Written evidence submitted by the British Humanist Association

1. We welcome the Committee's commitment to Parliamentary surveillance of human rights judgements, in particular from the European Court of Human Rights, and the Government's response to them. We find it deplorable and exasperating that responses from UK governments to judgements in Strasbourg are too often coloured by debates about EU influence over the UK and that when comparatively rarely the UK loses a case the official reaction is too often to attack the Court rather than take seriously the finding that in some particular - often with minor practical implications (such as votes for prisoners and the right to a review of whole life tariffs) - the UK is failing to live up to the high standards it professes.

2. In this submission, however, we shall confine ourselves to the four cases known collectively as *Eweida and others v. United Kingdom* and to your request for views on "the state's positive obligation to secure employees' right to manifest their religion or belief".

3. The British Humanist Association is committed to freedom of religion or belief (including freedom of non-belief and non-religious beliefs) and to the principles of equality and non-discrimination. Our wish is that the constraints on freedom should be the minimum compatible with the survival of a liberal, open society - tolerant, democratic, with guarantees of human rights. We believe that the best guarantee of freedom of religion or belief is a secular state in which the law and the public institutions we all share are neutral as between different religions and beliefs. This was the view expressed with some force by Lord Justice Laws in response to Lord Carey's ill-judged intervention in the McFarlane case:

> 22. In a free constitution such as ours there is an important distinction to be drawn between the law's protection of the right to hold and express a belief and the law's protection of that belief's substance or content. The common law and ECHR Article 9 offer vigorous protection of the Christian's right (and every other person's right) to hold and express his or her beliefs. And so they should. By contrast they do not, and should not, offer any protection whatever of the substance or content of those beliefs on the ground only that they are based on religious precepts. These are twin conditions of a free society.
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> 23. The first of these conditions is largely uncontentious. I should say a little more, however, about the second. The general law may of course protect a particular social or moral position which is espoused by Christianity, not because of its religious imprimatur, but on the footing that in reason its merits commend themselves. So it is with core provisions of the criminal law: the prohibition of violence and dishonesty. The Judaeo-Christian tradition, stretching over many centuries, has no doubt exerted a profound influence upon the judgment of lawmakers as to the objective merits of this or that social policy. And the liturgy and practice of the established Church are to some extent prescribed by law. But the conferment of any legal protection or

> preference upon a particular substantive moral position on the ground only that it is espoused by the adherents of a particular faith, however long its tradition, however rich its culture, is deeply unprincipled. It imposes compulsory law, not to advance the general good on objective grounds, but to give effect to the force of subjective opinion. This must be so, since in the eye of everyone save the believer religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence. It may of course be true; but the ascertainment of such a truth lies beyond the means by which laws are made in a reasonable society. Therefore it lies only in the heart of the believer, who is alone bound by it. No one else is or can be so bound, unless by his own free choice he accepts its claims.
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> 24. The promulgation of law for the protection of a position held purely on religious grounds cannot therefore be justified. It is irrational, as preferring the subjective over the objective. But it is also divisive, capricious and arbitrary. We do not live in a society where all the people share uniform religious beliefs. The precepts of any one religion – any belief system – cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other. If they did, those out in the cold would be less than citizens; and our constitution would be on the way to a theocracy, which is of necessity autocratic. The law of a theocracy is dictated without option to the people, not made by their judges and governments. The individual conscience is free to accept such dictated law; but the State, if its people are to be free, has the burdensome duty of thinking for itself.
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> 25. So it is that the law must firmly safeguard the right to hold and express religious belief; equally firmly, it must eschew any protection of such a belief's content in the name only of its religious credentials. Both principles are necessary conditions of a free and rational regime.
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> McFarlane v Relate Avon Ltd [2010] EWCA Civ 771

4. We emphasise that a secular state absolutely does not exclude religious believers from the public square, if for no other reason than that human rights law establishes that atheism or Humanism are no less ‘religions or beliefs’ than Islam or Christianity: if Christians were banned from the public square, so would be Humanists and atheists.

5. But our commitment to human rights means that our defence of the rights of religious believers goes far beyond this self-interested argument: we may hold that religions are mistaken and that they sometimes do harm, but these are matters beyond proof and in an open, liberal, secular society the right of individuals to believe what they will is a principle that must be defended.

6. Difficulties arise not over the absolute right to believe but over the conditional right to manifest belief. The relevant condition in the four *Eweida* cases was the protection of the

rights of others. Such cases involving a conflict of rights are usually best resolved by compromise and negotiation and without resort to law, but such informal resolutions will be shaped by judgements by the courts in the difficult cases that reach them. The courts must therefore analyse clearly and explicitly the basis for their judgements. In our view the *Eweida* judgement in Strasbourg broadly got this right.

7. Two of those cases (Eweida and Chaplin) concerned the right of employees to wear a religious symbol while at work. In the BHA's view, wearing a religious symbol is a form of non-verbal speech, with the result that we are generally hostile to laws and rules about what people wear. Our view is that this is a matter of personal freedom. So there should be no controls on what one wears or says in the street or similar public spaces (always excepting justified restrictions on hate speech etc).

8. In employment[1], other considerations come into play, involving for example the rights of employers. In our view it is reasonable that employers should not wish their employees who appear in public and in some sense represent the employer to take advantage of their position to advance a religion or belief - any more than a political position. Wearing a religious symbol or a political badge rarely amounts to such advocacy but it is not difficult to envisage cases where individuals might abuse their positions. The legitimate interests of Ms Eweida's employer in having staff facing the public dressed in a uniform without personalised additions were recognised by the Court, which we welcome: it seems to us that an employer might in some circumstances have legitimate grounds for enforcing a ban (e.g., if the badge was excessively large or provocative or related to a religion or belief that was intensely controversial). That said, we agree with the judgement that in this case Ms Eweida's freedom of religion or belief rightly supervened over the marginal interest of the employer.

9. The other case involving wearing a symbol - Chaplin - raised different considerations - those of health and safety - and was not strictly about the right to wear a religious symbol at all: Ms Chaplin rejected the idea of wearing her cross as a brooch rather than as a necklace. The court reached the right conclusion in rejecting her case - as it did in the other two cases, which were rather different.

10. The cases of McFarlane and Ladele both involved Christians who considered homosexuality sinful and wished to be allowed to discriminate in their behaviour at work against gay couples. We shall not comment on the details of these cases but deal more generally with the question of "conscientious objection" which provides the context for what amount in most cases to claims for religious exceptionalism.

11. Most commentators on conscientious objection focus exclusively on the individual conscience without regard to the consequences. The assumption is that only a few individuals with unusual, normally religious, beliefs are affected, and that society can afford

[1] Likewise in other special circumstances not dealt with here.

to accommodate them.

12. This was the case in the paradigm case of conscientious objection - in wartime[2]. It clearly marked an advance in civilised values that pacifists were allowed to apply to tribunals to prove their objections were based on genuine religious or moral principles. When after hard-fought campaigns abortion was legalised it was generally seen as a logical extension - and a politically useful concession - to allow doctors and nurses not to take part if they had conscientious objections. But in recent years claims for conscientious objection - not only here but in many countries - have extended to many new contexts, with claims being made implicitly or explicitly that conscientious and religious objections should always supervene over other considerations.[3]

13. Examples include magistrates refusing to handle adoptions by lesbian and gay couples; nurses refusing to take part in *in vitro* fertilisation; pharmacists refusing to dispense the 'morning after' contraceptive pill; doctors refusing to reveal their conscientious objection to patients wanting an abortion or to refer them elsewhere; Exclusive Brethren refusing to let their children to use computers or the Internet in school; Muslims refusing to allow their children to take part in physical education unless in single-sex groups and unless the girls especially are swathed in modesty-protecting garments, and so on. These cases obviously involve other people - for example, as service users or as children with rights to education. Assertion of an absolute right to conscientious objection in all cases might easily risk public safety, public order, health or morals, and the rights and freedoms of others.

14. A further complication is that conscientious objection seems often today to be asserted not as a result of deep moral feelings but as a political act of drawing attention to claims of underprivilege or persecution. This highly political context is at odds with the implicit assumptions of most discussions about conscientious objection. The claims articulated by the European Centre for Law and Justice, a powerful conservative Christian lobby organisation, in the context of a 2010 debate in the Parliamentary Assembly of the Council of Europe that focussed on conscientious objection and abortion, are that conscientious objection applies to both individuals and institutions, to both direct and indirect participation, and even when referral of a patient is impossible; it includes complete immunity from liability and from discrimination; and it cannot be balanced with any rights patients have to treatment.[4]

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[2]This was not in fact the first legal recognition of conscientious objection: objections were permitted to compulsory vaccination (introduced in 1853) under an amending law of 1898.

[3]The BHA's Humanist Philosophers' Group has published a booklet on the subject: *Right to Object? Conscientious Objection and Religious Conviction,* ed. Alan Haworth, BHA, November 2011.

[4]"Memorandum on the PACE Report, Doc. 12347, 20 July 2010, . . ." Grégor Puppinck and Kris J. Wenberg, (European Centre for Law and Justice, Strasbourg, September 2010) - see http://www.eclj.org/pdf/ECLJ_MEMO_COUNCIL_OF_EUROPE_CONSCIENTIOUS_OBJECTION_McCafferty_EN_Puppinck.pdf, accessed 26 September 2013.

15. Against this background, the cases of McFarlane and Ladele can be seen - backed as they were by the combative and noisy Christian Legal Centre - as part of a campaign by a small Christian minority to establish rights to religious exemption with little regard to the interests of third parties. As we stated at the time of the Strasbourg judgement:

> The cases were repeatedly lost in court after court and have wasted an enormous amount of time just as they have generated a huge amount of unnecessarily divisive feeling amongst the public. The victim narrative that lies behind them, whipped up by the political Christian lobby groups that organise them and the socially conservative media that report them, has no basis in reality. The widespread misreporting of these cases under the guise of "Christian persecution" when they are anything but has undermined the chance of the public to get a really clear understanding of what the issues engaged by these cases really are.
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> What they describe as discrimination and marginalisation of Christians is in fact the proper upholding of human rights and equalities law and principles – principles which protect all people against unfair treatment – and we are pleased that the court has recognised this. All reasonable people will agree that there is scope in a secular democracy for reasonable accommodation of religious beliefs when that accommodation does not affect the rights and freedoms of others. But if believers try to invoke their beliefs as a defence for treating other people badly – denying them a service because they are gay or claiming a right to preach at them in a professional context – the law is right to prevent them. It's not persecution of Christians; it's the maintenance of a civilised society for all.

16. In the circumstances, therefore, your call for comments on "the state's positive obligation to secure employees' right to manifest their religion or belief" could be seen as a one-sided encapsulation of the issues at stake. An opposite but analogous - and equally unacceptable - expression might have been "The state's positive obligation to secure the public's protection from discrimination based on claims for religious exemption".

17. The state of course has both obligations - but has in fact largely met them by enacting the Human Rights Act and the various laws on equality and non-discrimination. It is our view that the courts have interpreted these laws sensibly and fairly, properly balancing the interests of all parties, not only in these cases but in most others of a comparable kind.

18. The Government has not, so far as we know, issued any formal statement on the *Eweida* judgements, but informally the Prime Minister's office stated at the time that he was "delighted that the principle of wearing religious symbols at work has been upheld. The Government's view is that the law as it stands strikes the right balance between the rights of employees and employers." In contrast, the Secretary of State for Communities and Local Government talked of "a degree of aggressive secularism" and said "We'll look at the judgement really carefully and if we do need change the law to ensure people can wear

discreet religious symbols, we will do so". [5]

19. We think that the Prime Minister was right: the law strikes the right balance and no further action is required on its part.

[5]Daily Telegraph, 15 January 2013 - http://www.telegraph.co.uk/news/9803198/Consider-changing-the-law-to-defend-the-right-to-wear-crosses-says-Pickles.html