



The Odysseus Trust

Report on Activities

2012

The Odyssey Trust ('the Trust') is a non-profit company limited by guarantee, which seeks to promote good governance and the effective protection of human rights. This report covers the Trust's main activities from January 2012-December 2012.

The Trust is directed by Lord Lester of Herne Hill QC. The Parliamentary Legal Officers from January 2012-December 2012 were Joanna Dawson and Sophia Harris. Caroline Baker is the Senior Researcher and Administrator.

Defamation Bill 2012

We worked with Ministry of Justice officials to prepare the Defamation Bill prior to its introduction into Parliament, as well as holding regular meetings with free speech NGOs and defamation experts to discuss policy options and campaigning strategies.

We tracked the Bill during its Commons stages noting amendments and Government responses, and briefed participants in the debate. We maintained contact with the MOJ discussing progress and proposing amendments.

Lord Lester spoke in the Second Reading debate in the Lords,. The Bill will be scrutinised by Grand Committee in late December and January 2013. We continue to work with Ministers, officials, Parliamentarians, practitioners and campaigners, to improve the Bill. We are also working on the costs and procedure regime and Internet regulations, and the use of ADR.

Legal Aid, Sentencing and Punishment of Offenders Bill 2012

The Bill made changes to the funding regime for defamation and privacy cases, abolishing the recoverability of success fees and after the event insurance, making it less likely that lawyers will take on cases on the basis of a conditional fee agreement. Lord Lester took part in the debate in order to seek assurances that the Government would introduce measures, such as one way cost shifting or costs orders, which would enable impecunious parties to bring or defend proceedings and ensure equality of arms. As mentioned, these issues will need to be addressed in implementing the Defamation Bill.

Enterprise and Regulatory Reform Bill 2012

This Bill seeks to enact changes to the structure and powers of the Equality and Human Rights Commission as well as removing the provisions of the Equality Act 2010 on the questionnaire procedure and third party harassment. We oppose the Government's proposal to repeal the questionnaire procedure and third party harassment. We therefore drafted amendments to this effect which were tabled by Lord Lester. We will also resist proposals to abolish or cut back the public

sector equality duty and the power of employment tribunals to make general recommendations..

Crime and Courts Bill 2012

Lord Lester and Lord Pannick tabled an amendment at Committee Stage of the Crime and Courts Bill 2012 to remove the Common Law offence of scandalising the judiciary. The Government subsequently asked the Law Commission to examine the issue rapidly and report back before Report Stage on the Bill. The Government have agreed to accept a similar amendment to the Bill next week. See also consultation response below.

Sex Offenders Act 2003 Remedial (Order) 2012

The Sex Offenders Act 2003 Remedial (Order) 2012 was made necessary by the Supreme Court's judgment in *Re F & Thompson v Secretary of State for the Home Department* [2010] UKSC 17 in which the Supreme Court held that the lack of review available to those on the Sexual Offenders Register was incompatible with the Article 8 ECHR right to respect for private life.

The Government withdrew the first Remedial Order after the JCHR reported stating that it would not remove the incompatibility noted by the Supreme Court.¹ They laid a second Remedial Order before Parliament on 5 March 2012 which the JCHR decided would remove the incompatibility.²

Lord Lester intervened in the debate on the Remedial Order supporting the Government's second draft and reflecting the JCHR position.

Private Member's Bill

Lord Lester introduced the Inheritance (Cohabitants) Bill 2012 as a Private Member's Bill on 10 May 2012. The Bill seeks to include qualifying cohabitants in the regime for intestate succession which is currently restricted to spouses and civil partners. The Bill was drafted by the Law Commission and would resolve the hardships created by the current law. These are that a surviving cohabitant must make a claim against the deceased's estate in court; their only route to a share of their partner's estate is through litigation, or at least the threat of it.

We drafted Explanatory Notes to the Bill, preparing briefing materials, raising awareness of the Bill both inside the House of Lords and outside and assisted Lord Lester drafting his Second Reading speech.

¹ Joint Committee on Human Rights, *Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011*, Nineteenth Report of Session 2010-12, HL Paper 200.

² Joint Committee on Human Rights, *Draft Sexual Offences Act 2003 (Remedial) Order 2011: second Report*, First Report of Session 2012-13, HL Paper 8.

The Government did not support the Bill at Second Reading but must respond to the Law Commission's Report by the end of 2012. We will decide whether and how best to make progress once the Government has responded.

Parliamentary Written Questions

We have tabled Parliamentary Questions to call the Government to account on many issues, such as safe abortion for rape victims, fair extradition procedures, prisoners' voting rights, closed material procedures, the cost and delay in completing the Chilcot Inquiry, the plight of children in immigration detention, the status of civil servants and special advisers, and proposals to amend the Equality Act 2010 including the removal of liability for third party harassment, abolition of the questionnaire procedure and of employment tribunals' powers to make general recommendations.

Joint Committee on Human Rights

The Trust supported Lord Lester's work on the JCHR providing further research for areas under examination by the JCHR including, among many issues, the inquiry into the Justice and Security Green Paper and the subsequent Justice and Security Bill.

Consultation Responses

Scandalising the Judiciary

We responded to the Law Commission's consultation proposing the removal of the Common Law offence of scandalising the judiciary. The Law Commission's provisional conclusion was that the offence should be abolished without replacement. We supported the Law Commission's proposal.

Criminalisation of Forced Marriage

We submitted a response to the Government's consultation on the criminalisation of forced marriage. We opposed criminalisation since there are already sufficient criminal offences available to penalise the behaviour involved in forcing an individual to marry against their will and there is a risk that criminalising forced marriage would reduce the number of people coming forward. We worked closely with the Family Justice Council and the Southall Black Sisters, with whom we had worked on the Forced Marriage (Civil Protection) Act 2007, in drafting our response. We seek to persuade governments in South Asia and the Council of Europe to adopt matching measures.

Equality Act 2010 Consultation

We opposed the Government's proposed repeal of the Employment Tribunal's power to make general recommendations to employers under section 124(3)(b) Equality Act 2010 and of the questionnaire procedure allowing potential claimants to gather information prior to making a discrimination claim under section 138 Equality Act 2010.

We argued against both proposals because there is a substantial risk that this would have the opposite effect of increasing regulatory burdens on employers and businesses and weakening compliance with the law. Repeal would undermine the object and purpose of anti-discrimination legislation and would not remove unnecessary burdens on employers and trade unions and might well make avoidable and vexatious litigation more rather than less likely.

Bill of Rights Commission

Much of Lord Lester's work has been concerned with his participation in the UK Bill of Rights Commission due to report at the end of this year.