariq Ramadan, Contemporary Islamic Studies, University of Oxford)

The editor of a Bengali weekly newspaper brought in the issue of *shariah* councils (see also further below) in response to a question about how courts should deal with the problems thrown up by non-recognition of religious law by the courts:

This is a very complicated issue and I think more research needs to be done on this issue. I know people are having these kinds of problems and we are having problems as well. On the one hand, you have English law, and on the other, as Muslims, we have *shariah* law also. I understand that there are *shariah* councils that exist within Britain at the moment, so what Islamic scholars are suggesting to us at the moment is to consult them if we have problems in this regard. But, at the same time, I think judges are having problems in trying to deal with these *shariah* councils. Some judges do not accept the dictates of *shariah* law; you cannot expect *shariah* law to be accepted by judges in court as it does not conform to the laws of the land. I know of a couple of cases, that I am personally witnessing, where one party went to the *shariah* council and the other party went to the state law courts so that they could get their fair share of the houses etc. So I think more research needs to be done on this issue, also I think English law should work alongside *shariah* law. I think more work needs to be done on this one. (Nobab Uddin, Chief Editor, Janomat Bengali Newsweekly)

Question of religious laws and legal pluralism

When asked about the challenges faced by his community, including whether key legal issues were involved as a matter of state law and Jewish law, one Jewish spokesperson noted:

I don't really perceive these as legal issues. I'm very interested in the history of the German Jewry, where my family comes from; I've done a lot of reading and a certain amount of research about it. It's clear, then, [that] until Bismarck, there was no equality of rights [in Germany] and, even then, even through the Weimer period, it was unstable. But it has not really struck me that Jews are limited by the law in this country. I haven't found or encountered that in the life of my community as being an issue. I haven't found people coming and saying 'this law is unfair'. There are laws in the Human Rights Act where there is a question about whether European law will dislodge the kind of tolerance shown to religious organizations; for instance, that there are religious organizations that justifiably serve their own membership, care organizations that operate for Jews, for Muslims or for Hindus. The equality law may enter the domain of religious tradition, so I think there are concerns in that area. There have also been concerns about the Race Relations Acts (which the Jews have been very involved in). And there are also issues relating to law and incitement and freedom of

speech. I think those are big concerns but, primarily, I think there is a long tradition of creating reasonably acceptable boundaries between religious law and state law in Judaism. In the early third century, the scholar Samuel, created the phrase ‘the law of the land is the law’ and it was originally related to paying a kind of poll tax or head tax; you had to pay it and you couldn’t just ignore it, but it’s been used, frequently, as the guiding principle [in these matters] so long as the law of the land doesn’t displace religious law in matters of marriage, in death, in festivals and keeping *kosher*. The law of the land, in terms of its broad civil law has been accepted by Jews for generations and generations. The Jewish community has got a much longer tradition of diaspora. (Rabbi Jonathan Wittenberg, New North London Synagogue)

While Rabbi Wittenberg conveys a message of his community’s satisfaction with the operation of the official legal system we can also see reflected the kind of concern seen above with respect to the encroachment of state norms through the equality laws. Rabbi Wittenberg further explained the generally favourable attitude of Jews to modern Western legal systems:

There have been various reasons why Jews, by and large, tend to be pro-Western. First of all, the same move in political consciousness that made for the Enlightenment and that wrought universal suffrage, also brought civil equalities to the Jews, for the first time, after two thousand years of exile. Jewish journalists, lawyers, have been in the forefront in the battle for equality across Europe; a figure like Heiner in Germany (first half of the 19th century) is a good example, as well as his colleague Bellner. (Rabbi Jonathan Wittenberg, New North London Synagogue)

A response of the necessity of recognition of religious law from a Muslim interviewee was somewhat more marked in terms:

Muslims in this country have been campaigning for a long time for the acceptance of certain aspects of *shariah* law, particularly in the realm of personal law – laws in respect of marriage, divorce and inheritance. We are not asking for the introduction or the acceptance of Islamic criminal law in this country. They may be some single, isolated voices in this regard, or maybe the media has been enjoying this sort of hyperbole; that *shariah* means chopping the hand, stoning to death and things like that. But as far as I know, and I have been here for the past 35 years, I do not know of any Muslim organization demanding the law of *hudood* [Islamic capital punishment] to be implemented in this country. Of course, there are Muslim girls and boys who have been brought-up and educated in this country who ask the valid question: “Look, I’ve been playing and going to school and university with my non-Muslim white neighbour, she only needs one set of marriage laws and one set of divorce laws, why, as a Muslim girl in this country do I need two sets of marriage laws and two sets of divorce laws, why am I being discriminated against?” They don’t know anything about *shariah* law, they don’t know all the details of English law, but simply, what they are asking is why are they being discriminated against for just being Muslim even though they’ve been born and brought-up in this country? And this is a valid question. This question is not only important for the Muslim community; I think this question is relevant for politicians, for local authorities and the government of this country. For that reason, I think the Archbishop was quite right as he only really raised this question in trying to alleviate this injustice within mainstream English law. By incorporating aspects of Muslim law, British Muslim boys and girls can receive some equal treatment. So I think that was the purpose of the Archbishop’s speech, as far as I understand it. But I think that the media high-jacked it and made a lot of noise to the extent that they were calling for the Archbishop’s resignation or suspension, which was very sad to see. This poor man was perhaps saying the right thing at the wrong time – that’s how I see it. As far as the *shariah* is concerned, I can see *shariah* aspects of finance are now being offered by high street banks, not only Islamic banks. In this competitive market, there are high street banks that are offering *shariah*-compliant products, mainly to Muslims. Therefore, *shariah* does not need to be treated as something necessarily

alien to Britain as they are some complimentary aspects. I'm not demanding anything other than a fair, transparent, inclusive discussion - within the media, left-wing, right-wing etc. – let us discuss it. Why are we not prepared to have some sort of interaction on this issue? It should not be considered as an Islamic issue or Muslim issue; it should be treated as a British issue. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

Rabbi Wittenberg offered an explanation as an outsider to the Muslim community about perceptions of Islam and the *shariah* among non-Muslims:

The history of Islam in the West is kind of different and I think, from the outside, there are questions. Although Islamophobia is condemned, I think people are anxious, uncertain and not clear what nature of balance is looked for between some of the key features of Western society; free speech, equality of women, and very broad areas of freedom of moral choice and Islam. The Muslim community is also very, very nuanced and very complex and one can't talk about "a" Muslim community, so even though I have quite a number of contacts within it, I feel completely ignorant about what [Islam] actually is. If the Jewish community is complex, the Muslim community is getting on for a hundred times the size. So it's very complicated and I don't think the Muslim community itself knows the answers to these questions in any way and I think they're begging some kind of focused consideration. I think debates about the *shariah* councils etc, are extremely important debates and I think they're full of difficulty. I knew Zaki Badawi very well, but I think, since his death, there doesn't appear to be a leader [in the Muslim community] with the same kind of voice that he had, or the same kind of authority (although I don't know what kind of authority he held within the Muslim community) [but] he was a very, very, broadly respected figure in the wider intellectual and legal circles in Britain.¹¹ I think non-Muslims find it hard to know what the intentions of the Muslim community are. Fears run high about the complete rejection of Western values; what is the role of militancy within Islam and what are the proportions one's talking about? How big a phenomenon is militant Islam? Is it marginal? Is it not marginal? I think people, including me, just don't know and therefore don't really know what to say. (Rabbi Jonathan Wittenberg, New North London Synagogue)

Specifically with respect to the raising of the question of religious law particularly as it concerns the relationship of Muslims with the official legal system we noted the speech of February 2008 by the Archbishop of Canterbury. It appears that respondents were generally supportive of the position of the Archbishop especially from the point of view that he was misunderstood. An Anglican respondent active in Inter-Faith dialogue said:

Much the same as with Multiculturalism. It is very easy to stick up a cardboard cut-out of what we thought he said and knock it down. It is quite different if we actually read what he did say. Part of the problem with that was that it wasn't marketed well. He is an academic, first and foremost, he's not a celebrity who can go on "World at One" and do a thirty-second sound-bite; he works in twenty-minute lectures, at the very least. For me, the issues that he was dealing with in that lecture are the challenges that I work with day-by-day in [the London Borough of] Tower Hamlets. How do you engage with different religious and cultural understandings that have been through different histories, different social contexts, and therefore, represent not only different theological principles, but have come to different points of exploring that theology within modern or social terms? For example, the place of women within a religious culture: I've grown up through the 60s and 70s, challenged in my own thinking, both as a man and as a member of the Church, about the position of women within our society and within our religious institutions. I have come through that very much

¹¹ Among the many positions the late Zaki Badawi (d. 2006) held was the Chief Imam of the London Central Mosque in Regents Park and chair of the council of imams and mosques. He was a key figure in the setting up of the Muslim Law Shariah Council in Ealing in the early 1980s.

supportive of [the] Feminist line of equality, that is of a particular Western understanding. That, then, was rather threatened, when I first came to Tower Hamlets and seeing so many women walking behind husbands, wearing veils out on the street; expressions of a different culture and a different religious understanding. Is the response to that to say the values that I have are Western liberal values, and that, therefore, we must impose those Western liberal values on other people? Or is it to say ‘here’s a culture moving in a different direction, from a different perspective, from a different geographical region, and that that has to be worked with, that has to be listened to?’ You find means that create dialogue about how that feels to each other that are not about the imposition of standards. What are the consequences of that way of working, not only in terms of mutual respect on the street, but in terms of how we allow a community to set its own rules? That’s quite a complex area. I think [the Archbishop] was doing an incredibly good job in exploring that approach to community ethics and law. But I don’t think it was well understood [...] The issue about the connection of ethics and theological belief is difficult all round. The Church of England is a much broader church than the Roman Catholic Church. And so we have our own difficulties with those who accept abortions and those who don’t; with those who accept homosexuality and those who don’t. We will have open discussions about those within the Church of England; which make it look as though we can’t agree on anything, whereas [I think] it’s about open debate. To take that wider sentiment, that is certainly a difficulty between the faiths and it is something we come up against in Inter-Faith Forum from time to time. (Alan Green, Chair, Tower Hamlets Inter-Faith Forum)

Charles Wookey, from a Catholic perspective, also noted that there had been a misunderstanding of what the Archbishop was trying to say:

Well I think he was misunderstood, and he made that very clear later on. He was not advocating that *shariah* law should have the force of civil law. My understanding was that he was simply noting the fact that Muslims in this country sometimes make use of the *shariah* courts to settle issues between them. In that respect, the use, by Muslims, of Islamic principles and structures, is no different from that of the Jews or Christians. The Jews use the *Beth Din* and, in fact, under the Arbitrations Act, the agreements [...] are actually legally enforceable in civil courts in a way that no Muslim agreement is. Of course, we have our Canon law; our canonical marriage law, in every diocese in England and Wales, don’t have the force of the civil law, but they are mechanisms through which the Church, perfectly legally and within the structures of civil law, operates its canonical procedures for people who chose to make use of them.¹² I don’t see that there was any problem at all really in what Rowan Williams said, I think he was completely misunderstood. But the misunderstanding goes back to a real fear, which is not entirely unsubstantiated, given what some Muslims in other parts of the world say and what indeed happens in a number of Muslim countries – where you do have the imposition of *shariah* law and some aspects of *shariah* law, which people find very, very disturbing indeed (in terms of some of the punishments that are there and the use, particularly in Pakistan, of blasphemy legislation). I think it wasn’t unreasonable that people got slightly jumpy, but I think it was just a misunderstanding.

A Muslim writer, publisher and public intellectual reflected as follows on the question of the acceptance of *shariah* as part of English law:

Shariah, as understood and constituted by many traditional *ulama* [Islamic legal scholars/jurists/theologians] could be incompatible with national legal frameworks, or at least by activist Islamic groups, if they see it as something that must be codified through secular state law and structures. But, nearly all [activist] groups, with the exception of a few from the fringe, don’t actually believe in that proposition. A minority of *ulama* in Britain think that the

¹² The study by Douglas et al (2011) also covers the operation of the Catholic Tribunal for Wales.

Anglo-Mohammedan law in British colonial India provides for a model for British Muslims – how they should engage with them in more normative terms. But this is a minority view as well, it was more common about thirty years ago, certainly most *ulama* these days don't seriously advocate that either. Neither the flag of *shariah* flying over Number 10 [Downing Street, the British Prime Minister's official residence], or some rehash of Anglo-Mohammedan law is on the table. The MCB [Muslim Council of Britain] used to want to extend the blasphemy law to Muslims; that law was repealed in 2008.¹³ Instead, they got a secularized law against the incitement of hatred against someone's race or religion in the Act of 2006¹⁴, which is something entirely different – it is not an extension of religious law or values as such. All these groups have learned the hard way that calling for *shariah* in a blunt way will never work in this country. They're slowly coming to realize where English common law may accommodate some aspects of *shariah* law. For instance, in civil law, arbitration of disputes, arbitration law and some tweaking of financial institutes in the City that allows England to be an international competitor in the global Islamic financial industry – there are elements where the two systems will not clash and overlap. [...] For me, this is still an area where whatever the interface would be between *shariah* values and English common law is still to be fully articulated or institutionalized. I still think after fifty years we are still in an early stage of development so it's hard to say which way it will go. I don't think they need to be in conflict, I think they can be brought together. The most important development however, does not lie in the development of *shariah* courts, the most important development will lie in the intellectual framework and public and theological language that Muslims use to frame and present their religion in the public sphere. That will be of more importance. For instance, in people like Tariq Ramadan, Hamza Yusuf or even some of the most traditional scholars, there is a shift in the language from law to ethics. In other words, stop talking about what is lawful and what is unlawful, stop talking about what is religion in terms of rules, start talking about religion in terms of virtues, in terms of ethics, in terms of values, in terms of qualities of the heart. The Aristotelian tradition of Islamic ethics. That kind of language will fit more in a secular national public sphere than a language that sounds like you want to set up a parallel legal system. That's where the critical point is; I'm not saying that community leaders don't use the language of liberal rights [they do]. Inside the community, however, scholars use the language of religious duty, they need to articulate that language in the public sphere as well. At the moment there is a critical disjuncture between public language and subaltern community public language which they need to think about – they need to raise the level of public discourse and subaltern public discourse. (Yahya Birt, Trustee of City Circle/Commissioning Editor of Kube [Islamic] Publications)

The themes of religious law and legal pluralism were fleshed out in more detail in response to the questions regarding specific issues such as the marriage, alternative dispute resolution, and divorce.

Marriage law and registration

Under English law marriage can be solemnized in a number of different ways. Marriages in Anglican church are ipso facto recognized as official marriages. Jewish and Quaker ceremonies of marriage are recognized and leading to valid marriages. For others, English law assumes that they will register their marriages in accordance with criteria laid down in the Marriage Acts 1949 (with subsequent amendments). Recent reforms have allowed non-religious buildings to be registered for the purpose of

¹³ The Criminal Justice and Immigration Act 2008, section 79 abolished the common law offences of blasphemy and blasphemous libel which applied only to Anglican Christianity.

¹⁴ A reference to the Racial and Religious Hatred Act 2006 which adds an offence of religious hatred to the existing provisions on racial hatred although with a higher standard than for racial hatred offences as to gravity of offence. See Sandberg (2011: 139-144) on the 2006 Act and the abolition of blasphemy offence.

marriage. Solemnization must still be conducted by a recognized registrar.¹⁵ Effectively, this has meant that different groups are subject to different rules for marrying, while members of some religious minorities are obliged to ‘marry twice’ (in the ‘secular’ ceremony and then having a religious ceremony according to the rites of their communities).

The question of state interest in marriage law as currently implemented was addressed in the following manner by an Anglican interviewee:

I think the “why” is an important question. There is a premise in English law which one could resent when its applied to a minority or more recently arrived communities but actually there is nothing particularly patronising about this. For example, a vicar announces three Sundays before a given marriage [to the congregation] in order to invite objections. I do it to this day, I ask publicly whether anyone has a problem with a particular marriage; this is designed to eradicate the possibility of bigamous or coercive marriages, for example. These steps have to be gone through to give people the opportunity to flag any potential problems. There must be witnesses. These protections have been built up over the centuries and I agree they look like a bizarre hang-up but there are good reasons for them. Such safeguards are in principle a good thing because they prevent marriages occurring as a result of coercion etc. The safeguards which the state finds the most effective are the ones that are implemented by English law. I am, for example, subject to serious sanction if I conduct sham marriages. I am bound to obey the law, Her Majesty, Her parliament, if I let a marriage happen without state endorsement, I would get sacked. It’s my job to ensure that the law is observed for the safety of the couple. In principle, that seems to me, fair, how you exercise it is a matter of debate. I can also foresee, that in practice, for all sorts of reasons, this apparently heavy-handed approach by the state may compel religious communities to do their own thing. But the point of the law is to prevent married couples from being exploited and abused. (Robin Griffiths-Jones, Master of the Temple, Temple Church)

Interestingly, the same justification for state oversight in the conduct of marriage appear to Robin Griffiths-Jones to lie at the heart of why some communities tend to avoid the state-sanctioned way of getting married. If this is so, then there may be a particular tension, or even a contradiction, involved in more effectively bringing the marriages of some communities under the official framework. Another respondent highlighted the Christian underpinnings of marriage, also advocating some rethinking of it:

I think one can make a case for uniform application for, shall we say, the “principles” of marriages. Although, of course, I think the principles, even of a civil marriage here, are very Christian-based; one can hear it in the words used by registrars when they do their stuff. So you get a sense of the Christian heritage, as it were. If that’s problematic for people, then maybe there’s a case for (not a unilateral body to say ‘we’re going to follow our system and not anybody else’s’) but perhaps for the modification of the statutory system. It’s not a question on which I have a clear set of thoughts. I think so long as people (and particularly women) are not subject to abuse by the way in which their communities carry out marriage, then I guess it’s, on the whole, okay. But it has to be approached with a great deal of care, given that we are, in the end, governed by the European Convention of Human Rights. (Barney Leith, Chair, Faith-Based Regeneration Network)

¹⁵ The Marriage (Registration of Buildings) Act 1990 deleted the requirement to have a separate building as a registrable place of worship thus making it more flexible to register places of worship for marriage, and the Marriage Act 1994 allowed registration of ‘approved premises’ other than religious buildings or local authority registries.

From a Humanist perspective, David Pollock offered a view backing a uniform and seemingly simpler registration system which allows some degree of differentiation or adaptation in the practice of marriage registration:

On principle, I am in favour of a legal requirement for all marriages to be simply registered with the registrar. Not necessarily with any ceremony at all. The celebration can be done however the couple wish. That is the situation in many countries in Europe and that's what I'd advocate for. In practice, in some countries, the idea/tradition of religious marriages is so entrenched, both in the culture and in law, that it is impossible to see a change happening in several generations, and that includes England. So here, I line-up on the neutrality rather than the separation side of things (the definition of secularism, etc.). Given that religious marriages, by and large, are recognized by the state by one means or another, then Humanist marriages ought also to be recognized by the state. That is, arrangements should be made either for Humanist celebrants to be registrars in civil law or for registrars to attend and register the marriage, as it were, in the vestry afterwards (which is what happens with some denominations). I think my preference would be for universal civil registration. (David Pollock, President, European Humanist Federation)

There is now a wider recognition that a large percentage of marriages among Muslims in particular are unregistered with some estimates citing a figure of some 80 per cent in some parts of Britain. One Muslim representative noted:

I am not able to verify the percentages of un-registered marriages that you just cited, but definitely through the *shariah* council we know this phenomenon to be true. Just before you came, I had a meeting with an applicant who came here to seek our assistance; her marriage was not registered. So there are many cases where Muslims do not register their marriages. The reasons may be ignorance or not taking it very seriously or, in some cases, we have discovered that husbands deliberately avoid registering marriages because they want to avoid any obligations in English law. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

A multiplicity of reasons appears to therefore lie behind the non-registration of marriages by Muslims. Another reason cited and elaborated upon by the same respondent was as follows:

There is a very small group which preaches that it [registering marriages] is against Islam because, by going to the registrar, they will be contravening their beliefs in one God because God is the sovereign and we cannot accept anybody, apart from God, as our ruler or administrator. These Muslims claim that registering their marriage is classed as *shirk* [polytheism] or at least *bida'a* [non-Islamic innovation] – but this is a very small group, however they do exist. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

Such an explanation again refers back to the fact that for some faithful Muslims, there is perceived to be a difference between the obligations under civil and religious laws to the extent that the religious law has to give way to the state law. The plurality of views and the resultant ambiguities were highlighted by Ghulam Rabbhani:

Some [Islamic] scholars, some time ago, even big scholars, they argued that a civil marriage is the same as a religious marriage. But some others scholars differed; they insisted on Islamic rites. I can't say who's right and who's not but even the scholars have their differences. I think it depends on the people involved - how religious they are. Some people have more religious knowledge; maybe to them a religious marriage is more important. However, when these issues go to court, it's always the British law that is implemented. The law of the land always overrules. (Ghulam Rabbhani, General Secretary, Harrow Central Mosque)

Presumably aware that there are such differences of attitude among Muslims, a respondent from the Ahmadiyya community noted, in a response which also links up with the question of reliance on foreign or jurisdictional law (see further below):

Very simple; we don't distinguish between anybody here. What we say is, if you do not have a registration certificate from the UK, we will not perform your *nikah*, in this mosque, or any of our mosques. So basically, you have to have gone through the UK registry office, have your marriage registered, before you come to us for a *nikah*. Unless we have that form, it's not going to happen. So there is no question. The legal order of the citizen must prevail. (Mohammed Nasser Khan, Vice-President, Ahmadiyya Muslim Association UK)

This stance does not of course prevent Muslims, or Ahmadiyyas in particular, from marrying anywhere other than in a mosque and without an imam. On the subject of what to do with helping Muslims to register their marriages on a routine basis, Maulana Shahid Raza noted:

The proposal of providing the facility of registering marriages through mosques and Muslim organizations is a very good one in my opinion, but before we go for that we need to put our home in order – there is a lot of mess in our mosques, there is a lot of mess in the service of Imams in this country. [Currently], there are no self-regulations employed on our mosques or the employment of Imams at all. If we ask for that [marriage registration] facility being provided through mosques and Imams, straight away it could create other problems, not only for the government, but also for the Muslim community. It is indeed a very wonderful proposal, but before we do that, of course, we will be proposing some training for mosque managers and Imams who will be serving as registrars. However, I'm confident that we can work it out; I think most of the mosques will welcome it as something positive. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

A Baptist pastor noted, however, that there could be problems if registration is associated with a place of worship for a specific religion because of the tying in to the state's marriage regime that that would entail:

Depends how you look at it. For example, in our church we have difficulty because if you register the church, anybody can go there and get married. If the couples don't fall into the realm of our faith structure, we can be sued. I don't think a mosque, for example, should be forced to allow Christians to get married there. I don't think Christians who have a belief that marriage should be between male and female should be married by someone who believes anything different to that. All religious communities have rules, and these rules must be respected. The community of faith should be protected over the individual in that setting. (Mark Shelton, Pastor, Cross Street Baptist Church)

Nobab Uddin also pointed out the differences and potential clashes between religious rules and the civil system, when responding to the question about whether marriage systems should run in parallel or whether religious marriages could gain official status:

That's a very difficult question because you are Muslim and British at the same time. As a Muslim, I have to respect Islamic principles. At the same time I'm living in Britain; I have to follow the rules of the country, which are slightly different [from Islamic laws]. Because we are living in a multicultural society, I think both laws should ideally work together and come to a common understanding. If you look at Christian marriage, they don't believe in gay marriages. Similarly, Muslims don't believe in gay marriages. So the law should take these aspects into consideration and find conciliation between the differences. (Nobab Uddin, Chief Editor, Janomat Bengali Newsweekly)

Barney Leith offered a perspective from his Baha'i faith, which brought in the differences in the different British jurisdictions:

Again, this is an interesting one for me as a Baha'i because, to give an example, the form of conducting a Baha'i marriage is recognized in Scotland and Northern Ireland but not in England and Wales. Because the law is different in Scotland, it's different in Northern Ireland, and it enables for there to be what they call "marriage celebrants". So the Baha'i community can have marriage celebrants who can do pretty much everything except the actual legal registration; that has to be submitted but it's submitted on a documentary basis to the registry office. But in England and Wales, the registrants have to go to the registry office as well as have a Baha'i ceremony. In England and Wales, it's a *place* that's licensed for marriage. In Scotland and Northern Ireland it's a *person* who's licensed to carry out the marriage. (Barney Leith, Chair, Faith-Based Regeneration Network)

On the question of whether religious and civil marriages should run in parallel or whether religious marriages could replace civil marriages, Rabbi Berger highlighted the need for a discussion on how religious groups could celebrate marriages in conformity with their traditions, with the state following that rather than setting rules unilaterally:

I don't think that any religious wedding should have to be superseded by a civil wedding. I think what's important for a couple is that they're making commitments and vows to each other in a format that works for them. But, I think that British law needs to move along with that and be able to recognize and have that dialogue with religious groups and be able to say "what would we need to do to be able to bring these two ceremonies together"? What would you need to be able to conform to and what would the community need to offer? (Rabbi Miriam Berger, Principal Rabbi, Finchley Reform Synagogue)

Barney Leith meanwhile posed the converse dilemma of having no secular, civil marriage law as is the situation in some Middle Eastern countries:

I'm going to leave aside the question of 'should', because, at the moment, they do. I've already illustrated some of the potential problems in terms of the need for, apparently, rather arbitrary reasons, to separate religious and civil marriages in this country, whereas in Scotland and Northern Ireland, that is not the case. In Northern Ireland, we have to add a line to our very simple Baha'i marriage contract to satisfy the legal requirements. The statement that has to be made by the marrying couple in Northern Ireland is that they are both willing participants in the process (I guess to outlaw any attempts at forced marriage); that's fine, it's not a problem for us. I can think of other countries where there is no civil marriage and it can be very problematic for communities that don't meet whatever conditions the "religious state", as it were, sets upon marriage. And this certainly impacts my own [Baha'i] community in certain parts of the world. So, the absence of a civil system as a parallel can be very problematic. If you're going to have religious marriages, I think you're certainly going to need to have at least a parallel civil system; not least because the majority of people probably choose not to have a religious marriage in any case. There needs to be some kind of civil oversight of religious marriages to make sure that they're not being abusive. (Barney Leith, Chair, Faith-Based Regeneration Network)

From a Jewish perspective, David Frei reminded us that in English history too, the assumption used to be that marriage was a religion-only affair and that marriages were tied into the a secular uniform system allowing the parallel performance of the civil and religious ceremonies:

We have it in parallel; I have no problem with sticking to that. I don't think the Jewish community has ever asked for our divorces to be recognized in civil law. Interestingly enough, I believe that before 1837, Jews were first given the rights to register their marriages under

English law and to conduct marriages according to Jewish law (so that you could get married religiously or civilly); before that, the Jewish community was left on its own completely on the side. Because, of course, marriage law in this country was very much Christian, it was based on Christian doctrine, divorce was almost impossible. Jewish divorce was actually accepted by the courts as a valid divorce, even in those days - the pre-1837 framework. Once you got the 1837 Registration Acts, then it became very difficult to do that, we came under English law. I don't think there has even been a clamour, certainly in the last eighty to a hundred years, to suggest that a Jewish divorce *per se* counts as a civil divorce. There hasn't been a demand for it and nobody's asking for it. (David Frei, Registrar, United Synagogue *Beth Din*)¹⁶

As discussed in the section on divorce further below, some action has been taken by British judges and the British parliament to cater from the non-recognition of the Jewish divorce, the *get*, in English law. The matter is therefore not as cut and dried as might appear. A Catholic respondent also linked the question of parallelism to the possibility of bringing together as closely as possible the multiple ways of getting married:

I think there is a distinction between religious marriage and civil marriage, and it's important that that distinction be retained, basically, to respect religious freedom. It's important that you shouldn't have to be religious in order to get married, but if you are religious, you may wish to have a ceremony in which your marriage is, in some way, brought within the ambit of your faith. Many of the faiths have wonderful ceremonies by which that happens, and that ought to be recognized. Therefore, ways need to be found in order to both fulfil the civil, legal requirements of any statement, when it comes to the registration of any marriages – which is, after all, a contract in civil law – and, at the same time, to allow the religious rituals and practices to be respected as well. Sometimes, imaginative ways can be found to do that; you can have one service which does both, sometimes you might have two. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

David Pollock drew attention to the necessity of registration into the civil system in order that a weaker party, usually a wife may be protected by the state:

The potential problems are fairly evident; religious marriages, are not recognized in civil law, and so all the mass of statutes and common law concerning what happens when the marriage breaks down (because, after all, the law has very little effect on the marriage while it's still prospering) then the law typically steps in and sorts things out. With a religious marriage, it can't. So I wouldn't want to prevent people having a religious marriage only, but I would want to ensure that they understood the consequences of it. And the consequences are, I think, universally not beneficial. I don't think there's much advantage, except for the husband who wants to be able to divorce his wife at a drop of a hat and walk away, and I don't have much sympathy with that. (David Pollock, President, European Humanist Federation)

The Chief Editor of a Bengali weekly newspaper expressed some criticism about the discriminatory manner in which the freedom to marry varied depending on one's foreign status:

Recently, the Home Office introduced a new regulation where one cannot bring their spouse to the UK if they are not over the age of twenty-one. However, in England, you are allowed to get married when you are sixteen. So at the moment they are applying two different laws, one which discriminates against people of foreign origin who have British partners – specifically against ethnic minorities. There was a case in the High Court when a non-European immigrant (I think he was Turkish) wanted to bring his wife but the immigration officer

¹⁶ For details on the reforms of the 19th century and the debates within the Jewish communities, see Freeman (1981) and Finestein (1993).

refused his application because his wife was nineteen at the time. The High Court then ruled that the Home Office has to now review this discriminatory marriage law. Therefore, I think marriage law needs to be reviewed because at the moment it is unfair, it is not applied indiscriminately even though they claim that it is. Ideally, I'm all for homogenous marriage laws, but the fact of the matter is that this is only empty talk; the law discriminates against ethnic minorities. (Nobab Uddin, Chief Editor, Janomat Bengali Newsweekly)¹⁷

Dispute resolution on a religious basis

Issues of marriage breakdown were often discussed in the context of alternative dispute resolution, in particular, on a religious basis. Evidently there is a long history of the various sectors of the Jewish community in Britain operating Batei Din (sing. Beth Din) and they are nowadays often compared to what the *shariah* councils are doing, and in some respects are a model for Muslims.

There has been a Beth Din in this country for well over two hundred years. The format of the Beth Din has changed from time to time. I would think that in the early years when the Chief Rabbis sat with a couple of Rabbis alongside them, for such formal matters as divorce and conversion and also for court cases. They [the rabbis] weren't necessarily full-time employees in those days, but have been [full-time employees] for well over a century. (David Frei, Registrar, United Synagogue *Beth Din*)

David Frei also explained how Batei Din within Britain, and in different countries where Jewish communities are long present, differ from one another:

England, in general, has a particular system which is exported, in some ways, to other Commonwealth countries, such as South Africa or Australia, which is not prevalent in somewhere like the United States. In this country, we have large synagogal organizations which cover almost all Orthodox synagogues. Every synagogue, with a few exceptions of growing independent synagogues, is now literally part of a large synagogal body; either the United Synagogue or the Federation of Synagogues or the Sephardic (Spanish and Portuguese) congregations or the Union of Hebrew congregations (which are the Ultra-Orthodox or right-wing if you like). Most synagogues will fit into one of those [bodies]. For example, marriage and divorce will be controlled by the body as a whole. This sort of arrangement is similar to that which pertains, I think, in Australia and South Africa. In the United States of America, you have a much larger community, a much more diffuse community; you have fewer supra-communal organizations which control matters. There are communal synagogues even there but fewer of them and fewer communal institutions as such; Beth Din[s] tend to be more *ad hoc* there. Small communities and even private individuals will run a Beth Din but their remit is very, very narrow when compared to ours. (David Frei, Registrar, United Synagogue *Beth Din*)

Jay Lakhani noted that it was not an issue for Hindus, but more for Muslims, and expressed concern about the increasing divergence between different legal spheres which could pose problems of reconciliation:

I think this question is more applicable to Islam than Hinduism. If you have a two-tier system, suppose the husband finds it better for him to use one tier than the other because it's more favourable, this is going to cause real friction in society. Then perhaps the wife will want to use the legal system of the land and the husband would like to use the legal system of the

¹⁷ The age of entry rules were found to be unlawful by the Supreme Court in *R (on the application of Quila) v Secretary of State for the Home Department* [2011] UKSC 45 later on 12 October 2011 on the ground that it was in breach of Article 8 of the ECHR.

religion he belongs to, this will create tremendous pressures and issues that will arise cannot ever be resolved. In this case how do you compromise? That's the problem. If the ideas that religious communities are putting out are really important or valid than, say, the civil courts, the religious communities should then make an effort to incorporate them within the civil courts rather than try and have a two-tier system which would inevitably cause more friction and more contentious issues will arise as they'll never reach an agreement. I would suggest that if such religious ideas and law are interesting and important, then they fight for their incorporation within the legal system rather than a two-tier system. (Jay Lakhani, Senior Lecturer, Hindu Academy)

On the scope for religious or customary law to be applied in cases of disputes between partners, Barney Leith noted:

I think there already is. Certainly the Jewish community has the *Beth Din* courts, I think there are some *shariah* courts that deal with this kind of thing. Our own [Baha'i] community has a process called the Year of Patience, which is overseen by the high local governing council in each community. But, in the end, we require people to go through the civil divorce as well. Perhaps there is a need for more protection against abuse in a divorce system because there is the whole need for monetary settlements, care of children, inheritance and all that kind of stuff. Again, the state, I think, has to ensure that both parties have an equal say and equal treatment. I think there is a strong case, perhaps even a stronger case, for civil oversight over the divorce system. But I would see no problem, given that my own community has its own procedures for divorce, in religious courts handling aspects of divorce. Particularly attempts at reconciliation which could be better handled through religious systems where everybody understands the spiritual and religious contexts within which the couple is operating. But I think there has to be an element of both systems in it. (Barney Leith, Chair, Faith-Based Regeneration Network)

Inevitably, the question of divorce and its consequences began to emerge as a core one concerning ADR. It should be noted that divorce has since the early 1970s the official position has been that divorce is the preserve of the official courts, as are matters of maintenance and financial arrangements, and arrangements for children.¹⁸ Unsurprisingly, therefore, there has been a lot of discussion as to the relationship between ADR and the jurisdiction family courts. David Frei, registrar of the United Synagogue's Beth Din, acknowledged that there were some reservations, particularly about women's entitlements, within Jewish dispute resolution mechanisms:

Well, I would not mind that [and] I think there are some Jewish people who would prefer that. In this case, we do feel constrained, both in cases of child matters and in cases of maintenance and other financial matters. We [the Beth Din] don't feel that we are able to adjudicate on these matters because, of course, the government have sole jurisdiction. The most we can do is mediate and at least give our views in the hope that a party will take those views to the courts and enforce them. I fully understand the points being made by the English legislators and the reasons why they don't want religious communities to do this because they feel that religious law (much of it) is very ancient, is male-orientated (the wife will not get the same sort of benefits as she would under English law) and there is also the feeling that although they are willing to come to a religious tribunal, often they are not willing really and they are coerced to come (not that there is physical coercion, but the social opprobrium that will attach to them in certain close-knit communities if they did not come and accept the jurisdiction of a religious tribunal such that it takes away their consent). I understand those concerns of the courts. From our point of view, if you have two individuals who are willing to accept,

¹⁸ Under section 16(1) of the Domicile and Matrimonial Proceedings Act 1973, no proceedings in the United Kingdom can validly dissolve a marriage unless instituted in a court of law.

effectively, they will accept it anyway, without any recognition of the courts. In other words, if two people want to hear what the law is under Jewish law, and then accept the decision, then they will go off to court and consent to it on the basis of what we say. It is quite rare, especially as Jewish law would not give anything like the sort of fifty-fifty split which you would get in English law today. This is a relatively new phenomenon anyway; it's only in the last ten or fifteen years that you get this in English law. And I think it is unfair actually, even for today, and certainly Jewish law would not give that sort of split. (David Frei, Registrar, United Synagogue *Beth Din*)

Similar concerns, especially with respect to the status of women, were expressed about the operation of *shariah* councils:

The question of *shariah* law is much more nuanced and complex. I better speak for myself, but I think I'm not untypical; clearly *shariah* councils have a quite legitimate job to do in adjudicating on religious matters (and that includes religious marriages) so I have no worry about that. I have worries about ancillary things like the fact that a high proportion of Muslim/Islamic marriages are never registered as civil marriages; probably with women, in particular, not understanding that and the result is that they have no legal rights whatsoever. So that's a concern but that's not directly [related to] *shariah* council business. I am concerned, continually, about Muslim arbitration tribunals; [...] if they are working on the basis of intrinsically discriminatory *shariah* law and so discriminate against women, for example, in inheritance, in sheer weight given to their voices, [and] in other matters. I am [also] very worried if they are venturing into areas of criminal law (which has been suggested at the fringes) or of family law, which is properly governed by civil law and I think I'm right in saying that if challenged in court, they wouldn't have a leg to stand on – if they were adjudicated in family law. I'm afraid that it may be happening, maybe building up a position that would be more difficult to challenge if we don't do so straight away. (David Pollock, President, European Humanist Federation)

It is the kind of concerns that David Pollock expresses here that also lie behind the promotion of the Arbitration and Mediation Services (Equality) Bill which had its first reading in Parliament on 7 Jun 2011. The effect of the Bill, if it becomes legislation, will however be to curtail the activities of the *shariah* councils to the point of extinguishing them altogether. On the scope for religious or customary law to be applied in cases of disputes between partners a member of the current British government noted:

No, statute and case law should always be followed when possible to ensure that the law is concise and consistent. Religious law is often used by one partner to coerce the other partner. (Baroness Falkner, Life Peer, Liberal Democrat, Ministry of Justice spokesperson, House of Lords)

Meanwhile, contextualizing the nature of *shariah* council activities, a Muslim respondent noted:

The next battleground is going to be over the regulation of Islamic councils, *Shariah* Councils (I won't call them courts, because they are not courts, they are *Shariah* Councils) and how they conduct their business. Because these councils have no regulatory authority, people can choose to or not to go to them, they can choose to abide by the rulings or not – it's a free market. I think they've responded to that by trying to grant women the right to provide a solution to their limping marriages – *khula*. While keeping the traditional notions of *Shariah* Law intact, within that, they've sought to recognize Muslim women's autonomy and right but within a traditional context. Ninety per cent of the cases seem to be *khula* cases, which is very significant for me because it gets missed out in the debate. (Yahya Birt, Trustee of City Circle/Commissioning Editor of Kube [Islamic] Publications)

Yahya Birt here points out that a vast section of the work of *shariah* councils is indeed to facilitate marriage dissolution in a religiously appropriate way. On the scope for religious or customary law to be applied in cases of disputes between partners, Prof Ramadan said:

If they want. I think that what should prevail is the common law of the country. But if they both agree on that [marriage contract], then it's their choice. Based upon what I've seen on the ground, I advise women not to go for that, because there have been questions about the judges – Muslims coming from Pakistan and mediating disputes, [for example] – which, for me, is not really in tune with or adapted to their [specific] situation, but, if they both agree, why not? These [religious] mediation councils that we have could just be something that we add but the final word is the common legislation. (Professor Tariq Ramadan, Contemporary Islamic Studies, University of Oxford)

Yayha Birt emphasized the need for earlier and professionalized intervention in marital problems:

I would argue [...]that arbitration is actually very important in a marriage prior to getting to the stage of divorce. But that arbitration should use trained professionals like Relate; people skilled in counselling couples – bringing resolution. Where appropriate training can be put into an Islamic framework, anybody with a relevant background, I would think that would be suitable as well. Anything that prevents women from accepting an unequal, unjust state of affairs over a long period of time. They should genuinely seek to resolve those kinds of problems. Again, I think this is a matter of the skilled sector, that's what I'm suggesting. Arbitration does have a long history among religious scholars. For instance, arbitration is actually a *sunnah* (biographical deed) of the Prophet. Where scholars cannot genuinely revive these traditional skills, they should show the humility to refer. Actually that's part of the education of our Imams. (Yahya Birt, Trustee of City Circle/Commissioning Editor of Kube [Islamic] Publications)

A Catholic interviewee, responded to the question on the scope for religious or customary law to be applied in cases of disputes between partners:

Instinctively, my answer to that is no; because I think, hypothetically, with particular faiths, you may have a situation in which the mechanism for resolving those disputes is not one that really does justice to either of the parties, at which point it's quite important that there is a mechanism whereby the state can provide a forum in which marriage is brought to an end, in terms of civil law, in a way which manifestly does do justice to both parties. In terms of the *Beth Din*, as I understand it, it is enforceable in civil law, and if the process by which that happens (which I'm not an expert in) that, essentially, validates a natural justice process being followed in achieving that result. I don't see that as problematic. But, instinctively, I would be hesitant. I think the distinctions we have between civil law, in establishing marriages, and religious services by which those are solemnized within the rubrics of any particular faith, I think those distinctions are important at the beginning of marriage, and I would see them as also being important at the end. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

While being aware of the necessity of marrying and divorcing at two levels for some groups – the civil and the religious - Charles Wookey here seems keen to retain the distinction. On the same question Dhanisha Patel noted:

If you look at it in terms of having religious marriage, partners should have the scope, therefore, to have a religious divorce or religious mediations and negotiations. I think, logically, that makes sense. If you have a certain way of believing, then you should be able to resolve it according to that method [...] I think that if people want to opt for a religious divorce, they should be allowed to do that. Obviously they follow a belief; you can't just pick

and choose which bits of it you want to follow. So as a woman say, for example, in a divorce settlement I'd get nothing according to my religion, then I'd have to follow that if I have complete faith in my religion and what it's doing is prescribing the correct things for me. (Dhanisha Patel, Legal Co-ordinator, National Hindu Students' Forum)

While Dhanisha Patel's view also emphasizes retaining the religion-civil distinction, she appears to support an either-or approach so that choosing a religious framework would entail truly accepting the rules, solutions and so on provided within that framework. This position therefore does not support the kind of forum shopping between the civil and religious frameworks that is sometimes reported.

On the question of state recognition of religious dispute resolution fora most respondents either expressed some reservations or noted that they were not asking for recognition. Charles Wookey responded:

On the whole, I would say that they shouldn't. The main problem is that you get an encroachment of civil law, and the machinery of civil law, into an area in which it doesn't really apply and which would be very difficult for judges and civil lawyers to operate. I don't see what mischief would be solved by allowing this legal encroachment, or what's to be gained in any terms of the common good. You have these religious structures; the *Beth Din*, or *shariah* courts, and canonical courts; they are used and they are used according to the tenets of the religion by those who want to use them – there's no compulsion for somebody, who is not a member of the faiths, to use those structures. I don't see that there's anything to be gained by changing that. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

David Frei noted that issue was not one of 'recognition' but perhaps acknowledgement of the other's existence:

We're not asking for recognition of jurisdiction, actually. We've had a court working here effectively for two hundred years and we've never had official recognition and we're not seeking it. When we act as a tribunal that terminates marriages, we're doing it for Jewish marriage, which is nothing to do with the state at all – they [the state] are not interested because they're only worried about the civil aspects, the termination of the civil marriage. We're terminating the Jewish marriage. It sounds strange, but they are, literally, parallel processes so there's no real medium between them. So we're not asking the courts to recognize us at all. They [the courts] are aware of our existence; the Divorce (Religious Marriages) Act [2002] recognizes and acknowledges our [the Beth Din's] existence if there is an issue in the community, but we're not asking for official state recognition. And when we do arbitrations between individuals and institutions, who wish to arbitrate their disputes, again, there is no official recognition any more than any private arbitrator [...] We're not looking for a charter to hang up on our wall which is going to say; 'we recognize this court'. (David Frei, Registrar, United Synagogue *Beth Din*)

Prof Ramadan suggested that the question was somewhat premature for the Western context, while not ruling it out in principle:

I would say it's too early. I would say that the Muslims really have to work on understandings of their religion and translating those understandings and meanings for the West. I see too many scholars and people just importing ideas [from the Islamic world] and thinking that only way to be faithful is to be faithful the way we were. This is not the right way of looking at things; there are many opinions, many trends within the Islamic traditions. I would say that I am not against it in principle, but it is not the right time to do this for Muslims. Muslims should understand that they have a great deal of reassessing the priorities and what they want

to achieve before they go on this direction. This is what I said when the Archbishop [of Canterbury] said that we need to find a place for *shariah*; I thought that he was right from a legal viewpoint – it's open and it's offered already – but I don't think that Muslims need that today. At the end of the day, what we need, is trying to understand how Islamic references work in the West, trying to find merging processes and not parallel systems. If you have parallel systems, then it's not really your country. You need to find ways, and there are ways, for example, marriage contracts; from an Islamic viewpoint, you can go for any of the contracts that exist in European countries and they [the contracts] are Islamic by definition – we don't have secret marriages, we have contracts. (Professor Tariq Ramadan, Contemporary Islamic Studies, University of Oxford)

In a similar vein, Yahya Birt noted that there was some way to go and that 'recognition' could turn out to be state 'intervention' to sort matters out:

I think that, in theory, religious councils (I wouldn't call them courts) should not be discriminated against if they are able to apply and register themselves with the Arbitration Act 1996. If it can be applied to any other civil society organization, I think it would be discriminatory to *ipso facto* deny that in the case of *shariah* councils. However, having said that, *shariah* councils seem to me to be currently highly amateurish, disorganised, some of the practices are not correct. Some of the people making the decisions are woefully misinformed. I would also say, at the same time, that there needs to be relevant and serious training of the individuals making these kinds of decisions. If *shariah* councils cannot organize sufficiently, that may encourage the state to come in and regulate – which I've seen in a number of cases. In a number of our institutions, where things aren't being done properly, the state has not been able to wait; it's had to move in and regulate. It moves Muslim community leaderships and organization to sort these issues out responsibly. (Yahya Birt, Trustee of City Circle/Commissioning Editor of Kube [Islamic] Publications)

Divorce: The Jewish get divorce and the 2002 Act

The Divorce (Religious Marriages) Act 2002 allows a court to delay the final decree (decree absolute) of an official divorce until a *get* (Jewish divorce) has been obtained. This short Act, amending the existing divorce legislation, was campaigned for by some Jewish organizations and is seen as a partial solution to address the problem of the 'chained wife' who is divorced at official law but in religious law she is still considered married and is unable to marry according to Jewish rites. Judith Russell singled out the *get* issue as the one prominent case where there has tended to be a problem because of non-recognition by the state law of religious law, thus entrapping Jewish women in particular:

The only problem in Jewish law is if the ex-husband refuses to give his wife a *get*, so she's technically chained to him. They can get a civil divorce but they can't get a religious divorce if he won't grant her one, and I think that is a problem. I know that there have been various attempts to get that sorted in civil law, although I don't think it's ever been quite sorted. I don't think civil law has any sanctions on the man refusing to issue a *get* and there have been real cases of cruelty to women as a result. The only issue I can think of, where civil law and religious law might be at odds, is in the realm of marriage. Otherwise, there doesn't seem to be a conflict that I can think of. (Judith Russell, Development Director, Institute for Jewish Policy Research)

Not all sectors of the Jewish community take the perspective on the religious law as outlined by Judith Russell, but there are some who do. David Frei explained the importance of the legislation in reply to a question on how judges should deal cases where traditional/religious customs and practices relating to marriage and divorce are not recognized by English law:

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Well, we have no problem with judges continuing the dichotomy between English and Jewish law, in fact, it has worked very, very well in the past. All we ask judges (and, in fact, parliament has accepted this) is that we do have a problem when it comes to divorce. Because a person can happily go to a synagogue and get married under Jewish law, but then when it comes later on to a divorce, he (if it is a man) cannot stop the civil divorce from taking place, but when it comes to a religious divorce, if he refuses to co-operate with the Beth Din, we have no powers of coercion to forcibly give a *get*. If he doesn't do so, this woman will remain married in Jewish law and she is, effectively, stuck in our community – she cannot carry on and marry, even though she's free to marry whoever she wants under English law, she can't under Jewish law. We've asked the courts to accept this; this is the difficulty which we have and they [the courts] say to us 'well, it's your problem, not ours' and they are right, in a way. What we have achieved through parliament is the passing of this act in 2002 – Divorce (Religious Marriages) Act – which allows a judge to stop a decree absolute being made if the husband or the wife wants a *get* and the other party is refusing to give/accept it. That's been very, very helpful and it's cleared up a lot of our problems. So that's all we can ask, we can't ask judges to do more than that and we're not asking that. We're not saying that one should accept a *get* as a replacement for English law for divorce; we're quite happy with the continuation of the dual system (David Frei, Registrar, United Synagogue *Beth Din*)

Although David Frei rightly points out that the legislation increases the powers of judges to stop the civil divorce, it should be noted that the English courts were already aware of and responding to the problem of the 'chained wife' or *agunah* as evident in reported cases.¹⁹ Some of the Jewish respondents were asked specifically whether the legislation was having an effect in their communities, and whether Jewish women were making use of these provisions in divorce proceedings in the courts:

No, because it hasn't been tested enough. And also, because of various technical reasons, my [Masorti Jewish] community may not have recourse to that. Have I noticed something? I am pleased by the legislation but I haven't noticed anything yet [...] women are not making use of this legislation to my knowledge; I'm not sure that cases have come up where they've had to, but it's not inconceivable [that] they would. (Rabbi Jonathan Wittenberg, New North London Synagogue)

Another respondent, providing the position according to Reform Judaism, noted:

These are not issues within the reform movement. The reform movement for many years have ensured that there is equal partnership – that either men or women can apply for a *get* (Jewish divorce). The reform Jewish law court are responsible for accepting a divorce even if the other side have refused one. Within the reform movement, you can't get stuck in a marriage where there is no mutual consent to it. (Rabbi Miriam Berger, Finchley Reform Synagogue)

The 2002 Act also contains provision for extension to groups other than those married in accordance with Jewish usages. So far there does not appear to have been a well-articulated demand from Muslims for such an extension and it may be that *shariah* councils are able to see to the problem of religious divorce in a way that some branches of the Jewish community cannot.²⁰

¹⁹ *N v N (Jurisdiction: Pre-Nuptial Agreement)* [1999] 2 F.L.R. 745; [1999] 2 F.C.R. 583; [1999] Fam. Law 691; *O v O (Jurisdiction: Jewish Divorce)* 2000 2 FLR 147.

²⁰ This is not to argue that divorce is always easier for Muslim women. See e.g. the case of Mrs Masuma Jariwalla, discussed 10 June 2009 in the House of Commons. <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090610/halltext/90610h0004.htm>. For a case in which a Muslim man applied under the 2002 Act for divorce proceedings to be stayed until an Islamic divorce was in place, later described by Tomlinson LJ in the Court of Appeal 'as seeking to draw out these proceedings

Legal order based on either nationality or residence

This is a technical question based on the specifics of private international law rules. Besides that, the British legal order tends to apply the law of the forum, except when an issue has to do with the recognition of an already completed set of legal acts in another jurisdiction. This is somewhat in contrast to some continental European legal systems where the question of application of the ‘foreign law’ has much more salience in, say, matrimonial disputes (e.g. Rohe 2007: 19, Büchler 2011: 27-34). For these reasons most respondents could not provide an answer based on their experience. While a variety of responses were obtained, most tended to be at a general level of abstraction, which did not tessellate particularly well with the existing legal regime. One respondent noted:

If they’re living in the UK, then they should conform to UK law, that’s my view. If they want to conform to legal systems of any other country, they should go and then live in that country. If they’re choosing to live here, then they’re citizens of this country and I do feel that that’s got to take precedence. (Judith Russell, Development Officer, Institute of Jewish Policy Studies)

While conveying a less cut-and-dried view another respondent called attention to the problems inherent in having a regime that might apply different laws based on the country of origin:

It’s quite a technical question and I imagine that there is a lot at stake in some of these situations. I’m not going to give an answer to that question [...] Could the custody of children be at stake? [...] My natural, gut answer would be to suggest the place of residence but I don’t know what could be involved. It would also be quite difficult if the law of the country of origin applied, it could mean that, in one street, you’d have about fifty legal systems vying to family law and I think it could render life to be inoperable. I think there is a strong case to be made for the law of the country in which people live. On the other hand, if this was happening in the Yemen, for example, wouldn’t one want to say [that] you are governed by the land which has the most civil liberties? It’s a difficult question. (Rabbi Jonathan Wittenberg, Principal Rabbi, New North London Synagogue)

An Anglican respondent also presented a more nuanced perspective and one that expressed a continuity between the application of foreign law and the taking into account of religion and culture by British law:

I think the law of the country in which they are resident applies. But, there should be leeway in line with what Rowan [Williams] discussed; that enables some leeway in areas where they are not fundamentally in conflict with British law. Defining those areas, of course, is the difficult thing - what can come within that and what mustn’t come into it? Domestic violence should not come into it, for example. If we assume in some other country there is nothing wrong with chastising your wife physically, you should not be allowed to do that here, because that is wrong – you need to define why it is that that is wrong. But other things, [such as] the way inheritance works, seems to me to be of a different order and we might decide that that is something that can be settled with a religious/cultural practice. There needs to be a constant interplay between those who represent British law and those who represent that alternate cultural or religious expression. Nothing can be fixed too much, I think. (Rev. Alan Green, Chair, Tower Hamlets Inter-Faith Forum)

and delay matters as much as he possibly can for his own advantage’, see *Kandeel v Hands* [2010] EWCA Civ 1233. This case indicates the kind of abuse to which any such legislation is open.

This perspective seems to underline the fact that rather than thinking in terms of the application of a ‘foreign law’ as might be applied by the courts of that foreign country, British discourse seems to approach the question more along the lines of the recognition of religion or culture. Another respondent was willing to take a more flexible approach, based on the assumption that there was already an inbuilt flexibility in legal structures:

I’m not a legal person; I come from a religious background. I’ll be very honest; it should really depend on individual cases. For example, if they come from a very traditionalist background and their loyalties lie outside of the UK, I think the law here is very open and their loyalties will be recognized. They [government] are not imposing a strong legal attitude and forcibly making you British. They are not legally binding you to sign-up for a British agenda. If you still have tremendous loyalty, love or attraction for something, there is plenty of freedom in this country that allows you to have this kind of dual-position where you can keep your foot in either camp. (Jay Lakhani, Senior Lecturer, Hindu Academy)

Yahya Birt underlined the need to bear in mind that Muslim law is not a monolith and should be approached by taking into account the multiplicity of its interpretations:

I think that it's important that English Law continues to recognize Private International Law where it would apply. However, if there's a case of some fundamental violation of an individual's rights, possibly on a case-by-case basis, the discretion should be with the courts to attempt to aid that. I think where it gets difficult is when you have a general rule which is applied as an absolute principle. Some guidance or some kind of expert opinion should be sought. In addition, *Shariah* should not be thought of as some kind of monolithic tradition, we're talking about Muslims, there are multiple interpretations. Just as there is case preference and variation in English Law, they should recognize that there are similar variations in *Shariah* cases. What you wouldn't want to happen, as was the case in Germany, is that judges deem *Shariah* Law as an unequal and oppressive. (Yahya Birt, Trustee of City Circle/Commissioning Editor of Kube [Islamic] Publications)

Yet another respondent’s answer matches with the existing legal structure on divorce, that is, the application of the *lex fori* (law of the forum), albeit on the assumption that registration of marriage has been done:

I think that the law of the country where the couple reside will be applicable. This is why I give *shariah* advice on this issue, cases come to me where, unfortunately, the couple are divorcing and the wife is demanding fifty per cent of the house or the savings of the husband, I advise them that if they have registered the marriage, then they have signed for a package of the law, it is not just marriage. If a wife demands fifty per cent of the property them, Islamically, she is allowed and he must accept by entering into a marriage contract in this country, he is bound by Islamic law, to honour it. The law of the country where both reside is applicable in this case, and should be applicable. (Maulana Shahid Raza, Chair, MINAB)

This perspective again highlights the fact that law of residence is the main jurisdictional rule when it comes to property issues in matrimonial contexts. Indeed, Maulana Shahid Raza goes so far as to indicate that opting into the official marriage system obliges one, as a matter of Islamic ethics, to honour the provision of the English law provisions on marriage breakdown and its financial consequences. However, as Maulana Shahid Raza noted in an earlier quote, the wish not to be tied into the English law system may be the very reason why some couples or individuals prefer not to opt into it by registering their marriage officially.

WP4: Workplace

Some background information about the legal structures applicable with respect to employment, especially regarding developments concerning anti-discrimination and human rights laws, are discussed in the Introduction chapter of this report. Some respondents were able to offer general assessments from their experiences about the state of the workplace and its respect for religious employees or, more generally, about ethnic and religious diversity. Atul Shah noted:

I believe that lawyers and judges, at the very least, should invest in improving their literacy about culture and faith. In fact, I would go even further and say not just faith but even cultural literacy is a big problem in Britain. If you look at the HR [human resources] profession, for example, which is one of the big entry points for anybody in the British workplace, the HR profession in its training – for membership of the professional body – has got no content related to cultures and faiths at all; today, in 2011 Britain. I wrote an article about the organization which, again, has got no ethnic representation in its board. This kind of structural discrimination is so widespread in Britain and it is so endemic. Worst of all, when I engage with leaders about it, they don't even understand what it means. They don't even understand how they are subconsciously and consciously discriminating. So there's a lot of work to be done. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

However, Atul Shah also saw the problem as being set in a wider context of institutional biases or institutional discrimination:

For example, the work I'm doing around the boardroom. At the moment, there's a debate going on about diversity in the boardroom in Britain; which is primarily a male-dominated boardroom and primarily mono-cultural – the ethnic proportion is 7-8 per cent at best. These are multinational corporations, they operate all over the world. If you look at it from the outside, you would think that they need 80 per cent diversity! But they are actually not even representative of Britain alone. There is a tremendous institutional bias, in terms of leadership in this country. And there is a tremendous institutional resistance to diversity. So, in terms of creating opportunities, ethnic minorities generally, being in the fringe of society – very often being first or second generation migrants – are hungry. They're hungry to progress, they're hungry to work hard. They are very well-educated, very well represented in the professions; if you look at accountancy, law, medicine, etc. The representation of ethnic people is much, much larger than the relative majority population percentage. For example, in the field of accountancy, about 35 per cent of all accountants in Britain are ethnic minorities. The national statistic of ethnic minorities is about 10 or 12 per cent. They've [ethnic minorities] used the professions as a way of getting beyond the glass ceiling and getting jobs and opportunities. But still, the glass ceilings are very, very real. I, myself, for example, in my academic research in the late 1990s, predicted the whole banking crisis and published ten research papers predicting it. I experienced severe prejudice within the institution that I was in; I was told that I wasn't smart enough, that I really wasn't good at research. [...] What motivated the kind of research that I was doing and what others weren't doing was my own Jain ethic which dictated that whatever I do, I have to take on a civic responsibility which I found my peers had no interest in whatsoever. They were only interested in their own career and their own progress and their own kudos. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

Yahya Birt also sees the issue of structural discrimination as being of greater importance:

Equal access in the workplace is obviously more important than the facilitation of religious access in the workplace. If Muslims suffer structurally higher rates of unemployment, if research shows, through job applications, that Muslims are discriminated against purely because of their name and background, we know that there is a structural discrimination going on. The first priority is tackling structural discrimination; it's acquiring equality of inclusion for European Muslims – that's crucial. That should be the priority politically. Once people are in the workplace, I think a reasonable set of demands can be made. I think the provision of something like the provision of *halal* food is appropriate if there is a

massive Muslim workforce, for example. I think people should be reasonable about these things. (Yahya Birt, Trustee of City Circle/Commissioning Editor of Kube [Islamic] Publications)

Clearly, however, some of the areas of ignorance are being highlighted and information is sought regarding them for people who are already within the workplace. As Alan Beazley of the Employers' Forum on Belief:

I suppose what occupies us quite a lot is employers' general lack of knowledge about either lesser known religions or religions with which they haven't had much contact. We got lots of requests for information: 'is this a religious practice and, if so, what should we be doing about it?' And that may be in relation to dress, customs, prayers, all sorts of things. It's not just in relation to minority religions, but even particular observances of Islam, for example.

Religious exemptions in the workplace (dress codes, food-prescriptions, prayer-facilities, time schedules, etc.)

Asked whether Muslims have more needs to satisfy in the workplace in relation to other religious groups, Alan Beazley mentioned prayer facilities as an issue that might distinguish the case of Muslims:

Well, they're more needy in the sense that most of our member organizations would seek to provide facilities, of one sort or another, for prayer. So, obviously, there is a requirement which is more frequently expressed than other religions for appropriate facilities. Now, that, in itself, is not unduly difficult for a larger employer to deal with but it's not just about providing a suitable room; the issue goes far beyond that, in our experience. We get lots of questions about 'should we be providing for ritual ablution as well as prayer room?' and in that sense it becomes more complicated for employers to deal with. (Alan Beazley, Advice and Policy Specialist, Employers' Forum on Belief)

David Frei provided a perspective on the experience of Jewish employees:

I think that this country has done a very, very good job on tolerance of religious minorities. The Jewish community has a particular issue which no other community really has; as Sabbath observers – which is a real issue. Sabbath is not just Saturdays; it starts at sunset on Friday afternoon and goes on until an hour after sunset on a Saturday night. This means in mid-winter, Jewish employees have to leave work roughly at lunchtime [...] and that is a real issue. For many employers, [it's a problem] if your chap's going home at one o'clock on a Friday afternoon for quite a few weeks during the winter (of course, as the days get longer, towards the end of January it gets later and later and later). Now, people have accommodated that; Jews managed to be employed in many, many industries and many professions [...] people make up the hours at different times. It's awkward and difficult and it always has been difficult but I think there's more tolerance of this than ever before at the moment and we accept that. We also accept that a Jewish person cannot expect to get a job which requires, for example, being around on a Saturday and then saying 'hold on, well I can't turn up'. So we do understand if you're working at a leisure park or whatever and Saturdays is one of the most important days of the week, don't get a job there! People understand our religion, they're tolerant, and they're happy to rearrange things to accommodate us in most professions. However, with a company that says 'look, we are a takeaway service, or whatever it is that we do, we mainly open on a Friday night and Saturday morning, I'm sorry we can't employ you', you can't argue with that. But I think generally, the workplace provisions are very, very fair. (David Frei, Registrar, United Synagogue *Beth Din*)

The issue of working time has been litigated recently and may emerge as a quite important issue for the future. It is notable from the case law that exemptions have not been accepted for the employee, while the factual background indicates that some employers will try and accommodate prayer and Sabbath periods.²¹

The issue of dress codes has clearly become one of the most prominent ones for European legal systems, and one of the areas in which it affects people is the workplace. In the UK too, there has been some litigation on the subject.²² In all the main reported cases the courts have not accepted the employees' claims of discrimination or

²¹ See for a recent case concerning a Muslim employee and time off for prayer: *Cherfi v G4S Security Services Ltd*, 2011 WL 1151919, Appeal No. UKEAT/0379/10/DM, Employment Appeal Tribunal.

²² *Crown Suppliers (Property Services Agency) v Dawkins* [1993] I.C.R. 517, [1991] IRLR 327 (Rastafarians claim to wear headdress to cover unshorn hair); *Azmi v Kirklees Metropolitan Borough Council* [2007] I.C.R.

breach of their freedom of religion. Dhanisha Patel spoke about dress codes at the workplace and its potential disadvantages:

I think in terms of Hinduism, there isn't really a lot of conflict between the law and dress codes etc., but then I think there are a lot of cultural issues within the UK because people don't dress [here] in their traditional dresses. But, then again, their traditional dresses aren't necessarily "Hindu" dresses. This is not really a big issue for the Hindu community. On a wider level, yes I've got friends who are Muslim and I know how hard it is for them to observe the specific things that they have to abide by. I know a few medics who have issues with the dress codes [...] I think the law comes from the right place, with the right intention. I don't think it's [the law] there to disadvantage any specific group, it comes from, in the case of the medics for example, a hygienic perspective or a secular perspective – 'it doesn't matter what religion you are, this is the dress code'. But then, obviously, that dress code hinders some people's interpretation or application of their religion, so I think there should be scope to allow people to have the freedom of choice but that shouldn't hinder what the ultimate goal is of that organization. For example, if you're working in a company, it doesn't matter what you're wearing because you sit at a desk all day, is a dress code necessary there? Whereas if you're working in catering and you're dealing with people's food then, obviously, your dress code is necessary. I don't think there should be a hard and fast rule about this; it should be based on contexts and common sense. (Dhanisha Patel, Legal Co-ordinator, National Hindu Students' Forum)

Providing a view about the experience of Hindus, Jay Lakhani observed the following about the question of religious rights:

The answer would be very brief. Hindus generally integrate very well in societies where they are not the majority. They do not normally ask for special favours, such as the right to wear certain dress. There are always exceptions as, within any community, you will have highly traditional, orthodox members who will make a big issue out of some minor issue. There will be issues like this arising from time to time but you must recognize that the whole community is not like that. Fortunately, Hindus coming at loggerheads at work due to the demanding of religious rights has been very rare, historically speaking. Once you start going down the route of providing religious exemptions in the workplace, there is no limit to it. There are such vast numbers of religions around that if they were all accommodated; the law will be so complicated and cumbersome. I would rather say that it is better to play along with the majority and keep the orthodox communities under control. Fortunately the youth are progressive so these problems will cease to exist in the future. (Jay Lakhani, Senior Lecturer, Hindu Academy)

Reasonable accommodation

Mention has already been made of some recently publicized cases concerning devout Christian employees who have been penalized for refusing to perform their workplace duties on grounds of religious belief.²³ It was noted that some of these cases are now being litigated in Strasbourg. Discussion of these cases came up in relation to special considerations or 'reasonable accommodation' being granted to officials who make a claim for exemption because of their religion:

No. Only to the extent that we have the limited exceptions that we have now, which relate to appointments for purpose of organized religion; where there are legitimate opt-outs from some of the requirements of the Equality Act and for certain occupations within organizations which have a religious ethos. Beyond that, I think there should be absolutely no way there should be special legal consideration. People are free to hold whatever religion or religious beliefs they choose, but I think it goes too far if you then allow any general right for individuals to opt-out from the tasks that their employer gives them. There's been all this fuss recently about the intervention of the Equality and Human Rights Commission in the two

1154 (Muslim school bilingual support worker's claim to wear a niqab); *Eweida v British Airways plc* [2010] EWCA Civ 80, [2010] I.C.R. 890 (Christian employee's claim to wear a cross over her uniform).

²³ See note 2 for that and related cases.

pending cases in the European Court of Human Rights. This is understood originally, or certainly reported, as the [Equality and Human Rights] Commission making an intervention on behalf of the Christians concerned. They've since clarified that this is not the case, that it's purely an intervention to enable the courts to have the benefits of the Commission's expertise in this area. But they also went on to say that they wanted to explore the possibility of using the concept of reasonable accommodation as a way of dealing with this. Interestingly, it was reported in some of the gay media last week that they're actually backtracking on taking that position, particularly in relation to the Ladele [marriage registrar case], MacFarlane case [sex therapist case]. I don't have a problem [with this], I think reasonable accommodation is a very good way for an employer to approach issues like wearing a crucifix and all sorts of expression of that sort, because that doesn't infringe, in any way, it seems to me, the rights of anybody else. But I think when you get into 'I'm not going to do this because marriage is a sacred union between a man and a woman as recognized by God' and all that stuff, I think an employer shouldn't have to deal with that – they can do, if they want to, but they shouldn't have to. (Alan Beazley, Advice and Policy Specialist, Employers' Forum on Belief)

A similarly strong perspective was offered by the Humanist, David Pollock, who suggests that there is a concerted political effort to highlight discrimination, or even persecution, against some groups, notably Christians:

Fundamentally, no. People who are employed as public officials are there to administer the public law; it's not up to them to decide to do so or not. In practice, I'd have no problems with arrangements that avoided the question. If a registrar or a magistrate or somebody in an adoption case had a quiet word and says 'don't put me on that case' and that could be done without difficulty, I'd be perfectly happy with that. I think it's notable that in the cases that have come to courts, it's not been handled in that way and the registrar in question was fairly militantly anti-gay and made no secret of her views. And also with the BA [British Airways] check-in clerk who got no sympathy at all from the Christian Union within BA because she was apparently quite obnoxious. I wouldn't want any legal wriggle-room for people not obeying the law in those sorts of cases. This whole question of conscientious objection is one that is dealt with, at some length, in the paper that I submitted [to Religare]. Clearly there are cases where things get very close to the bone and where one wouldn't want any interference with conscientious objection [...] the problem is arising, increasingly, through what seems to be a concerted militancy on the part of a quite small minority of Christians (and to a small extent Muslims, but I think not, I think mainly it's Christians) who are setting out to propagate a completely false myth of persecution. And also by the Catholic Church which has lost the argument against abortion in legislative terms and seems, in countries where it's powerful, to be setting out to make the law a dead letter by pressuring doctors and so on to opt out of it on grounds of conscience when they'd previously been quite happy to provide the service. I think the consequence of that is that maybe some people with genuine problems are getting more roughly treated than they might've been if it wasn't for this political background. So I don't think the Catholic Church or this largely Evangelical group are doing their co-religionists any favours. I wouldn't want exceptions written in the law at all. (David Pollock, President, European Humanist Federation)

In David Pollock's view therefore this kind of politically-motivated concerted action, which includes legal action, may be having a generally negative effect on opinion towards exemptions on grounds of religion. Charles Wookey, meanwhile, provided a different perspective on how reasonable accommodation could work and which cases were worth considering in that context:

The more general point is, under the equality legislation, it's important that religion and belief is treated as seriously as the other strands. Public authorities have a duty to ensure that religion and belief is taken seriously. That particular case is a very interesting one (the Ladele case [concerning the marriage registrar]). What you have there is somebody who was brought

into a job, the law was then changed, and she was required to register civil partnerships – that wasn't what she was hired to do. I think that an accommodation definitely could have been made with her to enable her to continue working in Islington in some way – you've got lots of marriage registrars, she simply didn't have to do registrations of civil partnerships. That was certainly a reasonable option that was there, and I think one of the strong criticisms I would generally make, in the way that the Equality Act has been applied, is that in some of these cases, common sense has simply gone out of the window. They have not reached reasonable accommodation in a way which they could have done. Having said which, I would argue, on the other side of that case, had Mrs Ladele been the only marriage registrar on the island of Orkney, where it's important that the state should be able to rely on state-appointed officials to do what the state says, and it is important that gay couples who have a legal right to have their marriage registered, are able to carry that out. If that meant, in those circumstances, Mrs Ladele being kicked out, I would have said 'fine, fair enough'. I think the reasonable accommodation does depend on whether or not there *can be* an accommodation, which is fact-specific. More generally, on the issue of employment, I think I would have a concern about some of the cases that are being run. On the religious side, I think some of them – wearing crosses, etc – sometimes some religious groups have become too zealous and not picked very good cases. [...] it provokes an overreaction on the part of secular-minded judges, and you create the perception, then, of this antagonism between, on the one hand, people who wish to live out their faith through their work, and the requirements of secular law. I think, often, that's a very misconceived picture. It doesn't help sometimes in the way these cases are presented and the ways they're argued in court either. I would have concerns about the ways some of those have been done. On the whole, I don't see that there's a real problem for people who wish to live their lives as committed people of faith within the structures of employment legislation that exists. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

Charles Wookey too echoes the point that the strategy of over-zealousness may be having some negative effects regarding acceptance of reasonable accommodation or religious exemptions. He also reminds us that reasonable accommodation has to be applied in a fact sensitive manner, and does not involve religious claims always trumping all others. Another view on how the correct balance might be achieved was stated by David Frei:

That's not so much a question about employment law [but] a question of conscience as to whether people should be allowed, in good conscience, not to do *x* or *y*. I personally think, and this is not an official Beth Din view because this is really a personal matter and it doesn't really impinge on our community so much, that conscience is something you should be entitled to be mindful of. It will not be the first time that legislation allows for that. I believe that when it comes to abortion, not all doctors wish to carry out abortions, not all doctors will wish to carry out other procedures and sometimes there's an allowance for them to opt out of certain things. So, I think the courts have got to be a little bit more flexible. I can very much understand that if you are a registrar of marriages and divorce, why a religious person would not want to undertake civil partnerships. On the other hand, I can also understand that if you're going to be employed as a registrar of marriages, where a large percentage go to formalize civil partnerships, why somebody would not want to employ such a person [...] the occasional abstention is one thing (as in the case of doctors who have many aspects to their expertise) but if a large part of your job can't be done, that is a problem. And, if that is the law of the land, nobody's compelling you to be a registrar and, given the above circumstances, you're going to stand down. You can't ask the law to enforce people to employ when they can't do half the jobs they're asked to do. But I do think that if there are issues of conscience where there is a minor element of their work, there should be more understanding. (David Frei, Registrar, United Synagogue *Beth Din*)

Dhanisha Patel highlighted the problem of consistency, stating:

Yes, I think there should be special consideration for religious officials. I think if you take that situation and put it into a different context, it could mean something different. I know a lot of people see that case specifically and think ‘Oh God! How unreasonable, they don’t want to see gay people get married’ but if you take it in a different context and you put it in, for example, someone who’s Muslim and doesn’t want to serve alcohol but they work for a catering company, I think that’s something that should be taken into consideration and often is. I don’t think people would have many objections against such a case. So why can’t somebody who’s Christian and doesn’t believe that two men should be married, why can’t their faith also intervene there and allow them to observe some sort of scope for refusal? There should definitely be some sort of legal consideration for these sorts of cases. (Dhanisha Patel, Legal Co-ordinator, National Hindu Students’ Forum)

David Pollock noted the various drawbacks to religious demands on the workplace atmosphere and, again, the potential constraints on reasonable accommodation:

There is room for what they call reasonable accommodation, particularly in employment circles. The question is much more one of looking at each individual case and seeing how much can be done. Our concern is with people who aren’t religious or have other religious views and are not making any demands, should not get the short end of the stick. If all Christians, for example, turned around and said ‘none of us are going to work on Sunday’ and so they get their weekends to spend with their families and so on and it’s the non-religious, or the Muslims, who work on Sundays and don’t get rest on the weekends. If Muslims demand to get three months off to go to *haji* or something etc; there comes a limit to what reasonable accommodation can cover. Attempts to turn a restroom into a prayer room and freeze out any other use of it - one would want to stop short of that. If Muslims want to go and pray two or three times during the working day, and that in itself can be accommodated, then, okay, let them do it in the restroom and do whatever they want in the room during the while, but at lunchtime it should be free and available to everyone and let everyone not feel inhibited. (David Pollock, President, European Humanist Federation)

The role of trade unions

Several respondents came out as fairly critical of the role of trade unions in the area of religion in the workplace. Suresh Grover, an anti-racism activist provided a critical appraisal of the role of trade unions:

I think trade unions have ignored all these issues. I think in terms of employment practices and access and promotion or whatever, if people are being discriminated against on a religious basis, the trade unions should be intervening and making sure the process of discrimination and access are addressed. But I don’t think trade unions should promote any form of religion. And I think it should fight against (what I would call) the politicization of religion as a political trade union body. So I think it [a trade union] has both those roles. To me, a trade union is a union of workers fighting for specific rights for workers but it also a collection of working people who share a vision of creating equality. In terms of discrimination, access to services, it has a role to play and actually support workers. At the moment, most unions will not offer services to a Muslim trade unionist if he is characterized by the employer as somebody who is anti-Semitic; I have cases of that. Or he is labelled as “extremist”; I have cases of that as well. They [trade unions] should fight, as a trade union, if they feel there is a perception of discrimination, regardless of what happens. But I think it has another duty as a collection of individuals who want to create an equal society, at least for workers, to fight against currents that may jeopardize that notion of equality. So I think it has a dual role. (Suresh Grover, Director, The Monitoring Group)

Atul Shah also urged the necessity of trade unions taking a more active role:

Again the same thing. Trade unions need to be made more literate about cultures and faiths and identities of their members. That way, again, they will be more sensitive in dealing with issues, problems etc. And hopefully, also, they could use that literacy and language to make a case to employers to allow this; because the HR profession is certainly not doing it. Trade Unions are very important. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

Dhanisha Patel similarly emphasized the awareness raising role of the trade unions:

I think, first of all, they need to be aware. I think a lot of trade unions aren't aware of what a lot of religious groups need or should have. I think also facilitating that kind of awareness through its membership would be the first thing it needs to do before it went to government with the idea that people aren't being treated fairly. I think trade unions need to be instrumental in teaching other employees about religious diversity in the workplace. A lot of the issues [religious groups have] aren't because of government legislation, but because of lack of knowledge. I think it could start there and depending on how that impacts, then maybe progress it through to legislation if it needs to be. I think it [the trade union] needs to start at the very basic level instead of trying a top-down effect. It needs to start at the bottom level and raise awareness and make people understand the differences and appreciate them. (Dhanisha Patel, Legal Co-ordinator, National Hindu Students' Forum)

Mohammed Nasser Khan tried to circumscribe the role that trade unions could usefully play in such a way as not to risk alienating other sections of the community:

There are so many things that the local people here, the Christians are upset about. And one of them is that "look you come here, you want your Fridays off, you want your Eids off, you have Christmases off, you have all the holidays we have, and then you want your five daily prayers in between your work". For us, there should be some sense in our work; we shouldn't be demanding things. This country is not a Muslim country, it's a Christian country. We should respect their Christian values. If they say don't trade on Sunday, which they don't say, but if they did, we should abide by that. If they say you can't have every Fridays off because the [employer's] business will suffer we have to accept that. Why alienate people? Why should the employer spend money on you because the trade union has put pressure on them to do that. We shoot ourselves in the foot as Muslims when we demand things for us as Muslims in a country that's not Muslim and then expect people will appreciate and love us for it. Of course, the trade unions will always fight for any one of their members. I think if it's done on the basis that people want time off work, it's the wrong way to look at it. If the whole factory is full of Muslims and they want to be able to pray on time, the unions should look at that – they should negotiate with the employers like everybody else has. It's based on discretion and judged on a case-by-case basis. (Mohammed Nasser Khan, Vice-President, Ahmadiyya Muslim Association UK)

The role of the official law

Alan Beazley of the Employers' Forum on Belief outlined the sorts of tensions and legal cases that arise in relation to religion and belief in the employment context:

I think in the UK we have a fairly clear framework to operate with religion and belief as a very broadly defined protected characteristic under the Equality Act. The principal tension that is created by the present state of the law is really concerned, in my view, only with certain manifestations of belief rather than religion or belief itself; which is protected in the Article 9 sense. The main conflict is where individuals at work seek to, in effect, implement what is a right of conscientious objection to perform certain tasks which their employer would

like them to perform. So we've got the leading cases²⁴, in my view, in the UK which is *Ladele v. Islington* and *MacFarlane v. Relate*, that, in different ways, illustrate the point that an employee cannot opt out of the way required when performing duties which either the organization is required to perform in a non-discriminatory fashion - *Ladele* - because that in itself would be a breach of the right of certain sexual orientations to receive services in a non-discriminatory way. And then in *MacFarlane*, we've got conflict of the individual seeking to derogate from performing a certain task which the employer had legitimate aims to perform. (Alan Beazley, Advice and Policy Specialist, Employers' Forum on Belief)

For Alan Beazley, therefore, one of the key problematic issues arising under the Equality Act is how to deal with cases that in effect are claims for conscientious objection to performance of some employment duties. Atul Shah, meanwhile, focused on the lower profile cases which are in fact the vast majority, and highlighted the fact that the legal mechanisms exist as a last resort for frustrated employees when other avenues have been exhausted:

If you look at the industrial tribunals in Britain, the statistics are horrifying. The number of tribunals and discrimination cases are increasing every year. Remember people only go to a tribunal when they're at the end of their tether; this is the last thing that ethnic minorities want to do – to kick up a fuss. They want to just get on with their job and do it, and progress in a normal way. But they are frustrated in so many areas, not just at the bottom, but even in professional service. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

Elaborating on the manner in which legal cases are argued and the challenges that such arguments would need to satisfy, Alan Beazley noted:

Most of the issues that arise are treated under the UK provisions on indirect discrimination. So you have a provision criterion or practice, like a dress code that an employer has, and somebody comes along and then says 'well this indirectly discriminates against me because I am a Sikh' or a Christian, or whatever it may be. There have been issues in some of the legal cases, particularly in the British Airways cross case, about the identification of the groups that is affected by the rule. In fact, from the time that she lost the tribunal, she was, in my view, fatally doomed to lose every further bit of the case because the area she was trying to explore - 'it affects me and it affects Christians like me', i.e., the notion of establishing a group disadvantage from the rule – is quite difficult. That's the area where, I think, once it gets taken on in tribunal, it's quite difficult to win those cases. Where the issues are resolved by a matter of discussion, negotiation and compromise between the individual and the employer, it really doesn't matter. But as soon as you try to make a [legal] case on the basis of adverse impacts on the individual, it becomes more difficult [...] this is because I think it's a matter of establishing where the disadvantage is – is there a barrier that is imposed? What's the disadvantage? In law, you don't have to establish damage or loss but something has got to happen to you as a result of the rule. I think, based on the facts, that that can be quite difficult to prove. (Alan Beazley, Advice and Policy Specialist, Employers' Forum on Belief)

Alan Beazley therefore highlighted the problems when litigation is actually attempted, focusing on the kinds of hurdles that will face individuals claiming discrimination on grounds of religion. The two main points he identifies are the need to establish some type of group impact and the need to establish disadvantage. Atul Shah also highlighted the problem of implementation of the legal regimes and the possibility that the law may not be encouraging good practice within the workplace but perhaps even a defensive attitude from employers:

²⁴ See note 2 for references to both cases discussed here.

The law is giving rights for respecting religious needs in the context of employment. The *implementation* of the law is proving to be quite a challenge. In fact, there's an employer's forum on religion and belief, which was set up to help organizations to deal with this dilemma. Again, if you look at the main people who are involved in this and the main employers, the HR representatives from employment bodies, everything is mono-cultural. Most of these people are not even believers in any faith. So their reaction to this almost starts from fear and a lot of ignorance and is much more about the rule book and about political correctness. Let's say, the issue of Islamic prayer; one could either look at the rule book and say what kind of provisions by law are we providing? Or one could rally together all the Muslims in employment of this organization and ask them what kind of facilities they would like and we'll see how we can accommodate it. These are our concerns. If you have to go several times a day to the prayer room, they'll obviously be a disruption in the work which I'm sure employers will not like, but to ask the question, 'how can it be accommodated?' is better for the overall organization. These kinds of dialogues are very rarely happening in the British workplace. There's lots of prejudice by employers, in many cases, actually, as a result of the law and rights. People may not be saying it overtly, [but] they are effectively trying to eliminate people with strong religious requirements to enter the workplace. [The workplace] is actually the place where it's easier to perpetuate discrimination and that's also why we still find many organizations which do not move beyond mono-culture, especially if you go outside London. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

On the potential role that the European Commission could play, it was noted:

I think the fact that we've got religion or belief on a par with all of the other protected characteristics is great; I think that's a solid framework. I don't particularly see the need for any more legislation. Probably the Commission can do much more, for example, given that [in some] member states the wearing of the veil in public [is prohibited]; I think that that is quite an important European Commission issue. There are really different approaches [to religion compared to the British model] emerging in France, Belgium and other countries probably still to come, where it's quite a hot topic. (Alan Beazley, Advice and Policy Specialist, Employers' Forum on Belief)

Tariq Ramadan noted that the law could be itself a problem or its non-implementation could be a problem:

Once again, we need to be clear that we are against any kind of discrimination, racism and treatment that is not based on respect for the human being and their practices as a believer. If, for example, there are no problems of security, no problems of employment, if you are just doing your job, you should be allowed some discretion. This business of religious people not being visible, as we have in France, is a problem; it has to be the other way round – people have to get used to the idea that religious people exist within society. For example, with the *niqab*, we had this discussion in France and all the women [in the discussion] were saying 'if I was asked, for security reasons, to show my face, I'm going to do it'. So, that's fine, where's the security problem? But then they came with the new law, why? I think if you are working within the rules of your job and you deliver your services in a competent manner, everything should be done to get equal opportunities to get the job. Muslims are not asking for specific laws, they are asking for equal implementation of the law because the law is suited for equality but they are not implementing it. (Professor Tariq Ramadan, Contemporary Islamic Studies, University of Oxford)

Robin Griffiths-Jones expressed a criticism of the law in a different way, in terms of the constraints within which religion and being religious is viewed:

I've always wanted to know what happens if a Muslim wants exemption for prayers on Fridays. It's a really good question, what do you do? Some parts of the country it's probably

acceptable due to the high concentration of Muslims etc. but I'm generally ignorant about specific details pertaining to the religious needs of other communities. The question about clothing is, as I understand it, about the definition of religion under English and European legislation. There are two things about this legislation. The first thing is that it's startlingly individualistic – between one person and God. But religion is a community thing. The second thing is about the law. The courts think that if you are Christian you must just go to church on Sunday, but of course religion is more than that. Being part of a religion is a being part of a community. A person wearing a cross represents her beliefs and she wants to remind herself and those around her that that is the way she wants to identify herself. It is a genuine statement of solidarity, encouragement and identity which people find very helpful for themselves and their community. If we think that being religious just means going to the church or the mosque, we are completely missing the point of religion, there is so much more to it. The court doesn't get it, and they are still making judgements based on this pretty restricted view of what religion is. The courts must be more careful and sensitive to what religion means to people. Judges need to get some sense of what it means to be religious. (Robin Griffiths-Jones, Master of the Temple, Temple Church)

Suresh Grover sees the issue as being a lack in legal provision because of the non-recognition of a right of access to the labour market on the basis of merit and the right to develop one's skills within employment:

The problem with English law is that it has discretionary power and interpretations; it has no framework on whether access to the labour market or access to services [...] can be done on the basis of pure competence rather than anything else. So it's taken a position where each individual case in a specific labour market, the impact of that particular person's religious practices, may restrict that person's entry to the labour market and not their performance or ability. I think everybody should have access to the labour market but the law should ensure that whilst people are in a [particular] labour market, their development should not be restricted - so they expand their skills, they are able to communicate with each other and their performance is not affected because of their religious beliefs. I think this is the criterion that the courts should use as a basis of their measurement, but it should tackle discrimination where it helps.

It may be that a presumption of the kind that Suresh Grover here refers to as 'competence', can be operated together with a 'reasonable accommodation' test which would be similarly presumptive of the remaining in place of a particular employee provided the job tasks are not jeopardized.

WP5: Public space

State funding of faith schools

The UK has a long history of religious-ethos or faith-based provision of education. The state authorities have accepted this role for the main religious organizations and there are mechanisms deriving from a long process culminating in the Education Act 1944, to ensure the state funding of some faith-based schools and using different structures to do so. While the Churches obtained much-needed injection of funds into the schools which they ran, the state managed to co-opt functioning schools to achieve universal education until age 16. Today, about one third of schools have this pluralistic structure, while they educate about a quarter of all pupils. Besides the Christian faith-based schools, a number of Jewish schools have been funded for a number of decades, and other non-Christian schools (including Muslim, Sikh and Hindu) have also been brought under the umbrella. On the principle of having state-funded faith schools one respondent noted:

So far as Catholic schools are concerned, of course, the whole point of them is that they're, first and foremost, Christian communities. The worship side of that comes out, and, therefore, worship, in the context of a Christian or Catholic school, is very important, because of affirming and deepening the *raison d'être* in the first place. As regards to admissions policies for Catholic schools; the law in this country, since 1873 (the beginnings of a "dual partnership between the Church and the state) the Church has contributed, and continues to contribute buildings, raises capital sums to support its schools, and works with the state in the education of Catholic and other children. Catholics pay taxes as well; if they wish to educate their children through Catholic schools, I think it's difficult in a pluralist society to argue against doing that – provided the same premium is extended to other faiths who wish to do the same (which I would argue for). I think there are limits to that religious freedom. I think it should rightly be qualified by ensuring that the National Curriculum is followed. [...] Faith schools that are run well, in particular, [those] based on the main Abrahamic faiths, with a strong emphasis on social action, on social cohesion and outreach to others, in many ways, serve to reinforce social cohesion rather than undermine it. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

David Frei also relied partly on the taxation argument to back the state funding of state schools:

Well there are [religious] state schools at the moment. I went to a religious state school; I was a governor of a state school for a very long time. It is always said by the atheists and the secular lobby 'why should we be forced to pay our taxes to a school which we couldn't get into or which we don't believe in?' to which others would say, 'we are religious, we are twenty per cent, thirty per cent of the population, we are paying taxes, why should those taxes not go towards us and our schools?' I can tell you that in America, where they have complete separation of state and religion, not a penny goes towards Jewish schools and Jewish people find it absolutely crippling. They live in nice green suburbs, they pay absolute fortunes for the upkeep of the local [state] school, which they can't send their children to because they can't have any religious instruction at all. All their [Jewish] schools are private and they pay an absolute fortune to send their children there. It's crippling to the extent that it is now regarded as one of the main arguments for birth control – having fewer children because families can't afford to put their children through education because they're paying double. They're paying large taxes to the local community schools – incidentally, because [Jews] group in particular areas and becoming increasingly religious, very few people go to the local schools and, therefore, the local schools are empty. They're bussing in people from other areas to fill up what are beautiful schools, with massive campuses, where they [the local Jewish community] are paying their taxes towards it and then paying double to educate their children privately. If

that's what's being advocated in this country I think it's unfair, why should they pay twice? Why shouldn't the tax-payer, who is a religious tax-payer, get an education which he has paid for? As it so happens, we all know that religious schools are doing far better than any other schools. We also know that there is no evidence whatsoever to suggest that there's greater intolerance emanating from religious schools, it's just not happening. And all the bombers etc, they did not come out of religious schools, they came out of state schools. The better citizens are clearly being produced by religious schools – Church of England, Jewish schools, Muslim schools, Catholic schools – no question at all; the moral codes, the better citizens, the crime rates, you'll see far higher scores for the religious schools than any other and that is the greatest advertisement I can give it. Now, if you're going to price them out of the market by making people pay their taxes twice, paying for other people's education and then paying for their children's education privately, that's equally unfair.

Shahid Raza also relied on the tax argument to express support for state funding:

I think the state should support these schools because they are established and run by tax-payers. Consultation, mutual understanding and exchanges of ideas and experiences are wonderful things, so these independent schools must to be brought into a framework where they are required, essentially, to have regular interaction and consultation with state schools and management. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

Rabbi Miriam Berger relied instead on the arguments of excellence and demography to support state funding of and involvement in state schools:

We have close relationships with a Jewish school in close proximity of the synagogue. It's not run by us but many of our congregation send their children to that school. I think that faith schools can be a wonderful thing, and I think that the high achievements that those schools often make are proof enough that they often work. I would be anxious for them to work completely outside of government guidelines because I think that you have government guidelines in place in our schools for a reason. If that means they've set a national curriculum that all schools should conform to, I don't see why any school should step out of that. But I think they need to be able to work together to say "how are the needs of this school different and how can we conform to the national curriculum etc.? [...] I think there should be government funding for these schools because I think that they achieve excellence. I think it's very easy for people to say it takes away multiculturalism, that it breeds ignorance, it breeds segregated society. When, actually, all you have to do is look around non-faith schools and see to what extent a particular faith group or nationality monopolizes particular state schools because they are situated within a particular catchment area with a high concentration of pupils from a given cultural or religious background. You realize that actually faith schools are no different to that. We don't really live in a melting pot as a society, we live within very distinct groups which don't really mix all that much and therefore faith schools are a good way to say "this isn't just phenomena, there are a lot of people of a particular faith in this community, let's embrace this and let's provide services that takes their interests into account." That way, students would be given the opportunity to have confidence in them and acknowledge difference and then be able to engage with others from different backgrounds. (Rabbi Miriam Berger, Principal Rabbi, Finchley Reform Synagogue)

Rev. Green saw the issue as more of understanding the role of faith and religion in life, preferring some models over others:

They should be managed in consultation with government. I'm less sure about their funding. I think if funding can be found, I think that's better. Also, I think there needs to be a better debate about the nature of faith-schools. For example, there is, generally, a very different

understanding in what a Roman Catholic school is about and what a Church of England school is about – the sort of theology that we spoke about right at the beginning. Again, the Church of England schools tend to have a high proportion of people who are not Church of England and not Christian, and that is seen, by us, as a good thing. Religious values [in these schools] are part of the teaching, not to gain membership, but in order to help children to grow and be able to understand the role of religion and faith within individual life and within social life. For the Roman Catholic schools, there are some of those things, but it is about membership, it is about retaining the growth of the Roman Catholic Church. I am less in favour of that model of school. I'm much more in favour of the Church of England model. Some Muslims say that they want to become [like] that Church of England model; there's real value in continuing that discussion. But it's difficult, because the climate in which we have that discussion doesn't understand those differences and just sees these faith-schools as a means of indoctrination. (Rev. Alan Green, Chair, Tower Hamlets Inter-Faith Forum)

Sayyid Yousif Al-Khoei expressed support on the ground that the religious community is part of the national collective and schools provide a service to the entire local community:

They should not be completely independent because they are required to follow the curriculum. In order to pass exams and gain recognized qualifications. However, the schools themselves have certain ways of working and philosophies – hence the need to establish faith schools the first place. They have their own traditions and customs, but these should not be the grounds for discrimination. The government should offer some kind of support for these schools, whether through funding or any other support, as these schools are providing a service for a given religious community who are also part of the national collective. Don't forget also, that not all students in religious schools necessarily belong to the dominant religious denomination of the school in question. There are many students at our school, for example, who are not Shia or even Muslim. It is important to note that we provide a service for the entire local community, not just Muslims. (Sayyid Yousif Al-Khoei, Director of Public Affairs, Al-Khoei Foundation)

Mohammed Nasser Khan noted, however, that there could be concerns about cultivating closed communities and mind-sets:

I think they should operate completely independently, they should be funded independently and the government should scrutinize them. I think the regulating should be done by the government but the funding should be done in-house. This is a Christian country and I know they have a history of having Christian schools funded by the State, but even these schools were allowing non-Christian people to actually attend those schools. But now you look at all these religious schools, they are closed-shops, literally, they are closed shops. And, if you just mix with your own all the time, where's the enlightenment? Where is the open-mindedness? We are just putting people in boxes and creating these fortresses around our communities which are horrible and threatening. And we see the consequences of that around the world – some people are so entrenched in their beliefs that they are not willing to listen anybody else's view or talk to anyone else, it's very worrying. I'm totally against the idea. (Mohammed Nasser Khan, Vice-President, Ahmadiyya Muslim Association UK)

Expressing concerns about state funding of faith schools, Jay Lakhani noted:

The Hindu Academy has signed up to a body called Accord. This idea of funding a faith school with public money is something that worries me. On the one hand I'm keen on religious ideas being expressed in the education system but I'm always nervous that whenever you have faith schools funded by public money, the majority of atheists and agnostics are funding a school which promotes ideas they completely don't agree with. So, in a way, it's always been contentious. The reason why I signed up to this movement that challenges faith schools is because we discovered faith schools are using biased employment policies; so, for

example, is someone is atheist, they can't work in a faith school. According to the law of the land, an atheist can work in a school, so this injunction is being violated. I'm siding with the more liberal, humanist approach. These schools can also be run by a cult, and there are some cases of this. These cults can brainwash their students, while using public money, to make them believe in a very limited vision of the world – I've actually seen this happening. Public money is being given to exclusivist groups and this does not seem fair to me. (Jay Lakhani, Senior Lecturer, Hindu Academy)

Part of the objections Jay Lakhani expresses here are also linked to the concerns of WP4, in that employment policies of faith schools come into question. The coordinator of the Accord coalition noted that, while it did not take a position outright against faith schools having state funding, there were other concerns, including the necessity of closer inspection by the state:

We think that there is a strong argument for the community to take an interest in how these schools operate. We would [like to] see that the government has a strong role in all those kind of schools, to make sure that they were operating in an inclusive way. Obviously, we're particularly concerned about the legislative freedoms that faith-schools have. We think faith-schools should be inspected like other schools. At the moment they are inspected on the contribution they make to community cohesion, but the government is trying to remove that legal duty, which we have great issue with. We think that OFSTED [Office for Standards in Education, Children's Services and Skills] should do more inspection of community cohesion in schools; at the moment they don't consider the effects of the types of assembly and RE [religious education] that is provided, and employment and admissions policies. They don't look at how those things affect community cohesion. We will certainly argue that there is a strong case for inspection in those schools, to make sure the powers aren't being abused. We aren't against faith-schools, but we do think that they should operate in a proper inspection regime, like other schools. We see a clear role for the government in how [religious schools] operate. (Paul Pettinger, Chief Co-ordinator, The Accord Coalition)

Yahya Birt expressed concerns about the potential treatment of applications for Muslim state-funded schools:

The situation varies widely across Europe on this issue. In Britain, because of the historical fact that the Church of England led the provision of public education in the 19th century, has meant that something like fifty per cent of [faith based] secondary schools and thirty per cent of primary schools are now Church of England. Because of that historical precedent, other faith-groups expect the right to set-up their own schools that are publicly funded. So, on the basis of equity, I would expect that those rights are extended to new faith communities, which includes Muslims. I worried about that because of the moral panic about extremism and terrorism, that there may be extra penalties of extra tests brought to bear on Muslims. For instance, in the Free Schools application, the Education Secretary, Michael Gove said last year that there was a special extremism unit set-up within the DFES to check on the applications of Free Schools from religious communities. Now, I would like reassurance that that unit will not act in an unduly discriminatory way. I don't think there should be an unfair additional hurdle. I'm not saying that the State is obliged to turn a blind-eye to things, malpractice or genuinely radical or extremist organizations running Islamic schools; of course it should keep an eye out. But there shouldn't be an unduly high hurdle and I'd like to see that there's due diligence in these checks (Yahya Birt, Trustee of City Circle/Commissioning Editor of Kube [Islamic] Publications)

Social cohesion and faith schools

Respondents were asked whether faith schools threaten wider integration and social cohesion, something which already came up (above) in connection with whether faith schools should be state supported at all. David Frei urged some deeper thinking about what ‘social cohesion’ entails, noting:

Not at all. There is no question that these schools certainly produce a religious code – I think it depends what religion you’re talking about as well – but I don’t think any of the schools prevent social cohesion and I think it really depends on what you mean by social cohesion. If social cohesion means inter-marrying with people of other faiths then, yes, religious schools will prevent that [...] because Jewish schools (and maybe Muslim schools) advocate marrying within the community. If social cohesion means breaking every single barrier down, then they [religious schools] are an obstacle to social cohesion. If social cohesion means living alongside other people with tolerance, adhering to your own traditions which require marriage within your own religion, then I don’t think there is any problem whatsoever. [...] I know that the Jewish population in prisons is well, well below the national proportion [...]. We are the most law-abiding citizens. I don’t think any racial hatred emanates from the Jewish community towards other communities. I mean you can look up the statistics, look at the violent incidents they have caused against others – nil, zero. And I think that if you look at the other religious schools you’ll find the same thing. It’s just a nonsense to suggest that social cohesion is going to break down if you teach people religion, it just doesn’t happen. On the contrary, you’re going to get more law-abiding citizens, greater tolerance out of these people than you do out of the many secular schools where they are all together and yet they nevertheless breed violence and crime. (David Frei, Registrar, United Synagogue *Beth Din*)

David Pollock took an opposite view stating that faith schools could exacerbate a problem that was already present in terms of integration:

Yes, absolutely. If you go to a school where you are self-consciously aware that ‘we are all Catholics’ or ‘we are all Muslims’ or something, and you cease at the age of five or eleven or whatever it is, meeting people with different views, then you can’t avoid seeing them as “Other”, different, and therefore inferior; “wrong” in some way. That’s not conducive to an integrated and happily functioning community. We have enough problems with integration without schools reinforcing them. There are areas of segregated housing which lead to segregated schooling by virtue of the fact that we don’t go in for bussing - bussing created big problems. But the idea that we have areas where housing is relatively integrated and then separate the kids out in groups according to religion and belief is folly, it’s dangerous. (David Pollock, President, European Humanist Federation)

Dhanisha Patel, taking a more nuanced position, noted that work would have to be put in to ensure total isolation did not result:

I think they do [threaten wider integration and social cohesion], yes, but that doesn’t necessarily mean that they are bad. Just reflecting on my own upbringing, my friends are from different backgrounds and I think the tendency for people who go to a specific faith school is that they are exclusive places only for members of their own religious community (even though a lot of these schools are open to everyone). Catholics should go to Catholic schools and Hindus should go to Hindu schools, for example. I think that is an issue. And if that ends up being the way that the school is run, then you will only have a school full of Hindus and a school full of Catholics. I think if these schools have an open policy, to allow people of any faith or background to come in, I think it’s better for social cohesion. Also, I think the syllabus should be Hindu-focused or faith-focused but I think school is not just about the academic side of things, you also have lunch, playtime, sports and things like that which a given school could potentially work with other schools so you’re not just in a Hindu environment all day every day. Maybe if these schools shared facilities, Hindus students

could have lunch with everyone, for example [...] I think social perceptions have a lot to do with this issue. It wouldn't be normal for me to ask my mum if I could go to a Muslim school, for example, being a Hindu. So I think society already operates on these dividing lines, it's just a question of what can we do about them now. (Dhanisha Patel, Legal Co-ordinator, National Hindu Students' Forum)

Dhanisha Patel's view on the fact that people also live within distinct communities echoes somewhat Rabbi Miriam Berger position expressed in the previous section. Shahid Raza suggested that there might be an element of selectivity in choosing to focus on faith schools as leading social non-cohesion and a lack of integration:

These schools don't pose a threat, but individually, some of the cases in these schools, some of the teachers in these schools, may pose a threat to so many things but that happens in state schools also. Religious schools should not be picked on for that particular problem; these problems are widespread in state schools, these problems should be treated equally. If religious schools are a problem because they are erroneously seen as separatist, they should also see Eton and Harrow as a problem due to their elitism. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

Tariq Ramadan noted that one had to look at the socio-economic reasons why Muslims are forming faith schools:

No, I think that even surveys are showing that that is not true. In fact, what is threatening social cohesion is not effective Muslim schools or Jewish schools, it's social segregation. The primary reason why there are Muslim schools is because of social and economic segregation where families are poor and schools are under-par. This is why Muslims are creating an alternative and sending their children there – because these schools perform better. I think we should not be Islamizing the causes of these problems; it's not Islam, it's not religion, it's social status, class problems. Once again, we have to turn to history – who put these divisions in society? Why were minorities concentrated in areas with second-class schools? The state education system is not matching the needs of the people and people are within their right to seek alternatives. (Professor Tariq Ramadan, Contemporary Islamic Studies, University of Oxford)

Like Mohamed Shahid Raza, Tariq Ramadan is asking for a broader perspective on schooling, something which other respondents also highlight, especially in light of the performance differentials between faith and non-faith based state supported schools.

Religious worship in schools

Proposed amendments to the Education Bill currently going through parliament would put an end to the obligation of religious worship in state schools not founded on religion or faith basis. Currently, the act of worship required in non-denominational state schools requires that it must be 'wholly or mainly of a broadly Christian character' although such worship may vary depending on 'any circumstances relating to the family backgrounds of the pupils'. This formula was brought in by the Education Reform Act 1988 to 'clarify' an obligation already present in the Education Act 1944 and out of concerns that the Christian character of education was declining. The obligation was retained in

subsequent legislation and the current provision is found in the School Standards and Framework Act 1998.²⁵ Paul Pettinger of The Accord Coalition, which backs the proposed changes, noted:

[...] The final thing we want to do is reform the laws on collective worship. Every state-funded school in England and Wales is supposed to teach and provide daily collective worship, to quote the law: “of a wholly or broadly mainly Christian character” [...] We object to this, we think that assemblies should be based on shared values; we believe that there are a great many shared values between all the world’s main religions, beliefs and also non-religious perspectives. We are trying to change the law so that schools are not compelled to provide for Christian worship and to allow them to provide assemblies that are based on shared values. Fortunately, the law at the moment is very unpopular and most schools ignore it; they don’t provide collective worship or school assembly. In part, often schools don’t have premises appropriate for it, and also because they don’t like the law. We feel the law is being flouted, which is not good, because it means that school assemblies are not being provided when they might otherwise be (we think school assemblies are very important).[...] Without a shared belief system, we don’t see how you can give a meaningful assembly when you’re giving reverence or privilege to a particular religious belief. There are shared values [thus] we think school assemblies are very important but lots of schools ignore it because collective worship is very unpopular. [However], we want schools to provide assemblies, we want schools to provide ethical and moral education – we think that’s very important. The current law isn’t working very well; it’s unworkable; we think it needs to be reformed. It does seem grossly unfair that Christianity is privileged in the way that it is [...] we have lots and lots of Christian supporters who don’t want their religion being associated with discrimination – they object greatly. Some people involved in Accord hold their view because they claim to have been directly inspired by their religious views; so it really is a coalition of religious and non-religious people. (Paul Pettinger, Chief Co-ordinator, The Accord Coalition)

Consistent with other reports, Paul Pettinger also speaks here of the declining support in practice of the act of worship obligation. Charles Wookey coming from a Catholic perspective put the issue in terms of the desirability of worship but it’s problematic nature within a secular context:

My own view about that, and it would be my personal view (I’ve got educational expert friends and colleagues who are thinking about this issue much more than I am) would be that state schools should be taking religion seriously, should provide opportunities for those students who come from faith backgrounds to have that faith respected in the school as part of what they bring to the school. I think experiencing worship in a secular context is problematic if the ethos of the school doesn’t have a basis in faith. It’s quite difficult to see how that can be sustained and taken seriously if the teaching staff, who are conducting the service to the students who are there, do not necessarily share a particular belief. [...] I think an opportunity for those who wish to attend services at school are important. (Charles Wookey, Assistant General Secretary, Catholic Bishops’ Conference of England and Wales)

Religious education

Religious education is part of the basic curriculum in all state non-faith based schools since the Education Act 1944. It reflects part of the larger agreement between the state and the Churches. The Education Reform Act 1988 was an attempt to initiate changes to the manner in which religious education was taught because it was felt by some parliamentarians and interests groups that, just as with the obligation of worship, the Christian content was being diluted. In much the same way as the religious worship provisions were bolstered to ensure a Christian content, so were the provisions for the teaching of religious education. The provisions have reportedly failed in their aims, with a variety

²⁵ Specifically, the School Standards and Framework Act 1998, Schedule 20, para. 3.

of ways of teaching the subject in practice, while a whole swathe of schools ignore the legal obligation to teach it.

We also want to reform Religious Education (RE) [in schools]; we think it's very important that people should receive a broad, balanced education about the range of religious and non-religious beliefs in society. So we believe that each child should have a core entitlement to that kind of RE. Arguably, a school or parents may wish to organize extra RE instructed in the faith of the school, we think that it's very important for that core entitlement to be broad and balanced. RE is a strange subject; it is a compulsory subject, which is not part of the National Curriculum.²⁶ It is actually a devolved subject, so, again, voluntary controlled schools and all other state schools without a religious character, follow a local RE syllabus produced by the local authority. We have some issues over this. For example, they give privileged position to representatives of the Church of England; the non-religious are often excluded. But on the whole, the RE produced by these local committees is okay, it good, it's broad and balanced. We're particularly concerned about the type of RE taught in voluntary aided schools. Again, they have freedoms other schools don't have; it's up to the school to determine what their curriculum is, what they teach in RE can be overtly instructional, it can just teach about what the school believes, it can teach the school's religious belief as objective truth, it may ignore other Christian denominations, it may ignore all other religions and it may completely ignore non-religious perspectives.[...] We think RE should seek to teach the range of beliefs held in society. In Scotland, lots of schools don't teach RE but they teach moral and ethical education, [but] we'd certainly be in favour of RE in England and Wales – trying to reform it, to go down that route. There are arguments about whether an RE syllabus should be adapted for a local area, I think there is an argument for that if in one region or area particular religious or non-religious communities were prevalent; then an effort could be made for tendering a local syllabus. Although, I think, in reality, we'd leave that to educationists. We're not best placed to write an RE syllabus for each area, but RE should change from how it is at the moment (Paul Pettinger, Chief Co-ordinator, The Accord Coalition)

Atul Shah noted that religious education was actually valued by students because it provided a vehicle to discuss diversity:

One recent example was about the teaching of world religions in schools at the GCSE level. This was one area where students encountered cultural diversity, inadvertently. There are examples of schools where they have stopped teaching world religions, the children have actually started making complaints because they enjoyed the subject, they found it very interesting, fascinating, and educational and they love to see the mosaic of the world. I think that is very important and that is also the way of opening the minds of the citizenry and also making them more culturally literate. I know for a fact that my daughter, my own daughter, was going to a school where the majority were white students and very few minorities; the white students complained about the cancellation of world religions, not just my daughter. [...] [World religions] is a very interesting subject and it is actually a very powerful way of building a diverse society and an inclusive society. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

Selective school admissions policies (including the JFS case)

In principle, the state-funded schools that are recognized as having a 'religious character' are able to set their pupil admission policies in line with their priorities. This is confirmed by the House of Lords case concerning a Catholic voluntary aided school that sought to give priority in admission to

²⁶ This derives from the Education Act 1944 that religious education is part of the 'basic curriculum'. The 'national curriculum' was only introduced in the Education Reform Act 1988.

Catholics, other Christians, and others, in that order.²⁷ In the more recent case of *JFS*²⁸, the UK Supreme Court, by a majority of 5-4, decided that the admission policy of the school in question, JFS, was a breach of the Race Relations Act 1976, constituting discrimination on grounds of a person's racial group because the admission policy was dependent on a test of Jewishness based on descent through a Jewish mother. Our interviewees were able to provide the different perspectives taken on this case by differently situated Jews, with some overall concern that the state and official judges have had to become involved in deciding who a Jew is. David Frei explained the potentially wide-reaching impact of the judgment:

Well, it's not just the school admission policy. The JFS case came to a conclusion which is quite extraordinary. The conclusion was that the way that Jews define themselves - the universal way that Jews define themselves; this is not English Jews or American Jews; it is accepted throughout Orthodox, Reform, Masorti, most either Jewish bodies etc.- is that one is Jewish if one has a Jewish mother or if one has been converted. The only difference between those movements [...] is in the sense that one movement's conversion won't be accepted by another. So, the Orthodox conversions are accepted within the Orthodox community, the Orthodox community doesn't accept the conversion of the Reform or Masorti community, for example. But, in terms of the actual definition of who's a Jew, they're all unanimous. That has been Jewish law for millennia and that remains Jewish law. I think the only deviation is the liberal synagogues, very far left of the spectrum, who introduce not a matrilineal but a patrilineal test as well. So, if you had a Jewish father, rather than a Jewish mother, you'd also be Jewish in their eyes. So, the vast majority of Jews, I would say ninety per cent, regard Jewish status as based on the mother, the liberals, the exception, say the father as well. All those movements, one hundred per cent of those movements, are being told now that that definition *per se* is racist; that it breaches the Equality Act; that you cannot rely on it, not just for entry to schools but for the provision of other services. So, you have an absurd situation where you are told that if you want to bring children to the school, it has to be based on the observance of religious practice rather than religious status. And it flies full in the face, as was observed by judges in the minority in the Supreme Court; four out of the nine judges who opined in this case, made the point that this is complete nonsense – you're asking Jews to define themselves in a way that they never have and you're asking them to provide a religious practice test which means you can restrict entry to your schools (and other institutions) on the basis of what you observe rather than what you are. This [definition] is a fundamental understanding of Jewish history, of Jewish culture, as was pointed out [by judges] in the Supreme Court, and flies in the face of the Jewish religion. It is the way everybody defines themselves [...] And it's not just school entry which is affected by this, it could be many, many other things.... We convert anybody from any race whatsoever – we've converted people from Islam, black people, brown people; it doesn't really matter what colour or creed you are, you can be Jewish. We do say that there is a Jewish nation and we define that by having a Jewish mother, it's as simple as that. We can't be racist if we are prepared to bring in a person of any colour whatsoever and have done so and continue to do so. So you can't be racist in that sense. [The policy] fails to understand the way that Jews define themselves; we are not just a religion, we are also a nation. (David Frei, Registrar, United Synagogue *Beth Din*)

Rabbi Wittenberg however noted:

Most of the lawyers involved and two of the key pupils involved come from my community; who were heavily involved in this case and were pleased with the judgement, by and large.

²⁷ *Choudhury v Bishop Challoner RC School* [1992] 3 All ER 277, [1992] 3 WLR 99. This is confirmed by the statutory provision in the Education Act 1996, section 411(3)(b).

²⁸ *R (on the application of E) v The Governing Body of JFS and the Admissions Appeal Panel of JFS and others* [2009] UKSC 15.

We thought, actually, when the JFS was the only Jewish secondary school (now there are others) that it was outrageous the way it was behaving and the community was quite supportive of this case. However, it should have never have gone to the civil courts; it should have been agreed within the Jewish community. It's an absolute disgrace for the Jewish community that that didn't happen, and foolish. I think, although I wanted an outcome that opened the school's admission policy in the way that the case has, I wouldn't have wanted to use legislation (all things being ideal) in the way that it was used. It's kind of embarrassing. On the whole, my view is that it doesn't set dangerous precedents but that's not a totally clear-cut picture, so one does not know what will emerge from it. I think it was completely unnecessary squandering of community resources, funds, time and energy on something that should never have gone there [to the Supreme Court]. (Rabbi Jonathan Wittenberg, Principal Rabbi, New North London Synagogue)

Rabbi Miriam Berger also saw some benefits because of the ruling but was also not unequivocal about it:

That ruling was very significant for us as a community because many of our members don't fall into the category of being *halakhic*, according to the orthodox movement. So, in that sense, many of our congregation was very happy with the ruling. What I was very challenged by was the idea that the Supreme Court defines us as what a Jew is. As somebody who is *halakhic* Jewish, I realize that it's an easy thing for me to say. Actually within the sphere of religious law, all this becomes very complicated. Especially when the government turns around to us and defines for us who's a Jew and who's not...I personally believe that the government overstepped the mark on this issue, which has had repercussions on other schools and their admissions policy – which I think has had an adverse effect within the Jewish community. Effectively, I think that it's well within the Supreme Court's right to be able to say, if we cannot define who is a Jew, then we cannot have Jewish schools, we cannot have faith schools. Because if we're providing an education system, these are the rules within which we are governed. That's very different from saying, this is what a Jew is, or how do you define who a Jew is, and then you can have your Jewish schools. I think it has muddied the waters [...] At the same time, I wouldn't be standing against the ruling, particularly as it benefits many of my congregants who can now send their children to schools that they hadn't been able to otherwise. I personally wouldn't want my child to go to a school that doesn't recognize them. The problem is, it hasn't changed the mentality within the schools in question. For instance, the process of *bar* and *bat mitzva* happened within JFS so that they would go through that religious life-cycle event within the school, but now the school authorities would say we can't be sure who is Jewish and who isn't, therefore we can't go through this life-cycle system anymore. So, what the school is admitting is that we don't recognize these people as Jewish. However we've been told we have to recognize them. I don't think this benefits anyone. (Rabbi Miriam Berger, Principal Rabbi, Finchley Reform Synagogue)

On behalf of the Accord coalition it was said:

We welcome the conclusion of the case, but it's a long way away from what we want, which is no selection. JFS is a fascinating issue, because it is about 'who is Jewish?' 'Who is to determine what a Jewish person is?' It was a really ugly episode. I'm not Jewish myself, but it was about the tension within the Jewish community. The law [in that case] has been read in a way which is more inclusive, so we would welcome it, but, obviously, it's a long, long way away from non-religious selection. I'm not sure what else I can really say from an Accord perspective on that, but it does ask lots of interesting questions about who is Jewish and what it is to be Jewish – what the law says is different from what the Orthodox believe. (Paul Pettinger, Chief Co-ordinator, The Accord Coalition)

Proposed amendments to the Education Bill currently going through parliament would put an end to the ability of all state funded schools to select on the basis of religion – either staff or pupils. The Accord coalition supports this position:

...we want to stop discrimination, as we see it, on the grounds of religion and belief in pupil admissions in all state-funded schools in England and Wales. All our objectives are focused primarily on England and Wales, although we do take interest in Scotland and Northern Ireland (but our constitution is focused on bringing about legislative change in England and Wales). Secondly, [we want to] stop any kind of discrimination in staff employment in state-funded schools (of course, we're talking about faith-schools here). There are two main types of faith-schools at the moment: there's voluntary aided and voluntary controlled, there are also the academy faith schools (which are growing very much in number) but until now, there were two main types. We are particularly concerned with voluntary aided schools. Just to give you a broad overview: about a third of state-maintained schools in England and Wales are faith-schools, so they are registered as having a religious character by the Secretary of State or the Welsh Assembly. There are voluntary aided schools which have more freedom and power than the voluntary controlled schools. The voluntary aided schools can select on the basis of religion for all of their pupil places if they are sufficiently subscribed. They can also select people on the grounds of religion for all their teacher posts. Whereas, in voluntary controlled schools, most are not allowed to select on the grounds of religion, if over-subscribed. Confusingly, some can [select on religious grounds] if their local education authority permits it. About a third to a half of those authorities that do have voluntary controlled schools, allow them to select on the grounds of religion in some way. The voluntary controlled schools are allowed to reserve a fifth of the teacher posts to recruit on the grounds of religion. Supposedly, they're appointed for their appropriateness to give religious education in accordance with the tenets of the school's religion. So these schools are able to discriminate, but not a hundred per cent, but only twenty per cent. We want to stop all religious selection in these areas, but obviously it's political. (Paul Pettinger, Chief Co-ordinator, The Accord Coalition)

It is likely, however, that there will be some opposition to the legislative proposals prohibiting selection on religious grounds among members of the several groups who have established schools with a religious character. Charles Wookey noted:

I think the freedom over admissions policies is appropriate. They only come in to play, in terms of preferring Catholics over others, in the case of over-subscription. In practice, most of the Catholic secondary schools in England and Wales have around thirty to forty per cent of Catholics there. So, in practice, most of our schools have a mixture of students from different schools. When those families apply to those schools, they know that they are applying for an education in a church school – they don't have to apply there – and, if they go, it's not unreasonable that they should get the service of worship and the curriculum and the ethos that the school provides. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

The outcome of the proposed legislation is far from certain at present and developments in this field will obviously have to be monitored closely. If the legislation does prohibit selection on religious grounds it is likely that there will be criticism on the ground that that will spell the end of schools with a religious character at a time when, as noted by some respondents, they produce educationally successful outcomes while providing an ethical content to their education.

Religious dress

We asked respondents to comment on whether members of religious communities should retain the legal right to dress as they please in public and whether distinct religious dress codes undermine “national values”. Prof Ramadan summed up the hostile atmosphere that forms the context of this discussion:

Dress codes are seen as symbols of colonization and not seen as symbols of normalization. In fact, they should be seen as symbols of normalization. That means that we are here and this is us. The British, or Europeans in general, should be getting the idea now that Europe is changing. Headscarves, beards etc. are now parts of the European landscape [...] all these colours are European colours. I am completely against anything that says that in order to be accepted, we have to be invisible. This is the populist current that urges us to change our names, change our colours, change our dress – this is wrong. This is no longer a European society that celebrates diversity, it’s a defensive, reactionary understanding of its own culture and it’s wrong. (Professor Tariq Ramadan, Contemporary Islamic Studies, University of Oxford)

David Pollock framed the matter by suggesting that there was a contradiction between English national values and obliging a person not to wear something:

I have no problem; let them get on with it. I live in the midst of a community of Hasidic Jews and they have marvellous dress-codes which I don’t understand. They’re all different from each other, they’re very different from mine [...] I don’t think [dress-codes] necessarily undermine national values – what are national values? National values are for you to do as you wish. It always used to be said that in England you could do whatever you wished as long as I wasn’t against the law, whereas, in other countries you would only do that which was specifically allowed by the law. We’re moving a bit in that direction but I cherish the idea that we can still, on the whole, do anything that isn’t specifically prohibited. (David Pollock, President, European Humanist Federation)

Several respondents attempted to draw a line between a general freedom to dress and the types of dress that restrict interaction, communication or security. Ghulam Rabbhani noted:

This is quite a difficult question, there is no doubt about it. People should be able to dress how they like as long as it doesn’t harm other communities. Everyone is supposed to be free and dress they way they like. If, for instance, someone dresses in a way that is intimating, it gives the wrong impression to everybody. In a similar way, some non-Muslims go out and they dress in a lewd way, almost naked, that is unacceptable as well, quite offensive. *Salwar kameez*, trousers, *hijab* is alright. Even, some strict Muslims wear the *niqab* in public, they should be allowed to, but again, if they are a teacher, for example, they should take it off because it doesn’t work - you’re making yourself unemployable. (Ghulam Rabbhani, General Secretary, Harrow Central Mosque)

While emphasizing freedom Alan Beazley suggested that there would, in any case, be problems with enforcement if a French style ban was adopted:

I think they should retain the right to wear whatever they want in public subject only to appropriate allowances being made where there are high level issues or concerns about security. I, personally, don’t like it; I don’t have a problem with *hijab* but it offends me to see fully veiled women in public. It’s a pretty shocking site to me. I can only really speak about London, but it’s still relatively unusual to see [veiled women] in London. I think it will be over the top to impose any bans on wearing veils in public. In an employment context, I think we’ve got appropriate ways of dealing with it. As with the *Azmi* case, which was ‘you can’t

do this job fully veiled because you can't communicate with the children you're teaching', that's an entirely different thing. But I think in the public realm, at the moment, we should just live with what we have. It's too divisive to try and insist on public bans and I don't know how you enforce them anyway. They seem to have enormous problems in the few cases that they've tried to enforce in France so far. It's doesn't seem to have worked. It's a big political gesture. I have some sympathy with the French position that 'you're French first' and whatever you may be after that is very much secondary. But I think it would be a reactionary and divisive move to try and bring it here. (Alan Beazley, Advice and Policy Specialist, Employers' Forum on Belief)

Barney Leith also highlighted the issue of communication as a possible reason why restrictions would apply in some circumstances:

If you could tell me what national values are in the first place, I would be happy to answer. I think this is a tricky one. I, this morning, for example, was in a meeting to do with healthcare chaplaincy, and I was sitting in a room with a member of the Muslim Council of Britain, on one side, wearing an ordinary Western-style suit; a Sikh, with his turban and his bangle and his sword; and a Catholic priest, with his clerical collar; a member of the Jain community, dressed in a business suit; and myself, dressed as you see me here. I don't think that the form of dress necessarily acts as a barrier or is a barrier to cohesion once you are used to it, once you are used to looking at the person underneath the dress. But if you take a superficial view, and the first time you see somebody they've got 'funny clothes on', it can make some people react in a defensive way and not quite know how to talk to this person. When you're used to it, it's just part of the scenery, as it were. I think the biggest challenge comes if religious dress involves covering a large proportion of the face. I don't think it's anything specific to do with the religious connotations of it; it just has to do with the difficulty with communicating with people when you can't see their faces. I think we have to be blunt about this. There was that situation where Jack Straw MP asked that Muslim women wearing the veil to remove it so that he could communicate with her; that became a big issue. There was a case of that girl in Luton who went to school and was wearing a *jilbab* etc. I think there are certain circumstances where the sensitive nature of communication really requires the ability of all parties to see the facial expressions of all other parties. On the whole, I have no problem, personally, with people wearing religious dress; if they feel that's an important expression of their faith, then why not? Provided it does not become a hindrance to communication. I think if you communicate with people in different kinds of dress often enough, it just becomes part of the scenery – you don't think about it. Then there are people who wear different kinds of dress, they're cultural, not necessarily religious [...] Again, there needs to be room for sensitivity and negotiation. What's the problem? (Barney Leith, Chair, Faith-Based Regeneration Network)

Baroness Faulkner advocates a ban on face coverings in certain situations:

What do you mean by a 'distinct' dress code? Islam does not have a defined dress code. As a liberal, I believe that the state has no role in the dress code of the individual, other than norms about nudity in public places and so on. However, there are certain women who go to an extreme by wearing a *niqab*, which shows that she doesn't trust others to interact with her in a non-sexualized basis, and I am as keen to ban a full face covering in some limited situations as I am to ban a balaclava. I do not think it is appropriate for either kind of face-covering in a work situation, teaching, hospitals and other areas where young or vulnerable people might need to interact with the person wearing a balaclava or *niqab*. (Baroness Falkner, Life Peer, Liberal Democrat, Ministry of Justice spokesperson, House of Lords)

While also disagreeing with the idea of a 'dress code', C.B. Patel did not think that a ban should be entertained:

First of all there is no religious dress-code, whether *burqa* or beard. But, if they want to wear *burqa*, let them wear *burqa*. I would rather allow them to wear *burqa*, than by law stop them wearing *burqa*, like France is about to do. As if there are resources to deal with such a law? Court resources? Police resources? If my Muslim neighbour wants to wear *burqa*, let her. I believe that the least inference by law is more common sense, because when the law says don't do something, people still do it, they do it more. I don't like the state to intervene in these personal matters. What to wear is like what to eat. I'm vegetarian, I'm seventy-four and I feel very healthy, I drink very sparingly, I smoke but only five cigarettes a-day – I should know what is good for me. Whether in terms of food, or drink or lifestyle, the state should intervene, this is attacking our liberties too far. (C.B. Patel, Chief Editor, Asian Voice/Gujarat Samachar)

Right to build places of worship

Respondents were asked to comment on whether every religious community should have the right to build a place of worship and based on what conditions. The Swiss case of a ban on minarets was evidently in the forefront of some respondents' minds, which seems like an example none of them wanted to be emulated in Britain. As Barney Leith expressed the issue:

Yes, why not? I can see no reason on God's earth for denying a particular faith community the right to build a place of worship, provided, of course, it complies with planning regulations. Then again, the planning regulations should be sufficiently flexible to allow people to build minarets or whatever it is. I think, by and large, that is the case in the UK. I know in Switzerland there was a law banning minarets but I think that's frankly ridiculous. People may object on the grounds of noise, crowds, parking etc. but to object on the grounds that 'I don't happen to want a Hindu temple or a *gurdwara* or a synagogue or a mosque at the end of the road'; I think that is not a relevant objection. (Barney Leith, Chair, Faith-Based Regeneration Network)

There could however, be some reasonable objections to places of worship being built even though the principle may be conceded:

No, every religious community should not have the automatic right to build a place of worship but I do, maybe paradoxically, believe that every religious community has the *legal right* to build a place of worship. However, sometimes it's not wise, for example, the "9/11 Mosque" in America. I think local municipalities need to exercise discretion on these matters because they are the authorities that understand local social dynamics the best. On a local level, I would say no, on a national level, I would say yes. In the 9/11 example, there was high emotion around the building of the mosque. Regardless of whether or not these emotions were justified, sometimes you shouldn't force your way in as this might cause more harm for the community than benefit. If a local municipality rule against a place of worship being built, I think their reasons should be considered. However, in principle, religious communities should be given the general right to build places of worship. (Mark Shelton, Pastor, Cross Street Baptist Church)

Sometimes, however, planning may be blocked because of a lack of vision among local planners, as Atul Shah explained:

Planning rules need to be sensitive, they can't be generic. Maybe some general principles, but the actual interpretation needs to be case-sensitive. I have an example of that, one of the greatest additions to British architecture in the 20th century [...] is the Swaminarayan Hindu temple in Neasden, London. It was built in 1995 and has attracted millions of visitors since. But if you look at the history of their experience for getting planning permission for this

building, and getting approval and consent, it is a miracle that the temple ever got built. I have met the people involved in that process and they said, at the time, the local planners they were dealing with had no vision, no sense of what this building stood for, even after we showed them a picture of what this building could do to transform the civic landscape. And transform it has, it has brought a lot of peace in the area, it has brought a lot of cohesion in the area, it has become a fountain of moral inspiration for the whole of London. People are travelling from all over the world to visit the temple. Every visitor is welcomed with an open heart. Nobody is forced to convert to Hinduism. There is no fundamentalism practised. It is a completely open-door policy and people come out absolutely uplifted from that experience and remember it for many years hence. So, these communities this, they're already doing it on the margin, they're doing it through their own resourcefulness – no government money or support – yet, they're actually benefiting the government in so many ways. They are transforming society in multiple levels; in terms of empowerment, fairness, honesty, justice, leadership, art, creativity. I've seen whole bus-loads of school children coming to this place, and almost from the moment they step in to this place, the teacher does not even have to say "be quiet". Just the aura of the place makes them become reflective, quiet, they bring their sketchbooks and because they see art all around, not just exhibited in a frame, in a painting to be admired from a distance, but to be experienced, to be lived. They sketch freely and they take those memories home with them. This is the quiet transformation which you rarely hear about in the media, but it's happening. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

Rabbi Berger echoed this statement:

Again, ignorance can be alienating. Some of these ornate and wonderful Hindu temples, for example, can look very out of place in the heart of an area that predominantly comprises of English architecture of the 1940s. But if you have a community of people that are going to be using that building, and a community of people that are going to be paying for that building, then it has a need and a purpose. What better way of showing that we have different communities and cultures among us than have that represented in our culture? (Rabbi Miriam Berger, Principal Rabbi, Finchley Reform Synagogue)

Suresh Grover meanwhile thinks that a disproportionate amount of space is being devoted to religious groups and not enough for other spaces needed for the community:

No I don't think they should. If you'd asked me that question 20-22 years ago [...] I fought for a mosque for the Bohra community in Northolt, I would have given you a different answer. You had [at the time] estate agents in Northolt against the building of that mosque. There was a very powerful, white-led, action against that mosque. It was in an industrial area, not even in a residential area where it's very difficult to disturb anyone and to get to. My arguments were that people were entitled to space etc. Our monitoring area is within the geographical area of three square miles which has, three mosques, seven temples and eighteen gurudwaras and not a single public organization funded [these] to serve the community. I think the influence of religious institutions is too strong; I think there has to be proportionality for leisure space for young people, women, old people on top of the religious needs of the community. I am not in favour of any religious institution building a space simply because it's a religious institution. [...] I'm attacking it on the basis that space has to be utilized for the development of individuals and communities within a community and that should be proportionate. For example, I think there is a greater need to have a small mosque for the benefit of the Somali community, rather than more gurudwaras simply for the sake of having them. In Southall we have seventy religious marches a year; you have fifty thousand people going, every Sunday, to gurudwaras, there are a lot of people – Sikhs and Muslims – who are fed up with this [over-prescription of religious events]. The problem is that there is not a single cultural event that unites everybody; there is an explosion of music by young people but we don't have the resources to facilitate it. All the public buildings have been sold apart

from one (the Dominion Theatre) which we fought for two years ago [to prevent it being privatized]. So, therefore, I am opposed to building more simply for the sake of it but I'm not opposed to the principle of building places of worship generally. There is a saying that goodness will come if there is a church on every street-corner – I don't believe in that at all. (Suresh Grover, Director, The Monitoring Group)

Consulting about building places of worship

Respondents were asked provide their view as to whether the government should consult the citizens of the area where a place of worship is planned to be built and what should happen if a large group of residents object to permission being granted.

I think there should be consultation only within whatever limits are imposed by national or local planning control [...] If there's a planning application for the change of use, a new building or whatever it may be, and if you are an immediate resident [in the vicinity of the proposed place of worship], you need to be notified directly. Given that the present government is banging on about the need for transparency in local and national government, these issues are for the community to work out, in my opinion. But I wouldn't have any special consultation requirements with the local citizens. (Alan Beazley, Advice and Policy Specialist, Employers' Forum on Belief)

Editor of the *Asian Voice* and *Gujarat Samachar* newspapers suggested that objectors should not necessarily be given a veto:

People may object or not but there are laws. Take, for example the Harrow area; opposite the Civic Centre there is a huge mosque. I admire the people of Harrow Council and the Christian community. There were people protesting, the English Defence League also made a protest [...] but this is a civilized country, they adhere to certain principles. Today some Muslims, Hindus and Sikhs feel that there is some discrimination, in the last century, the Jews also thought so, before that the Huguenots also, the Caribbean people also. I think we become very narrow-minded. The law of the land is the supreme law, even if people object, they must understand that there laws governing planning issues. That's why I supported the Harrow case, and I'm Hindu, not a Muslim. If Muslims want to build a mosque, let them build, what's the worry? (C.B. Patel, Chief Editor, Asian Voice/Gujarat Samachar)

Rabbi Berger noted that planners have to deal with objections sensibly:

I think a large group of residents would object to anything being built, usually not on the grounds of what we perceive it to be. I always think that if someone is objecting to a synagogue being built, or if anyone attacks a Jewish kid in the street, that it's anti-Semitism. Whereas, actually, it's as likely that if we were trying to build a hospital, the same residents will also object. People don't care what you build or why you're building it, they care about the impact it's going to have on them. People are inherently scared of change. I think people have to be consulted, but they have to be brought along on a process. Those people that run the process need to be sensitive to the process, and not allow anxiety to prevail but be able to listen to real, deep-seated concerns. What's important is that there is a dialogue. (Rabbi Miriam Berger, Principal Rabbi, Finchley Reform Synagogue)

Charles Wookey argued for a careful assessment of the nature of any objections that people might have to planning permission:

From what I've just said, yes; I think they should be. That needs to be taken into account. There's a balance to be struck here and it's very hard to generalize. It is very case-specific. I think objections from local committees need to be taken seriously, because you don't want to

ferment unrest and social division. Equally, you don't want to pander to what may be racial or religious prejudice. Therefore, I think the views of the population need to be tested. Often, views can be manufactured or very heavily influenced by much, much smaller groups who go around stirring up antagonism; so that needs to be seen through too. There needs to be very clear public mechanisms for consultation so that what really lie behind objections can be publicly and openly tested. If there are issues, they can be seen and addressed. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

David Frei provided the example of objections to the establishment of an *eruv* in London:

Well, again, first of all it's not really government; the local government is in charge of planning legislation. Secondly, the local authority or the local population will normally be aware of the make-up of the area. If it is a very major project, there will normally be a planning enquiry in any event and local people will be consulted but I don't see that it's the business of some voluble minority who might not want *x* or *y* on their doorstep to say so and to prevent a minority from getting their rights to express themselves and pray as they wish. After all, they would have bought the property with their own money, they will be within planning law, otherwise it won't be built, so then what is left for someone to say that 'I don't want them here because of *x* or *y*'? We have a very fine example of this in the north west London area where, a number of years ago, over ten years ago, we wanted to put up something called an *eruv* – which is boundary which allows Jews to carry on the Sabbath – we had an extraordinary battle going over a period of many years and leading on to a public enquiry. At the end of it, the Secretary of the Environment had to determine whether or not we could have it and decreed in our favour. The arguments deployed by the local population, the vociferous opponents who were very few in number, were so absurd. From birds knocking into the posts and dying (not one bird has ever been shown to have died) to this being the building of a ghetto or a concentration camp or a "Jewish boundary"; compromising their rights under the Human Rights Act'; blind people are going to fall over the street furnishing (that it was going to be more cluttering than a lamppost or a public bin). If you read back through the pages of the local newspapers fifteen years ago, you'll see all these absurd arguments deployed. We had an almighty battle and, in the end, we got it through. Nobody in the area even knows it's there; the vast majority of the boundaries are railway viaducts, tunnels and the embankment of the M1 motorway and a few strings unsuspectingly stuck into various places. Since then, about two or three more *eruvim* within the greater London area have been built and more are planned and nobody even knows it. The Whitehouse in Washington is within an *eruv* area, nobody even knows it's there. So usually, when people oppose it, it's either on sincerely held aesthetic grounds; in the main, it's usually anti-Semitism. The real subtext is 'we don't want these people here'. Should the local population be entitled to say 'we don't want these people here'? Definitely not; we're a democracy, you can buy houses wherever you want, you don't like it, go and find somewhere else. If you're a white racist and you don't want Jews in your area or Hindus in your area or Muslims in your area, then just go somewhere else. (David Frei, Registrar, United Synagogue *Beth Din*)

Jay Lakhani emphasized the necessity of consensus building:

As would happen with any democratic system, if the majority of the local community is against a particular idea, any idea (religious or non-religious) then they should contact the local councilors who are working for them, who have been elected by them, those councilors will decide what to do with the information at hand. If the local community wish to make a good case for themselves, I would suggest they [the given religious community] should engage with the local community and educate them against the prejudices harboured against them. Rather than imposing themselves [...] provided you are genuine and you make a clear case, you will be able to win over the hearts and minds of the people. It should be done with common consensus, with agreement [...] so I think it should be a combination of the

government and the religious community working together to get permission granted. (Jay Lakhani, Senior Lecturer, Hindu Academy)

Mohammed Nasser Khan gave an example of consultative practice that overcame objections by engaging with local people and institutions:

I have personal experience of this. I can tell you that we've built mosques in areas where there have been large Muslim communities and the opposition has been from other Muslims. They signed petitions saying no to the mosque, have come out with placards in mass demonstrations - in Walsall, in Feltham – where there are large Muslim communities, you'll see that kind of opposition against us. Here, in Morden, we've had problems of a different nature. We were building a mosque in an area which, at the time, was dominated by racists, including the BNP [British National Party] – whose headquarters are a couple of miles from here. We were in a position where we were buying the premises of a very large local employer. This place was employing a thousand people at one time. And here we were, taking those jobs. Although the place had been shut for 8 years, as far as the perception was concerned, 'they're coming here, they're taking our jobs and building a mega-mosque, the biggest mosque in Western Europe is being built in our doorstep'. The council also gave us problems; they insisted on a 69-tier criteria being met in order to be granted permission. So they [the local community] obviously had a lot to say about it. But the whole situation changed because we set-up a liaison committee here where the ex-mayor was the chairman of that committee. So we decided to invite all the local groups, the church committees, the police, the council – the whole lot – whoever wanted to air their views, we took them on board on that liaison group. We've had 69 quarterly meetings of the liaison group, right from the point of inception, to discuss any problems they had regarding our plans, the way we worked. Of course now, we don't even discuss the mosque; we discuss issues concerning the community and whatever's going on in the area. So that liaison group has become a much more important outlet to air their grievances about other things but we were the ones that were making those moves and breaking down the barriers and making sure the people knew who we were and involved them in that process. And they are very much involved; people call it *their* mosque, they're not even Muslims. So that shows you the change in their attitudes. But if you go into the Muslim areas, they don't even want to step into our mosques, they don't want to know our people, and they don't want their people to engage with our people. The answer to your question is mob rule is not a good thing, and we see what happens when people do that. I think, again, the law is more important than mob rule and if it ticks the planning boxes, that's all that matters. If the law allows it, it should happen. (Mohammed Nasser Khan, Vice-President, Ahmadiyya Muslim Association UK)

Accessibility of places of worship to the public

Respondents were asked what they thought about having access to the public for places of worship. A government minister places the balance in favour of not having open access unless there a particular reason justifying opening it to the public:

No, unless there is a particular characteristic that is unique to that particular place of worship and it is of interest to the public. It is important that the general public respect places of worship and are willing to follow custom whilst visiting. It is down to the custodians of a place of worship to look after this and not the government. (Baroness Falkner, Life Peer, Liberal Democrat, Ministry of Justice spokesperson, House of Lords)

Ghulam Rabbhani of the Harrow Central Mosque noted that openness is important:

They should be open to the public for open days, school visits, community services etc. They should be open for everyone to see, to learn about Islam, Hinduism etc. But at the same time

there has to be respect for the place of worship on the part of the visitors. (Ghulam Rabbhani, General Secretary, Harrow Central Mosque)

Judith Russell supported a similar position on grounds of the educational benefits:

I suppose so, yes. You don't want people wandering in and out during services but I think that it's a good educational tool. The fact that people don't know what the inside of a mosque looks like is not right. There shouldn't be so much secrecy, there should be openness. Obviously, there are certain security implications but, in principle, they should be open. (Judith Russell, Development Director, Institute for Jewish Policy Research)

Sayyid Yousif Al-Khoei put the issue in terms of a culture of openness:

I think the Turkish model is the best. Mosques are open to the public, but at specific times. Certain parts of the mosques are reserved for worship, but other parts are open for exhibition. Similarly, public Open Days are also very effective in this regard. Our religion is designed to invite others, to befriend them, to invite them, so I don't see why it should be closed to the public. But it is also important that the public respect the place. There are areas where a compromise is necessary. (Sayyid Yousif Al-Khoei, Director of Public Affairs, Al-Khoei Foundation)

The views provided regarding open access are not conclusive with each respondent favouring a different type of arrangement. It is unlikely that this question can be suitable for some kind of legislative solution, but should rather be left for consideration by the group in charge of the premises in question.

A place of worship in general as a public place

Respondents were asked whether they considered a place of worship as a public place. Consistent with her view as to access to the public, Baroness Falkner noted:

No, a place of worship is a private place for individuals or groups to practice their own religion. (Baroness Falkner, Life Peer, Liberal Democrat, Ministry of Justice spokesperson, House of Lords)

Charles Wookey noted:

Well, the public don't own them. They belong to the communities, very often. On the whole, I think, when there aren't services going on, many of these places are open to the public, if they wished to, and I would be in favour of encouraging that. But I wouldn't be in favour of state legislation over that. If a particular faith wants to say, 'it's part of our faith that you have to be a practising member to cross this threshold', as part of religious freedom, you respect that. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

Maulana Shahid Raza backed a similarly cautious position:

This terminology of a public place is very ambiguous. We do a lot of things in public places and the law allows us to do whatever we like to do, as free human beings and individuals. But, to declare a place a public place should not undermine the purpose and sanctity of such a place. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

Rabbi Berger too expressed a cautious position:

I don't think I do. Places of worship are built by people who want to worship in them. In the same as my home is not open to the public, but I hope it's a welcoming place, so is a synagogue. It's not a public building that everyone can come in and do what they like in, but I hope it's a warm and welcoming place where people can come and understand the Jewish community better or feel a part of the Jewish community and respect what goes on here. (Rabbi Miriam Berger, Principal Rabbi, Finchley Reform Synagogue)

Judith Russell noted:

I think that during hours of worship it should be a private place. I don't think that people going to a service want to have people wandering in and out, although they do have that system in other countries. I think having places of worship open to the public at appropriate times breaks down barriers and enhances the understanding of other communities. (Judith Russell, Development Director, Institute for Jewish Policy Research)

Mark Shelton was even more upbeat:

Yes. There is no place of worship without worshippers. When people come into my church who are not there to take part in the service or for private prayers, it makes me very happy because it's a cultural experience and an outreach opportunity for us. All religious people are proud of their religion and want to showcase it to those who are unconvinced, generally interested or potential friends and supporters of the community. Places of worship are seldom bad places to go. (Mark Shelton, Pastor, Cross Street Baptist Church)

Respect for former religious use

Interviewees were asked what they thought about the use of a building that is abandoned as a place of worship and whether its subsequent use should be open to the choice of the seller or whether its former religious use be respected in some way. C.B. Patel noted:

No. Look at this country; there are so many Hindu temples which were formerly Christian churches. Dozens of mosques that were formerly churches – there is no problem with this. The only exception is if there was a covenant in place when the church was built, then you have to respect that covenant. (C.B. Patel, Chief Editor, Asian Voice/Gujarat Samachar)

David Pollock also argued in favour of a freedom of subsequent use:

Well the seller would normally be the religious user, in the first instance. I don't think the law should interfere here. If the Church of England's got a nasty late-nineteenth century brick-built church in some run-down suburb and it wants to sell it to an outfit to replace car tyres or something, then let it. If it's got a redundant church that it can't find any religious use for but perhaps someone wants to take it on as an exhibition hall or something, then it's up to the willing buyer and the willing seller whether they enter into any covenant. It's a private matter; it's nothing to do with the state. (David Pollock, President, European Humanist Federation)

Atul Shah took a different position arguing for some level of respect to former use:

I know in my own faith, the former use should be respected because the whole sanctification of that space is important, but I don't know the rules of other faiths. I guess the institutional memory should be preserved symbolically, just to say that this place used to be church etc. Generally, places of faith and they are more than the physical structure, they've also been imbued with spiritual vibrations and energy. (Dr Atul Shah, Chief Executive Officer, Diverse Ethics Ltd)

Jay Lakhani approached the question from a similar perspective:

It depends. If a particular monument or sacred place has a particular sacred significance, and the local Hindu community feels that this is not just an ordinary building but has been sanctified, then their views must be taken into account. Maybe there are commercial forces pressurizing the place to be sold as, say, a supermarket, it will go against the symbolism of the temple. This may cause tension. If the sanctity can be maintained, it should be. But this is a tricky one, there's no straight answer. I think in certain cases there will also be tension. There should be a balance. Although, at the same time, I can't say that there is some injunction in Hinduism that suggests that there are some places that are more sacred than others. (Jay Lakhani, Senior Lecturer, Hindu Academy)

Maulana Shahid Raza noted that there may be no one answer to the issue and it would depend on the context and the community in question:

Here, perhaps, different faith communities may have different answers. In Islam, as far as I can understand, once a place is declared a mosque, it remains a mosque for as long the place can serve that purpose. For mosques, it may not be theologically possible to sell it for a change of use. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

Sayyid Yousif Al-Khoei described the experience of his community, which is not that unusual in contemporary Britain with new communities taking over spaces and buildings previously occupied by others:

It's all about sensitivity. The community has to be happy about the fate of place of worship (for years). The Al-Khoei foundation used to be a synagogue, we bought the building from Jews and they were happy for it to be a mosque. Feelings should definitely be taken into account when it comes to these things. You do still come across people who are unhappy about a mosque being in this area, however, the majority are happy about it. (Sayyid Yousif Al-Khoei, Director of Public Affairs, Al-Khoei Foundation)

As with the openness to the public question, those responding to the question of change of use could not provide a unified response, which partly indicates that different religions and traditions have different understandings about what is and is not appropriate. It is difficult to see in this light what constructive public law solution there could be in so far as there might be problems. On the whole, however, the respondents did not cite major problems of a legal or other nature which may indicate that the current regime works relatively well.

WP6: State Support to Religions

Public funding for religions organizations

Overall, our respondents were sympathetic to the idea of state support although most did not advocate it in an unqualified way. The majority argued in favour of a case for government funding, provided that each respective religious organization contributed to the general welfare of civil society through public service. Moreover, some argued that religious communities were “entitled” to state funding in return for taxes rendered. Secularists/Humanist respondents, however, argued for parity, claiming that religious communities should not be prioritized over the non-religious, although even they conceded consent for central-funding if such monies contributed to “the public good”. Therefore, some notion of the public good seems to be at play when considering the level of state support for religions. This may roughly correspond to the concept of public benefit in the currently applicable Charities Act 2006. Charles Wookey noted:

It’s a very difficult question to answer in those terms. Particular government funding for social programs, that might be initiated or conducted by religious charities or religious organizations; yes, absolutely, why not? That happens all over the place, I don’t think charitable organizations should be disbarred from receiving government funding because their religious. Religions, through their charities, have a long and distinguished role in the provision of help to the poor, to the extent that they can play a part in helping deliver those needs working with government; there’s no reason why not. It’s important, however, that religion is not co-opted by the state in any way. For that reason, I think financial independence of religious organizations, in themselves, are very important and they are typically supported in their numbers. You absolutely don’t want a takeover of religion by the state, through funding or any other kind of way, but, equally you don’t want religious organizations being disbarred from access to government funding for particular work. (Charles Wookey, Assistant General Secretary, Catholic Bishops’ Conference of England and Wales)

David Frei, like some other respondents, distinguished between activities like worship and those with a wider philanthropic dimension:

Not necessarily. If it is purely the practice of your religion alone to worship I don’t think there should be public funding, otherwise you get anybody who wants to go bird-watching or watch football will say, ‘well, that’s my leisure activity, why not fund that?’ No I don’t think there should be public funding for that. However, where traditional organizations do things in a philanthropic area, in a welfare area, then by all means help them out. But purely for religion alone, I don’t see why government should fund that. (David Frei, Registrar, United Synagogue Beth Din)

Barney Leith gave a similar response based on a kind of public-private distinction:

If religious organizations are providing public services of one kind or another, for example; provision of education, provision of residential homes for senior citizens and so on, the I think there is a case for public support [...] However, the government should not be funding faith communities to do things which are specifically religious or private activities. It’s not always easy to distinguish between social action and religious practice, but I think if the public, at large, is able to benefit from these services, then there is a case for public support. (Barney Leith, Chair, Faith-Based Regeneration Network)

Dhanisha Patel also gave a qualified response preferring an approach that did not single out religious organizations as beneficiaries and with an emphasis on the close control of any state funding to religious organizations:

No, I don't think there should be funding for organizations but there should be funding for activities and work the organization does. So I think that the government shouldn't just funnel money into Hindu organizations, but I think it should fund, say, community work with old people, or working on environmental initiatives, things like that. If the government offers a pot of money to organizations that are willing to take the initiative, then I'm supportive of that. But I don't think it should just ring-fence money and give it to [religious] organizations – it should have a say over where that money goes and what it's trying to do. At the end of the day, there are so many different things that organizations can work on that if the government wanted something specific to come from the money, then it should state that when it gives it to the organization and not give out blank cheques. (Dhanisha Patel, Legal Coordinator, National Hindu Students' Forum)

Two of the Muslim respondents tended to favour support in principle and tended to say that their communities should benefit from the funds rather than having some wider public in mind:

Yes. I am in favour of this. I know there are many other colleagues who are not. I am one of the main advocates for Muslim (religious) organizations receiving state funding because it is our right as tax-payers and citizens of this country. We must avail this opportunity to develop the facilities and the services that are available to our community. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

We are all taxpayers. Some of money is going to the military, the royal family, some of it towards the Olympics, towards higher education, towards all areas of the civil service etc. So what is the problem if the same funds are spent for the welfare of religious communities? Faith is a positive force for the community to move forward. I can't identify a conflict or negativity in this regard. (Sayyid Yousif Al-Khoei, Director of Public Affairs, Al-Khoei Foundation)

Two other respondents meanwhile came out against the idea altogether for different reasons. Alan Beazley of the Employers' Forum took a position arguing that religion was very much a private affair:

They should stand or fall based in their own performance, if you like. I don't think we have an obligation [to fund religious organizations]. It is not the same sort of argument that would apply to the public funding of political parties; [religious communities] are not performing any representative role. They are private matters of belief and that's how it should remain, I think. (Alan Beazley, Advice and Policy Specialist, Employers' Forum on Belief)

Suresh Grover used the argument that religion could act as an exclusionary mechanism with society also:

Not at all. I think there is a conflict of interest between what religious organizations aspire for and what the government aspires, specifically if religious institutions want to have exclusivity of different customs which can be contradictory and discriminatory to different levels of people. In Sikhism, those who believe in the eleventh Guru are actually killed, there are not allowed to function. In Southall, a small corrugated, barbed-wired gurudwara exists in the outskirts of Southall (because they believe in the eleventh Guru). I think public funding has to be based on conditions that aspire to equal society and I don't think religious institutions can actually, objectively prove that they are not going to exclude. (Suresh Grover, Director, The Monitoring Group)

Regulation of state funding

In response to the question of regulating any state funding to religious organizations, Yahya Birt drew attention to the fact that while it would have to be an even handed approach and could favour the economically less advantaged sections of the community, one could not be blind to the fact that there would be an enmeshing into identity politics:

By keeping true to the secular principle of non-discrimination. In other words, not favouring one religion over the other. In practice, I also believe in the principle of even-handedness. If there is a disadvantaged group in society and they're mobilizing and ask for economic support – like what Muslims in Europe are doing at the moment, which may not be the case twenty or thirty years down the line once they've developed their institutions or developed into the mainstream. If the State feels it can empower certain communities in order to make them more integrate, then I think it should do so. I think they should not do so naively or at risk of exacerbating identity-politics. On the other hand, I think that identity-politics is part and parcel of democratic politics anyway so I don't think we can ever get rid of identity-politics; we're just in a complicated dance with identity-politics. (Yahya Birt, Trustee of City Circle/Commissioning Editor of Kube [Islamic] Publications)

C.B. Patel pointed to one such instance of 'identity politics' as a result of government funding in response to the question whether all religious organizations should receive funding:

The problem happens when people come to know that the British government spend 70-80 million pounds cultivating the Muslim community – giving them grants. The Hindus thought they were being sidelined, this created a problem. You cannot bribe people, you cannot buy loyalty. Loyalty is not something to be paid for, also. (C.B. Patel, Chief Editor, Asian Voice/Gujarat Samachar)

David Frei meanwhile mater-of-factly noted that the regulation would have to go hand-in-hand with the kind of activity being funded:

For example, the Jewish community runs care homes and homes for the elderly, homes for the blind, homes for the disabled, homes for the mentally ill. I think in those situations, similar funding that was given to the secular field should be given to religious communities. Because, first of all, if they [those in need] were not going to our places, they'd be falling on the state, so the state should pay its bit for the maintenance of the people who are entitled to the same welfare payments. In terms of regulation, any private home, any private nursing home or elderly home etc. will be under government regulation anyway – you can't just own a home and not comply with government regulations, so it has to be regulated. (David Frei, Registrar, United Synagogue *Beth Din*)

Dhanisha Patel reiterated the necessity of checks and also tying in the funding to the fulfilment of specific state or public objectives:

When money is sent to these organizations, they should be accompanied with objectives. I think there should be a discussion beforehand concerning the allocation of funds. For example, they [the government] could say 'we give you a hundred thousand pounds to make greener *mandirs*' and then do some research into finding out how long that would take to implement across every single *mandir* in England and then set a target for these organizations. It will take a lot of mothering from the state but I don't think people should just be given money and told to spend it without checks and balances. (Dhanisha Patel, Legal Co-ordinator, National Hindu Students' Forum)

C.B. Patel drew attention to the possibility of inducing divisiveness with the body or group as a result of state funding a fact which would in turn elicit state regulation in some or other way because of the ensuing conflicts:

First of all, there's been enough debate about this. All [political] parties tried to carry favours for certain communities; Hindus, Muslims, Sikhs, Jews, everything. Everybody is equal in law, but some are more equal than others – no – I am very clear; all state grants are divisive. I know some Muslim organizations in Luton and London and some Hindu organizations also, when the CRE, the government, give them grants, there were more quarrels within the organization than without the government grants. To ask for government grants, say for my newspapers, is a non-starter. (C.B. Patel, Chief Editor, Asian Voice/Gujarat Samachar)

Another respondent noted that state funding is also making the community turn against itself because of suspicions about the aims of the state and its funding:

This funding should be regulated in a way where all these religious communities also become a part of decision-making. It should not be that the receiving communities are not part of the decision-making process. That would create a lot of misunderstanding, and this is what's happening; many Muslim organizations are being accused [by the community] of being the tools of government agencies or other agencies, when they receive the fund. They [the Muslim community] think that they [the organizations] are being used as tools and vehicles against the interests of the community. (Maulana Shahid Raza, Chair, Mosques and Imams National Advisory Board)

As an anti-dote therefore Maulana Shahid Raza advocates much closer community involvement in the whole process of decision making.

Maintenance of places of worship

Respondents were asked about whether the state should cover the costs for maintenance when a place of worship is a monument. Several respondents recognized that there is a case for state support of religious buildings that may have heritage value. Charles Wookey advocates that the state should step in to assist with the maintenance of the heritage of the Churches which they can no longer afford to maintain:

On the whole, yes; I think that's right. In France, for instance, and here, and in many other European countries, you have incredible religious heritage of buildings, and it's simply impossible for the churches to be entirely responsible for their upkeep. Here, it's much more of a problem for the Church of England than for the Catholic Church. In France, there's a very big problem for the Catholic Church, because you've got massive cathedrals – how do you keep that up? – well, you can't. I think it's absolutely right that the state, in various countries, does stake a share of responsibilities. I think, sometimes, there is an overlap; there might still be a working church but it may also be a monument, with people coming as tourists to see it, as well as worshipers to pray in it. I would say, certainly, the state should sometimes step in and help where the church has an architectural importance and it's beyond the capacity of the church to look after it. (Charles Wookey, Assistant General Secretary, Catholic Bishops' Conference of England and Wales)

David Frei sees the question as important where the state has already certified ('listed') a building as important for heritage, but not simply if it is of religious importance:

If they're going to list a building, stopping the community from moving on, then I think there is an argument to say that it should be given grants to maintain a building. What often does

happen - we have this problem in the Jewish community - there were synagogues built in inner-urban areas which were beautiful Victorian edifices. The communities have moved on into the suburbs, we don't need the space where it is (interestingly, the Jewish community has a particular problem which is the inability to travel on the Sabbath and so synagogues have been built in the suburbs) leaving these old synagogues stuck there. You can't do anything with them because some do-gooder has decided that we have to list it due to archaeological interest. So you are left with a building you can't do anything with and it costs a lot of money to maintain. So, if the government wishes to list it, and stop you from doing with it what you wish, then by all means they should help to maintain it. If not, however, if it's simply a place of religious worship, I don't see why they should maintain it except very ancient monuments which the government wishes to keep because it's a work of art. There are churches all over the country which are part of the British heritage and I think it's quite scandalous that the government doesn't maintain them more. I understand that it is a colossal task [...] but they're not just the property of the Church, they are clearly buildings which should not be knocked down. They are usually the oldest building in the village or town by several centuries, they've often been on the same spot for a thousand years and they're part of Britain's cultural heritage. So, in that respect, I do recognize a call to maintain religious buildings, but not because it's religious *per se*. (David Frei, Registrar, United Synagogue *Beth Din*)

Rev. Alan Green clarified that the state does not always fund religious buildings of architectural importance:

It would be lovely. It would be quite wonderful. Most people believe that's what already happens. A church like mine - Grade One Listed, 1828, British architect - is here because [people think] we have funding; we don't. It would be very nice. What would be most nice, is that there is an understanding that that actually doesn't happen. And that buildings such as ours are kept up by the generosity of the congregation; which you feel in Hampstead, doesn't have to be quite as generous as it is in Tower Hamlets. But also [it would be nice to avoid] spending lots and lots of time in trying to persuade organizations to give us money to do essential repairs. If that was understood, it would make it easier to actually get money. But people do believe that we are simply maintained by the government. Something has to be done, but not necessarily direct money from government; maybe a bit of education. (Rev. Alan Green, Chair, Tower Hamlets Inter-Faith Forum)

Sayyid Yousif Al-Khoei provided a reason to perhaps consider support to newer religious buildings too, centering on the importance of being recognized as a part of the national community:

These places will act as social and cultural hubs for the communities in years to come. These places will become historical symbols of identity. For example, the oldest mosque in the country is in Woking, which was built in the 19th century. These places are so important not just for the Muslim community but also the wider national community. Young Muslims relate to these places – they are proud of it because it shows we have had a long presence in British society, that we have been a part of this country for a long time. If mosques are taken care of by the state now, in a hundred years time our children can be proud of being part of Britain's history - they will be able to situate themselves and their community firmly in Britain. That way, the future generations of Muslims will develop positive attitudes towards the state and feel like they belong here, rather than feel like they are separate from the rest of society. (Sayyid Yousif Al-Khoei, Director of Public Affairs, Al-Khoei Foundation)

The responses to the question of state support to religious buildings indicate broad favour for support in cases of heritage value, which may itself be defined in different ways and may depend on context.

Conclusion

This United Kingdom socio-legal research report presented a selection of results from the sociological research conducted in 2011. The findings of this report are informed by interviews conducted with opinion formers from religious organisations, individuals who work with religious issues in both official and semi-official capacities, as well as a judge, a member of the British House of Lords, members of the press, and public intellectuals. See Annex I for a list of interviewees.

Beginning with a background to ethno-religious diversity, this report outlines a brief history of recent immigration into Britain, and the current picture of ethno-religious diversity, including the role of the Census. The report then provided a brief legal context explaining the relevance of the anti-discrimination and human rights legislation and a short discussion of legal pluralism in the UK. Interview results were then presented, organized according to the RELIGARE work package themes: Family, Workplace, Public Space, and State Support to Religions.

Summaries for each work package are summarized below. General observations pertinent to the overall UK study show through a range of responses that religion is treated as a relatively marginal issue in various, arguably ‘public’, areas of life. Religion needs to be seen in a positive light and as an issue relevant to law and policy. It is pertinent to acknowledge that British culture is much more than a white middle class culture. There was an expressed concern from several respondents that there was an encroachment by state laws in the affairs of the religious communities and examples of this included the potential action in some countries to ban the production of *kosher* or *halal* food, and the widening scope of equality law in such a way as to jeopardize socially beneficial activities of religious groups, while concern was also expressed at the criminalization of certain practices specific to some communities.

WP3: The family

Recognizing the increasing super-diversity in family law cases, there was an expectation that judges should show flexibility and understanding in individual cases where cultural and religious issues are at stake. Jewish respondents tended to express general satisfaction that their system of law could be operated alongside English law and did not express any complaints of a fundamental sort. On the other hand, some Muslim respondents said that an accommodation should be found for *shariah* within English law, although there is a view that *shariah* should not only be perceived in terms of rules that need implementing but as an ethical system. It was also pointed out that there are some legitimate concerns among the general populations of what the implications of *shariah* are. Respondents also noted opinions regarding the Archbishop of Canterbury’s famous speech of February 2008 concerning civil and religious law in England. They felt the Archbishop was misunderstood.

On the topic of registration of marriage, the particular issue of under-registration of Muslim marriages was acknowledged with several explanations given. Solutions that bring the civil and religious aspects of the marriage ceremony should be sought in order to facilitate official recognition; otherwise women in particular are losing out on remedies in civil law.

Alternative dispute resolution mechanisms were identified as particularly relevant for the Jewish, Muslim, Catholic and Baha’I religious communities but did not appear to be relevant for Hindus. Though there was some sympathy expressed, several respondents recognized that there were concerns

about their operation and tended to say that there was no need, or that the time was not yet ripe, for their official recognition.

Lastly, though there is not yet unequivocal evidence of its ‘success’, Jewish respondents tended to express satisfaction about the existence of the Divorce (Religious Marriages) Act 2002 helping the Jewish chained wife to ensure that a religious divorce is in place prior to the finalization of an official divorce.

WP4: The workplace

Ignorance about matters of culture and religion in the workplace were cited as being of concern. Respondents noted the importance of structural discrimination against ethnic minorities in accessing the workplace as well as within it. With respect to accommodation in the workplace, issues flagged as particularly relevant included dress codes, prayer facilities and time off for religiously significant days. A Jewish respondent noted that the larger society were fairly accommodative, while the workplace accommodation issues tended to be unimportant for Hindus.

The issue of ‘reasonable accommodation’ in the workplace engaged several respondents. The current series of cases involving Christians who have brought cases under the anti-discrimination and/or human rights law were frequently mentioned. While there was agreement that reasonable accommodation would be a way forward, there were reservations about granting too much flexibility that might defeat the purpose of employment altogether, especially for official employees. Criticism of the lack of knowledge of religious issues within trade unions was noted. There was a feeling that they need to take on a more activist role.

Finally, the role of the official law was reflected upon by some respondents. There are hurdles in bringing actions under the human rights and anti-discrimination laws and particularly under the indirect discrimination provisions. The actual will to take on a legal battle may be a personal hurdle for some individuals. Others thought that the law was not being implemented in its spirit and was not generating an ethos of best practice around diversity, but one of avoidance.

WP5: The public space

With a long and established history, state funding of faith based schools is widely accepted and justified on a number of bases including, the obligations to taxpayers, the standards of academic excellence, and the good citizenship they cultivate among students. There are concerns, however, about exclusivism, in addition to reservations about whether state funding should go to such bodies, and the necessity of closer inspection of faith schools by the state. Regarding new faith schools, particularly for Muslims, concern was expressed that they should not be required to fulfil extra criteria premised on being associated with a ‘suspected’ community. Any criteria applied should however be balanced with concerns for public safety and security.

Concerns about the impact of faith-based schools in terms of social cohesion were countered with arguments about the excellence of such schools, an atmosphere in which ethical education gets prioritized, their (sometimes) open admissions policies despite their faith basis, their cultivation of good citizenship, the fact that differences already exist in society, and the failure of state schools to provide an adequate educational framework.

There were some arguments in favour of retaining both the obligation of worship and to teach religious education. Legislative reforms are now in the pipeline to remove the obligations of worship in non-faith-based schools.

The question of religion-based selection for faith-based schools came to a head with the *JFS* case decided in 2009 by the UK Supreme Court. The Court stated by a majority that an assessment of Jewishness through descent from a Jewish mother breached the Race Relations Act 1976 as being discrimination on racial grounds. A number of views were provided as to the appropriateness of the courts interfering in this area. A number of participants stated that they were in favour of retaining the right of faith-based state-funded schools to admit pupils on religious grounds, which is also due for legislative repeal.

All respondents were in favour of a generalized freedom to dress in public in the way one pleased. Some, however, highlighted the fact that sometimes a line would have to be drawn for the purpose of communication, interaction or security.

There was a general feeling that planning approval should be available to religious communities for buildings provided that local concerns were satisfied. Some expressed the view that local planners did not always have the bigger vision since religious buildings can do much to improve the attractiveness and social cohesion in an area. On the other hand, several respondents expressed the view that there would be objections to any planned religious building in such cases the planners have to be aware of the serious and the non-serious objections and act accordingly. Thus while consultation and discussion with local people and institutions was advocated, it was felt that giving a veto to one interest group would not be advisable.

Most respondents favoured a nuanced approach to public accessibility and the denotation of a religious building as a public space. They were conscious of the fact that there may be sensitivities within the religious community, for whose use the building exists in the first place, and so situation-specific approaches would have to apply. As to respect for former religious use in the subsequent use of a building, there was no one dominant perspective. While some thought that no issue should be made out of the fact that a place used to be for worship previously, others noted that there may be some sensitivities about the matter of subsequent use.

WP6: State support

There was some opinion in favour of funding those activities that were providing some kind of benefit to the public or that should be considered as a public good. Dissenting opinions were also expressed on the grounds that religion was a private-only affair or it was thought that religious organizations breed divisiveness or exclusion.

Respondents supported the giving of state money to sustain buildings that are of artistic or architectural value, especially if the state was classifying them as such in the first place. Some wanted greater community support for upkeep of buildings of importance.

Opinions were broadly in favour of regulating any state funding through close monitoring of religious organizations and ensuring that there is not a perception of unfairly favouring some groups over others. Some cautionary voices pointed to the potential divisiveness and conflict state funding created within communities, something that should perhaps be more closely studied.

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Annex I: List of Interviewees

Name	Position	Organisation	Relevance to study	Relevant Websites/Media
Alan Beazley	Advice and Policy Specialist	Employers' Forum on Belief	Advising body to large employers and human resource organizations	http://www.efbelief.org.uk/
Barney Leith	Chair	Faith-Based Regeneration Network	Leading multi-faith social action network regarding the practice of faith through social action	http://www.fbrn.org.uk/
Baroness Falkner	Life Peer	House of Lords (Liberal Democrat)	Politician with special interest in European affairs, political Islam, equality and diversity; currently spokesperson for the Ministry of Justice in the House of Lords	http://www.parliament.uk/biographies/lords/32275
C.B. Patel	Publisher/Editor	Asian Voice/Gujarat Samachar Newspaper	Minority Media (Most popular Gujarati community newspaper in the UK)	http://epaper.asian-voice.com/PUBLICATIONS/AV/AV/2011/10/01/index.shtml
Charles Wookey	Assistant General Secretary	The Catholic Bishops' Conference of England and Wales	Main Catholic bishops' body in the UK that organizes public policy initiatives on behalf of the Church	http://www.catholic-ew.org.uk/Catholic-Church/Catholic-Bishops-Conference-of-England-and-Wales
David Frei	Registrar/Director of Legal Services	The United Synagogue (London) <i>Beth Din</i>	The London <i>Beth Din</i> is the court of the Chief Rabbi for the Orthodox Jewish Community; its remit covers the United Hebrew Congregations of the United Kingdom and the Commonwealth	http://www.theus.org.uk/the_united_synagogue/the_london_beth_din/about_us/
David Pollock	President	European Humanist Federation	The EHF brings together about 50 Humanist organizations around Europe in over 20 countries	http://www.humanistfederation.eu/
Dhanisha Patel	Legal Co-ordinator	National Hindu Students Forum	A national union of student Hindu societies. The body acts as a support network for co-religionists in a range of educational, social and legal capacities.	http://www.nhsf.org.uk/
Dr. Atul K. Shah	Chief Executive Officer	Diverse Ethics Ltd.	Public intellectual (Jain community) and activist on diversity in the British boardroom	http://www.diverseethics.com/
Ghulam Rabbhani	General Secretary	Harrow Central Mosque	A recently completed purpose-built "mega-mosque" and community centre. During the building process, the mosque was the scene of protests from the Far-Right English Defence League (EDL) opposed to its	http://news.bbc.co.uk/1/hi/8251598.stm http://www.harrowtimes.co.uk/news/localnews/4541102.Anti_mosque_protest_planned_for_Harrow/ http://www.independent.co.uk/news/uk/hom

			construction.	e-news/rightwing-protestors-target-harrow-mosque-1785797.html
Jay Lakhani	Chief Co-ordinator	The Hindu Academy	Educational institution for the Hindu community. Jay Lakhani is also a Hinduism Lecturer and public intellectual activist for reformist Hinduism.	http://www.hinduacademy.org/ http://www.guardian.co.uk/profile/jay-lakhani
Judith Russell	Development Director	Institute for Jewish Policy Research	JPR is the only independent Jewish think-tank in Britain that specializes in the state of the contemporary Jewish communities in the UK and elsewhere in Europe, with the aim of informing policy.	http://www.jpr.org.uk/index.php
Lord Justice Thorpe	Judge, Court of Appeal	The Royal Courts of Justice	Lord Justice Thorpe is a senior appeals judge at the Royal Courts of Justice, specializing in family law cases.	http://www.familylawweek.co.uk/site.aspx?id=ed1091
Mark Shelton	Pastor	Cross Street Baptist Church	This parish is located in the heart of Central London and serves a multi-ethnic congregation of Christians as well as being active in community relations and social action.	http://www.csbaptistchurch.org/
Maulana Shahid Raza	Chairman	Mosques and Imams National Advisory Board (MINAB)	MINAB is a Muslim inter-sectarian organization with a mandate for the governance of mosques; to increase religious participation for Muslim women; to increase participation for Muslim youth; to assist imams to develop specialized professional skills; and to make mosques the centres of citizenship.	http://www.minab.org.uk/
Mohammed Nasser Khan	Vice President UK	Ahmadiyya Muslim Association UK	The Ahmadiyya Muslim Association UK is the largest Ahmadiyya Muslim organization in the UK. It provides religious and community services ranging from marriage mediation, seminary schools and prayer facilities.	http://www.ahmadiyya.org.uk/ http://www.baitulfutuh.org/
Nobab Uddin	Chief Editor	Janomat Bengali Newsweekly	Janomat Bengali Newsweekly is one of the oldest Bengali-language newspaper in the UK. The paper is distributed in the UK and mainland Europe with a large subscription among the Bangladeshi diaspora.	http://www.janomot.com/about.html
Paul Pettinger	Chief Co-ordinator	The Accord Coalition	The Accord Coalition is a campaigning organization that seeks to change the law with regards to discrimination in the	http://accordcoalition.org.uk/

			admissions and employment policy, on the grounds of religion and belief, in all state-funded schools in England and Wales. It also seeks to reform the way religion is taught at school.	
Rabbi Jonathan Wittenberg	Principal Rabbi	The New North London Synagogue	Senior Rabbi of the Masorti synagogues of Great Britain and Jewish public intellectual.	http://www.masorti.org.uk/rabbi_jonathan_wittenberg.htm
Rabbi Miriam Berger	Principal Rabbi	Finchley Reform Synagogue	Finchley Reform Synagogue consists of 710 family units, serving a community of mainly middle-class Jews based on reform, egalitarian values. Rabbi Berger is also a Jewish public intellectual.	http://www.frsonline.org/ http://www.bbc.co.uk/programmes/b0106z3s
Rev. Alan Green	Chair	Tower Hamlets Multi-Faith Forum	Tower Hamlets is one of the most culturally diverse boroughs in Britain; the forum presents faith as a positive social contributor to the borough through establishing structured networks between various faith communities and liaising in joint community initiatives.	http://www.faithintowerhamlets.com/wordpress/
Rev. Robin Griffiths-Jones	Master of the Temple	Temple Church	Rev. Robin Griffith-Jones is a senior Church of England clergyperson.	http://www.robingriffithjones.co.uk/ http://www.templechurch.com/
Sayyid Yousif Al-Khoei	Director of Public Affairs	Al-Khoei Foundation	From its London headquarters, the foundation serves the religious, social, educational and cultural needs of the Shia Muslim community all over the world. The London centre also runs to single-gender open-access high-schools for boys and girls.	http://www.al-khoei.org/Contact.aspx
Simon Rucker	Judaism Editor	The Jewish Chronicle	The JC is the oldest Jewish newspaper in the world and has the largest circulation among Jews in the UK.	http://www.thejc.com/ http://www.thejc.com/users/simon-rocker http://www.thejc.com/blogs/simon-rocker http://www.guardian.co.uk/profile/simon-rocker
Mr. Suresh Grover	Director	The Monitoring Group	An anti-racist organization which delivers case-work for people who are suffering from racial violence and religious hatred.	http://www.tmg-uk.org/
Prof. Tariq Ramadan	Professor of Contemporary Islamic Studies	Faculty of Oriental Studies, University of Oxford	Muslim public intellectual and scholar of European Islam.	http://www.orinst.ox.ac.uk/staff/iw/tramadan.html

Yahya Birt	Trustee/Director	The City Circle/Kube [Islamic] Publishing	Muslim public intellectual and publisher.	http://www.yahyabirt.com/ http://www.thecitycircle.com/ http://www.kubepublishing.com/
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Annex II: Topic List Used

General Tensions/Conflicts between Basic Rights

The focus on basic tensions or conflicts between basic rights may be easily misunderstood. Tensions or conflicts between rights are, indeed, normative tensions but not of the kind of ‘normativity’ characteristic for moral philosophy. Quite to the contrary, these are tensions inherent in empirical norms (i.e. norms claiming legal validity) both in International Covenants of Civic and Political Rights or the ECHR as well as in (Constitutional) Law of Member States, whether we call these constitutions ‘liberal democratic’ or ‘constitutional democracy’ or not. In this ‘socio-legal’ part of RELIGARE, we are interested in the *empirical way* in which Courts and Equal Treatment Commissions practically deal with them, how they argue for – often widely diverging – balancing and weighing in judging cases in specific contexts and circumstances – and whether and, if so how these processes are influenced by deeper, implicit cultural biases. In addition, we are interested in how our respondents (preferably also judges and chairpersons of Commissions amongst them) perceive these tensions and deal with them. Last but not least, we are also interested in conflicts that do not end up before courts (‘non-cases’) and in divergent non-jurisprudential practices and resolutions of (potential) conflicts. We present the items (in all thematic work packages WP3 – 6) in the following order: (i) (*empirical*) practices (of case law and conflicts or good practices that do not appear in case law); (ii) (*normative*) what, if anything, should be changed?

- 1. Tension between individual and collective autonomy.** In terms of religious freedoms: tensions between individual or internal religious freedom (freedom of conscience) and collective or external religious freedoms (religious practices and associational freedoms of (organized) religions).
- 2. Tensions between collective religious freedoms and other basic human rights** (ICCP Art. 9,2: “protection of the rights and freedoms of others”), such as: *freedoms of speech/expression and anti-discrimination* (both with regard to ‘religious speech’ and ‘secularist speech’); protection of *essential basic rights of individuals and religious minorities* (particularly minors, dissenters, women, ethnic and gender minorities (vulnerable minorities)) within religious minorities and within religious majorities and their organizations.
- 3. Tensions between religious freedoms and ‘public order’ and ‘security’** (ICCP Art. 9,2: “public safety, public order, health or morals”), **particularly in an age in which security-issues get ever more prominent.**
- 4. Tensions between (formal) equal treatment** (of religions and non-religions) **before and in the law and more substantive equal treatment (if any)** (commonly phrased in terms of ‘negative freedoms of religion’ versus ‘positive freedoms’)

Family Law (WP3)

- 1. Basic Tensions** in cases in which rules and practices of (minority or majority) *religious family and divorce laws and customs* are at odds with basic principles of international family and divorce law and general civic or state marriage and divorce law: *equality between the sexes and favor divortii* (marriage, divorce, custody (and inheritance, excluded in WP3)).²⁹

²⁹ It has already been decided in the RELIGARE project proposal that we do not research cases of conflicts with rules and practices of modern criminal law such as wife beating, child beating, genital mutilation, honour killing

Because of the increasing importance which the ‘legal regulation of intimate relations’ has recently gained with issues of same-sex marriage and adoption, we include issues of polygamy and same-sex marriage and the respective challenges and defenses of the ‘norm’ of monogamy and nuclear family.

2. Domains:

- (1) **International Private Law (IPL);**
- (2) **domestic religious law(s) versus state law;**
- (3) **Alternative Dispute Resolution (ADR)** (e.g. Islamic Arbitration Tribunals)

Labour Law (WP4)

1. Basic Tensions: religious interests of employees versus interests of other interested parties (employer, co-workers, customers, general public) and other liberal values such as secularism, non-discrimination (sex and gender equality) (the *individual religious freedom cluster*). Collective autonomy (practices of majority or minority religious organizations and associations that are protected by collective religious freedoms) versus labour law principles of non-discrimination on the basis of religion, gender, sexual orientation (and possibly race) (the *collective religious freedom cluster*).

2. Domains:

- (1) **‘non-religious’ or not ‘faith-based’ workplaces (including private, semi-private and public employers);**
- (2) **(organized) religions (including the whole variety of religious core-organizations as employers, not only ‘churches’);**
- (3) **‘Faith-based’ organizations as employers (including not only ‘religion’-based ‘ethos’ employers but all non-religious ‘ethos’ employers)**

3. Relevant items with regard to legal/legitimate *exemptions from general labour law rules and standards*:

- (1) the (non) employment status of church staff (ranging from ministers of cult to lay cleaning and gardening staff) and the role of law and jurisprudence in developments;
- (2) church staff and labour union advocacy;
- (3) perceptions regarding conflicts and accommodations for religious beliefs and practices in the workplace and the role of law and jurisprudence in developments;
- (4) religious employees and labour union advocacy.

The proposed focus on accommodation/non-accommodation of religious-based claims of individual employees in ‘non-religious’ workplaces is on prevailing issues of dress code, prayer-facilities, time schedules etc. as well as on issues of equal access and inclusion in the labour market through judicial treatment in the employment and unemployment contexts [e.g. participation and traditional issues of ‘Diversity’-HRM (Human Resource ‘Management’ or, preferably, Mobilization’) such as selection, promotion.

Public Space (WP5)

1. Basic Tension: Basic principles of liberal democratic constitutionalism (such as ‘**state neutrality**’ (as ‘strict’ or ‘formal’ versus ‘benevolent’ or ‘relational neutrality’; as ‘neutrality by subtraction’ or ‘by addition’) **and fairness** (as ‘hands-off’ or as ‘even-handedness’) **versus traditional historical ethno-religious ‘national (majority) culture’** (and quite often highly questionable assumptions regarding ‘*necessary social cohesion*’ and ‘*political unity*’)

2. Domains:

- (1) **religiously oriented private schools;**
- (2) **dress codes;**
- (3) **building/maintaining places of worship**

3. Relevant items:

- (1) **the contribution of religiously oriented private schools to plurality in education;**
- (2) **individual freedom and respect of community prescriptions in the choice of dress codes;**

(3) **autonomy of religious communities vs. general interests in building/maintaining places of worship**

A clear **common focus** or problematique for WP5 could be the following:

The reluctance to or rejection of reasonable accommodation is based on (i) intrinsic problems of all forms of *pragmatic*, administrative accommodation (working out practices by way of talking and negotiating) and (ii) on more or less deeply entrenched cultural majority-bias opposed to public *symbolic recognition*. Both reasons work out very differently in countries and ‘national jurisdictions’. The core conflict is how ‘neutrality and fairness’ are interpreted and how much weight is given to legitimate claims to protect/develop ‘national culture’. The core normative issue is – given all this (legitimate) variety – to defend and implement accommodation that is minimally required in countries characterized by wide and deep religious diversity.

Public Funding (WP6).

1. Basic Tensions:

- (1) **‘Strict neutrality’ = no financing and recognition** (obviously only in an imaginable world, not in any existing regime of religious governance) versus **relational neutrality and equality as fairness**:
- (2) if any public money, then **‘equality before the law’** instead of privileging the entrenched majority religion(s) and/or **‘substantive equality’** minimally requires to take history into account (e.g. in cases of very recent ‘disestablishments’ or the many hidden forms of financing churches via ‘cultural heritage’).
- (3) For religious and religion related organizations:
 - i. **autonomy dilemma: trade-off between autonomy and privileges.** Less or no scrutiny and control by the state, on the one hand, and money and other privileges (connected to public/political scrutiny and control) and political influence, on the other;
 - ii. **organization and mobilization dilemma** (see Bader (2007), p. 228f).
- (4) Basic tensions for liberal-democratic states (p. 229-31).

2. Domains:

- (1) **religious core organizations;**
- (2) **FBO’s (such as religious schools, media)**

3. Items

- (1) Should there be a public funding of religions and FBO’s? Why?
- (2) Do you feel that all religions and FBO’s are entitled to public funding?
- (3) What kind of public funding for religions and FBO’s is available in your country? What type of funding can it be compared to? Which would be the best way for the State to finance religions and FBO’s? (Suggested Typology for (organized) religions): (i) subventions to the sustained religions (ii) subventions granted

according to precise projects (iii) tax deduction granted to religious institutions (iv) church tax according to the religious affiliation (iv) possibility to grant a part of the income tax to religious denominations.

- (4) Is there a control over the use of the public support? Is there a demand of transparency / accountability? If so, how do religious bodies deal with it?

Annex III: Census form 2011: Extract on national identity, ethnic group, religion, and main language questions

Person 1 - continued

15 How would you describe your national identity?
 ↪ Tick all that apply

English

Welsh

Scottish

Northern Irish

British

Other, write in

17 This question is intentionally left blank ➔ Go to **18**

16 What is your ethnic group?
 ↪ Choose **one** section from A to E, then tick **one** box to best describe your ethnic group or background

A White

English/Welsh/Scottish/Northern Irish/British

Irish

Gypsy or Irish Traveller

Any other White background, write in

B Mixed/multiple ethnic groups

White and Black Caribbean

White and Black African

White and Asian

Any other Mixed/multiple ethnic background, write in

C Asian/Asian British

Indian

Pakistani

Bangladeshi

Chinese

Any other Asian background, write in

D Black/African/Caribbean/Black British

African

Caribbean

Any other Black/African/Caribbean background, write in

E Other ethnic group

Arab

Any other ethnic group, write in

18 What is your main language?
 English ➔ Go to **20**

Other, write in (including British Sign Language)

19 How well can you speak English?
 Very well Well Not well Not at all

20 What is your religion?
 ↪ This question is voluntary

No religion

Christian (including Church of England, Catholic, Protestant and all other Christian denominations)

Buddhist

Hindu

Jewish

Muslim

Sikh

Any other religion, write in

21 One year ago, what was your usual address?
 ↪ If you had no usual address one year ago, state the address where you were staying

The address on the front of this questionnaire

Student term time/boarding school address in the UK, write in term time address below

Another address in the UK, write in below

Postcode

OR Outside the UK, write in country

