



The Odysseus Trust
Report on Activities from
January 2008 to January 2009

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Introduction

The Odysseus 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 2008 to January 2009.

The Trust is directed by Lord Lester of Herne Hill QC. The Parliamentary Legal Officers from January 2008 until April 2008 were Bonita Meyersfeld and Tara Lyle and from April 2008 until December 2008 were Tara Lyle and Paola Uccellari. The Trust continues to benefit greatly from the services of the Office Manager, Evie Jamieson and the support provided by the Research Officer, Caroline Baker.

Our major legislative project during the year was the Cohabitation Bill, which Lord Lester introduced as a Private Member's Bill in December 2008. Much of the preparatory work leading to the introduction of the Bill took place over the course of 2008.

The Trust worked closely with Lord Lester in his capacity as unpaid independent adviser to the Government on constitutional reform until November 2008, when Lord Lester resigned from this position. The Trust conducted several parliamentary campaigns to strengthen human rights protection in various areas, both building on Lord Lester's work on the Joint Committee on Human Rights and on its own initiative. The Trust developed policy and built relationships with NGOs, trade unions, academics and parliamentarians to prepare for the forthcoming Equality Bill. Our website (www.odysseustrust.org) continues to attract much interest from the public, who are able to access our Bills, recent debates, consultation responses and lectures given by Lord Lester.

Major Projects

The Cohabitation Bill

The Odysseus Trust worked with an association of 5000 family lawyers, Resolution (formerly the Solicitors Family Law Association) on its campaign to introduce rights for unmarried cohabiting couples.

Family life has changed dramatically over the past 50 years. Many cohabit rather than marry and have children outside marriage but the law has failed to keep in step with these changed realities.

Cohabiting couples, that is, families made up of two adults living together in a loving relationship, are not recognised under English law as a family when their relationship breaks down, but rather are treated as two unconnected individuals. The division of their property is based on any formal agreements that have been made and on financial contributions. The courts can take no account of any contributions made to the relationship by caring for the family or home, or by sacrificing a career in the interests of the other party. Nor can English courts consider the needs of either party on separation. Unless couples have taken steps to agree their legal position during their relationship, which is very unusual, the outcome under English property and trust law often bears no relation to what most people would agree would be a fair outcome for both parties. As a result, many adults and their children are left in poverty at the end of a cohabiting relationship.

The Living Together campaign aimed to provide greater legal certainty, choice and legal protection for people living together outside a formal, State-recognised relationship. Many other countries including Australia, New Zealand and Canada already provide legal protection for various categories of unmarried people living together. The law in Scotland was recently changed to provide protection for couples who live together.

In July 2007 the Law Commission recommended that the law be reformed to regulate the financial affairs of unmarried cohabiting couples at the end of a relationship in a report called *'Cohabitation: The Financial Consequences of Relationship Breakdown'*. The Government neither rejected the Law Commission's recommendations nor stated that it has a principled objection to their implementation. But it has postponed making a decision about changing the law until after review of the impact of the Scottish legislation. Unconvinced by the Government's reasons for postponing much needed law reform, and concerned about the unfair effect of continuing Government inaction, the Odysseus Trust,

with Resolution, set about a campaign to bring forward law reform and provoke a national debate on this issue.

Before publishing this Bill, the Odysseus Trust and Resolution conducted a public consultation, seeking views as to whether there should be a Cohabitation Bill and, if so, what it should do. There were 197 responses, including the Law Societies of England and Wales and Scotland, the Family Division of the High Court, the Family Law Bar Association, the Association of Women Solicitors, Families Need Fathers, Refuge, Rights of Women, Stonewall, many academic experts, and individual family solicitors, all of whom supported reform. The Bill was drafted by an external expert in legislative drafting, based on policy shaped by the results of the consultation.

The Bill purports to give cohabiting couples limited rights to make a claim for financial provision at the end of their relationship, either through separation or death. Part 1 determines to whom the Bill applies. It affects only those cohabitants who have demonstrated significant commitment to each other, either by having lived together for two years, or by having had a child together. Part 2 gives former cohabitants the right to apply to a court for an order when their relationship breaks down. The court may make an order if it considers it just and equitable to do so, having regard to all the circumstances. Part 2 also contains provisions allowing couples to opt out, so that the rights contained in the Bill would not apply to their relationship. This maintains the essential freedom of personal choice, allowing couples to regulate their own affairs in accordance with their wishes. Part 3 allows cohabitants to take out life insurance in respect of each other's life and to register each other's death. Surviving cohabitants already have the right to make claims against their deceased cohabitant's estate. This Bill amends the definition of cohabitant in existing legislation to cover cohabitants who have children together. It also extends to cohabitants the right to claim for bereavement damages.

Lord Lester introduced the Cohabitation to the House of Lords on 11 December 2008. It has its second reading on 13 March 2009 and Committee Stage commenced on 30 April 2009. The Bill was supported by Liberal Democrats, the Bishops and a number of Cross-Bencher and Labour Back Bench Peers. However, owing to a lack of parliamentary time, the Bill did not complete all parliamentary stages in the House of Lords. The Bill was also introduced to the commons by Mary Creagh MP as a ten-minute rule Bill but had to be withdrawn when Mary Creagh joined the government whips' office.

Ministry of Justice

The Odysseus Trust continued to support Lord Lester's role as unpaid, independent adviser to the Government on constitutional reform until his

resignation in November 2008. The Trust provided advice on a number of constitutional issues through regular meetings with Ministry of Justice Ministers and officials and by submitting papers on specific issues.

Committee Work

Joint Committee on Human Rights (JCHR)

Lord Lester remains an active member of the JCHR.

In the 2008-09 session, the JCHR continued its inquiries into counter-terrorism and human rights policy, concentrating particularly on the Counter-Terrorism Bill. It focused on the Government's proposals regarding pre-charge detention, post-charge questioning, the use of special advocates for persons subject to control orders, the threshold test for charging, the use of intercept evidence and changes to arrangements for coroners' inquests. Lord Lester was an active participant in debates on the Bill in the House of Lords. The JCHR's other thematic inquiries included the human rights of adults with learning disabilities; the use of restraint in secure training centres; data protection and human rights; and the use of prohibited interrogation techniques in Iraq. The Committee also carried out an enquiry and produced a report on a Bill of Rights for the UK. Lord Lester did not take part in this inquiry on a Bill of Rights because he was advising the Government on their proposed Bill of Rights and Responsibilities. The JCHR also continued its important work in scrutinising the human rights compatibility of legislation proposed by the Government.

The JCHR monitors the Government's response to adverse human rights judgments of the Strasbourg and domestic courts. It published a report setting out its findings in this respect in October 2008. On 24 November 2008, Lord Lester participated in a debate on the report, pressing the Government to respond to the JCHR's recommendation that it make systemic reforms to improve the Government's response to human rights judgments and to comply with the judgments of the European Court of Human Rights in cases such as *Hirst v UK* and those concerning deaths resulting from the use of force by security services in Northern Ireland.

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

Lord Lester remained an active member of Sub-Committee E until leaving the Committee in November 2008 having served the maximum term. During this session, the Committee carried out a detailed enquiry into the Lisbon treaty. Lord Lester took part in the debates on the EU (amendment) Bill in June 2008.

Equality

General

A high priority for the Trust and Lord Lester is to secure effective anti-discrimination legislation. Throughout 2008 the Trust's work in this respect over had as its focus preparation for the forthcoming Equality Bill 2009.

Our work is underpinned by Lord Lester's Equality Bill, which passed successfully through the House of Lords in 2003. Although the Bill was welcomed in the House of Commons and signed by 246 MPs, the Government did not support it. However, it did compel the Government to commit to a revision of UK anti-discrimination law. In 2007 the Government consulted on its proposals to introduce a Single Equality Bill (Department for Communities and Local Government, *Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain (2007)*) and set out its proposals for the Bill in the summer of 2008 (Government Equalities Office, *The Equality Bill – Government Response to the Consultation (Cm 7454) July 2008*). Lord Lester participated in a debate on the Government's key proposals on 26 June 2008, questioning, in particular, the Government's intentions with respect to equal pay and the place of religion within the bill.

The Odysseus Trust spent much of 2008 shaping its policy in respect of the Government's proposed reforms, [lobbying Ministers and officials on unsatisfactory aspects of the Bill] and creating links with parliamentarians and external organisations with an interest in equality, with a view to coordinating action/strategy/response once the Bill is published. In particular, the Odysseus Trust has helped organise a coalition of Peers who intend to work together on a cross party basis to improve the Bill when it reaches the House of Lords. Lord Lester and Paola Uccellari published an article warning of the adverse implications should the Bill seek to extend the public sector duty, in unmodified form, to religion or belief.

The Trust has observer status on the Equality and Diversity Forum (EDF), a collaboration of equality organisations across the discrimination strands. The staff of the Trust regularly attend meetings of the EDF and contributes to its work as well as having regular contact with Trade Unions, the EHRC and other organisations involved in equality and discrimination law.

Implementation of the Race Directive

On 21 May 2008 Lord Lester initiated a debate to question the Government on its approach to implementation of Directive 2000/43/EC. The Government implemented the Directive's provisions only in relation to discrimination based on ethnic or racial grounds, excluding discrimination on the ground of colour, based on its interpretation of the European Union race directive as not covering discrimination on the ground of colour. The Government has since confirmed that it will correct this anomaly in the forthcoming Equality Bill.

Disability Discrimination following *Lewisham LBC v Malcolm*¹

Through a series of parliamentary questions, meetings with Ministers and officials and parliamentary debates, we pressed the Government to introduce legislation to fill the gaps in protection against disability discrimination created by the decision of the House of Lords in *Lewisham LBC v Malcolm*. The Government has committed to addressing this issue in the forthcoming Equality Bill.

Consultation Response

The Trust submitted a response to the Government's consultation on dispute resolution, which sought views as to whether employment tribunals should dispose of wider powers to make recommendations in discrimination cases. The Trust's response argued that Employment Tribunals should be able to recommend strategic changes to organisational policy following a finding of unlawful discrimination so as to maximise the impact of findings in individual discrimination cases. It also called for tribunals' power to make recommendations to be extended to equal pay cases and for broader reforms to the dispute resolution system in equality cases.

¹ [2008] UKHL 43.

Other Projects

International Human Rights Obligations

The Trust has continued to press the Government to accept the right of individual petition under the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and the International Convention on the Elimination of All Forms of Racial Discrimination. In particular, we have repeatedly raised the fact that the UK is one of only four Council of Europe Member States (the other three being Moldova, Monaco and Switzerland), and alone in the democratic Commonwealth in not having accepted the right of individual petition under the ICCPR.

Prisoners' Voting Rights

Lord Lester has continued to press the Government to introduce legislation in response to the judgment of the European Court of Human Rights in *Hirst v UK*² which found that the UK's blanket ban on voting for prisoners is in breach of the Convention. Lord Lester participated in a debate on this issue on 15 December 2008.

Protection of gay couples abroad

In 2008 the Odysseus Trust and Lord Lester persuaded the Government, through parliamentary questions, correspondence and meetings with the Government, to withdraw their intervention in *Schalk and Kopf v Austria*. The Government's submission in this case argued against the proposition that enduring family relationship between same-sex partners fall within the scope of private and family life protected by the European Convention on Human Rights. The Trust initiated parliamentary debates on this issue on 10 July 2008 and 23 October 2008, in which Lord Lester argued that the Government's position is disappointingly regressive for a Government which introduced the Civil Partnership Act 2004 and recognised that same sex partners can have an enduring family relationship for the purposes of adoption law. The Government accepted the Trust's arguments and amended their intervention on this point.

The Odysseus Trust and Lord Lester became aware that French law did not grant to couples in a UK civil partnership the rights enjoyed by couples in a French *pacte civil de solidarité*. The Odysseus Trust mounted a parliamentary campaign, through a series of written questions and a debate on 23 October 2008, to encourage the Government to make representations to the French authorities to

² (2006) 42 EHRR 41.

reform its law in this respect. The UK Government pursued this issue and in April 2009 the necessary changes were made to French law.

Employment Bill

The Employment Bill was introduced in the House of Lords on 6 December 2007. One of its objectives was to implement the decision of the European Court of Human Rights in the case of *Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom* (27 Feb 2007). The Court had held that trade unions should be free to choose their members, subject to the rights of the individual not be left in a position where he has no protection against a capricious employer. Clause 18 of the Bill would have amended the law to enable a trade union to exclude or expel a person on the basis of her membership of a political party. Clause 18 did not make any provision to protect individuals against unfair exclusion or expulsion. It thus failed to strike an appropriate balance between a trade union's rights to choose its membership and the rights of the individual to be treated in accordance with natural justice.

Lord Lester tabled the Joint Committee on Human Rights' proposed amendments to Clause 18, to introduce safeguards to protect the rights of the individual. Following Second Reading, Grand Committee and several meetings with the Minister and officials, the Government agreed to introduce amendments to deal with these concerns.

Bill of Rights for Northern Ireland

The Trust assisted the Northern Ireland Human Rights Commission in formulating the proposed rights contained in their recommendations for a Bill of Rights for Northern Ireland. Lord Lester and the Parliamentary Legal Officers attended meetings in London and Belfast with the Commissioners and staff of the Commission as well as providing written advice.

Other House of Lords Debates

The Trust assisted Lord Lester in his participation in several debates in the House of Lords, including debates on:

- The UK-US extradition treaty (8 January 2008)
- The Chilcot Report on the use of intercept evidence (6 February 2008)
- Parliamentary scrutiny of EU legislation (11 March 2008)
- Honour-related violence (10 March 2008);
- Ratification of the Lisbon Treaty (18 June 2008)
- The Criminal Evidence (Witness Anonymity) Bill (10 and 15 Jul 2008);

- Regulations which would have prohibited life Peers from sitting or voting in the House of Lords if they become members of the European Parliament (14 October 2008)
- Relations between the executive, the judiciary and parliament (18 November 2008);
- Police action in response to government leaks (11 December 2008) during which Lord Lester stressed that the police are bound by the Human Rights Act to balance the right to respect for personal privacy against other compelling interests such as national security;
- The national DNA database (9 December 2008)
- The Government's plans to improve relations with the Muslim community (9 December 2008).

Further Parliamentary Campaigns

Lord Lester and The Odysseus Trust have continued to press the Government through a series of parliamentary questions on matters related to good governance including: procedural reforms designed to enhance the independence and efficient functioning of the European Court of Human rights; arrangements affecting access to justice such as the availability of legal aid, court fees, public expenditure on the court service and conditional fee arrangements; the place of religion in the legal system of a secular democracy; the free speech implication of criminal libel; proper implementation of the Forced Marriage (Civil Protection) Act 2007; the respective roles of the Government and Parliament in challenging EU legislation before the European Court of Justice on subsidiarity grounds; and the detention of failed asylum seekers.