

NORTHERN IRELAND CATHOLIC COUNCIL ON SOCIAL AFFAIRS

A sub-committee of the
Council for Justice & Peace of the
Irish Bishops' Conference

RESPONSE *to the* PUBLIC CONSULTATION ON THE 'NORTHERN IRELAND FREEDOM OF CONSCIENCE AMENDMENT BILL'

24th February 2015

Introduction:

The Northern Ireland Catholic Council for Social Affairs (NICCOSA) is a sub-committee of the Council for Justice and Peace of the Irish Bishops' Conference. Comprising Bishops, lay faithful with expertise in a range of related areas, Catholic priests and religious, NICCOSA provides advice on a range of public policy, social justice and legislative issues to the Catholic Bishops of those Dioceses that are located in whole or in part in Northern Ireland. This includes, but is not limited to, assisting in analysis and response to key legislative developments that impact directly or indirectly on the mission and life of the Catholic Church, as well as on the rights and freedoms of those 738,033 citizens in Northern Ireland who freely chose to identify themselves as Roman Catholic in the most recent census in 2011.

Freedom of Conscience: a fundamental principle of pluralism and democracy.

NICCOSA welcomes the opportunity to participate in the public consultation on the proposed '*Northern Ireland Freedom of Conscience Amendment Bill*', proposed by Mr Paul Givan MLA (DUP). NICCOSA supports the objective behind the proposed amendment, namely to ensure appropriate and proportionate respect for the right to freedom of conscience and religion for all citizens.

The right to freedom of conscience and religion is a fundamental human right, essential to the effective and just operation of a diverse, pluralist society. It is a right that has been consistently recognised in international Human Rights instruments as well as in the European Convention on Human Rights and the Human Rights Act of the United Kingdom. Article 18 of the International Covenant on Civil and Political Rights, for example, affirms that: 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom,

either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.’ This is echoed, almost *verbatim*, in Article 9 of the European Convention on Human Rights and the equivalent Article in the Human Rights Act 1998.

The *Second Vatican Council* (1962-1965) formally committed the Catholic Church to the promotion and protection of religious freedom, which concerns the human person both individually and socially. The Declaration *Dignitatis Humanae* (*The Dignity of the Human Person*) explains that the dignity of the person and the very nature of the human quest for God require that all men and women enjoy the right to the maximum possible freedom in the area of religion (*cf.* para. 2). Critically, this requires that, as a matter of respect for the fundamental freedom of the individual and the dignity of the person, society and the State must not force a person to act against his or her conscience. This is a fundamental tenet of Catholic doctrine as well as an indispensable principle of a truly free and pluralist society. It explains why the Catholic Church in its teaching holds that the right to religious freedom must be recognized in the juridical order and sanctioned as a civil right (*cf.* *The Catechism of the Catholic Church*, para. 2108). It also explains why when such cases arise, and when individuals or communities such as Churches are forced by law or other forms of duress to act against the established religious doctrines of the Church or religious community to which they freely adhere, it is a duty on Catholics and all citizens to acknowledge that something vital to the freedom of the human person and the common good is at stake. It also explains the duty on all citizens, for the sake of the rights of all, to actively defend and uphold the principle of freedom of conscience and religion as a fundamental human right.

As with International, European and UK instruments of human rights in this area, the Catholic Church also acknowledges that the right to freedom of conscience and religion is not of itself an unlimited right. As the *Compendium of the Social Doctrine of the Catholic Church* explains: ‘the *just limits* of the exercise of religious freedom must be determined in each social situation with political prudence, according to the requirements of the common good, and ratified by the civil authority through legal norms consistent with the objective moral order. Such norms are required by the need for the effective safeguarding of the rights of all citizens and for the peaceful settlement of conflicts of rights, also by the need for an adequate care of genuine public peace’ (*cf.* para. 422).

The need for reasonable accommodation: redressing an imbalance of rights.

While there is a great deal of convergence between the Catholic Church and the legislature in Northern Ireland about those rights and legal norms which ensure the authentic good of the human person and society, and are consistent with the objective moral order, recent years have witnessed a range of areas where divergences arise. This is particularly the case in certain areas relating to the family, marriage and the duty to uphold the fundamental right to life of every person, from conception to natural death. This in turn has given rise both here, and in other jurisdictions, to the need for the legislature and the Courts to give more

focused consideration to the issue of conflicts of rights in a pluralist society and to the importance and scope of the right to freedom of religion and conscience in practice.

It is the view of NICCOSA that this is a relatively new theme in public debate, as well as in local and international jurisprudence, one that is evolving in response to the experience of the application of certain laws in practice. This is the very nature of law in a democratic society. Through the legislature, influenced not least by open democratic debate, laws can be amended and changed to address such things as unintended consequences or imbalances that only emerge as laws are applied over time.

The basic objective behind the proposed '*Northern Ireland Freedom of Conscience Amendment Bill*' is to address a real and serious imbalance of rights in the application of certain aspects of current equality legislation in Northern Ireland, one that we believe has an unjust and disproportionate impact on people who, as a matter of the established and verifiable teaching of their Church or faith community, hold a particular view about the nature of marriage and sexual relationships on the basis of a perfectly rational and defensible conviction of conscience.

The extent to which this imbalance is impacting on the legitimate rights and freedoms of Christians and others of faith becomes clear when one considers the range of practical situations that the proposed Bill seeks to address. The fact is that Christians and others who hold the principled view that marriage is exclusively between a woman and a man, that the complementarity of a mother and father is significant and positive in the upbringing of children and that sexual relationships ought to be reserved for marriage, are now threatened with fines, with the loss of their job or business, or are told that they can't receive public funding in support of the charitable services they have long provided, such as Church-related adoption agencies. One consequence of such an environment is that people who hold this rational and conscientious view are effectively excluded from certain areas of employment, effectively told 'you are out' of business or 'you need not apply' for this type of job. The unreasonableness and imbalance of such a situation becomes evident when one considers how intolerable it would be for any other individual or group in society to be subject to such unjust and disproportionate consequences for holding a particular view about marriage.

The reality is that the current legislation is giving rise to real, unjust and disproportionate consequences for those, including Christians, who hold to a particular and perfectly rational view about the nature of marriage and sexual relationships. This is inconsistent with the basic principles of freedom, pluralism and democracy. While the Courts, and publicly funded bodies such as the Northern Ireland Equality Commission, may take a particular view of existing laws, it properly lies with the legislature here in Northern Ireland, as elected public

representatives to amend the law in such a way as to address the existing imbalance.

The need to avoid unjust discrimination and spurious or superficial claims of conscience.

NICCOSA believes it is possible to address this imbalance in legislation. We believe that with creativity, commitment and careful balance it is possible for the legislature, through detailed democratic debate, to come up with a legislative formula that achieves an appropriate balance of rights in this area.

In attempting to achieve this balance, NICCOSA notes concern that has been raised that the proposed *Freedom of Conscience Amendment Bill* could give rise to wide scale and unchecked discrimination against members of the Gay, Lesbian and Bisexual community and even against members of their family. Catholic teaching clearly rejects any form of unjust discrimination against any individual or community. Love of neighbour, including those who hold very different opinions or live very different lifestyles, is a fundamental principle of Christian life. NICCOSA therefore shares the view that as a general principle any exceptions to equality legislation should be carefully and narrowly defined. In regard to the specific *Freedom of Conscience Bill* that is being proposed, NICCOSA believes that it should be rigorously examined, debated and tested to ensure that it does not give rise to a wider application than would be just, balanced or intended.

Any amendment to the law should therefore exclude the possibility of recourse to superficial or untested claims to conscience as an excuse for unjust discrimination. One way in which this may be achieved is by strengthening the exceptions in existing legislation and by seeking to establish verifiable and reasonable tests for the claim to conscience being made. This could include, for example, linking any further exceptions, as the current exceptions do, to the established and verifiable doctrines of a particular faith community or of a substantial number of its adherents. It could include addressing some very specific and foreseeable circumstances in legislation on a case by case basis and excluding others. NICCOSA believes that it is possible for the legislature, if rigorous debate and analysis find the current proposal wanting, to develop an amendment that both provides reasonable accommodation for religious conscience as is intended, while at the same time avoiding unintended and unjust forms of discrimination.

What is clear, however, is that some form of amendment, or some revision of existing legislation needs to be developed to address the need for a reasonable accommodation of established religious conscience in the area of marriage, in the first instance. It would not be acceptable for the legislature and public representatives to ignore this issue and the real difficulties created by current legislation for one section of our community, in this case those of religious faith, in the name of an exclusive concern for the rights of another section of the

community. A mechanism for addressing other areas of foreseeable conflicts with the right to freedom of conscience and religion beyond issues of marriage and sexuality, also needs to be found. It falls to the legislature, in a truly just, diverse and pluralist society to find a way to accommodate difference on such fundamental issues, not to ignore the negative impact on one section of the community while claiming to uphold the rights and freedoms of all. It is vitally important that all members of the legislature and their respective parties acknowledge that there is an important issue here that needs to be addressed.

As part of their general responsibility to promote the common good, public representatives always have a duty to promote those legal norms that are consistent with the objective moral order, a moral order that can be established from human reason alone and without recourse to any specifically religious source. The ethical position of the Catholic Church and others who share our view on marriage, the family and sexual relationships within marriage is consistent with human reason. Its justification does not depend on recourse to uniquely religious sources or arguments.

There is some evidence to suggest that the clear injustices arising from various practical applications of the law, such as those which the proposed Bill seeks to address, are drawing more and more legislators, academics and the courts themselves to ask if the balance in current jurisprudence is correct. This is perhaps best summed up in the following excerpt from an address given on ‘Freedom of Religion and Belief’ by Lady Hales, Deputy President of the UK Supreme Court, on the occasion of the Annual Human Rights Lecture for the Law Society of Ireland on 13 June 2014. On that occasion, Lady Hales said: ‘[the law]...has to work out how far it should go in making special provisions or exceptions for particular beliefs, how far it should require the providers of employment, goods and services to accommodate them, and how far it should allow for a “conscience clause”, either to the providers, as argued by the hotel keepers in *Bull v Hall*, or to employees, as suggested by the dissenting minority in *Ladele*. I am not sure that our law has yet found a reasonable accommodation of all these different strands. The story has just begun.’

Conclusion: the need for mutual generosity and concern in the protection of rights.

Some have expressed concern that the proposed *Freedom of Conscience Amendment Bill* potentially limits itself to the relationship between religious conscience and matters to do with same-sex relationships, ignoring the possible implications for other areas of equality law. NICCOSA suggests that this narrow focus reflects the reality that Northern Ireland does not yet have a single equality act which would make it easier to address all areas involving the relationship between equality and freedom of conscience in a single piece of legislation. NICCOSA has expressed its support for a single equality act before and takes this opportunity to call again for detailed consultation around the potential benefits and content of such an act. As it is, in

the meantime, the area under consideration in the proposed *Freedom of Conscience Amendment Bill* addresses the terrain in which most difficulties have arisen to date. In addressing this important area, we repeat our concern to ensure that exceptions for religious conscience are drawn-up in such a way as to address any unintended consequences, especially concerns about an unjustly wide application of any exception(s).

In summary, NICCOSA, in this submission has expressed the view that:

- Freedom of conscience and religion is a fundamental human right that is essential to a just, free and pluralist society;
- That those who hold to a particular religious and rational human view about sexual-relationships and same-sex marriage could be subject to fines, imprisonment, loss of business or job, exclusion from certain types of work or enterprise is totally unacceptable and inconsistent with genuine pluralism and the right to freedom of conscience and religion.
- It is possible for the legislature to calibrate an appropriate amendment to current equality legislation that will provide a reasonable accommodation for religious conscience while at the same time avoiding an application that is unjustly wide or claims to conscience that are clearly transient, spurious or superficial.
- NICCOSA therefore supports the objective behind the proposed *Freedom of Conscience Amendment Bill*, and the call to rigorously assess and amend it, if necessary, to ensure that its application does not give rise to unintended or unjust discrimination.

Finally, a fundamental tenet of the Christian faith and life we profess is that of respect and concern for all, including those with whom we fundamentally disagree on matters such as same-sex relationships, marriage and the family. As Catholics, we believe in and wish to work for an inclusive, loving and tolerant society. In committing to work with all to find a way of living tolerantly and justly with issues of fundamental difference of conscience in our society, we in NICCOSA commit ourselves and call on others to engage in this important debate in a spirit of mutual concern for the good of each other and for the whole of our society, rooted in respect for the freedom of conscience and religion of all.

ENDS.