



SUMMARY OF ADVICE

1. I have been instructed to advise on whether the U.K. Inter Faith Network ('IFN') can lawfully discriminate by refusing to admit a body representing many Druids practising in the U.K., the Druid Network, as one of its member organisations. This question arises because in May 2012 the Druid Network made a formal application for membership which the IFN Executive decided it could not recommend for approval. The Executive's decision was based on the IFN's current membership policy, agreed at a meeting in 2007. It is to admit as members only groups representing Baha'is, Buddhists, Christians, Hindus, Jains, Jews, Muslims, Sikhs and Zoroastrians (along with inter faith groups and certain academic bodies and study centres). Groups representing other single faiths are automatically excluded.
2. Despite the Executive Committee's position, the Druid Network application came up for debate at the IFN AGM on 12 July 2012. A slim majority of IFN members voted against its admission. In the same meeting, the IFN's members resolved to support a Strategic Review, the recommendations of which will be reported to the next AGM in 2013. This may consider whether the existing membership policy ought to be changed (the commitment is to examine "IFN's membership and patterns of engagement and consultation").
3. The Druid Network and other IFN members which support its application for membership are not content to await for the outcome of that review. Their position is that the IFN is not only morally, but also legally, obliged to admit the Druid Network now.
4. The IFN disagrees. Prior to the AGM, it took legal advice on its current membership policy from a respected firm of solicitors specialising in charity law, Bates Wells and Braithwaite LLP and a note was produced by the IFN Executive ('the Advice Note') which is said to reflect their advice. This played a decisive role in the AGM debate: those present were told repeatedly that the membership policy was lawful on the basis of it. Whether the membership policy ought to be changed for other reasons was said to be a matter for the Strategic Review.
5. My view is that the AGM did not have adequate information on which to reach the decision it did. I say this for three reasons: the advice on the Equality Act

2010 ('the 2010 Act') is wrong; no account was taken of the risk to IFN funding if the membership policy is maintained; and the policy is not compatible with the IFN Memorandum and Articles of Association.

Prohibition on direct religion and belief based discrimination

6. The IFN membership policy is undoubtedly discriminatory against Druids and the Druid Network on grounds of religion and belief. That is because sections 13(1) and 101 of the 2010 Act prohibit an association like the IFN from discriminating directly against a person by treating them less favourably than others, on the basis of a personal characteristic such as religion or belief, in the arrangements made for deciding who to admit to membership, the terms of membership and by not accepting applications for membership. Though this superficially appears to protect individuals only, the Interpretation Act 1978 extends the protection to groups including unincorporated associations (e.g. the Druid Network).
7. It follows that, to shield itself successfully against any County Court claim of direct discrimination (or investigation by the Equalities and Human Rights Commission), the IFN would have to show that its decisions on membership are protected by an exemption to section 101. That is what the Advice Note argues is the case. But its arguments are bad.
8. The first such argument is that "[i]f an organisation, the purpose of which is to 'foster or maintain good relations between persons of different religions or beliefs' concludes that work could be seriously affected by the acceptance into membership of a particular organisation (or individual)... the decision not to accept that membership application would be consistent with the relevant provisions in Schedule 23." This is a reference to paragraphs 2(3) and (6) of schedule 23 which allow restrictions on membership of religious organisations "because of" their purposes.
9. There are four reasons why this argument would not be an effective defence to a discrimination claim. First, it conflates organisational purposes with the means and ease of their achievement. The purposes of the IFN are to "advance public knowledge and mutual understanding of the teachings, traditions and practices of the different faith communities in Britain including an awareness of both their distinctive features and the common ground and to promote good relations between persons of different faiths", words which are reinforced by the IFN's power to "provide a forum for discussions between members of different faiths" (my emphasis). These words are not concerned with the nine preferred faiths the IFN has decided, through its membership policy, deserve

representation. Unlike say a Synagogue, it is not necessary for the IFN to discriminate to maintain its essential identity; if anything its identity is based on inclusivity.

10. Secondly, if an association were allowed to make membership admission decisions in a discriminatory way because of its own opinion as to the consequences (“If an organisation... concludes that...”) that would mean direct discrimination would be legitimised if a subjective justification were available. There is no justification defence of this kind in the 2010 Act to direct religion or belief-based discrimination by associations.
11. Thirdly, the Advice Note is premised on a conclusion having been reached that the IFN’s work will be “seriously affected” if the Druid Network is admitted. But there has been no such conclusion. Despite Druid Network correspondence pressing for clarity on the point, the IFN does not appear to have any institutional position on what might happen if the Druid Network were admitted as a member. Even if it could in law justify its actions (and it cannot), it cannot rely on a justification it has not even adopted, let alone substantiated with evidence.
12. Last, the lack of evidence to support the suggestion that the IFN’s work might be affected by admission of the Druid network is mirrored by the presence of evidence that the network and its supporters have provided to show the other inter faith organisations, local and national, have managed perfectly well after allowing Druids to participate. Indeed Druids do participate in a limited way in the IFN’s activities through their membership of inter faith groups that are themselves members.
13. The Advice Note then advances a secondary argument: “[w]hile the reference at paragraph 2(6)(b) on its face appears to apply in relation to organisations covering a single ‘religion or belief’ it would be likely, within the context of the Schedule to be held to apply by extension to the ‘religions’ or ‘beliefs’ represented within an interfaith organisation.” The reference is to the other schedule 23 religious organisation exemption: religion or belief restrictions “to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.”
14. This tortured construction of the 2010 Act proposed in the Advice Note is not likely to be adopted by a Court at all. It is untenable. Paragraph 2(6)(b) is plainly not concerned with inter faith organisations, but rather single faith ones of the kind sub-paragraphs 2(1)(a)-(d) identify. Had Parliament wanted to allow inter faith organisations to discriminate in the way the Advice Note

envisages to be permissible, it could and would have used the plural. Indeed elsewhere in the 2010 Act provision is made for single personal characteristic organisations to admit by reference to that characteristic, there is no like provision for organisations defining themselves by reference to multiple personal characteristics. Parliament's intention is clear.

Public sector equality duty

15. The IFN's second difficulty is that maintenance of the current membership policy, even if it is lawful, puts the funding of the IFN seriously at risk - something which the Trustees ought to have been aware of and drawn to IFN members' attention at the AGM.
16. That is because most of the IFN's funding comes by way of a grant from the Department for Communities and Local Government. The Department has important duties of its own to discharge when making funding decisions, in particular to have due regard to various anti-discrimination and equality issues listed in section 149 of the 2010 Act. e.g. it must have due regard, when deciding whether to fund IFN, to matters such as the need to advance equality of opportunity between persons who share a relevant protected characteristic (the religion of Druidry) and persons who do not share it, and to foster good relations between these groups of people.
17. If the Department becomes aware of the discriminatory effects of the membership policy operated by the IFN - in particular the fact that, despite its objectives being focussed on "different faiths" and the "different faith communities in Britain", one in particular has been deliberately excluded causing genuine offence - it will be obliged to reconsider whether public funding remains appropriate, notwithstanding those effects. There is a very real risk it will then decide to withdraw or at least put conditions on funding unless and until the membership policy is changed. Any other result would mean public money being knowingly granted to be used in an overtly discriminatory way for no good, objective reason.

Charity law

18. There are also serious questions about compatibility of the IFN membership policy with its own Memorandum and Articles of Association which could be raised as a complaint to the Charity Commission calling for investigatory and regulatory action or litigated in Charity Act 2011 proceedings. In particular, exclusion from of membership does, by its very nature, undermine the advancement of knowledge, mutual understanding and good relations. It is

very difficult to see how a policy with that effect can be squared with the IFN's purposes and the Advice Note offers no answer. If, and only if, those purposes were confined to the interests of defined faith groups in the Memoranda itself would this be permissible.

Conclusion

19. The IFN has committed itself to a 12-month review of its membership which is likely to examine its membership policy as the previous review did. But it has done so having assured itself that there is nothing unlawful in equality or charity law terms regards its current policy. It was wrong to do so. It was also wrong of the IFN to proceed to a decision on Druid Network membership without taking into account the significant risks that refusal would (and now do) present for its funding.
20. It should be emphasised that the Druid Network has been very clear with the IFN and me that it does not want to have to resort to legal action or complaints to the Equality and Human Rights or Charity Commissions to resolve matters. That is very sensible: there are likely to be better ways to resolve this dispute. Formal mediation might well be a possibility. In any event, the IFN should now urgently reconsider its position, ideally at a special general meeting called either by the Trustees or 10% of the member bodies with a right to attend (see Article 16). As the Druid Network and its supporters have argued, it is not appropriate to await the outcome of the review, particularly when the premise for that review is a misdirection on what the law requires.



John Halford
Bindmans LLP
20 November 2012