

**SUBMISSION TO THE
HOME AFFAIRS SELECT COMMITTEE
CONSIDERING THE STATEMENT OF
THE HOME SECRETARY
IN THE HOUSE OF COMMONS
ON MONDAY 15 OCTOBER 2001
(Home Office Press Notice
No. 250/2001 issued on 15th October 2001)**

THE MUSLIM RESPONSE

**PRODUCED BY A CONSORTIUM OF MUSLIM ORGANISATIONS
LISTED AT APPENDIX A
November 2001**

Submission to the Home Affairs Select Committee considering the statement of the Home Secretary in the House of Commons on Monday 15 October 2001 (Home Office Press Notice No. 250/2001 issued on 15th October 2001)

This response is from organisations and individuals listed in Appendix A.

Introduction: Existing Situation

1. The **pre-September 11** situation of Muslims was characterised by extreme social exclusion from mainstream activity. This has contributed towards the social isolation of some Muslims and involvement in marginal social, political and economic activity.¹ There is also evidence of tensions between some sections of the Muslim community and law enforcement agencies.² Recent Home Office research confirms increasing levels of dissatisfaction amongst Muslims (Pakistanis and Bangladeshis are used as indicators in the research) with the police.³ The Bradford, Burnley and Oldham public disorder in summer 2001 and the resulting law enforcement measures will exacerbate this tension.
2. **Post September 11** we expect an increase in negative stereotypes about Muslims. This will result in discriminatory attitudes and conduct that specifically target Muslims. This may translate into: verbal and physical abuse; discrimination in the private and public sphere; discrimination by law enforcement agencies. It is also likely that there will be heavier policing of Muslims (and especially, visible Muslims) and their communities.

Immediate Risks to British Muslims

3. Negative stereotypes are likely to manifest themselves in individual attitudes and conduct in the following ways:
 - Greater violence and harassment that specifically targets Muslims. There is evidence that there has been an increase in this type of conduct since September 11 (see Appendix B).
 - Negative images of Muslims in the media and the public spheres, which will reinforce pre-existing prejudice. An increase in discriminatory attitudes and conducts by all individual actors and all institutions in the public and the private sector.⁴ This will exacerbate pre-existing social exclusion and isolation.
 - Increased discriminatory treatment (and perception of discriminatory treatment) of Muslims by law enforcement agencies such as the police, Customs and Excise, Immigration officials and the CPS. The Macpherson and Denham Reports have recently confirmed the likelihood of 'institutional racism' within these institutions. These tendencies may take an anti-Muslim form following September 11. This will exacerbate existing tensions between these agents of the State and Muslims/Muslim communities.
4. We welcome any legislation or policy initiative that will safeguard British Muslims against the immediate and long term risks following September 11. The Home Secretary's proposals announced on 15 October have concentrated on the criminal law. We have grave reservations about the extension of the criminal law powers and discretion of law enforcement agencies **at this time** (see Sections 1-3).

5. The most pressing needs of British Muslims relate to their extreme social exclusion. **We urge the Government to recognise the increased risk of discrimination in the post September 11 period and ensure the early introduction of comprehensive legislation against religious discrimination (see Section 4).**⁵

Section 1: Powers to give the police and customs services the authority to demand the removal of facial covering or gloves.

6. Police and customs services officers have powers that enable them to conduct identification and investigation functions in pursuit of legitimate law enforcement aims. The Home Secretary has not provided any pressing national security or law and order reasons that justify the introduction of these **additional** powers. These powers will disproportionately impact on Muslim women who wear facial and head covering as part of their mandatory religious obligations as Muslims. **We object in the strongest terms to the introduction of these powers.**
7. These additional powers are being introduced against a background of pre-existing and increasing (post-September 11) tensions between Muslim communities and law enforcement officers/agencies. The introduction of these wide-ranging and intrusive powers may have the same impact that the stop and search laws have had on relations between the African/Caribbean community and the police.

Section 2: Proposals to extend existing Incitement to Racial Hatred legislation to cover 'religion'

8. The extension of incitement legislation at this particular time is unlikely to protect Muslims. **We have grave reservations about the introduction of legislation at this particular time.**
9. The extension of the legislation to cover incitement and conspiracy outside the UK specifically targets extremist Muslim groups. Investigation and detection will require law enforcement agencies (the police in particular) to cast their net wider which may have two significant consequences:
 - Heavier policing and investigation of the whole of the Muslim community – and visible Muslims – to detect/investigate suspected incitement offences.
 - A deterrent and 'chilling' effect on the legitimate free speech of all Muslims who react defensively to uncertainty about which speech is legitimate (and unregulated) and which speech falls within the new legislation (and subject to up to a seven year criminal penalty).
10. The present legislation vests a significant amount of discretion in the usual law enforcement agencies (police, CPS) *and also* the Attorney General who is a part of the executive branch of Government. Muslims are likely to see permission by the Attorney General's office to prosecute them as a 'political' decision taken by the State. There is also a risk that the Attorney General's office will become more politicised given the current political climate and tone of the media coverage. Public opinion may create pressure to proceed with prosecutions in order to reassure the media and the public that something is being done about the threat of extremist groups. Muslims may perceive senior politicians (members of the executive) as implicated in attempts to uniquely criminalise their speech and conduct.

11. If the Government proceeds with this legislation the Muslim community needs to be reassured that their free speech is not being uniquely and unfairly criminalised by the State. The Government must introduce safeguards to ensure that the exercise of discretion of the Attorney General and law enforcement agencies does not disproportionately target Muslims. In particular:

- The legislation should include a Note of Guidance setting out the criteria for the exercise of the AG's discretion;
- The exercise of the discretion of the Attorney General must be subject to scrutiny by Parliament via the presentation of an annual report to the Home Affairs Select Committee and the Joint Committee on Human Rights. The annual report should include: the facts of the cases he has considered; a break down of relevant factors by ethnicity, gender and religion; and his reasons for proceeding/not proceeding with the prosecution;
- The Joint Committee on Human Rights should be asked to give an opinion and publish an annual report on the practical enforcement of incitement legislation and its compliance with the European Convention on Human Rights (especially Art 10 ECHR).
- Law enforcement agencies must be monitored, supervised and held accountable to the Lawrence Steering Group, which should be given jurisdiction over the proposed incitement legislation.
- An independent 'ombudsman' should be appointed to monitor the implementation of this legislation. He or she should be asked to publish an annual report which is submitted to the Home Affairs Select Committee and Joint Committee on Human Rights.

Section 3: Racially Aggravated Offences Extended to 'Religion'

12. Muslims have previously campaigned for the extension of the Crime and Disorder Act 1998 to non-ethnic religious minorities. We accept that if effectively implemented this type of legislative change has the potential to contribute towards reducing and deterring anti-Muslim violence. This brings the UK in line with the strategy of other European Union member states and many state jurisdictions in the United States. Muslims recognise that sentence enhancement and racially (religious) aggravated offences can make a substantial contribution to dealing with the increasing risks of physical and verbal abuse of Muslims. If they are implemented and enforced effectively they can send a clear and unequivocal message that those who commit acts of violence and harassment of Muslims out of deliberate and conscious hatred of their membership of their religious group deserve special penalty under the criminal law. **Effective enforcement** requires:

- these offences be used strategically to criminalise the most serious and culpable forms of racist conduct of those who undertake criminal acts motivated by conscious religious hatred.
- **careful supervision of the exercise of discretion by law enforcement agencies in relation to this type of criminal power.**

13. The increase in anti-Muslim prejudice in the post September 11 period has created a substantial risk that discrimination will taint the exercise of any additional criminal powers that specifically target a religious group (see para. 2 and 3 above). Therefore we

have grave reservations about the extension of this criminal power to cover religious groups **at this particular time**.

14. If the Government proceeds with this legislation despite these reservations it must introduce safeguards to ensure that the discretion of law enforcement agencies is not abused to target Muslims. There is evidence suggesting low levels of satisfaction amongst ethnic minorities with the police in relation to racially motivated crimes.⁶ It is in the interests of the State, law enforcement agencies and the Muslim community to minimise the risk of conflict. This can be done by ensuring that:
 - the exercise of discretion by law enforcement agencies is monitored and accountable.
 - there is appropriate training of law enforcement officers about policing issues arising out or ‘religious’ hate crimes.
 - law enforcement agencies are monitored, supervised and held accountable to an independent body which includes, *inter alia*, members of the Muslim community and other faith communities.
 - the Lawrence Steering Group is given jurisdiction over the relevant issues (CRR training, development of codes of practice and all matters relating to the effective and fair enforcement of the proposed religious aggravated offences).

Sections 1–3: Extension of criminal powers – general conclusions

15. An independent monitoring body should be set up to monitor and implement the new ‘religious aggravated’ offences. This body should include, *inter alia*, representatives of all faith communities including Muslims who are a non-ethnic religious minority.
16. The Lawrence Steering Group which arose out of the Lawrence Inquiry Report has instituted a procedure of Ministerial Priority for all police authorities: ‘to increase trust and confidence in policing amongst ethnic minority communities’. The existing scope of the Lawrence Steering group does not specifically cover non-ethnic religious minorities e.g. Muslims. The scope and jurisdiction of the Lawrence Steering Group should be extended to ensure specific protection for this religious minority.
17. Members of the Muslim community with expertise of criminal law, human rights and civil liberties, as well as ex officios from relevant Muslim organisations with interest in these matters should be appointed to these bodies.

Section 4: Anti-discrimination - Priority for Legislation and Policy Initiatives

18. Existing civil anti-discrimination law and policy does not extend to non-ethnic religious minorities e.g. Muslims. **We ask the Government to recognise the increased risk of discrimination in the post September 11 period and we urge the early introduction of comprehensive legislation against religious discrimination.** In particular, in implementing the EU Employment Directive the Government must go beyond the material scope of that Directive and:
 - Ensure protection against religious discrimination in all areas of life covered by the current race discrimination legislation and policy.
 - Extend the Race Relations Amendment Act 2001 and secondary legislation to non-ethnic religious minorities (e.g., Muslims) thereby ensuring that the statutory duty on

public authorities that mainstream racial equality within the public sector also extends to religious equality.

- Implement the EU Employment Directive through primary legislation.

19. In addition, **the Equality Unit** should be given special responsibility for assessing the impact of the implementing on the EU Employment Directive on the social exclusion of Muslims.
20. Whichever part of Government is given responsibility for the new legislation there needs to be special duties to consult Muslims who face a specific danger of discrimination, social exclusion and social isolation after September 11.

¹ Performance Innovation Unit (PIU) Report: *Improving labour market achievements for ethnic minorities in British society*, at para.2, p.3. This report is referred to in references below. The report is available at: www.cabinet-office.gov.uk/innovation/2001/ethnicity/scope.shtml – as accessed on 3 Nov 2001.

² Clancy, A., Hough, M., Aust, R., and Kershaw, C. (2001), *Crime, Policing and Justice: The Experience of Ethnic Minorities - Findings from the 2000 British Crime Survey* (BCS), London: Home Office, 2001). Clancy et al concluded that the British Crime Survey 2000 confirms previous research which found that ethnic minorities run greater risks of crime than white people, though this largely reflects the fact that minority populations are concentrated in large cities and in particular in conurbations where the crime risks are high for everyone, regardless of ethnicity (at p.100). This confirms previous BCS research by Percy 1998 who concluded that ethnic minorities generally, and Pakistanis and Bangladeshis in particular, were at greater risk of victimisation than white people (see Clancy at p.9).

³ Clancy et al (above) confirm:

- (i) In an assessment of police performance by ethnic group, for all age groups, Pakistani and Bangladeshi respondents rated the police lower than other groups (see n.2 above at p.74).
- (ii) ‘Satisfaction with police response to sought contact was highest amongst white respondents, and Pakistanis and Bangladeshis were the least satisfied. This trend was found across several different aspects of police performance.’ (n.2 above at p.53).
- (iii) ‘Barely half of respondents were satisfied with police efforts to keep them informed following their enquiry; dissatisfaction was greatest amongst Pakistanis and Bangladeshis.’ (n.2 above at p.53).

⁴ The PSI study in 1997 suggested that anti-Asian (which may include anti-Muslim attitudes) are a significant aspect of discriminatory attitudes towards ethnic minorities. See Tariq Modood, Richard Berthoud, Jane Lakey, Patten Smith, Satnam Virdee and Sharon Beishon, *Ethnic Minorities in Britain: Diversity and Disadvantage*, London: Policy Studies Institute, 1997 (see esp at pp.129–135).

⁵ See for example previous documents that argued for legislative change, e.g., *Need for Reform*, UK Action Committee on Islamic Affair (published document available on request from MCB).

⁶ See Clancy et al at n.2 above at p.53.