



The Odysseus Trust
Report on Activities from
September 2002 to December 2003

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Introduction

This report covers the Trust's main activities during the period September 2002 through to December 2003. It has been a busy time for the Trust. We have now expanded our premises to take up two floors of office space in Fleet Street and we now have an archive and meeting room upstairs and a substantially improved workspace downstairs. We are very grateful to our Legal Officers, Kay Taylor and Dr Matthew Waitt for their dedicated and invaluable work on behalf of the Trust. The new Legal Officers are Lydia Clapinska (with effect from August 2003) and Alison Hayes (with effect from February 2004). The Trust continues to benefit greatly from the services of the Office Manager, Evie Jamieson.

Over the past year, our major Bill projects have been the Equality Bill, Civil Partnerships Bill and Civil Service Bill. Through these and other human rights and constitutional reform 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 now able to email us with their queries about various aspects of our work. As well as our Bills and related debates, the website now features recent lectures given by Lord Lester.

Major Projects

Civil Partnerships Bill 2002

The Civil Partnerships Bill had its second reading in the House of Lords on 25 January 2002. Following a lively and supportive debate, the decision was taken not to take the Bill through any further Parliamentary stages in order to allow the Government to conduct an inter-departmental review in relation to civil partnerships and to formulate its position on the proposed civil partnership registration scheme. In June 2003, the Women and Equality Unit in the Department of Trade and Industry published a consultation paper entitled, 'Civil Partnership: A framework for the legal recognition of same-sex couples'. The paper sets out the Government's proposals for a civil partnership registration scheme in England and Wales. The consultation period ran from 30 June 2003 to 30 September 2003. The Odysseus Trust responded to the consultation by sending in a copy of Lord Lester's Civil Partnerships Bill which is more far-reaching in its scope not least because it seeks to provide protection for unmarried heterosexual couples as well as same-sex couples.

In November 2003, the Women and Equality Unit published the responses to their consultation paper. The Unit received 3,167 responses. 84% of individuals responding supported the principle of a civil partnership scheme. On 26 November 2003, the Queen's Speech on the opening of Parliament, contained the following commitment:

'My Government will maintain its commitment to increased equality and social justice by bringing forward legislation on the registration of civil partnerships between same sex couples.'

We now await the publication of a draft Bill by the Government. It is hoped that that will occur during Spring 2004. Thereafter we will be closely involved with all parliamentary stages of the Bill, including any pre-legislative scrutiny. We are seeking to secure a speedy passage of the legislation and to have a scheme in place by mid 2005.

Equality Bill 2003

The Equality Bill project dominated much of the work of the Odysseus Trust this year. The first task for the new legal officers was to analyse the responses to the draft Equality Bill that had been sent out for public consultation in July 2002. By September 2002 the Trust had received 45 detailed responses from a wide range of individuals and organisations, including all the major NGOs working in this field and the three Equality Commissions. The overwhelming response to the Bill was a very positive one and it was clear that the Hepple report had given this Bill much authority.

There were, however, some concerns about the detail and the next two months saw the legal officers working closely with Barbara Cohen (our discrimination law consultant), Professor Sir Bob Hepple QC and former Parliamentary Counsel, Stephanie Grundy in order to finalise the Bill as it would be presented to Parliament. One of the most difficult areas to get right was the way in which the Bill tackled disability discrimination. This is unique amongst the recognised forms of discrimination in requiring employers and service providers to take positive action (or make 'reasonable adjustments') in order to cease the discrimination. The Equality Bill had to recognise this unique form of discrimination whilst maintaining the coherency of a Bill designed to tackle all forms of discrimination in as uniform a way as possible. To this end, the legal officers worked closely with the lawyers at the Disability Rights Commission in order to achieve a Bill which did not remove any of the existing rights or remedies of people with disabilities. At the end of this process, Lord Lester met with Bert Massie, the Chair of the Disability Rights Commission, who declared

that whilst he still had doubts about the composition of a single Equality Commission, he was satisfied with the detail of the Bill.

In addition during this period the Government published its draft regulations to implement the EC Race Directive and Framework Employment Directive. All these regulations had to be closely examined in order to ensure that the Equality Bill either met the standard of protection offered by these regulations, or, as was usually the case, went further.

The Bill was ready to present to the House of Lords in January 2003 and the Odysseus Trust organised a press conference for the day of publication on 15 January 2003 where a media briefing pack, prepared by the Trust was available for interested journalists.

In the build up to second reading the legal officers were extremely busy drafting and distributing briefings on every aspect of the Bill to all peers who expressed an interest in speaking. Second reading took place on 28 February 2003 with 22 peers ensuring a rich and varied debate. The Equality Bill was welcomed from speakers on all sides of the House who urged the Government to support the Bill. Whilst the responding Government Minister (Lord McIntosh of Haringey) did not feel able to support the Bill he opened his remarks with,

‘This is not one of your run-of-the mill Private Members’ Bills. It is quite different and quite outstanding. The Bill has been the subject of detailed thought and consultation by some of the people most expert in the field over a number of years. The Bill has been brought forward by the noble Lord, Lord Lester, whose reputation in this field is outstanding and whose work with Lord Jenkins in the 1970s is still seen as a step change in our views about legislation on equality. This is something we take enormously seriously. Although I shall not support the Bill and I shall not give an indication that it will be followed by a Government Bill along the same lines, I do not believe that the Bill will die the death. I believe that it will make a continuing, valued and worthwhile contribution to debate on the issues covered by it’.

The Bill was then subject to amendment at Committee and Report stages on 14 March 2003 and 9 May 2003 respectively. The overall structure and aims of the Bill remained very much intact with the principle changes again being connected with disability. The disability lobby had remained unhappy about a single Equality Commission that would eventually absorb the newly established Disability Rights Commission. As recognition of these concerns Lord Lester acceded to an amendment proposed by Lord Ashley of Stoke to introduce a specialised disability committee within the proposed Commission. Further amendments on disability were also introduced by Baroness Wilkins to change

the definition of disability to facilitate increased protection for those with mental health difficulties.

The Bill passed successfully through the House of Lords and the attention of the Trust turned to the politics of the House of Commons. The Trust continued, on a cross party basis, to lobby on all sides for support. Angela Eagle MP (former Minister for Race Relations) was extremely enthusiastic to take over as sponsor of the Bill. She was supported by both Vera Baird QC MP and Norman Lamb MP (Liberal Democrat Treasury Spokesperson). The Bill 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 any time for the Bill to have a second reading. The Bill therefore fell at the end of the last session and must be reintroduced for any further debate.

The Trust remains involved heavily in the campaign for a single Equality Bill. One of the Trust's legal officers was a founder member of a campaign organised by Joseph O'Reilly of the National Aids Trust designed to lobby both inside and outside Parliament for as much support as possible. One legal officer is also a member of the Equality and Diversity Forum. This campaign has the support of all the Equality Commissions, major NGOs, Trade Unions and some employers groups.

The Equality Bill provided an important catalyst for this campaign. Its very existence means that it can now longer be said that this task is 'too difficult' and the huge support amongst so many groups must also silence the criticism that this project is 'only of interest to lawyers'.

Executive Powers and Civil Service Bill 2003

In the past, the Trust has 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 Lord 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 is 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 powers to ratify treaties with other countries, to mobilise troops, to regulate the Civil Service and make appointments to certain public positions. The Bill creates a statutory framework for the exercise of these powers. It contains detailed provisions dealing with particular areas (the civil service, special advisers and public appointments) and makes provision for general review by Parliament in all other areas. The Bill makes provision, amongst other things, with respect to:

- a statutory basis for review by Parliament of executive powers generally, with specific requirements in relation to treaties and armed combat;
- the fundamental principles underlying appointments to, and operation of, the Civil Service;
- 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 creation of the office of Commissioner for Public Appointments to advise on appointments to certain public offices and the establishment of a Parliamentary Public Appointments Committee to approve them.

The Bill had its first reading on 18 December 2003 and it is hoped that second reading will take place on 5 March 2004. There is considerable support for the Bill and the Trust continues to promote the Bill in both Houses and will provide briefing materials for all interested parties prior to second reading. The House of Commons Public Administration Select Committee has also long believed that a Bill to enshrine key principles and structures to safeguard them in statute is long overdue. In 2003 and in a break with the tradition that legislation is dominated by Government, the Committee decided to draft their own Bill. This Bill has now been published. The Trust continues to work closely with the Committee. Lord Lester and a legal officer recently met with Committee members to discuss the content of the respective Bills and ways in which we could support each other. There is also a Government commitment to produce a draft Bill in 2004. It is very much hoped that Lord Lester's Bill will raise the Government's sights.

Committee Work

Joint Committee on Human Rights (JCHR)

Lord Lester is an active member of the Joint Committee on Human Rights, a committee that is now well established as a key part of the legislative process. The Trust continues to examine the advice of the Legal Adviser to the Committee and to provide background briefings for Lord Lester's work with the JCHR. Over the last year, the JCHR has published a large number of Reports on Bills, which contain summaries of legal principles and international and comparative human rights jurisprudence, as well as the Committee's view on whether legislative measures are compatible with the ECHR and other relevant human rights treaties. These Reports may be taken into account by the courts in construing legislation that has been subjected to Parliamentary scrutiny.

Examples of Bills scrutinised by the Committee in the Session 2002-03 include the Anti-Social Behaviour Bill, the Civil Contingencies Bill, the Gender Recognition Bill and the Anti-Terrorism, Crime and Security Bill. Other important work has included the report on the Case for a Human Rights Commission and the report on the Case for a Children's Commissioner for England.

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

Session 2002-03 was an extremely busy and productive time for the Committee which produced 50 reports and scrutinised a huge number of Bills. At the end of 2003, Lord Lester was rotated off Sub-Committee E. Up until then the legal officers had supported his work on the Committee by preparing briefing papers and questions for oral evidence sessions. Some of the main areas under discussion have been the future status of the EU Charter of Fundamental Rights, the future role of the European Court of Justice, Takeover bids and Asylum procedures.

Other Projects

Human Rights Act and the Implementation of the ECHR

We continue 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. Lord Lester has continued to work with the wider media, publishing letters in newspapers and appearing on radio and television, most recently with regard to the Government's plans for constitutional reform and his Civil Service Bill. Lord Lester continues to give seminars and lectures, deepening public awareness of the Act and its provisions.

Further to the incorporation of the European Convention, the Office continues to press the Government to commit fully to the UK's other international human rights obligations. Lord Lester has tabled parliamentary questions asking the Government to explain why they do not accept the right to individual petition under the various international treaties to which the UK is party, in particular with regard to the First Optional Protocol to the International Covenant on Civil and Political Rights. The Government has almost completed its review of the UK's international human rights obligations, which we await with interest and concern.

Monitoring of Equality Regulations

In June 2003 the Government introduced regulations to implement the EC Framework Directive 2000/78/EC. These regulations cover disability, sexual orientation and religion. Separate regulations were also introduced to implement the EC Race Directive 2000/43/EC. Since the Government is not currently committed to a single Equality Act to cover all strands of discrimination, the regulations introduced are narrowly restrictive.

Lord Lester took an active role in the debates on all the regulations and the Odysseus Trust was active in providing support for Lord Lester and other sympathetic peers and MPs. Much of the detail of the proposed regulations was to be welcomed. This would be the first time that discrimination on the grounds of sexual orientation or religion would become unlawful. However, unlike the provisions, of the Equality Bill, the regulations applied only to employment and vocational training. This means for example that there would be no protection for a Muslim being refused service in a shop or a gay couple being refused access to a hotel room.

This was not the only problem with the regulations. Regulation 7 (3) of the Sexual Orientation Regulations led to Lord Lester taking the unusual step of bringing a motion to disapprove. Regulation 7 (3) had been added to the regulations at a late stage, following heavy lobbying by different religious organisations. The effect of regulation 7 (3) was to create an exception allowing a religious employer to impose a requirement relating to a person's sexuality in order to comply with the doctrines of the religion, or because of the nature of the employment and its context, to avoid conflicting with the strongly held convictions of a significant number of the religions followers. The Odysseus Trust expressed grave concern about the breadth of this provision fearing that it could lead, not only to the refusal of a church to employ a homosexual priest, but to a refusal to employ a lesbian cleaner or a gay secretary. The debate on the motion to disapprove was lively and put on the record some very important concerns. When the motion was pushed to a vote the result was 50 in support of the motion and 85 against.

As predicted during the debate, the regulations are currently the subject of a pending High Court judicial review. It remains to be seen whether Lord Lester's prediction, that the courts will eventually decide that Regulation 7 (3) is contrary, or has to be read to comply with, the principles of legal certainty and proportionality, will come true.

Commission for Equality and Human Rights

On 30 October 2003, the Government announced its intention to establish a new body with responsibilities for supporting equality legislation and promoting human rights. The proposed Commission for Equality and Human Rights would incorporate the work of the Commission for Racial Equality, the Disability Rights Commission and the Equal Rights 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 announcement, which was in line with the recommendations made in the JCHR's Sixth Report of

Session 2002-03, The Case for a Human Rights Commission. However, some basic conditions must be met if the Commission is to be effective:

- Its leadership must be chosen to ensure that it is completely independent of Government and its resources must be sufficient to tackle unjustifiable discrimination wherever it exists.
- The Commission's important task in promoting a culture of respect for human rights must not weaken action to tackle discrimination. There must be no levelling down of existing protection.
- The Commission must demonstrate that it will give equal protection to all the victims of the different forms of discrimination. The tangled and incoherent mess of existing equality laws needs to be replaced by a comprehensive, coherent and user friendly single Equality Act.

The Trust continues to promote these aims and gain support for them. This is achieved through Lord Lester's contributions to debates on the subject in the House of Lords and through the legal officers' participation in groups such as the Equality and Diversity Forum.

Constitutional Reform Projects

Following the surprise announcement by the Government in Summer 2003 that the role of Lord Chancellor would be abolished, the Government then set about launching a hasty and unexpected set of proposals for further constitutional reform. Autumn 2003 saw the publication of no fewer than five consultation papers by the newly launched Department for Constitutional Affairs. The five papers concerned the future of Queen's Counsel; a new way of appointing judges; a Supreme Court for the United Kingdom; reforming the office of Lord Chancellor and next steps for the House of Lords. Within the consultation period, which was extraordinarily short given the weighty matters under consideration, the legal officers analysed all of the consultation documents and attended lectures and seminars to discuss with politicians, lawyers and judges the important issues raised. The legal officers and Lord Lester then produced a joint response to the consultation papers on a new Supreme Court and appointing judges. The legal officers also analysed responses to the consultation by Justice and other NGOs as well as by lawyers' associations and judges, including, notably the Law Lords themselves. In the Queen's Speech in November 2003, the following commitments were made:

'My Government will continue its programme of constitutional reform by establishing a Supreme Court, reforming the Judicial Appointments System and providing for the abolition of the current office of Lord Chancellor.

...

Legislation will be brought forward to reform the House of Lords. This will remove hereditary peers and establish an independent Appointments Commission to select non-party members of the Upper House.'

The Trust will continue to monitor the Government's plans for constitutional reform and will scrutinise draft Bills when they are published.

The Odysseus Trust
December 2003