



**The Odysseus Trust**

**Annual Report**

**2001 - 2002**

## **Introduction**

The past year has been creative and productive for the Trust. We are now well established in our new premises and have set up a dedicated website to support and publicise our work ([www.odysseustrust.org](http://www.odysseustrust.org)). We are very grateful to our Legal Officers, Angela Patrick and Jane Gordon for their dedicated and skilful work on behalf of the Trust. The new Legal Officers, with effect from September 2002, are Dr Matthew Weait and Kay Taylor. The Trust continues to benefit greatly from the services of its Office Manager, Evie Jamieson.

Over the past year, the Trust has developed two major Private Member's Bills, the Civil Partnerships Bill 2002 and a draft Equality Bill. Through these projects, we have widened and strengthened links with NGO's, lobby groups and members of both Houses of Parliament.

We summarise below the Trust's main activities during the period September 2001 - September 2002.

## **Major Projects**

### **Civil Partnerships Bill 2002**

In the last year, we have committed a great deal of the office's time and resources to the drafting and promotion of the Civil Partnerships Bill 2002, a Private Member's Bill on the rights of same-sex and opposite-sex couples who cannot or choose not to marry. The Office worked closely with Angela Mason, Executive Director of Stonewall. With Stonewall's support, we were able to engage Stephanie Grundy, a former Parliamentary Counsel and independent legal adviser, to draft the Bill. The Bill implements Liberal Democrat party policy, but we promoted it across and beyond the political parties.

The problems we sought to address in the Civil Partnerships Bill stem from the lack of a proper legal framework recognising the status of unmarried cohabiting couples. English law gives full effect to the bond between couples if they are lawfully married, but not if they are unmarried. The law fails to recognise unmarried partners in relation to pensions, next of kin entitlements, social security and inheritance. Same-sex couples are particularly disadvantaged. English law lags far behind many European and Commonwealth countries, including France, Germany, the Nordic countries, Australia, Canada and New Zealand.

The Office prepared briefing papers on the comparative experience of relationship recognition, in particular in relation to same-sex couples, framed the substantive content of the Bill, and briefed Stephanie Grundy to draft the text. The Legal Officers worked closely during the drafting stages with, amongst others, The Law Society, The

Bar Council, The Solicitors Family Law Association and the Greater London Assembly. Each of these organisations have given their support to the general principles of the Bill. The Legal Officers presented workshops and lectures on the implications of the Bill and the need for reform.

The Office organised a press launch for the Bill, attended by both the broadsheet and specialist press, where Anthony Lester QC and Angela Mason highlighted the difficulties faced by couples trying to organise a mutual life together without the support and legal recognition of the State. We worked with the press, briefing broadsheets including the *Financial Times*, *The Daily Telegraph*, *The Guardian* and *The Times*. The Bill received widespread coverage in the press, with general support for the Bill and the need to highlight the dangers of the myth of the “common law wife”. The Bill led to a great deal of favourable coverage on the treatment of same-sex relationships.

The Civil Partnerships Bill had its successful Second Reading in the House of Lords on 25 January 2002. The debate was lively and largely supportive. We decided not to take the Bill further following Second Reading in order to give the Government the opportunity to conduct an inter-departmental review in relation to civil partnerships and formulate its position on the proposed civil partnership registration scheme. The Cabinet Office Civil Partnership and Sexual Orientation Team are currently conducting this internal review and should conclude its work by the Autumn of this year. The Office is working with the Team as the review moves forward.

The Government intends to set out its position on civil partnerships once their review is completed. Depending on the Government's response, Anthony Lester intends either to reintroduce an amended version of the Bill in the next Parliamentary session (2002-03) or to press for the establishment of a Select Committee to consider the Bill and take further evidence on the subject of civil partnerships.

Unfortunately, after many years of considering the issues, the Law Commission for England and Wales recently decided (in its discussion paper ‘Sharing Homes’ July 2002) that the subject was too complex to make firm recommendations for legislative action (on a much wider basis than the areas covered by the Civil Partnerships Bill). However, the Office continues to monitor wider work on the limited legal recognition of cohabitants, including the recent Law Society policy paper on Cohabitation.

### **Single Equality Bill Project**

Building on our previous work to promote the need for a Single Equality Act, the Office undertook an ambitious project to draft and promote a single coherent Equality Bill as a

Private Member's Bill. Funded by the Nuffield Foundation and the Joseph Rowntree Foundation, the Office worked with Professor Bob Hepple QC, Master of Clare College Cambridge, under the auspices of the Cambridge Centre of Public Law, Stephanie Grundy (independent legal adviser) and Barbara Cohen (Independent Consultant and former Principal Legal Officer at the Commission for Racial Equality), to coordinate the drafting and consultation process, the promotion and presentation of the Bill.

A draft Equality Bill has been prepared to give effect to the main recommendations of the Cambridge Centre for Public Law's Report, *Equality: a New Framework, The Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation* (Hepple, Coussey & Choudhury, Hart Publishing, July 2000). It has been drafted in response to the Government's continuing failure to conduct a widespread review of the present fragmented, inconsistent and unsatisfactory system of legislative protection against discrimination and to give effect to the recommendations made by the equality agencies and independent experts for the reform of the law.

The draft Bill seeks to address the serious defects of current equality legislation, setting out a single framework for eliminating discrimination and promoting equality between different people, regardless of their racial or ethnic origin, religion or belief, sex, marital or family status, sexual orientation, gender reassignment, age or disability. It goes beyond the minimum provisions required by the EC Race Directive (2000/43/EC) and the Employment Directive (2000/78/EC) in tackling *all* grounds of unfair discrimination in *all* spheres of activity, including employment, education, the provision of goods, facilities and services, the disposal or management of premises and the management of private members' clubs. It extends the positive duty requirements of the Race Relations (Amendment) Act 2000 beyond race to sex and disability. The basic aim is to ensure the equal protection of the dignity and worth of every individual through a single coherent legal code. It also establishes a single body, the Equality Commission for Great Britain, with a range of statutory powers to oversee the implementation of the Bill and to encourage and enforce observation of the Bill's requirements.

The draft Bill places emphasis on positive duties to promote equality, which do not depend upon the proof of fault by an individual complainant. Basing itself on British and international experience over the past four decades, it seeks to encourage an inclusive, pro-active, non-adversarial approach to fair participation and fair access while providing effective remedies and sanctions.

We intend to introduce the Equality Bill as a Private Member's Bill in the House of Lords later at the end of the year. Meanwhile, the draft Bill is the subject of a widespread public consultation, organised and coordinated by the Office with the help of Barbara Cohen. The consultation period will run from 30 July 2002 until 30 September 2002.

As part of this consultation, the Office hosted a Launch Meeting on 30 July 2002 attended by representatives from the equality agencies in Great Britain, Northern Ireland and the Republic of Ireland, Government Departments, the TUC, CBI and the Federation of Small Businesses, specialist NGOs and leading academics. There was widespread support in principle for the draft Bill, and valuable suggestions were made to widen its scope in some respects.

## **Committee Work**

### **Joint Committee on Human Rights**

Since its establishment in January 2001, the Joint Committee on Human Rights ("JCHR") (of which Anthony Lester is a member) has completed 22 Reports and 3 Special Reports, taken evidence from Ministers, legal experts and NGOs and established itself as a key part of the legislative process. The Office continues to provide essential background briefings for Anthony's work with the JCHR.

The JCHR has clarified and consolidated its role over the past year. It has recognised that one of its key duties is to consider whether Ministerial statements on the Bill's compatibility with the Human Rights Act 1998 have been properly made, and has established clear and efficient working practices to ensure thorough scrutiny and the best use of resources. Over the past year, the Committee has issued important Reports on Bills including the Anti-Terrorism Crime and Security Bill (and the accompanying Derogation from the ECHR), the Police Bill and the Nationality, Immigration and Asylum Bill. The Office works closely with Anthony and the Committee staff, examining the advice of the Legal Adviser and advising Anthony.

The JCHR is conducting an inquiry into the need for a Human Rights Commission for the UK. In the course of their inquiry, the Committee are taking evidence from Ministers, NGO's and other interested parties. They are considering the comparative experiences of other countries, the possible scope and structure of a UK commission and the relationship between any such commission and the devolved regions and the existing equality agencies. The Office has been closely involved in the inquiry and Jane Gordon, one of the Trust's Legal Officers (acting as special ad hoc adviser to the JCHR) has prepared several background briefing papers for the Committee.

### **House of Lords Select Committee on the European Union: Sub Committee E**

Over the last year, Sub-Committee E (of which Anthony is also a member) has undertaken a series of inquiries on the treatment of asylum seekers in Europe. The Sub-Committee has reported on the establishment of minimum procedural standards for

asylum applications, the reform of the Dublin Convention (responsible for determining which member state is responsible for the examination of an asylum claim by a third country national), and on the establishment of minimum standards within the Union on qualification for refugee status or as a person otherwise in need of international protection.

The Office has prepared briefing papers to assist Anthony in the hearings, particularly in examining the relevance of the European Convention on Human Rights and other international human rights standards to the proposals. In particular, we stressed the importance of ensuring that the proposals would not lead to a levelling down of protection across Europe, that the minimum standards would mirror the protection offered by the Geneva Convention on the Protection of Refugees and that where necessary, the proposals should reflect the principles and definitions used by the European Convention on Human Rights, particularly in relation to other international protection based upon the right to life or the right to be free from torture, inhuman or degrading treatment.

The Sub-Committee also examined the measures introduced in light of the events of September 11<sup>th</sup> 2001 : a Framework Directive on Terrorism and the proposals for a European Arrest Warrant. The Office stressed that the terms used in the Terrorism Directive should be tightly defined and should not be any wider than those used by the Terrorism Act 2000 and where necessary references to the European Convention should either be incorporated or its language reflected in the text. The Office produced briefings on both the Terrorism Directive and on the need for appropriate safeguards in the European Arrest Warrant in preparation for these meetings.

## **General**

### **Human Rights Act and Implementation of the ECHR**

We continue to monitor the implementation of the Human Rights Act 1998, recording the latest cases brought under the Act and the most recent academic surveys of the Act's impact. The Office regularly provides briefings for other peers, NGOs and the press. Anthony has continued to work with the wider media, publishing articles in newspapers, including *The Times* (on religious hatred and free speech), and appearing on various radio and television programmes. Anthony has given lectures and seminars for a diverse range of audiences, deepening public awareness of the Act and its provisions. Most recently, the Office briefed him for a series of lectures to parliamentarians, officials, academics and lawyers in New Zealand, highlighting the steps taken by the UK in the enactment and implementation of the HRA.

Since 2001, the Explanatory Notes accompanying every government Bill contain an outline of the government's view on the Bill's compatibility with the HRA. The JCHR continue to press for full and clear disclosure of the government's reasons for the making of compatibility statements to further inform proper parliamentary scrutiny of Government Bills.

Further to the incorporation of the European Convention, the Office continues to press the government to commit themselves fully to the UK's other international human rights obligations. Anthony has tabled many parliamentary questions asking the government to explain why they do not accept the right of individual petition under the various international treaties to which the UK is party. We have also pressed the government to lift unnecessary reservations and derogations, or to explain why they remain necessary. The Government has committed itself to a review of the United Kingdom's international human rights obligations. We will monitor the Government's review closely.

### **Equality and Citizenship**

The Office played a significant role in supporting the Sex Discrimination Amendment (No 2) Bill, a Private Member's Bill introduced by Lord Faulkner of Worcester, designed to secure equal treatment without sex discrimination in private clubs whose membership is open to both sexes. The Office provided briefings, and Anthony successfully introduced amendments designed to make the proposals more transparent and to ensure that its provisions accurately mirrored the provisions of the Sex Discrimination Act 1975. The Bill completed all stages in the House of Lords and gained support in principle from the Government. However, it has not been introduced in the Commons. Its provisions are therefore contained in the draft Equality Bill.

The Office is monitoring the Government's evolving policies on social cohesion and citizenship. In the wake of the Bradford and Oldham riots, the Home Secretary referred to the need to "develop a stronger understanding of what our collective citizenship means" (*Guardian*, 14 December 2001). The Government's recent White Paper, *Secure Borders, Safe Haven*, has formed the basis of the Nationality, Immigration and Asylum Bill 2002, which has been the subject of a report by the Joint Committee on Human Rights. The Trust is tracking the progress of the Bill and monitoring its compatibility with the UK's domestic and international human rights obligations. The Trust seeks to ensure that the Government's proposals on citizenship foster and promote an inclusive notion of citizenship, reflective of all of our society.

The Office welcomed the establishment of the Select Committee on Religious Offences and is monitoring its progress. The Office continues to promote the abolition of the archaic and outmoded offence of Blasphemy. During his evidence to the Joint Committee on Human Rights the Home Secretary admitted that one day the offence

may be committed to the history books. The Trust supports the work of the Select Committee as a step towards that time.

### **Constitutional Reform**

The Office keeps up to date with the progress of devolution and the constitutional and human rights developments in the devolved regions. We continue to monitor the government proposals on devolution for the English Regions. The Office has, through its work in relation to the promotion of the draft Equality Bill, further strengthened its links with the equality bodies in each of the regions, with the representatives of the various assemblies and in particular with the Northern Irish Human Rights Commission and the Equality Commission for Northern Ireland.

The Office remains committed to the strengthening of judicial independence and the efficiency of our justice system through the creation of a separate constitutional or supreme court or courts for the United Kingdom. This would remove the Law Lords from membership of the House of Lords, and would ensure the clear separation of judicial and legislative powers and guarantee an independent and properly resourced final court.

The Office has pressed for reform of the current 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. The Trust is monitoring the inquiry by the Committee on Standards in Public Life (the Wicks Committee) into the relationship between civil servants and special advisers.

We are monitoring proposals for the reform of the House of Lords and of the working practices of both Houses. We continue to seek to persuade the government to ensure transparency and parliamentary accountability in making public appointments, and to introduce legislation providing direct public access to the Ombudsman (Parliamentary Commissioner for Administration). We also continue to make the case for a Lords Treaty Scrutiny Committee to oversee government policy on the signature and ratification of international agreements.

### **Freedom of Information**

The Office continues to press for the full and effective implementation of the Freedom of Information Act 2000.

**The Odysseus Trust**  
**31 August 2002**