



The Odysseus Trust
Report on Activities from
January 2009 to January 2010

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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 2009 until August 2009 were Tara Lyle and Paola Uccellari and from September 2009 until December 2009 were Tara Lyle and Emily Gray. 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. The Bill had its Second Reading on 13 March 2009 and Committee Stage commenced on 30 April 2009. Owing to a lack of parliamentary time, the Bill did not complete all parliamentary stages in the House of Lords.

During 2009, The Trust developed policy and built relationships with NGOs, trade unions, academics and parliamentarians in preparation for the Equality Bill which was introduced to the House of Commons in April 2009. The Parliamentary Legal Officers worked with MPs to draft amendments to the Bill for Committee Stage in the House of Commons. The Bill was subject to a carry-over motion and had its Second Reading in the House of Lords on 15 December 2009. Lord Lester will be the front bench spokesperson for the Liberal Democrats on the Bill in the House of Lords.

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. Lord Lester also gave lectures on reform of the European Court of Human Rights and 'Multiculturalism and Free Speech'. The Trust assisted in the research and preparation of these lectures. 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.

At present, at the end of their relationship the law treats cohabiting couples as two unrelated individuals. It takes no account of their relationship and does not aim to achieve a fair outcome between former partners. The courts can take no account of what contributions each party made to the relationship by caring for the family or home, or sacrificing a career in the interests of the other party. Nor can English courts consider the needs of either party. Unless couples have taken steps to agree their legal position during their relationship, which is very unusual, the outcome under English property and trusts law often bears no relation to what most people would agree would be a fair outcome for both parties. As a result, many cohabitants (usually women) and their children fall into poverty upon relationship breakdown.

The Living Together campaign recognized that society is increasingly made up of non-traditional family units and aimed to increase legal certainty, choice and legal protection for people living together outside a formal, State-recognised relationship. The Cohabitation Bill was based on recommendations made by The Law Society in 2007 and a public consultation conducted by the Odysseus Trust and Resolution in 2008.

The Bill did not grant the same rights to cohabiting couples as to those enjoyed by married couples and couples in civil partnerships, but aimed to give cohabiting couples limited rights to make a claim for financial provision at the end of their relationship, either through separation or death. It would apply only to those cohabitants who have demonstrated significant commitment to each other.

The Bill would give former cohabitants the right to apply to a court for an order if their relationship broke down. The court would be able make an order if it considered it just and equitable to do so, having regard to all the circumstances. However, the Bill also made provision for couples to decide to opt-out so that the rights contained in the Bill would not apply to their relationship. This maintained the essential freedom of personal choice, allowing couples to regulate their own affairs in accordance with their wishes.

The Bill would also allow cohabitants to take out life insurance in respect of each other's life and to register each other's death. It would also extend to cohabitants the right to claim for bereavement damages.

Lord Lester introduced the Cohabitation Bill to the House of Lords on 11 December 2008. It had its Second Reading on 13 March 2009 and Committee Stage commenced on 30 April 2009. During Second Reading the Bill was supported by Liberal Democrats, the Bishops and a number of Cross-Bench and Labour backbench 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.

Equality Bill

A high priority for the Trust and Lord Lester is to secure effective anti-discrimination legislation. 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*). The Government published its Equality Bill on 24 April 2009.

Following publication of the Equality Bill, the Parliamentary Legal Officers worked with Evan Harris MP and Lynne Featherstone MP in the House of Commons to develop policy and draft amendments for Committee Stage of the Bill which took place between 2 June and 7 July. We pursued amendments on a wide range of issues including: equal pay; disability discrimination; public sector duties and religion; age discrimination; harassment. None of these amendments were accepted by the Government.

Throughout 2009, the Trust built relationships with academics, NGOs, Trade Unions and other organisations to develop policy on the Equality Bill. We organised a cross-party coalition of Peers to work together on a cross-party basis to improve the Bill when it reaches the House of Lords.

Following the summer recess, the Trust wrote several letters to Government Ministers on particular details of the Bill, in particular Equal Pay, multiple discrimination and harassment. These letters were followed by meetings with Government Ministers and officials and a number of concessions were achieved. Following these meetings, we identified areas of priority for amendments in the House of Lords and drafted amendments.

Second Reading of the Bill in the House of Lords took place on 15 December. Lord Lester participated in the debate as front bench spokesperson for the Liberal Democrats.

Coroners and Justice Bill

The Coroners and Justice Bill 2009, was introduced into the House of Lords by the Government on 25 March 2009. Of particular interest to The Trust were the provisions on: suicide, criminal memoirs, and homophobic hate speech. It also became clear that the Bill was an appropriate vehicle for a number of other reforms including: abolition of the common law offences of seditious libel and criminal libel and abolition of the offence of blasphemy in Northern Ireland.

Lord Lester proposed amendments which would amend section 5 of the Public Order Act by removing the word “offensive”, and supported the amendment tabled by Baroness Young of Hornsey which created a new offence of servitude and forced labour. He also supported an amendment which closed a loophole in the law of genocide and war crimes by allowing retrospective application of jurisdiction for genocide, war crimes and crimes against humanity and clarifying the “residency requirement” for prosecution. The Parliamentary Legal Officers devised and drafted an amendment to implement the judgment of *Hirst v UK* on prisoners’ voting rights which was tabled by Lord Ramsbotham.

The Trust worked with Dignity in Dying, Lord Falconer, Baroness Jay, Lord Low, Lord Joffe and several other Peers to craft an amendment which would provide a defence to a charge of assisting suicide for those who assisted a terminally ill loved one to travel overseas to end their lives. The defence was narrowly tailored and included strict safeguards to prevent abuse. Lord Lester was a co-signatory to the amendments and spoke to it during Committee Stage of the Bill on 7 July 2009. After a lengthy debate, the amendment was defeated by 194 to 141.

Lord Lester tabled amendments to the Bill which would abolish the common law offences of criminal libel and seditious libel. Although these offences were rarely used, there were concerns that they continued to have a chilling effect of free

speech and encouraged the enforcement of similar offences in countries around the world seeking to restrict free speech. At Committee Stage of the Bill, on 9 July, the Government agreed to abolish these offences. The Minister undertook to come back with their own amendments at Report Stage which would also abolish the offence of obscene libel and would include other consequential amendments. When the Government amendments were published and scrutinised by the Trust, it became apparent that although Parliament had abolished the offence of blasphemy in England and Wales in 2008, this had not been extended to Northern Ireland. The Trust therefore drafted further amendments to the Bill which would extend the abolition of blasphemy to Northern Ireland. These amendments were rejected by the Government who argued that the matter should be left to the Northern Ireland Assembly to deal with once Policing and Justice Powers were devolved.

Lord Lester and The Trust had serious concerns about Part 7 of the Bill which created a new civil recovery scheme of "Exploitation Proceeds Orders" by which a Court can require an offender to pay a sum of money if he has received any payment for writing a book, or speaking, about their crime. The new scheme was both overbroad and vague, apply both to heinous crimes such as murder and rape where victims have legitimate concerns about perpetrators profiting from their crimes, but also any offence committed in the UK or overseas, by a UK or foreign national, no matter how long ago the offence was committed or how minor the offence. We were concerned that the scheme would impact upon free speech and would harm prisoner rehabilitation programmes involving the arts. We worked with Lord Borrie QC and a coalition of NGOs including English PEN, Article 19 and The Howard League for Penal Reform to oppose the provisions. Our attempts to delete the whole of Part 7 of the Bill and then to limit the scheme to only the most heinous crimes were defeated, but the Government agreed to limit the scheme to offences that were only triable on indictment and to remove the criterion which would take into account the level of offence felt by the general public.

Committee Work

Joint Committee on Human Rights (JCHR)

Lord Lester was an active member of the JCHR until November 2009.

During 2009, the JCHR carried out inquiries into: The UN Convention on the Rights of Persons with Disabilities; counter-terrorism policy and human rights; a human rights approach to policing protest; the Prisoner Transfer Treaty with Libya; allegations of UK complicity in torture; UK law on genocide (and related

crimes) and redress for torture victims; and the retention, use and destruction of biometric data.

The Committee also scrutinised several pieces of legislation including: the Political Parties and Elections Bill; Coroners and Justice Bill; the Borders, Citizenship and Immigration Bill; Policing and Crime Bill; Parliamentary Standards Bill; and the Equality Bill.

Lectures

In 2009, Lord Lester gave two significant lectures with research and drafting assistance provided by The Trust. In March 2009 he attended a conference in Copenhagen on the European Court of Human Rights after 50 years and gave a lecture on reform of the European Court of Human Rights. In June 2009, he gave a lecture on "Multiculturalism and Free Speech" at the University of Leicester. The Copenhagen lecture has been published in the European Human Rights Law Review 2009, and the Multiculturalism and Free Speech will be published in Political Quarterly in 2010.

Other Projects

Policing and Crime Bill

Lord Lester tabled an amendment to the Policing and Crime Bill 2008 which would amend section 329 of the Criminal Justice Act 2003. This section was enacted in response to the case of Tony Martin, the Norfolk farmer who, in 1999, shot two burglars who had entered his home. In 2003, the surviving burglar sued Martin for damages relating to his injuries although later dropped the case. Section 329 provides a defence to a civil suit for "trespass to the person" brought by a convicted person, where, during the commission of that crime the victim or a third party has taken action which he believed necessary to prevent the crime or protect themselves, another person or property. The action must not have been grossly disproportionate. However, since this provision came into force in January 2003, it has only been used by police defendants seeking to defend themselves against civil actions. This subverts the principle that an arrest must be objectively justified and that no more force may be used in effecting it than is reasonable necessary, and creates a mismatch between the civil and criminal law. There is a risk that s.329 as it stands violates Article 8 and Article 13 of the European Convention on Human Rights. Lord Lester sought to amend this provision to prevent it being used by the police to defend themselves against civil actions where they have used excessive force on arrest. During the debate

the Government did not accept the amendment but agreed to consult on whether s.329 should be amended.

Lockerbie

On 12 October 2009, Lord Lester asked an oral question and took part in a debate about the release of Abdul Baset Ali al-Megrahi. He argued that there should be a full judicial inquiry into the matters raised by the Scottish Criminal Cases Review Commission and the UN observer, Professor Köchler, about a possible miscarriage of justice and abuses in the investigation, prosecution and trial.

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*¹ which found that the UK's blanket ban on voting for prisoners is in breach of the Convention.

Other House of Lords Debates

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

Equal Pay and Flexible Working Bill: 23 January

Banking Bill: 9 February

Equal Pay: 29 January

Statue Law Database: 24 February

Armed Forces: Detention 26 April

Constitution: Rights and Responsibilities: 23 March

Supreme Court: Retirement Age 25 March

Borders, Citizenship and Immigration Bill: 25 March & 1 April

Prisoners: Voting: 20 April

Prisons and Probation: 27 April

European Communities (Definition of Treaties) (United Nations Convention on the Rights of Persons with Disabilities) Order 2009: 28 April

Polygamy: 28 April

Disabled people (JCHR Report): 28 April

Cohabitation Bill: 13 March & 30 April 2009

Legal Aid: 18 May

¹ (2006) 42 EHRR 41.

Coroners and Justice Bill: 18 May, 7, 9 and 15 July; 26, 28, 29 October & 5 November
Privileges Committee: 20 May
Constitutional Renewal: 11 June
Armed Forces: Human Rights Act: 15 June
Control Orders: 16 June
War Crimes: 30 June
Parliamentary Standards Bill: 8, 14 & 20 July
Libya: 12 October
Older Workers: 22 October
Policing and Crime Bill: 20 October and 5 November
Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2009: 2 November
Equality: 15 December
Prisoners: 15 December

Parliamentary written questions

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:

Forced marriage; International Covenant on Civil and Political Rights (ICCPR); Prisoners' Voting Rights: 12 January
Assisted dying: 13 January
Human Rights: 26 January
Human Rights, ICCPR; Sri Lanka: 28 January
Human Rights; Passports: 2 February
Prisons: 4 February
Houses of Parliament: Bribery; Human Rights; Same-sex relationships: 11 February
Criminal Justice System: Men; Disabled People: UN Convention; Discrimination; Government Departments: Data Protection; Human Rights and Passports: 12 February
Human Rights: 24 February
Pensions 2 March
House of Lords: Publications: 3 March
Geert Wilders; Government: 30-year Rule: 5 March
Human Rights: 10 March
Houses of Parliament Copyright; Justice: European Courts: 11 March
Northern Ireland Human Rights Commission: 16 March
Houses of Parliament Select Committees; Human Rights: 17 March

Armed Forces: Detention; Human Rights; Justice: foreign and international
Courts: 18 March
Houses of Parliament: Copyright: 24 March
Legal Aid: 25 March
Human Rights; Places of Religious Worship: 30 March
Houses of Parliament Select Committees: 20 April
Equality and Human Rights Commission: 24 April
Afghanistan; Houses of Parliament Select Committees: 28 April
Houses of Parliament Select Committees: 30 April
Houses of Parliament Select Committees; Trident: 5 May
Houses of Parliament Select Committees; Prisoners' Voting Rights: 7 May
Houses of Parliament Select Committees; Polygamy: 11 May
Houses of Parliament: Select Committees; Treaties: Parliamentary Scrutiny: 12
May
Equal Pay; Public Expenditure: 19 May
Equal Pay; War Crimes; Hussar Ltd and Houses of Parliament Select
Committees: 1 June
Equal Pay and Legal Aid: 2 June
Equal Pay, Equality and Human Rights Commission; Equality Bill: 4 June
Equal Pay; Human Rights: 15 June
Government: 30-year Rule: 16 June
Constitutional Renewal Bill: 18 June
Human Rights Act 1998; Intelligence and Security Committee; ICCPR: 22 June
Constitutional Renewal Bill and Houses of Parliament Select Committees: 24
June
Houses of Parliament Select Committee: 25 June
Employment Tribunals Act 1996; Equalities Bill: 29 June
Equality and Human Rights Commission: 30 June
Human Rights Act 1998: 1 July
Civil Partnerships: 2 July
Human Rights; ICCPR: 6 July
Human Rights Act 1998: 8 July
Ministry of Justice: 9 July
Houses of Parliament Select Committees; Ministry of Justice: 14 July
Freedom of Information; Human Rights Act: 20 July
Bloody Sunday Inquiry; Data Protection; Employment Tribunals Act 1996;
ICCPR; Government Departments: Relocation; Sir Alan Sugar: 21 July
Incitement to Disaffection; Iraq: Chilcot Inquiry; Prisoners: Voting Rights: 5
October
Criminal Justice Acts: 12 October
Equality Bill; Government: Whistleblowers; Iraq: Chilcot Inquiry: 19 October
Parliamentary Commissioner for Administration: 27 October
National Archives: 10 November

Constitutional Reform and Governance Bill; Government: 30-year Rule: 11 November

Asylum Seeker; biometric data; drugs; cannabis; royal prerogative: 12 November

Biometric Data: 12 November

National DNA Database: 3 December

Iraq; Prisoners: Ethnicity and religion: 7 December

National DNA Database: 8 December