

# **EMPLOYMENT STATUS IN RELATION TO STATUTORY EMPLOYMENT RIGHTS**

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**FAIR  
Muslim College  
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# 1. EXECUTIVE SUMMARY

## INTRODUCTION

This is a Muslim response by the Forum Against Islamophobia & Racism (FAIR), the Muslim College and the Al-Khoei Foundation to the Government "*Discussion Document on Employment Status in Relation to Statutory Employment Rights*". Published in July 2002, it seeks views on the proposed extension of some statutory employment rights - via Section 23 of the Employment Rights Act, 1999 - to certain groups including 'ministers' of non-Christian religions. For the purposes of this response, the case of Imams is specifically considered.

The Employment Rights Act 1996 defines an employee as:

*'an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.....in this Act, "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or writing'.*

As ministers of religion owe their allegiance to God, clergy and others have been afforded no employment rights to seek redress to unfair dismissal and other grievances. This principle has been challenged through the courts and has been successfully upheld through case law.

## THE ROLE OF IMAMS

In Islam, as there is no central, hierarchical religious authority, it is virtually impossible for any central body to be established in order to regulate its inherent diversity.

Imams therefore are employed in the service of the community; primarily to lead prayers and other religious functions. Imams also have to engage with the socio-economic demands of many Muslims communities in the UK, the challenges being faced by second and third generation migrant communities, and the greater need for them to undertake pastoral care in public institutions such as prisons and hospitals.

The role of the Imam therefore is evolving, responding not only to challenges by the Muslim community but also more generic requirements imposed by wider society.

### *a. Youth*

Traditionally Imams provide religious instruction, in the form of Arabic and Qur'anic lessons, to its youth, although this is increasingly changing with the

needs of younger generations. Imams now need to be much more culturally sensitive to the values and ways of contemporary society.

Whilst there are many examples of good, progressive learning at mosque based supplementary schools across the UK, some traditional modes of teaching are only providing a basic understanding of the true values of Islam, leaving some disenchanted and disaffected youth to become susceptible to more exploitative and radical interpretations of their faith.

Many young Muslims however are increasingly identifying themselves by their faith, where Islam serves to bridge the inter-generational and inter-cultural conflicts in their lives. Faith becomes a common bond between the ethnic diversity found among British Muslims.

Some are turning away from their faith however, choosing to assimilate themselves into Western culture by adopting its norms and patterns of behaviour. Others are becoming much more radicalised, using Islam as a politicised vehicle.

In order to continue to address these changing needs, Imams who are employed to sustain the continuity of their homeland cultures in the diasporic context, may find it difficult to connect with the younger generation who do not feel the same cultural attachment and who may be more willing to question and challenge their beliefs and practices.

A generation of 'born and bred' Imams is therefore emerging. From 22 educational institutes in the UK, an estimated 225 graduates, qualified to take up Imamate positions are produced each year. Many however, are unable to secure positions in mosques because they are usually already filled by older members of the community or by Imams from abroad.

### ***b. Women***

The role of Imams also extends to supporting the special concerns of women: marriage, raising children, education, and well-being are just some examples. Imams will also conduct marriage ceremonies and assist in the introduction of or consultation on prospective partners. Imams can therefore uphold the status and rights Islam gives to women particularly where cultural practices dictate otherwise.

Women are also becoming more knowledgeable of Islam and are using this to make progress in educational and work related fields. Women are also increasingly involved in providing religious instruction and language teaching within both the home and the mosque.

The devotional role of women remains restricted with some mosques still not providing prayer space or other facilities for women. The role of women participating in the running of mosques and in the decision-making processes is also extremely limited.

Some Muslim theologians however do not see any bar to women leading congregational prayers and performing other functions for women. Although these women would not be termed as Imams, they should in our view be treated equally with their male counter parts as far as any extension of employment status is concerned.

### *c. Prison and Hospitals*

Imams employed by the Prison Service in the past often had to work hours that did not correspond with the number of inmates and duties assigned, were treated as visitors, lacked the necessary command of the English language, received no specialist training and were excluded meetings. Chaplains and ministers of other faiths had to work within the structures of the Church of England, so much so that the participation of Imams was extremely limited.

Since the appointment of the Muslim Advisor to Prisons, substantial changes have taken place. Imams are now vetted and enter into contractual agreements, leaving them obliged to follow the codes of conduct and other professional. They are treated as deputy chaplains, and can be called on to fulfil generic duties for the entire prison population. Consequently, access and participation are much more widespread.

Yet much remains to be done in terms of training: improved English language skills, training in counselling, pastoral and administrative skills, and the creation of multi-faith spaces to prevent religious ghettoisation would all be welcomed.

Hospitals are also recruiting Muslim chaplains to undertake duties that include dietary provision, counselling patients and relatives, leading prayers and Friday sermons, and the adequate provision of Muslim-specific needs such as speedy burials, bereavement counselling and birth rights.

However not all Imams in hospitals have a detailed job description, selection process and employment contract like the Prison Service. The work of Imams in hospitals therefore is often done voluntarily with varying conditions, hours and official recognition.

Within the Prison service, an Imam is granted enforceable employment rights through contractual agreements. An Imam in the community therefore should be no different from those employed in the public sector. Both should receive the same recognition and status.

## **IMAMS AND IMMIGRATION**

Under Home Office guidelines, a minister of religion must have either been working for at least one year in this role or have had one year's full time or two year's part time training. Applicants must also plan to work full time without help from public funds. Those that have been working in the UK continuously for four years can apply to live here permanently, again providing that no help has been

received from public funds. Under immigration rules, work permits are not required.

Due to the practical and social difficulties of recruiting abroad, effort should be made to employ Imams from the UK. FAIR's response to the White paper '*Safe Borders Secure Havens*', welcomed the proposal that ministers of religion should have an adequate command of the English language. However we maintain that this should be implemented with due consideration, especially in specific circumstances, such as for recent migrant communities who have not yet become religiously established.

Similar consideration should also be offered to those educating Imams in the UK. The lack of qualified instructors, trained to a scholarly standard that is recognised in the Muslim world, could, in our view, stunt the development of British-based Muslim theological institutions.

## **EMPLOYMENT STATUS OF IMAMS**

Whilst practical, vocational and pastoral similarities exist between Anglican clergy and Imams, there are obvious differences with regard to not only their theological status but also to their appointment, employment, and dismissal.

For the most part, communities fund the salary of the Imam. In a few exceptional cases however, Imams are funded by Muslim states abroad.

The demanding role played by Imams means that their working hours can be undefined and open-ended. As salaries are often paid for by communities, some receive less than the minimum wage whilst being subject to the demands of the community with few limitations. This can undermine the role and value of the status of Imam.

Low salaries, poor and undefined working conditions and unfair dismissal become realistic consequences that is often ad hoc and capricious, frequently being driven by grassroots politics. Even where cases of dismissal are justified, this usually takes place behind closed doors with no transparency or accountability. Extending employment status will help curtail such practices.

Furthermore, the lack of recognition of Imams in the Muslim community on the part of government and mainstream institutions can also be detrimental. Extending employment status therefore has a symbolic as well as a practical value.

However, it is equally important that Imams are given the opportunity to 'opt out' of statutory regulation, whereby the final decision and the autonomy of the individual is fully respected.

## **OTHER FAITH PERSPECTIVES**

Job insecurity and unresolved disputes are common to all faiths and whilst there are a few Churches who oppose the idea of enforceable employment rights, there is support for the equalisation of clergy and ministers of religion with others from various Christian, Hindu, Jewish as well as Muslim groups. Together, ministers of all faiths should be considered vital to the public life of a multi-faith society and be granted the same recognition as other public servants.

## **CONCLUSION & SUBMISSION OF VIEWS**

Our position is very much in favour of the extension of employment status to Imams but this must be done with careful consideration of the roles Imams play and the needs of Muslim communities in the UK.

The following are the specified issues on which the Discussion Document invites views on, together with our position on each.

***d. What the costs and benefits of extending the scope of some or all employment rights may be;***

Costs:

- Without cultural sensitivity, Muslim communities may perceive this to be Government interference in the autonomy of community affairs. It should therefore be seen to be positive rather than intrusive.
- The extension of statutory employment rights may hinder the degree of flexibility that can exist in the employment of Imams, for example, during the month of Ramadan different/extra Imams may be employed to lead the special night prayers. Sufficient provision for short-term contracts should be made.
- Statutory employment rights for Imams may be abused by the 'Employer' to hinder or restrict the autonomy of the Imam and the freedom of his speech to his congregation by stipulating clauses in the contract. This could also be used to impose favourable restrictions.

Benefits:

- Imams could seek redress through the courts for unfair dismissal.
- Breaches of trust could be resolved through the courts rather than behind closed doors.
- Symbolic and practical recognition of the autonomy of Imams giving them greater ability to give independent advice, support and guidance.



***e. Effect of extending employment rights on the nature of the relationship between work providers and the working people affected;***

- The extension of employee status in no way affects the nature or scope of the job description of an Imam. Rather, recognition offers more job security, plus greater potential for the improvement of working conditions and in attracting more capable applicants.
- The extension of employee status reduces the risk of abuse occurring on either side of the contractual relationship.
- The option of seeking legal redress is an essential provision to prevent the loss of basic civil and human rights for all parties concerned.
- Conferring employment status should not affect the current rules of immigration. It is desirable that the current position of exemption from applying for a work permit is maintained.

***f. Increased burden on the work provider/employer;***

- Employers will have to make alternative arrangements to cover for periods when Imams claim statutory benefits (paternity leave etc)
- Conferring employed status on Imams will also confer ‘employer’ status on various mosques/communities. This will bring them under the jurisdiction of various employment regulations (i.e. health and safety, police checks for working with vulnerable people).

***g. Effect on the labour market;***

- It may encourage a readily available pool of younger generation Imams trained in the UK to take up positions.

***h. How clear and easy to understand the current framework of employment protection rights is, and in particular the clarity and ease of current definitions in employment law;***

- The current framework of employment protection rights is not easy to follow, using differing definitions of ‘employee’ and ‘worker’. Some Acts may confer some rights according to some definitions which do not apply to other pieces of legislation.

***i. What non legislative approaches could be used to address problems that might arise from any lack of clarity in employment status;***

- Members of all faith communities should receive the same quality of service and access for ‘chaplains’ services. Present good practice should be exemplified.
  - The formulation of Codes of Practice.
- j. Whether all rights should apply to the same category of working people or whether coverage should be looked at on a case-by-case basis;***
- Statutory employment rights should not limit choice or flexibility of working arrangements but should provide a framework of standards that serve to protect the rights of both the employee and the employer. As in other forms of employment, part time or full time employment, temporary or permanent arrangements should all still be available.
- k. Whether any categories of working people currently protected by statutory employment rights or any groups of work seekers are actually disadvantaged by the level of statutory protection or whether those not protected would be disadvantaged by extension of rights to them;***
- Smaller mosques may find it difficult to comply with the requirements of employer status. This may prevent them from employing a proper Imam.

There are costs and benefits to the extension of employment status to ministers of religion. In some quarters the challenge to traditional perceptions of the vocation of a minister of religion is unwelcome from both individuals and institutions.

There is a need to recognise the different aspects of the role undertaken by Imams in both public and private sectors. Within public institutions there is also a need for equity in the conditions of service both in the employment of Imams and the chaplaincy services that Imams are able to provide to those in their pastoral care.

The extension of employment status to ministers of religion is in our view, a welcome measure that should be supported, but should also be implemented with due consideration to the particular needs of young migrant communities and their developing educational institutions.

## 2. INTRODUCTION

This paper is a Muslim response to the Government “Discussion Document on Employment Status in Relation to Statutory Employment Rights”, published in July 2002. It is a joint response between FAIR, the Muslim College, and the Al-Khoei Foundation.

The Government’s discussion paper seeks views on the proposed extension of some statutory employment rights, to certain groups who are currently excluded such as clergy and by extension, ‘ministers’ of other religions.

The Employment Rights Act 1996 defines an employee as

*‘an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.....in this Act, “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or writing’.*

Statutory employment rights conferred on employees by the above definition however, do not apply to clergy as they are deemed to be ecclesiastical office holders. As such they owe their allegiance to God and therefore, have no identifiable ‘terrestrial’ employer. Historically therefore, clergy have been afforded no employment rights and cannot seek redress through the courts for unfair dismissal or other grievances. When this principle has been challenged through the courts it has been successfully upheld and case law has also applied this principle to other religions.<sup>1</sup>

For the purposes of this response in particular, the case of Imams is specifically considered and as such this response has been put together in consultation with number of Imams, Muslim professionals and Muslim organisations throughout the UK.

The proposed extension of coverage is via Section 23 of the Employment Rights Act, 1999 and the statutory rights in question are listed in Appendix I.

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<sup>1</sup> Birmingham Mosque Trust v Alavi (1992) ICR 435, in which the EAT ruled the Mosque was not an ‘employee’ and Santokh Singh v Guru Nanak Gurdwara (1990) ICR 309, in which the Court of Appeal ruled that the Sikh temple was not an ‘employee’.

### 3. THE ROLE OF IMAMS

In Islam there is no central, hierarchical religious authority<sup>2</sup>. A number of institutions exist which undertake the training of Imams, The Muslim College, in London, Darul Uloom al-Arabiya al-Islamia in Lancashire, Institute of Islamic Education, in Dewsbury,<sup>3</sup> and the Al-Mahdi Institute in Birmingham for example. Unlike the Church which has a well developed administrative infrastructure which deals with the payment of stipends, and other conditions of service, there is still no central authority which oversees the religious and administrative organisation of Muslim educational and training institutions. Indeed it could be said that such a central controlling body may be virtually impossible given the diversity of denominations reflected in the institutions.

Whilst the Imam as religious leader is serving God, he is employed in the service of the community; the primary role of the Imam is to lead ritual prayers for the congregation five times a day. They also perform marriages, funerals and other rites of passage, give religious advice and guidance to the community on their daily lives and religious rituals such as fasting during the holy month of Ramadan and pilgrimage during Hajj, collect and distribute charity, provide counselling and teaching for both adults and children.

The role of Imams is both complex and diverse: community leader, teacher, advisor to people of all ages, spiritual guide, counsellor, social worker, mediator in disputes – there is no end to the definition of tasks that fall under the role of the Imam. In addition to this they have to deal with the social consequences of the economic conditions of their communities; many Muslims in Britain suffer from some of the worst housing, unemployment and education levels. They are reported to have the least satisfaction with police response to sought contact and police efforts to keep them informed following their enquiry<sup>4</sup>, as well as being overrepresented in prisons – 7% compared to 2% of the population<sup>5</sup>.

Muslims in the UK are a diverse multi-ethnic community. Traditionally Imams would serve communities that have originated from their own country of origin, communities that are sometimes specific to a local town or region, and for the most part this may still be the case. Therefore, the choice by these communities to ‘import’ Imams from the motherland is often driven by convenience as Imams have been needed to address their congregations in their own regional language or dialect. Communities have also been motivated by a desire to preserve their

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<sup>2</sup> The concept of Imams in the Shi’a branch of Islam differs slightly from the Sunni branch with respect to hierarchy in that there is a sense of structure whereby the faithful follow a spiritual leader and pay religious dues to him through the Imam. The appointment of a mosque Imam is often sanctioned by a spiritual leader.

<sup>3</sup> ‘Survey of British Seminaries (2002)’, Mr Jonathan Birt, Wolfson College, University of Oxford

<sup>4</sup> 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.

<sup>5</sup> ‘Monitoring Minority Protection in the EU: The Situation of Muslims in the UK’, Open Society Institute and EU Accession Monitoring Program, 2002

cultural identity, links with their homeland and to address specific cultural needs which are sometimes indistinguishable from their religious ones.

However this scenario is gradually changing as migrant communities are beginning to integrate into mainstream society. Second and third generation Muslims for example usually identify English as their first language and are growing away from the cultural traditions of older generations.

The role of Imams is also evolving as their work takes them out of the fold of their local communities into wider world of hospitals, prisons and other public institutions that have a strong pastoral remit and where similar functions are performed by specialist trained chaplains within other traditions. Imams are generally responding to this challenge by developing the inter-personal skills and abilities needed to best serve the needs of their communities and the wider world. As well as serving the Muslim community, they are also undertaking more generic duties for wider society. For example Imams who serve as chaplains in the Prison Service may be required to stand in for chaplains of other faiths to perform non-religious duties such as counselling, and vice versa.

A number of Imams are also increasingly becoming engaged in inter-faith dialogue with other faith and non-faith communities in order to promote religious harmony and community cohesion. For the most part, Imams generally preach and work to promote the universal values of peace, respect, family values of sharing and sacrifice, kindness to others, and good neighbourliness; values that are being heavily tested by the pressures of modern urban living.

### *a. Youth*

For some communities, the traditional role of the Imam in providing religious instruction to youth was limited to the rote teaching of Arabic and Qur'anic lessons. However as the needs of younger generations are perpetually changing and Imams are having to deal with a wider range of issues as a result. In order to address arising concerns of those in their pastoral care, they must be culturally sensitive to the values and ways of the wider contemporary society in which the younger generation are growing up.

However, even more salient than informal pastoral care of young adults is the interface between the Imam and the young at the mosque supplementary school, of which there are thousands around the United Kingdom. While there are many examples of good and progressive practice in many places, the traditional modes of rote teaching and learning that typifies large parts of Islamic supplementary schooling in the United Kingdom are still only able to provide basic knowledge and understanding of the true values and spirit of religious teachings. And, therefore, without an adequate understanding of their religion in relation to the realities of everyday life, a section of disenchanting, disillusioned and disaffected youth are thereby rendered susceptible to exploitative, radical interpretations of Islam.

Disillusionment need not, however, express itself in such trenchant disaffected forms. Many young professional Muslims who consider themselves to be integrated into mainstream society, and who are making a positive contribution to society also suffer from a sense of dissatisfaction at the world around them. The global communications revolution has allowed alternative narratives of geopolitical crises easy access in information-rich societies like the United Kingdom, providing British Muslims the opportunity to question the state justification of domestic and foreign policy in Muslim and non-Muslim countries, and to perceive more clearly the ever increasing divide between the haves and have-nots and the foreign and economic policies which perpetuate injustices, all of which serve to influence the views of young Muslims. This heightens the sense of idealism amongst the younger generation to forge a brave new world through a renewed Islamic identity and a return to a re-examination of the basic spirit and values of Islam.

This has led to a growing section of young Muslims identifying themselves by their faith before their ethnicity (although this a generalised feature of British Muslims, regardless of their age<sup>6</sup>) and for many youth caught in inter-generational and inter-cultural conflicts of identities and lifestyle, it is Islam that serves to bridge these two worlds. Their faith defines their culture and is a common bond through which they identify with the plight of fellow Muslims throughout the world. Increasingly, religious identity is the glue that binds together the great ethnic diversity found among British Muslims, and this is more so for the younger generations who are more accustomed to the dynamics of living in a multi-cultural environment than their first generation immigrant parents. A significant reason for this youthful re-engagement with Islamic tradition is to find ways to discard what are regarded as parochial elements of homeland cultures in favour of a cosmopolitan and modern urban British sensibility.

However, it is important to note that this emotive attachment to the plight of oppressed Muslims elsewhere in the world is kept in balance by most religiously-minded Muslims with the need to engage in the democratic process, and to pursue strategies of successful integration in British society. After 9/11, for instance, it was noticeable that the vast majority, if they did not approve of the campaign in Afghanistan, nonetheless, expressed this through the time-honoured British tradition of public dissent through the participation in national demonstrations. These youth have managed to find their own balance between their faith, ethnicity and sense of British identity.

But a rise in religiosity is certainly only part of the picture, for it is also true to say that a section of youth are turning away from the practice of their faith, choosing instead to assimilate themselves into Western culture by adopting the norms and patterns of behaviour that go with it.

Yet another section are becoming radicalised, often using Islam as a vehicle for their political aspirations. Membership of this type of group is inflated by certain

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<sup>6</sup> Tariq Modood, Richard Berthoud et al, *Ethnic Minorities in Britain: diversity and disadvantage* (London: PSI, 1997). p. 301, Table 9.7.

sections of the media who eagerly peddle stereotypes that promote the vocal controversial individuals who promote this breed of radicalism.

Youth-led Muslim organisations are also emerging in an attempt to address some of the internal and external conflicts faced by the younger generation. Within these organisations, the teaching of the Islamic faith is combined with an increasing number of youth activities, weekend and evening schools. Such groups are being initiated at both a local and national level.

However, in many local communities it is still the Imam that attends to the day-to-day lives of ordinary Muslims. This is reflected in the evolving role of Imams in the education of the youth to encompass secular as well as religious education. Schools in East London for example, work with local mosques to reduce truancy levels. Imams get involved in parent's evenings and raise the importance of education in their Friday sermons in attempts to combat underachievement.<sup>7</sup> Other mosques establish partnerships with local educational institutions to combine the use of their facilities with the expertise of the teaching staff to cater for extra curricular educational needs such as the partnership between the Imam Al-Khoei mosque with the North West London College. Under the headship of a British-trained Imam, the al-Risaala School in Balham, South London, became, in 2001, the fifth Muslim school to be given grant-maintained status.

In order to be able to continue to address the changing needs of youth, the teaching role of Imams with the youth has therefore evolved to keep up with a younger generation in that is more likely to question the way the faith is taught and practised. Imams who are rooted in ethnic cultural traditions and who are employed to sustain the continuity of their homeland cultures in the diasporic context, may find it difficult to connect with the younger generation who do not feel the same attachment to a cultural ethnic affiliation. For some youth Imams represent an alternate authority figure to that of the parent and can also give their advice in that context.

It is worth noting that a generation of Imams is beginning to emerge who are born and bred and receive their training within the UK. There are currently 22 educational institutes in the UK which provide training in Arabic and Islamic sciences to between 3,000-3,500 students, a significant minority of whom are women.<sup>8</sup> There are an estimated 225 graduates who are produced each year that are qualified to take up Imamate positions (some of whom, being foreign students, will choose to return home to serve their communities there).<sup>9</sup> However, many are not able to take up Imamate positions in mosques because they are usually already filled by older members of the community or by Imams from abroad. Many go on to take up positions as chaplains in hospitals, prisons or other public institutions instead or seek employment elsewhere.<sup>10</sup>

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<sup>7</sup> 'Monitoring Minority Protection in the EU: The Situation of Muslims in the UK', Open Society Institute and EU Accession Monitoring Program, 2002, p. 129, cites the example of East London Mosque

<sup>8</sup> 'Survey of British Seminaries (2002)', Mr Jonathan Birt, Wolfson College, University of Oxford

<sup>9</sup> 'Survey of British Seminaries (2002)', Mr Jonathan Birt, Wolfson College, University of Oxford

<sup>10</sup> 'Survey of British Seminaries (2002)', Mr Jonathan Birt, Wolfson College, University of Oxford

## ***b. Women***

Many women may turn to Imams to address their particular needs and the role of Imams also extends to being able to support the special concerns of women of all generations. Interviews with Imams reveal that a significant proportion of their time can be spent advising women on various issues relating to their lives. Advice is sought from Imams on problems relating to marriages, the raising of children, their education, and their general well-being. Consultations with Imams is often done via telephone to preserve anonymity on the part of the women. This can take up a significant proportion of the Imam's time.

As well as conducting marriage ceremonies, Imams can play a big role in the introduction of or consultation on prospective partners. The issue of forced marriages, albeit on the decline, is one that could potentially be alleviated further by Imams who should check that both parties have given free and willing consent before conducting marriage ceremonies. In many cases where marital discord is experienced, it is the advice of the Imams that is sought in settling disputes.

In addition Imams have a vital role to play in upholding the status and rights Islam gives to women which may be suppressed by cultural preferences such as the right to education. In cases where cultural practices are in conflict with the rights afforded to women by Islam, it can be left to the Imam to speak out in defence of the vulnerable either directly or indirectly through their Friday sermons.

In frequent cases the women who seek advice have no-one else to turn to who can give them the nature of religious instruction they need. The level of advice sought by women of their Imams does vary from community to community – in some cases the contact is via the men folk – and can depend on the cultural frame of reference at play. In other cases women may seek advice from their Imams on how to make their children and men folk more practising of their faith so it is not always the men who are managing the education of and shaping the lives of their women as is commonly perceived from the outside.

Women are also becoming more informed about the teachings of Islam than may have traditionally been the case and are using their knowledge to make progress in educational and work related fields. Women led networks and study groups for both adults and youth are providing support bases for religious instruction and social support with women.

Women are also increasingly involved in providing both religious instruction as well as teaching of community languages within their homes and in the circle of the mosque.

However, the devotional role of women in the mosques, however, remains generally limited with some mosques still not providing any prayer space or other dedicated facilities for women. The role of women participating in the running of or the decision-making process in mosque committees is still also extremely limited at this time, or is ghettoised in the sole discussion of what are called 'women's issues'.



And despite the relatively high numbers of British Muslim women who are receiving formal training in Arabic and the Islamic sciences within the United Kingdom (there are currently four women-only and three co-educational seminaries out of the current 22 existing institutions<sup>11</sup>), there is a general consensus that women are not able to lead congregational prayers.

However, there are Muslim theologians who do not see any bar to women leading congregational prayers and performing other religious functions for women. Indeed some women's groups are initiating counselling and other services for women to take care of their own spiritual and emotional needs. Although women would not be termed as Imams but because of their potential capacity to lead congregational prayers for women, they should in our view qualify them to be treated in law in par with their male counter parts as far as immigration and employment status is concerned.

### *c. Prison and Hospitals*

Imams employed by the Prison Service in the past, whether, on a full-time or part-time basis, often had to work hours that did not correspond with the number of inmates and duties assigned. In the main, they were treated as visitors and lacked the necessary command of the English language to argue their case. They received no specialist training to prepare them for their specific duties and were offered no opportunities to participate in race-relation meetings. Their subsequent participation in the Chaplaincy and the life of the Prison was therefore limited.

The responsibility of chaplaincy work within prisons lies with the Church of England chaplains and ministers of other faiths work within their structure. As a result, the work of Imams within this framework can be very limited and Imams can feel marginalised. Often Imams feel they are drafted in only for the provision of religious instruction and their involvement in other aspects of pastoral care, counselling or participation decision making processes is not facilitated.<sup>12</sup> This ultimately has an impact on the quality of service they are able to provide for those under their care.

However, since the appointment of the Muslim Advisor to Prisons, substantial changes have taken place to address some of these issues. The Muslim Prisoners Commission together with the Prison Service selects and vets Imams who serve prisons and enter into contractual agreements for their services. Under such contracts therefore they are obliged to follow the codes of conduct and other professional standards of the employing institution.

Imams are treated on the level of deputy chaplains, and can be called on to fill in for absent colleagues to fulfil generic duties for the general prison population. They are able to monitor the provision of halal meat and to secure better prayer facilities for those in their pastoral care. They have access to keys like their counterparts and are increasingly participating generally in meetings.

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<sup>11</sup> 'Survey of British Seminaries (2002)', Mr Jonathan Birt, Wolfson College, University of Oxford

<sup>12</sup> Basia Spalek, *Islam, Crime and Criminal Justice*, Willan Publishing, 2002, p.100

Yet despite this progress, it is clear that much remains to be done in terms of training to improve the nature and accessibility of Muslim chaplaincies in the prison service: improved English language skills, further training in counselling, pastoral and routine administrative skills, and the creation of multi-faith spaces within the prison context in order to prevent religious ghettoisation.

Hospitals are also now beginning to have significant Muslim populations as a result of which they are advertising for Muslim chaplains. They also undertake a wide host of duties including the provision of halal diet, the counselling of patients and relatives, leading congregational prayers and giving the Friday sermon, and ensuring the adequate provision of Muslim-specific service needs in ensuring speedy burials, bereavement counselling and birth rights. In some cases the services of Imams in leading prayers also covers hospital staff as well as patients.

Unlike the Prison service which has a detailed job description, selection process and employment contract however, not all Imams in hospitals (and indeed other public institutions such as colleges and universities) have this. Given the absence of employment status, the work of Imams in hospitals is often done voluntary with varying working conditions and hours. This leads to issues surrounding the recognition of their status and understanding of their roles.

Within the Prison service, at least an Imam is granted enforceable employment rights through contractual agreements. Consequently, the employment of an Imam for his services in the community should be no different from those that are employed in public sector to undertake the same duties and obligations. It is only fair that both should receive the same recognition and status.

## 4. IMAMS AND IMMIGRATION

Home Office guidelines define a minister of religion to be a ‘religious worker whose main duty is to lead a congregation in prayer and preach about their religious beliefs’.<sup>13</sup> Applicants must therefore be able to show that they have either been working for at least one year as a minister of religion or have one year’s full time or two year’s part time training. In addition applicants must also be able to show that they plan to work full time as a minister of religion without help from public funds.

Imams who have worked in the UK continuously for four years can apply to live in the UK permanently, providing that no help has been received from public funds and the leadership of the congregation still needs the Imam to work as a minister of religion.

Under immigration rules, ministers of religion are not required to apply for work permits.<sup>14</sup>

There has been much debate about the value of ‘home-grown’ Imams as opposed to ‘import’ Imams from abroad. In the Netherlands the debate about the immigration of Imams has culminated in the Dutch government proposing that Imams and other spiritual leaders recruited in Islamic countries to complete a 1-year integration course before being allowed to practise in the country.<sup>15</sup> In addition, the government proposes that the entry of Imams from abroad should be restricted if candidates are available within the Netherlands. The training of Imams has to take place in the Netherlands itself so practising Imams have an understanding of the values and norms of the society they operate in as well as a working grasp of the language. In order to fulfil this, the Theological University of Kampen and the Protestant Free University of Amsterdam have started providing religious training for Imams.

Recognising the practical and social difficulties of Imams from abroad who lack sufficient knowledge of the English language and familiarity with the working system, all efforts should be made to employ Imams from within the UK. In a response to the Government’s White paper ‘*Safe Borders Secure Havens*’, earlier this year FAIR welcomed the proposal that ministers of religion applying for positions in the UK should have an adequate command of the English language.

However we maintain the view that this should be implemented with due consideration for a number of factors.

Whilst it is desirable that Imams speak the native language of their host countries due consideration should be made for waiving this requirement in specific

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<sup>13</sup> Immigration and Nationality Directive, <http://www.ind.homeoffice.gov.uk/default.asp?PageId=139>

<sup>14</sup> [http://www.uk.emb.gov.au/CARRIERS/work\\_permits\\_britain.html](http://www.uk.emb.gov.au/CARRIERS/work_permits_britain.html)

<sup>15</sup> International Religious Freedom Report 2002

Released by the Bureau of Democracy, Human Rights, and Labor,  
<http://www.state.gov/g/drl/rls/irf/2002/13953.htm>

circumstances, such as, for example recent migrant communities who have yet to establish their own religious institutions in the UK. Muslims communities in the UK are anything but homogeneous and whilst some may have reached second or third generations, we are still seeing first generation migrant communities in the process of establishing themselves. Exemption from this requirement should be extended to such communities because this may well deprive them of pastoral services and guidance in what is often a difficult period.<sup>16</sup>

Similar due consideration should be offered to those involved in the education of Imams in the UK. As argued in FAIR's response to the White Paper '*Safe Borders, Secure Havens*' earlier this year, the lack of qualified instructors in Islamic studies in British seminaries places a great demand for the services of Imams who are trained to a scholarly standard that is recognised in the Muslim world. To prevent the employment of such Imams will, in our view, stunt the development of British-based Muslim theological institutions of learning which will also impact upon the training of a new generation of British based Imams.<sup>17</sup>

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<sup>16</sup> *Government White Paper: Secure Borders, Safe Haven — Integration With Diversity In Modern Britain, Response From The Forum Against Islamophobia & Racism, March 2002, Pp. 4-5*

<sup>17</sup> *Government White Paper: Secure Borders, Safe Haven — Integration With Diversity In Modern Britain, Response From The Forum Against Islamophobia & Racism, March 2002, Pp. 4-5*

## **5. EMPLOYMENT STATUS OF IMAMS**

Whilst in practical ways, the vocational and pastoral duties of Anglican priests and Imams are largely overlapping, there are obvious differences with regard not only to their theological status but also with their appointment, employment, and dismissal. Even though a comparison with the Non-Conformist Churches would be closer to the Muslim experience, it is still not directly relevant.

For the most part, Imams are chosen by the communities they serve on account of their religious learning and it is the community that funds the salary of the Imam. Imams therefore can be deemed to be one of many public servants. In a few exceptional cases, Imams can be chosen and funded by Muslim states abroad, such as Saudi Arabia, Iran or Egypt or Turkey, as is the case for instance with the Islamic Cultural Centre at Regents Park or the Suleymaniye Mosque in Dalston, London.

The demanding role played by Imams means they are often ‘on-call’ for their communities as and when they need them. Working hours of Imams can be undefined and open-ended which is often clearly detrimental to their own family lives.

As the salaries of Imams are often paid for by community, they can receive less than the minimum wage whilst being subject to having to follow all the demands of the community with few, if any, limitations. This can have the effect of undermining the role of the Imam in providing leadership and providing protection to the vulnerable (e.g. women).

Sole economic dependence on the communities served by Imams also leaves the possibility of low salaries, poor and undefined working conditions and unfair dismissal, that without the protections of employment law, is often ad hoc and capricious, frequently being driven by factional politics within mosque committees. And even where cases of dismissal are justified, dismissal processes take place behind closed doors with no transparency or real accountability to the rest of the community. Extending employment status to Imams will help curtail such practices.

Imams currently pay tax and National Insurance contributions on their earnings so it is anomalous that they have all the responsibilities of paid employees to fulfil on one hand, but without the corresponding protection of their basic employment rights.

Imams have a vital role to play in integrating Muslims into mainstream society but in order for them to play an effective and positive role, they must be allowed the standard employment and freedoms that other British citizens normally enjoy.

Our consultation showed that one of the problems that the current status of Imams with regards to employment gives rise to is inconsistency and misunderstanding of the many responsibilities undertaken by Imams not just within their own communities but also in prisons, universities, colleges and other public sector

institutions. This is compounded by a lack of or inexact job descriptions which also have varying interpretations by different institutions and bodies. Often the Imams who offer their services in these places do so voluntarily as pious and conscientious individuals. The issue therefore is not one of employment status only but also conditions of service.

Furthermore, the status quo can lead to a feeling amongst Imams that there is a lack of recognition and appreciation of the complexity of the role of Imams in the Muslim community on the part of government and mainstream institutions. The extending of employment status to Imams therefore has enormous symbolic as well as practical value therefore in bringing Imams into the mainstream with other public servants.

Given the historic sociology of Islam, that it has lacked a centralised ‘Church-like’ structure, it is obvious that we will not develop an centralised but autonomous way of training, appointing and dismissing Imams. Therefore, we would strongly support the extension of existing employment protections to British Imams.

However, we are aware that other faith traditions in the United Kingdom have historically developed autonomous systems relating to the employment of their religious officials – the outstanding example being the Church of England – and therefore we propose that the government adopts an ‘opting-out’ policy in order to cope with the different needs and expectations across the traditions. An opting out system could operate whereby faith traditions would have to prove, subject to inspection and monitoring by government, their ability to maintain proper appointment and redress procedures that adequately protected the civil rights of religious officials, prior to opting out of government regulation.

We are only pointing out a principle here, rather than a detailed policy that would be the subject of further deliberation. But, briefly, government should allow for a two year period, prior to the introduction of the law, in which those faith traditions with autonomous systems of appointment and redress, review their procedures to see if they match up with standard practice in line with British law. Presumably, such autonomous systems of appointment and redress would come under regular inspection by government in order to ensure that they were in compliance with general employment rights. A continued failure to adhere to such standards would result in the loss of “opted-out” status in the long term.

As regards, religious traditions that lack such robust and formal systems of appointment and redress, they should have the law extended to protect their religious officials as soon as possible for reasons we have outlined earlier in this presentation.

We favour an opting-out procedure to an opting-in one because we believe that this will not allow government sufficient leeway to tackle shoddy employment practices where religious institutions are unable, or unwilling, to improve conditions autonomously.

## 6. OTHER FAITH PERSPECTIVES

There are a number of other faith groups who believe that ministers of religion ought to be granted the status and rights of employees as would be allowed by s.23 of the Employment Rights Act 1999. The problems of job insecurity and unresolved disputes are common to all faiths and case law has unanimously withheld employment rights to representatives of all faiths.<sup>18</sup> Whilst there are a few Churches who oppose the idea of enforceable employment rights for clergy, there is support for the equalisation of clergy and ministers of religion with other workers from various Christian, Hindu, Jewish as well as Muslim groups. Together, ministers of all faiths should be considered vital to the public life of a multi-faith society and as such should be granted the same recognition as other public servants.

Additional support for the case comes from the European Parliament's recent overwhelming vote of support for the unfair dismissal claim by Rev. Ray Owen against the Diocese of Stafford.<sup>19</sup>

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<sup>18</sup> Birmingham Mosque Trust v Alavi (1992), Santokh Singh v Guru Nanak Gurdwara (1990), President of Methodist Conference v Parfitt (1984), Davies v Presbyterian Church of Wales (1986), Diocese of Southwark v Coker (1996)

<sup>19</sup> [http://www.3rdsectorunion.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=174&view\\_records=1&ww=1](http://www.3rdsectorunion.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=174&view_records=1&ww=1). This case has since been settled out of court.

## 7. CONCLUSION & SUBMISSION OF VIEWS

There are without doubt many costs and benefits to the extension of employment status to ministers of religion. In some quarters this challenge to traditional perceptions of the vocation of a minister of religion is unwelcome, both from individuals, collective communities and the religious institutions themselves.

There is a need to recognise the different aspects of the role undertaken by Imams in both public and private sectors, as indeed there is with regards all ministers of religion irrespective of their particular faith. Within public institutions there is also a need for equity in the conditions of service both in the employment of Imams and the chaplaincy services that Imams are able to provide to those in their pastoral care.

The extension of employment status to ministers of religion is in our view, a welcome measure, but should be implemented with due consideration of the particular needs of young migrant communities and developing educational institutions.

To conclude this paper, we have listed below our views and subsequent position on each of the specified issues that the Discussion Document invites views on:

*a. What the costs and benefits of extending the scope of some or all employment rights may be;*

Costs:

- Unless the practical measures that go with the extension of statutory employment rights are implemented in a culturally sensitive way, Muslim communities may react to what is perceived to be Government interference in the autonomy of private community affairs. It should therefore be seen to be a positive development rather than intrusive one.
- The practical measures that go with the extension of statutory employment rights may hinder the degree of flexibility of arrangements that can exist in the employment of Imams by their communities. For example, during the month of Ramadan different/extra Imams may be employed to lead the special night prayers. There should therefore be sufficient provision for short-term contracts in order to fulfil this central religious requirement.
- The implementation of a contract to secure statutory employment rights for Imams may be abused by the ‘Employer’ to hinder or restrict the autonomy of the Imam and the freedom of his speech to his congregation by stipulating clauses in the contract. However this could also be used to impose favourable restrictions.



Benefits:

- The ability for Imams to seek redress through the courts for unfair dismissal.
- Where there are breaches of trust, the problems can be resolved through the courts in the public light rather than behind closed doors.
- Symbolic and practical recognition of the autonomy of Imams in leading rather than following their communities giving Imams greater ability to give independent advice, support and guidance to members of their communities.

***b. Effect of extending employment rights on the nature of the relationship between work providers and the working people affected;***

- The extension of employee status to Imams, in our view, in no way affects the nature or scope of the job description of an Imam. Rather the symbolic recognition of the importance that fundamental rights are extended to Imams offers more job security and potential for improvement of working conditions, as well as attracting more capable individuals to take up imamate roles.
- The extension of employee status to Imams reduces the risk of abuse occurring on either side of the contractual relationship as the choice of seeking public legal redress for grievances will be, in our view, somewhat of a deterrent to all parties concerned.
- Whilst the vast majority of service agreements between Imams and their communities are conducted in good faith, in extreme cases where disputes have not found an amicable resolution, the option of seeking just legal redress is an essential provision to prevent the loss of basic civil and human rights for all parties concerned.
- Conferring employment status on Imams should not affect the current status of Imams with relation to the rules of immigration. It is desirable that the current position of exemption from applying for a work permit is maintained.

***c. Increased burden on the work provider/employer;***

- Identified employers of Imams will have to make alternative arrangements to cover for periods when Imams claim statutory benefits (paternity leave etc)
- Conferring employed status on Imams will also confer the status of 'employer' on the mosque/community that renders the services of the Imam. This will bring them under the jurisdiction of various

employment regulations (i.e. health and safety, police checks for working with vulnerable people) for which they will have to make the necessary provisions.

***d. Effect on the labour market;***

- In the case of Imams it may encourage a readily available pool younger generation of Imams trained in the UK to take up positions as the extension of statutory employment rights will give them job security and a greater degree of independence from their salary-paying communities.

***e. How clear and easy to understand the current framework of employment protection rights is, and in particular the clarity and ease of current definitions in employment law;***

- The current framework of employment protection rights is not easy to follow as there are several pieces of legislation that use differing definitions of ‘employee’ and ‘worker’ – some Acts may confer some rights according to some definitions which do not apply to other pieces of legislation.

***f. What non legislative approaches could be used to address problems that might arise from any lack of clarity in employment status;***

- Where the need is felt for ‘chaplancy’ services, members of all faith communities should receive the same quality of service and access to facilities. The good practice in some prisons and hospitals should be followed in all other public service institutions.
- The formulation of Codes of Practice on a general level on the employment of Imams in public sector institutions including clarification of their generic roles and responsibilities.

***g. Whether all rights should apply to the same category of working people or whether coverage should be looked at on a case-by-case basis;***

- Conferring statutory employment rights to Imams and clergy should not limit people’s choice or flexibility of working arrangements but should provide a framework of standards that serve to protect the rights of both the Imams and the communities they are employed by, as it currently does to the groups it already covers. As in other forms of employment, Imams can be employed on a part time or full time basis in both a temporary or a permanent arrangement so similar rights should be conferred depending on the terms of their employment as is currently used. It is also equally important that Imams are given the opportunity to ‘opt out’ of statutory regulation, whereby the final decision and the autonomy of the individual is therefore fully respected.

*h. Whether any categories of working people currently protected by statutory employment rights or any groups of work seekers are actually disadvantaged by the level of statutory protection or whether those not protected would be disadvantaged by extension of rights to them;*

- As mentioned above, small mosques which are not purpose built or do not have the administrative infrastructure of larger institutions may find it difficult to comply with the requirements of employer status. This may have the effect of preventing smaller mosques from employing a proper Imam.

## **8. APPENDIX I**

Individual Statutory Rights to be conferred via s.23 under the Employment Act:

Right to paternity leave

Right to adoption leave

Right to increased maternity leave

Right to dispute resolution procedures

Time off for union learning representatives

Right for fixed term employees not to be treated less favourably than comparable employees in permanent employment

Right to request flexible working for parents of young children

## 9. APPENDIX II

### Questionnaire to Imams

The Government is currently seeking views on the Employment Status in relation Statutory Employment rights. Under current UK law, Imams are not covered by basic statutory employment rights, such as the right not to be unfairly dismissed.

This questionnaire seeks your views on whether extension of statutory employment rights to Imams is considered to be a desired and beneficial outcome.

If you don't wish to answer any question, including your personal details, please put "NA" in the space provided.

**Name**

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**Age**

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**Ethnicity**

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**Mosque/Institution**

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### SECTION 1 – EMPLOYMENT STATUS

**Q1** What do you see as the main disadvantages of the current status of Imams with regards to employment status?

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**Q2** Do you see any non-legislative approaches that can be used to address these problems?

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**Q3** Do you think Imams should be granted employment rights? Please state your reasons including any advantages or disadvantages.

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**Q4** If you are currently employed as an Imam, do you have an Employment Contract?  
Y/N

**Q5** Do you think Imams should have written Employment Contracts? Please state your reasons, including any advantages or disadvantages

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**Q6** What problems does the absence of a formal Employment Contract give rise to?

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**Q7** Have you ever suffered from or know of anyone who has suffered from a case of unfair dismissal?

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**Q8** What do you think can be done to give Imams more job security?

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**SECTION 2 – JOB DESCRIPTION AND DUTIES**

**Q9** What do your duties involve?

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**Q10** Could you provide a brief outline of your daily routine?

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**Q11** How often do you have to undertake extraordinary duties? (those which are outside your scope)

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**Q12** What kind of things do these include?

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**Q13** Do you get involved in any administrative/managerial work? Please give details

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**Q14** If so, do you have a say over the budget?

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**Q15** Which language(s) do you use to communicate with the congregation and/or do the khutbas?

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**Q16** In the scope of your work, do you have any interaction with non-Muslim individuals/organisations? If so please give details

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**Q17** Are you involved in interfaith work of any kind? If so please give details

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**Q18** How much of your time is spent on pastoral care and how much of this is done over the phone?

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**Q19** Are you consulted by your congregation on the following areas

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|--------------------------------|-----|-----|
| • Marriage and domestic issues | Y/N |     |
| • Financial issues             | Y/N |     |
| • Secular education            | Y/N |     |
| • Crime                        |     | Y/N |
| • Drugs                        |     | Y/N |

If so, how widespread is this?

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**Q20** Do you get consulted by Women? What are the issues that they talk about?

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**Q21** Do you get consulted by young people? Y/N  
What are the issues that they talk about?

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**Q22** Are you involved in any work with Prisons, Hospitals or other public institutions? Y/N

What are major needs of Imams working public institutions?  
Do you feel they are currently being met?

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Please use the space below for any further comments on the questions above or any other issue which we have not included. Any further comments or suggestions will be greatly appreciated.

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