



The Odysseus Trust
Report on Activities from
December 2003 to December 2004

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Introduction

This report covers the Trust's main activities from December 2003 through to December 2004. The current Legal Officers are Lydia Clapinska and Alison Hayes. In March 2004, the Trust recruited a research assistant, Caroline Baker, who provides invaluable support and is a welcome addition to the team. The Trust continues to benefit greatly from the services of the Office Manager, Evie Jamieson.

During the last twelve months, our major projects have been the Civil Partnership Act, the Constitutional Reform Bill, the Children Act, the Civil Service Bill and detailed consideration of the Government's proposals for a Commission for Equality and Human Rights. Through these and other human rights and equality projects, we have continued to strengthen links with NGOs, lobby groups and members of both Houses of Parliament. Our website (www.odysseustrust.org) has received much interest, not least from members of the public who are able to email us with their queries about various aspects of our work. The website now features recent lectures given by Lord Anthony Lester.

Major Projects

Civil Partnership Act 2004

The Civil Partnership Act received Royal Assent on 18 November 2004. This Act gives long overdue legal recognition to same-sex couples in committed relationships, allowing them to register their partnerships and to take advantage of a set of rights and responsibilities that mirror civil marriage.

The Act will relieve hardship in key areas such as rights in relation to communal property, exemption from inheritance tax on a shared property and the right to be treated as next of kin by state agencies (for example, in the event of the illness or death of a partner). We have been campaigning for the Act to be brought fully into force at the earliest possible opportunity, which is likely to be the end of 2005 or the beginning of 2006.

The Trust has been heavily involved in all stages of the legislative process since the Bill's introduction into Parliament on 30 March 2004. We have formed close working relationships with key Government officials and Ministers that have helped to achieve significant improvements to the Act, particularly in the area of equality in pension provision. The Trust has also increased public awareness

and support for the Act through publishing articles, speaking at London's Gay Pride Rally and holding briefing meetings and distributing briefings for interested Peers and Members of Parliament.

The Bill has been widely welcomed, though it encountered some obstacles in its passage through Parliament. The Bill faced determined opposition from the Conservative Party within the House of Lords. A wrecking amendment was made to the Bill in the House of Lords which would have allowed certain groups of relatives to register as civil partners, provided that they were both over thirty years old and had lived together for a continuous period of twelve years. They could have been of the same-sex or opposite-sex. The amendment was widely condemned, most notably by the Parliamentary Joint Committee on Human Rights, of which Anthony Lester was a member. When the Bill reached the House of Commons the Bill was restored to its original purpose. The status of civil partnership, being akin to civil marriage, is completely inappropriate for this wider group. The majority of the House of Lords accepted this when the Bill returned to them, and the second attempt to wreck the Bill was defeated.

The key flaw with the Bill as initially drafted concerned survivor pensions. The Bill perpetuated unfair discrimination against the survivors of civil partnerships by allowing pension schemes to base survivor pension provision on service from the date of enactment of the Bill, whereas a married surviving partner will receive a pension calculated on the whole length of his/her service. The Government argued that schemes could not afford to provide equality to civil partners. Fortunately, an amendment drafted and backed by the Trust succeeded in backdating survivor pensions for civil partners to the beginning of the 1988/89 fiscal year. The amendment therefore puts surviving civil partners in the same position as widowers, and is a great improvement to the rights of same-sex couples who enter into a civil partnership.

The Trust has also widened the list of countries that are explicitly recognised as having a scheme equivalent to the UK's civil partnership scheme. The Government accepted an amendment the Trust had drafted and the Canadian provinces of Quebec and Nova Scotia were added to the list. Massachusetts also meets the requirements of the Act, however has not yet been added to the list. The Trust has, however, been working in partnership with a human rights group in Massachusetts. This has resulted in a letter from the General Court of Massachusetts, with signatures from the State Senator and 24 State Representatives, being sent to the UK Government, which will force them to keep this situation under review.

Children Act 2004

Reasonable Chastisement

In the Children Act the defence of reasonable chastisement has been largely removed so that it can no longer be used in situations where an assault on a child causes actual bodily harm. This was the result of the Government accepting an amendment drafted and supported by the Trust.

The Act, as originally drafted, did not address the loophole enabling some parents to escape a criminal conviction for causing actual bodily harm to their children by using the overly-broad defence of reasonable chastisement. Children's organisations supported an amendment that would have removed the defence of reasonable chastisement altogether and criminalised all parental smacking, even light disciplinary taps. Anthony Lester and the Trust took the view that such an amendment was a disproportionate response and an inappropriate interference by the state into private family life.

The Trust therefore proposed an alternative amendment. The effect of it was to outlaw abusive punishment without also criminalising parental discipline. Child battery can no longer be justified as a 'reasonable punishment' in any proceedings for wounding or causing grievous bodily harm, for cruelty to children under 16 years of age, or for assault occasioning actual bodily harm. This closes the loophole and increases the legal certainty of the reasonable chastisement defence.

The Trust was very busy responding to media queries and providing briefings for parliamentarians and other interested parties.

Children's Commissioner

The Act creates a Children's Commissioner for England, with the general function of promoting awareness of the views and interests of children in England. As originally drafted, the Commissioner had very weak powers in comparison to those enjoyed by the Children's Commissioners in Northern Ireland, Wales and Scotland.

The Trust drafted and supported several amendments that strengthened the independence and powers of the Commissioner. One example is that the original Bill proposed that the Commissioner could not hold inquiries into individual cases unless the Secretary of State directed her to do so. The Trust supported an amendment that allows the Commissioner to investigate individual cases at her own discretion if they are relevant to wider policy issues, bringing the English Commissioner in line with the other Commissioners. The

Government accepted this and the Bill was amended. The Trust also successfully campaigned to change the Bill so that the Commissioner 'must' have regard to the United Nations Convention on the Rights of the Child, rather than the weaker 'may' have regard, as was originally drafted.

Constitutional Reform Bill 2004

Following the surprise announcement by the Government in Summer 2003 that the role of Lord Chancellor would be abolished, a hasty consultation took place and the Constitutional Reform Bill was published in February 2004. The Bill proposes the abolition of the office of Lord Chancellor and changes to the way the functions vested in that office are handled. The Bill also makes provision to remove the Law Lords from the House of Lords in order to strengthen judicial independence by creating a Supreme Court of the United Kingdom. A Judicial Appointments Commission is also to be created. During the Second Reading on 8 March 2004, Anthony Lester voiced his support for the Bill. Despite the Government's, and his, resistance to an amendment to delay the Bill, peers voted to take the unusual step of considering the Bill in a select committee, where it was considered during the spring and summer. The Bill has now completed its passage through the Lords, with Third Reading on 20 December 2004. Hundreds of amendments were tabled to the Bill, many of which were wrecking amendments. Anthony Lester's amendment to allow non-politically active Peers to be members of the Judicial Appointments Commission was accepted. The Bill leaves the Lords in good shape. The title of Lord Chancellor will not be abolished but many of the functions of the position will be transferred. Third Reading in the Lords also saw off a final attempt by Lord Lloyd of Berwick to scupper plans for a Supreme Court. The Bill will have its Second Reading in the Commons on 17 January 2005 and the Trust will continue to monitor its progress supportively.

Commission for Equality and Human Rights

Following their announcement in October 2003 to establish a new Commission for Equality and Human Rights, the Government published a White Paper, 'Fairness for All' in May 2004. The proposed new body will be responsible for supporting equality legislation and promoting human rights and will incorporate the work of the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission as well as the new strands of discrimination law covering discrimination on grounds of religion or belief, age and sexual orientation. The Trust welcomed the Government's White Paper but expressed concern that some essential conditions would have to be met to ensure that the Commission would be an effective body. The conditions concerned the independence of its leadership, adequate resources and

commitment from the Government to a single Equality Act to give equal protection to all the victims of the different forms of unlawful discrimination. On the human rights side, the Trust firmly supported the conclusion of the JCHR that the credibility of the Commission and its enforcement role will suffer if it is not able to challenge the acts of public bodies by bringing judicial review proceedings in its own name.

The publication of the White Paper was followed by a consultation exercise that netted over 400 responses. Of these, there was almost unanimous support for a single Equality Act to be enacted before the Commission is set up. Respondents to the consultation were on the whole supportive of the proposals, with the notable exception of the Commission for Racial Equality and other black and minority ethnic organisations.

The Government published their Response to the consultation in November 2004, which contained some welcome improvements to the White Paper but still no commitment to a single Equality Act. The Trust continues to push for the vital conditions upon which the success of the Commission depends. We look forward to seeing the Bill that will set up the new Commission early in 2005 and will be closely involved with it during its passage through Parliament. It is understood the Lester Private Member's Bill on Equality is being scrutinised in Whitehall in considering possible law reforms.

Executive Powers and Civil Service Bill 2003 / Civil Service (No. 2) Bill 2004

The Trust has long pressed for reform of the fragmented and opaque rules on the roles of civil servants and special advisers and for the introduction of a Civil Service Bill in the interests of transparency and good governance. In 2003, the drafting of Anthony Lester's Private Member's Bill, the Executive Powers and Civil Service Bill furthered these aims. The Trust worked closely with a former Parliamentary Counsel, Stephanie Grundy and others to produce a far-reaching Bill, incorporating many of the recommendations of the Ninth Report of the Committee on Standards in Public Life, 'Defining the Boundaries within the Executive: Minister, Special Adviser and the permanent Civil Service' (The Wicks Report).

The Bill was intended to introduce reforms in relation to a range of Ministerial powers that are exercisable by virtue of the Royal Prerogative. Prerogative powers are rights and powers handed to Ministers by the monarch. There is no definitive statement of the scope of these powers but they include the power to

ratify treaties with other countries, to mobilise troops, to regulate the Civil Service and to make appointments to certain public positions. The Bill created a statutory framework for the exercise of these powers. It contained detailed provisions dealing with particular areas (the civil service, special advisers and public appointments) and made provision for general review by Parliament in all other areas.

Second Reading of the Bill took place on 5 March 2004. There was considerable support for the section of the Bill dealing with the Civil Service. However, there was controversy over other parts of the Bill dealing with prerogative powers, treaty scrutiny and war powers. Therefore Anthony Lester decided pragmatically to cut down the Bill so that it became the Civil Service (No.2) Bill.

The Civil Service (No.2) Bill is intended to introduce reforms to regulate the Civil Service. The Bill makes provision, amongst other things, with respect to:

- the principles for appointments to, and the operation of, the Civil Service;
- the duties of special advisers;
- the establishment of the Civil Service Commission as a statutory body;
- the functions of the Civil Service Commission, including powers of oversight of Civil Service appointments and conduct.

The Bill in its revised form passed through all subsequent stages of the House of Lords, with Third Reading on 20 May 2004. The Bill, which was intended primarily to raise the Government's sights, has not been taken further. In 2003, the House of Commons Public Administration Select Committee also applied pressure on the Government by drafting their own Bill.

The Government finally produced a draft Bill in November 2004. As anticipated, it is a weaker version than the Trust had hoped for but it is a good starting point for this much-needed legislation. The draft Bill is now under consultation. The Trust will respond to the consultation in the New Year, and will campaign to improve the Bill in line with recommendations made by the Public Administration Select Committee.

Committee Work

Joint Committee on Human Rights (JCHR)

During 2004 Anthony Lester has been an active member of the JCHR, a committee that is now well established as a key part of the legislative process. The Trust examined the advice of the Legal Adviser to the Committee and provided background briefings for Anthony Lester's work with the JCHR. Over the last year, the JCHR has published a large number of Reports on Bills, which contain important summaries of legal principles and international and comparative human rights case law. They also contain the Committee's view on whether legislative measures are compatible with the European Convention on Human Rights and other relevant human rights treaties. These Reports are influential with the Government, Parliament and the courts.

Examples of Bills scrutinised by the Committee in the Session 2003-04 include the Civil Partnership Bill, the Children Bill and the Asylum and Immigration (Treatment of Claimants, etc) Bill. Other important work has included the reports on Deaths in Custody, the Commission for Equality and Human Rights and the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004.

Due to the rotation of Lords Committee Member rules, Anthony Lester was rotated off the JCHR in December 2004, however the Trust will continue to monitor and support the JCHR's work.

House of Lords Select Committee on the European Union: Sub Committee E (Law and Institutions)

Following his rotation off the JCHR, Anthony Lester once again joined Sub-Committee E. He had previously been an active member of this Committee during the 2002-03 Session. The Legal Officers will continue to support his work on the Committee in the New Year by preparing briefing papers and questions for oral evidence sessions.

Other Projects

Equality Work

The campaign for a single Equality Act continues. It is welcome news that during the second half of 2004 the campaign has made real progress. This has been spurred by a number of factors. The first is the overwhelming support for a single Equality Act contained within the responses to the White Paper on the Commission for Equality and Human Rights. The second is the setting up of a strong new All-Party Parliamentary Group on Equalities, of which Anthony Lester is a Vice-Chairman. The third factor is the continuing work of the Equality and Diversity Forum which represents a range of organisations and which campaigns tirelessly for a single Equality Act. The legal officers attend the Forum meeting regularly as it provides an invaluable link with a network of equality and human rights organisations and also with Government. The fourth and perhaps most important factor is a perceptible shift in the Government's position. Without making a firm commitment to an Act they are beginning to sound more positive and have at least committed to a review of the existing equality legislation.

The recent surge in campaigning is underpinned by Anthony Lester's Equality Bill. This Bill passed successfully through the House of Lords in 2003 and was welcomed in the House of Commons with an Early Day Motion, which was signed by 246 MPs. Despite this overwhelming support the Government continued to refuse to support the Bill with the result that the Government whips did not find Parliamentary time for the Bill to have a Second Reading in the Commons. It is now hoped that the Government will move to embark on their own review, as promised, with a view to introducing a single Equality Act.

Serious Crimes Order

The Trust's outreach work with UNHCR led to Anthony Lester Praying against the Government's Serious Crimes Order in November 2004.

This Order lists some 500 offences. If a refugee is convicted of one of these offences, there is a presumption that it will invoke certain provisions in the UN Refugee Convention which allow individuals to be returned to their country of origin despite a continuing well-founded fear of persecution there.

Due to the serious implications of such refoulement, UNHCR and the Trust were concerned that some of the offences included on this list were not sufficiently serious to satisfy both elements of refoulement, namely that the crime is

'particularly serious' and that the individual constitutes a danger to the community of the country. The offences include, for example: theft, entering a building as a trespasser intending to steal, aggravated taking of a vehicle, criminal damage and possession of controlled drugs.

Anthony Lester argued (with support across the Lords) that the Order was beyond the lawful scope of the Government's order-making power as it was incompatible with the UK's international obligations under the UN Refugee Convention. However, the Government were unwilling to amend the Order. The Trust will continue to monitor the use of the Order.

Incitement to Religious Hatred

The Government have proposed a new criminal offence of incitement to religious hatred. This proposal seeks to extend the existing offence of incitement to racial hatred found in the Public Order Act 1986.

The Trust believes that existing legislation is sufficient. There are a wide array of offences protecting public order and ethnic minorities. The Anti-Terrorism, Crime and Security Act 2001 also created new offences of religiously aggravated assault, criminal damage, public order and harassment, alarm or distress. If any of these offences are aggravated by religion or religious hostility, they incur higher penalties.

It is not in the interests of any member of an open liberal democratic society to censure or deter genuine debate and free speech, least of all the free expression of British Muslims whom this law purports to benefit. The remedy for hate speech is not less speech but more speech to counter hateful ideas and to win the hearts and minds of fair-minded people. The new offence would do the reverse. It would encourage popular resentment and play into the hands of racists. It would disappoint the expectations of those who seek to protect Islam and its adherents against bigotry and prejudice.

Religious belief and practice, like political opinion and practice, should not be protected against harsh scrutiny or intemperate insult, provided that there is no clear and present danger to public order. If the attack is racism in disguise it can be dealt with under the law as it stands. However, there is a fundamental difference between attacking someone because of their ethnicity - an attack on their human dignity and common humanity - and an attack on beliefs, ideas or practices. It is right to deter and punish the former. The right to free speech, however, means that even criticisms that shock, offend or disturb one section of the community should not be made criminal.

What is urgently needed is a law which gives equal protection to the victims of religious discrimination to that already given to the victims of racial discrimination, as well as a strong new Equality Commission able to deal effectively with both kinds of discrimination. The Government have yet to demonstrate their willingness to provide genuine equal protection against religious as well as racial discrimination.

Human Rights Act and the Implementation of the ECHR

The Trust continues to monitor the implementation of the Human Rights Act 1998, noting key cases brought under the Act and keeping abreast of academic writing and new developments in the field of human rights at home and overseas. We monitor Government Bills which have human rights implications and draft amendments where necessary, often along the lines of recommendations made by the JCHR. The Trust also provides briefings for other peers, NGOs and the press. Anthony Lester has continued to work with the wider media, publishing letters in newspapers and appearing on radio and television. He gives seminars and lectures, deepening public awareness of the Act.

International Human Rights Obligations

The Trust continues to press the Government to commit fully to the UK's other international human rights obligations. The Government published their review of the UK's international human rights obligations in July 2004. The review was extremely disappointing. The Trust welcomes the Government's announcement that they will accept the right of individual petition under CEDAW (the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women) but we are disappointed that they have refused to accept the right of individual petition under the International Covenant on Civil and Political Rights (ICCPR), the Convention against Racial Discrimination (CERD) and the UN Convention Against Torture (UNCAT).

Parliamentary Commissioner (Amendment) Bill

Anthony Lester's Private Member's Bill, the Parliamentary Commissioner (Amendment) Bill, had its First Reading on 24 November 2004. The Parliamentary Commissioner for Administration (the Ombudsman) undertakes independent investigations into complaints about Government departments and other public bodies. Under the provisions of the Parliamentary Commissioner Act 1967 the public can only gain access to the Parliamentary Commissioner via

an MP. Anthony Lester's Bill will enable the public to have the option of direct access to the Parliamentary Commissioner, but the Bill does not take away the option of the MP filter. The aim of the Bill is to enable and encourage members of the public to submit complaints to the Parliamentary Commissioner directly; to date far fewer people than expected are making use of this valuable procedure.

The Bill's Second Reading is scheduled for 4 February 2005. This is the second time that Anthony has introduced a Bill on this subject.

Freedom of Information

The Freedom of Information Act 2000 comes into force on 1 January 2005, giving the public the right to request information from public authorities. The Trust is continuing to monitor the Act's implementation, for example, with respect to fees, time taken to deal with requests and exemptions from the Act. Properly implemented, the Act should result in greater openness and accountability in Government. The Trust is likely to make requests under the auspices of the Act during 2005.

The Odysseus Trust
December 2004