The Rt Hon Norman Baker MP,
Minister of State for Crime Prevention,
Home Office,
2 Marsham St,
London SW1P 4DF

Wednesday 6 November 2013

Dear Norman,

JCHR recommended amendments: Anti-social Behaviour, Crime and Policing Bill

I am writing to follow up on a couple of points that arose during the Commons Report Stages of the Anti-social Behaviour, Crime and Policing Bill.

1. Best interests of the child

In response to the Committee’s recommendation that a new clause should be inserted to provide that the best interests of the child should be taken into account as a primary consideration in proceedings relating to an Injunction to Prevent Nuisance and Annoyance (“IPNA”),¹ you stated that you are “a little concerned” about the use of the word “primary” in new clause 33.²

I would like to clarify the reason for the Committee’s suggested amendment.

Article 3(1) of the UN Convention on the Rights of the Child provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

Therefore, the Committee’s amendment, and in particular the use of the word “primary”, reflects the UK’s legal obligation under Article 3 of the UNCRC.

² HC Deb 14 October 2013 col. 541
2. Absolute right to hold religious beliefs

The Bill, as currently drafted, provides that any prohibition or requirement attached to an IPNA or a Criminal Behaviour Order ("CBO") must "so far as practicable" avoid any conflict with the respondent’s religious beliefs. The Committee recommended that these provisions are removed from the Bill.³

Article 9 ECHR permits justifiable interferences with the freedom to manifest one’s religion or belief under Article 9(2), but does not permit interferences with the right to hold religious and other beliefs, which is an absolute right under Article 9(1).

The Committee considers that the current drafting of clause 1(5)(a) and clause 21(9) relates to the absolute right to hold religious and other beliefs. There is therefore a problem with the drafting, which needs to be corrected.

As outlined in the Committee’s Report, we do not see the need specifically to provide for the right to manifest one’s religion or belief because the imposition of IPNA and CBO prohibitions or requirements may also interfere with other rights, such as the right to respect for private life or freedom of association. As these other rights are not provided for on the face of the Bill, we are not persuaded of the need to single out the right to manifest religion or belief in these provisions.

However, if the Government does not agree with our position on this, we recommend that the drafting of the provisions be amended to refer explicitly to the respondent’s right to manifest his or her religion or belief. As currently drafted, the provisions relate to the absolute right to hold religious and other beliefs.

I hope this clarifies the Committee’s recommended amendments in relation to these two points.

Dr Hywel Francis  
Chair