

SPECIAL ISSUE ARTICLE

# Non-religious prisoners' unequal access to pastoral care

Katie Hunt\*

University of Lincoln, Lincoln Law School, UK

\*Corresponding author. E-mail: [kbmhunt@lincoln.ac.uk](mailto:kbmhunt@lincoln.ac.uk)

## Abstract

Prisoners have long been recognised as a disenfranchised group. This paper positions non-religious prisoners as further excluded from pastoral care. While chaplaincies aim to serve prisoners of all faiths and none, this paper suggests a hierarchy of access in which the benefits of chaplaincy are more available to some prisoners than others. Shortcomings in secular care mean that non-religious offenders are often the only group unable to connect with like-minded people and it is argued that they are disadvantaged as a result. The paper also explores the challenges for pastoral carers seeking to support inmates equally. It considers the barriers on both sides of the care relationship, specifically the disincentives to chaplaincy engagement faced by prisoners of no faith and the obstacles encountered by the Non-Religious Pastoral Support Network in accessing service users and delivering care. Finally, recommendations are made to narrow the gaps between religious and non-religious prisoners.

**Keywords:** law and religion; prison; discrimination; equality; pastoral care

## 1 Introduction

This paper presents findings from empirical qualitative research conducted at, and funded by, the University of Southampton between 2016 and 2019, exploring how effectively prison chaplaincy meets the pastoral care needs of prisoners of no faith. The study uncovered discrimination against people with non-religious beliefs in English prisons within the meaning of both direct and indirect discrimination under the Equality Act 2010. This persists as a result of: outdated legislation; prison policies and practices that are inconsistent with the Act; and prisoner perceptions of the religiosity of chaplaincy.

The methodology combined an extensive literature review, data collection and doctrinal analysis of relevant statutes and case-law. Empirical work comprised semi-structured interviews and focus groups with twenty-one prison chaplains, counsellors, criminal justice professionals and members of the Non-Religious Pastoral Support Network (NRPSN). Interviews were conducted by phone, online and in person, including on-site during field visits to adult male prisons. They were audio-recorded, transcribed and thematically analysed using the computer-assisted qualitative data analysis software QSR NVivo 11. The scope of the prison data collection and analysis of the religious context is limited to England.

This project received ethical approval from both the Her Majesty's Prison and Probation Service (HMPPS) National Research Committee and Southampton University Ethics Committee. All participants gave their informed consent. Participants 5 and 10 waived their right to anonymity and chose to participate 'on the record'; they are Simon O'Donoghue, then Head of Pastoral Care at Humanists UK, and Rev Michael Kavanagh, then Chaplain-General of Prisons.

## 2 Marginalisation of non-religious prisoners

Some populations are widely recognised as marginalised and other contributors to this issue have examined the precarious position of groups whose oppression is well documented, such as sea

migrants (Campas Velasco), or whose exclusion may even be visible to us in our daily lives, such as the homeless (Bevan). This paper seeks to expose a kind of marginalisation that is less easily observed, first, because it takes place behind locked doors and, second, because its subjects may not be considered marginal, at least compared to fellow inmates. We might think of marginalised groups as oppressed minorities and it is readily accepted that neither of these words applies to the non-religious today. In modern Britain, a slight majority (53 per cent) of adults describe themselves as having no religion (NatCen, 2019) and the intersecting oppressions relating to race, class and religion mean that people with non-religious beliefs are on average higher earners, more highly educated and more likely to be White than other religious demographics. In some contexts, however, even large and relatively privileged groups can find themselves sidelined and underserved by a controlling minority.

Prison is a marginal environment in itself. The incarcerated population has long been recognised as a disenfranchised group (Hunt and Read, 2018), confined to a liminal space away from the rest of society, and with its own rules and codes. For people in custody, different power dynamics arise. One place in which this is keenly felt is the chaplaincy, which in many institutions is the sole source of professional pastoral support. In English prisons, the visible, powerful influence of the Church of England, the smaller presence of sessional, casualised representatives of other (and 'othered') faiths and – in most cases – the total absence of secular pastoral carers combine to further marginalise people of minority religious and especially non-religious belief.

This paper identifies non-religious people as further marginalised in the context of access to pastoral care services in prison. In the introduction to this issue, Gurnham considers a range of ways of thinking about or defining marginalisation, including 'the sense of having gone unnoticed, unreported, underresearched'. Despite (or perhaps because of) their numbers, the non-religious tend to be 'unnoticed, unreported, underresearched' as a demographic group. Until recently, little academic attention has been paid to people without faith. Beckford and Gilliat's *Religion in Prison: Equal Rites in Multi-faith Society* (1998) revealed inequality in prison-chaplaincy provision, but their investigation was limited to discrepancies between faith groups rather than between the religious and non-religious. I have identified elsewhere that non-religious prisoners may not find chaplaincy services appropriate (Hunt and Read, 2018). David Savage's *Non-religious Pastoral Care: A Practical Guide* (2019) includes a section on prisons and reflects on these issues but does not consider them in detail as a problem for equality law. Where this work builds on those publications is that it is the first academic, legal analysis of the unequal position of non-religious prisoners in the context of antidiscrimination legislation and is supported by original data.

From a practical perspective, this research is important for two reasons. First, the present arrangements for prison pastoral care may be unlawful and could lead to legal consequences for HMPPS. Second, the links between effective pastoral care and desistance (Maschi *et al.*, 2011) suggest that unequal access to support may lead to differences in rehabilitative outcomes, and that more equitable and accessible services could reduce reoffending behaviour, thereby improving public safety:

'Many of them have got such poor coping mechanisms for what they're dealing with, because they've used drink and drugs, ... they've ended up in jail and then they have even less coping mechanisms, and so it often comes out in violence or anger or aggression. ... If you interrupt that cycle, I think it can be massively positive.' (Participant 12, prison chaplain)

Creating conditions of fair treatment and equal opportunities is paramount in prisons, not just to bring HMPPS in line with equality legislation, but also as a safeguarding priority for the offenders themselves. Liebling found that perceptions of fairness have demonstrable effects on order and well-being:

'variables including respect and fairness, perceptions of safety ... were linked to lower levels of distress. In other words, we can demonstrate that some prison environments are more survivable

than others. Legitimate treatment may be literally a matter of life and death.’ (Liebling, 2011, p. 535)

Similarly, Vickers describes how ‘inequality, or misrecognition, in this sense can lead to negative self-image, stigma and lack of self-esteem, all of which are harmful of themselves’ (Vickers, 2011, p. 149) and this can manifest itself in individual behaviour, potentially affecting parole prospects.

### 3 Pastoral care

The adverse conditions of prison life coupled with the links between mental health and rehabilitation present a pressing need for comprehensive pastoral care. Hendry remarks that ‘prisons are most often viewed as places for punishment, while the goals of health and healing are neglected’, but reminds us that prisoners are a transient population and most will eventually return ‘to the wider community, taking with them their health and social problems’ (Hendry, 2009, pp. 275, 271). Prison pastoral care is therefore not merely an issue for criminal justice researchers and practitioners, but also a matter of public policy that affects us all.

The term ‘pastoral care’ is used here to refer to professional emotional, social and moral guidance, including but not limited to religious ministry. It can involve chaplaincy, counselling, personal support such as the kind offered in schools and workplaces, and informal advice and listening services. Charting pastoral care in prison is complex, as the services that are available vary significantly between institutions, and even between prisoners at the same institution: ‘There is a counselling service in the prison which they can be referred to, but they have quite strict boundaries on who they can help because otherwise, obviously, they would be a very popular service’ (Participant 13, prison chaplain).

Overstretched staff and dwindling budgets generally mean that little support is available. Help may be provided by charities or fellow prisoners – including, notably, through the Samaritans Listeners scheme – but these are a poor substitute for a professional in-house service and provision is typically patchy. *The Bradley Review* (2009) emphasised the need to enhance mental health care in the criminal justice system, calling for improved communication and signposting to services, to reduce offending and improve the well-being of offenders.

In most prisons, professional pastoral care is provided exclusively through the chaplaincy – a religious institution dominated in England by the Anglican Church. The power and privilege accorded to Anglicanism are reinforced by both prison policy and legislation, such as the Prison Ministers Act 1863 and the Prison Act 1865, passed 150 years ago when the influence of the Church was much greater and when England was very different to the multicultural and increasingly secular society we know today. The latest Prison Service statistics show that fewer than half of all prisoners are Christian and only one in seven is Anglican (Ministry of Justice, 2021). Far from representing a majority of the prison, Anglicanism is not even the dominant Christian denomination; a higher number of prisoners are Roman Catholic. A service that is open to all but only targets, represents or serves the needs of some will necessarily marginalise others, creating inequalities. A Christian chaplaincy may be a bad fit for people of other faiths and especially off-putting for those of no faith (Potter, 1999).

When pastoral care services that are vital for the well-being of all prisoners are controlled by and provided through an ostensibly interfaith but structurally Anglican chaplaincy, hierarchies of accessibility and advantage emerge, with non-religious prisoners at the bottom. In a closed setting such as prison, where no alternative is provided, religious disparities in the uptake of and benefit from pastoral care services can lead to disadvantage, with serious consequences for mental health, rehabilitation and parole prospects. These inequalities arise according to the service user’s religion – a protected characteristic under section 1 of the Equality Act 2010.

### 4 The Equality Act 2010

The Equality Act 2010 consolidates a large body of law and policy into a single framework for tackling discrimination. It prohibits discrimination by employers, service providers and public authorities on

the grounds of nine protected characteristics. The protection of religion or belief in section 10 explicitly extends to lack of religion or lack of belief, and philosophical positions such as atheism and humanism.<sup>1</sup> The result is that any provision offered to religious prisoners should be equally available to non-religious prisoners. This goes further than prison policy, which we will see currently only promotes equal treatment between faith groups.

The Act creates positive and negative duties aimed at advancing formal equality (equal treatment) and substantive equality (equal opportunity). Direct discrimination relates to formal equality and arises when people are treated less favourably because of a protected characteristic (s. 13); indirect discrimination relates to substantive equality and arises when everybody is treated in the same way, but the provision, criterion or practice has a disproportionate impact on people with a protected characteristic (s. 19). The difference has been summarised by Lady Hale:

‘Direct discrimination is comparatively simple: it is treating one person less favourably than you would treat another person, because of a particular protected characteristic that the former has. Indirect discrimination, however, is not so simple. It is meant to avoid rules and practices which are not directed at or against people with a particular protected characteristic but have the effect of putting them at a disadvantage.’<sup>2</sup>

These two categories are mutually exclusive, the former pertaining to unequal treatment and the latter to equal treatment that operates unequally. Indeed, Fredman writes: ‘the whole point of indirect discrimination is to recognise that equal treatment may itself be discriminatory’ (Fredman, 2012, p. 189). Note, therefore, that this paper identifies two separate aspects of prison pastoral care as instances of direct and indirect discrimination, respectively. It will be argued that prison policy on delivering religion or belief-specific pastoral care<sup>3</sup> provides unequally for the non-religious, possibly amounting to *direct discrimination*. Meanwhile, the chaplaincy and the services it provides are intended for all prisoners but are, in practice, less accessible to the non-religious, possibly amounting to *indirect discrimination*.

#### 4.1 Direct discrimination

‘Non-religious people are treated differently to religious people ... and that’s where the problem is. Rather than a group of people who have needs, it’s “the religious people” and “the non-religious people”.’ (Participant 5, then Head of Pastoral Support at Humanists UK)

The most widely understood form of discrimination is direct discrimination. Section 13(1) of the Equality Act 2010 provides that ‘a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others’.

The Ministry of Justice issues a range of policy documents that provide guidelines for each aspect of prison life. These are called Prison Service Instructions (PSIs) and are reviewed every five years to ensure best practice. PSI 05/2016 *Faith and Pastoral Care for Prisoners* (Ministry of Justice, 2016) dictates how prisons should operate to meet the religious and pastoral needs of ‘prisoners of all faiths and none’ (para. 21(5)) – explicitly including non-religious prisoners. Because of the diversity of the incarcerated population, chaplaincies are multifaith and will include not just an Anglican chaplain, but also representatives of other religions, such as an imam or rabbi, according to the needs of each institution. This is in line with the PSI, which requires that ‘the Chaplaincy provision reflects the faith/denominational requirements of the prison’. This suggests that every prisoner should be able to talk to a pastoral carer who shares their worldview or, at the very least, that the biggest denominations in each prison should be represented on the chaplaincy team.

<sup>1</sup>Explanatory Notes to the Equality Act 2010, at para. [53].

<sup>2</sup>*Essop v. Home Office (UK Border Agency)* [2017] UKSC 27, at para. [1]

<sup>3</sup>Religion- or belief-specific care is care provided by and for people of the prisoner’s own religion or belief.

After Christians, the second largest belief group in prison is the non-religious, who make up 31 per cent of people serving custodial sentences (Ministry of Justice, 2021) – greater than all other religious groups combined – yet we will see that, unlike other prisoners, they have limited options to seek pastoral support from a like-minded person:

‘If you look at the number of non-religious prisoners compared to faith groups, we’re one of the biggest. We’re almost on a par with Christian prisoners. There are more non-religious prisoners than there are Muslim prisoners, Catholic prisoners, Buddhist prisoners, etc., yet we don’t have the same provision.’ (Participant 9, NRPSN member)

Ticking the ‘No Religion’ box can be a positive statement of identity and non-religious people may be passionate humanists, sceptics and atheists with secular views that are important to them, but because HMPPS categorises the non-religious as people without beliefs, there is no requirement to represent this large population on chaplaincy teams. This is compounded by the crude categorisation of people of no faith as ‘nils’:

‘Their intention is to provide for all faiths and none, but already you’re in a negative because you’re a “none” and in prison you actually get called a “nil” .... So, they do talk about “the nils” without even realising that that might be quite insulting.’ (Participant 3, NRPSN member)

However, if we consider – as the Equality Act does – that these individuals are people *with* beliefs that are non-religious rather than people *without* religious beliefs, this becomes a glaring omission, and potentially an unlawful one.

Non-religious pastoral carers, sometimes called ‘that sort of oxymoron, “humanist chaplain”’ (Participant 3, NRPSN member), exist and offer their services for free. The NRPSN is a group of volunteers aiming to achieve access for every non-religious person in institutional settings to emotional, moral, pastoral and spiritual support from like-minded carers. Members are trained and accredited by Humanists UK to provide the sort of support to non-religious people that might be provided to religious people by chaplains. Almost a third of the prison population has indicated that they do not subscribe to any religion (Ministry of Justice, 2021), yet NRPSN members have a presence in just 12.8 per cent of prisons, meaning that the vast majority fail to provide any non-religious pastoral care.

If a prisoner belongs to a minority belief group, the PSI requires that ‘where their faith is not represented, arrangements are made for them to have access to a Minister of their own faith’ (Ministry of Justice, 2016, p. 6). There is no equivalent provision entitling non-religious prisoners to non-religious pastoral care: ‘Why shouldn’t we have the same option as the Muslim prisoners, the Buddhist prisoners, you know? There’s somebody for everybody. Why can’t we have the same thing? Under the Equality Act, we should’ (Participant 9, NRPSN member).

All religious prisoners are catered for, whether their religion is represented on the chaplaincy team or not, but the same cannot be said of non-religious prisoners, who remain the only group without the right to support from someone of their worldview.

Can the non-religious be called a belief group? Participant 12, a prison chaplain, commented that ‘not all the non-religious people are irreligious’. It is important to recognise the diversity of non-religious belief. Of course, the ‘non-religious’ demographic is not a homogeneous community with the same beliefs, but nor is any other religious group. What this research shows is that, in an inherently religious facility, (would-be) users who are united by lack of religious belief are a large and overlooked population with something meaningful in common that impacts the effectiveness of the service:

‘Non-religious prisoners are not catered for as non-religious prisoners. If they express ... that they are non-religious, they are offered the services of the chaplaincy, of course, but their umbrella of care ends there in most prisons, whereas, if they express a specific set of beliefs,

they will then be put in contact directly with somebody with the same beliefs. It seems to me as a lay person that that is discriminatory.’ (Participant 16, NRPSN member)

The present arrangements for the pastoral care of religious and non-religious prisoners certainly seem to constitute less favourable treatment for the latter. It is conceded that, if a prisoner asked to see a non-religious pastoral carer, it is likely that the PSI would be interpreted broadly as permitting them to do so and the arrangements would be made:

‘Say you were in jail, but you’d had strong links with the National Secular Society, for example. You can arrange for a member of the National Secular Society to come in on what’s called a special visit ... because they would be seen as your faith or religious minister.’ (Participant 10, then Chaplain-General of Prisons)

This would be at the Head Chaplain’s discretion, however, and it remains the case that the PSI does not guarantee this and that the letter of the prison policy is contrary to the letter of the law in failing to extend to the non-religious the same rights as it affords to the religious. Religious prisoners have the right to consult with a like-minded minister or pastoral carer while non-religious prisoners do not. This may breach the prohibition of direct discrimination in section 13 of the Equality Act 2010.

Whereas a defence of justification is available for indirect discrimination, direct discrimination is only justifiable in limited circumstances, none of which applies here. Courts take a restrictive approach, with the result that direct-discrimination claims are seldom successful (Sandberg, 2011). Hepple remarked that ‘the absence of such a defence has led tribunals and courts to try to avoid findings of direct discrimination and instead to categorise claims as instances of indirect discrimination, which can be justified’ (Hepple, 2011, p. 42) so that, as McColgan puts it, ‘outcomes differ according to sometimes hair-splitting distinctions between “indirect” and “direct” discrimination in the context of religion’ (McColgan, 2014, p. 174).

#### 4.2 Indirect discrimination

‘In theory, and to some extent in practice, every prisoner has access to chaplaincy.’ (Participant 4, NRPSN member)

Lady Hale has also explained the operation of indirect discrimination. In *Homer v. Chief Constable of West Yorkshire Police*, she summarised: ‘the law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic.’<sup>4</sup> Under section 19 of the Equality Act 2010, a provision that appears universal but puts people with a protected characteristic at particular disadvantage is indirectly discriminatory unless it can be justified.

Every prison in England and Wales has a multifaith chaplaincy for the use of all prisoners and colleagues. The service aims to provide ‘support to prisoners of all faiths and none’ (Ministry of Justice, 2016), but what is appropriate for some may not be appropriate for all: ‘It’s a place they know they can go, but some people will not go. And, if they’re anti-religious, they don’t want to have anything to do with the chaplaincy’ (Participant 16, NRPSN member).

Although chaplaincies welcome all members of the community, and so provide prima facie equality, their structures have always been Anglican. This is likely to be ideal for Anglicans, who comprise only 14 per cent of the prison population; an approximate fit for other Christians (31 per cent); less suitable for people of other faiths (24 per cent); and least appropriate for the non-religious (31 per

<sup>4</sup>[2012] UKSC 15, at para. [17]. See also *Essop v. Home Office (UK Border Agency)* [2017] UKSC 27.

cent) (Ministry of Justice, 2021). In short, the benefits of chaplaincy are more open to some than to others, and these distinctions are drawn along religious lines: ‘There was a real inequality with regards to the provision for non-religious prisoners. And whilst the chaplaincy team offered support, from speaking to a lot of non-religious prisoners, they didn’t really feel that that was relevant for them’ (Participant 9, NRPSN member).

There is no pretence that chaplaincy is neutral towards all religions. The previous Chaplain-General of Prisons, Rev. Michael Kavanagh, recognised ‘that a single “one size fits all” model is not going to work’ (Kavanagh, 2015, p. 257). The evidence suggests that the chaplaincy does not meet its objective in providing equal support to those of no faith, as the uptake of chaplaincy services amongst non-religious people is very low:

‘The data we’ve got shows that people who are not religious at all are not accessing pastoral care to anything like the same extent as religious people. Now, religious people say they’re there for “all faiths and none” ... yet 90% of the people they visit are religious. Well, half the people in that institution are not, so where are they going?’ (Participant 6, NRPSN member)

In 2016, Humanists UK commissioned YouGov to poll 4,000 British adults on their views about chaplaincy and pastoral support. They found that 14 per cent of Christians and 11 per cent of those of other religions have used a chaplain, but just 4 per cent of the non-religious have done so. Almost three-quarters (72 per cent) of non-religious respondents were ‘unlikely’ or ‘very unlikely’ to want support from a chaplain, although 45 per cent said that they would use a non-religious equivalent if one were available. While some non-religious prisoners do use chaplaincy services and have positive experiences with them, a significant number reportedly feel uneasy having to engage with religious people and places in order to receive counselling (Humanists UK, 2016) and do not see their values reflected in chaplaincy teams (Potter, 1999).

Why does it matter if non-religious people reject chaplaincy? People with non-religious views are, by definition, unlikely to require faith services, but problems arise when these spaces provide secular support that cannot be accessed elsewhere. Chaplaincies in total institutions do not function in the same way as churches in the community and offer users more than just ministry. In prison, the chaplaincy is the gateway to important secular services and is sometimes the only option for professional emotional support.

Some prisons do provide facilities beyond chaplaincy, but their availability and quality can vary. Counselling, peer support and official prison visitors are potential sources of care for those who choose not to see a chaplain, but they have one important feature in common that seriously undermines their suitability as a secular alternative – ‘referral is via the prison’s chaplaincy department’ (Participant 18, prison counsellor): ‘I’d say 98% of our referrals come through the chaplain. That’s generally the first port of call ... and we’ve often wondered whether that puts people off’ (Participant 17, prison counsellor and criminal justice professional).

Several interviewees identified this as a significant obstacle and the concern was not limited to NRPSN members. The management by a religious institution of facilities intended for everyone was perceived across the board to impede not just prisoners’ access to the services, but also their knowledge that they exist at all:

‘Whether there’s an opportunity for them to even know about our service other than going through the chaplaincy would be a really interesting question .... We are a secular organisation; we are available to all religions and none. So, I think that’s something. But they would only know that once they’ve accessed the service.’ (Participant 17, bereavement counsellor)

Non-religious prisoners are unlikely to avail themselves of chaplaincy services and – unlike those of minority faiths – rarely have access to a religion or belief-specific alternative, leaving them underserved

compared to all religious groups. This is an important finding and should be a serious concern for HMPPS.

In addition to the secular services that are harder to access elsewhere, these individuals also miss out on important personal, pastoral and rehabilitative benefits:

‘Non-religious prisoners ... were getting less time out of their cell because the religious prisoners had the option to go to religious ceremonies and to Bible Study, Qur’an Study, etc. So, they had less opportunity for constructive activity, and also, they didn’t have the support network that comes with going to those kinds of things.’ (Participant 9, NRPSN member)

It is difficult to overstate the difference that a good chaplaincy team can make to prisoner welfare. Chaplains can help to resolve practical problems, liaise with staff and family on a prisoner’s behalf, refer people to counselling and other facilities, offer company and conversation, and provide breathing space in a place of safety and calm, away from the commotion of the wings:

‘Sometimes they just need somebody to come and talk to, to give them a cup of tea, perhaps a biscuit, and a damn good listening to. Sometimes they need more than that, and we can, you know, signpost them on to our colleague who is a trained counsellor.’ (Participant 11, prison chaplain)

The chaplaincy, then, is not just a community centre or place of worship, but also a valuable space for peace, reflection and compassion, all of which can help prisoners to understand the impact of their crimes and look towards the future. The fact that non-Christian and especially non-religious people are less likely to engage with these services means that these groups are less likely to derive those benefits; religious non-Christians are at a disadvantage compared with Christians, and non-religious people are at a disadvantage compared with religious people.

In summary, while the chaplaincy is open to all inmates, the evidence indicates that a religious institution is not appropriate for non-faith prisoners, who are unlikely to visit. A lack of secular alternatives in most institutions suggests that prisoners who do not engage (typically non-religious) are less likely to receive the help that they need compared with prisoners who do (typically religious) and may experience poorer outcomes. This appears to present a disadvantage to those of no faith, contrary to the prohibition of indirect discrimination by section 19 of the Equality Act 2010: ‘I would call it discrimination, inequality, a lack of understanding of diversity, a lack of respect for the fact that [the prisoner has their] own needs and wants, as someone who is non-religious’ (Participant 3, NRPSN member).

Despite the focus of indirect discrimination on equal outcomes, if a justification can be made out, there is no obligation for the public body to change the practice in question. Lady Hale expanded on this in *Homer v. Chief Constable of West Yorkshire Police*:

‘The approach to the justification of what would otherwise be indirect discrimination is well settled. A provision, criterion or practice is justified if the employer can show that it is a proportionate means of achieving a legitimate aim. ... To some extent, the answer depends upon whether there were non-discriminatory alternatives available.’<sup>5</sup>

Many religious indirect-discrimination claims have failed on this ground (Sandberg, 2011), so it is worth considering possible justifications here. The strongest argument in support of the present arrangement is that the Anglican clergy and other ministers who staff multifaith chaplaincies cater adequately for all inmates, so a non-religious team member is not needed:

<sup>5</sup>[2012] UKSC 15, 19, 25.

'I don't think there was a need for [a non-religious pastoral carer] to do the work I just described ... because I think we do it well, and I don't think you'd find anyone saying that that wasn't done well by chaplains'. (Participant 15, prison chaplain)

Several chaplains echoed this, with one interviewee appearing to answer her own question:

'I did have a prisoner once who wrote to me and asked why there wasn't an atheist group. ... It was a good question, and I struggled to answer partly because I was sort of thinking, "I'm not entirely sure what the purpose would be". ... I did say to him, "Come and talk to me and we can explore it." He wouldn't come and talk to me.' (Participant 13, prison chaplain)

The idea that the pastoral care of prisoners with non-religious beliefs should be done by religious chaplains invalidates those prisoners by failing to recognise that they may need something different. It is undermined both by service-user data – which demonstrate that Christians are three and a half times more likely to have used a chaplaincy than the non-religious (Humanists UK, 2016) – and by the established HMPPS practice of making separate provisions for other religious groups. If it were true that a difference in religious beliefs is no barrier and Christian chaplains could give effective support to non-Christians, there would be no need to appoint ministers from minority faiths either. Clearly, imams, rabbis and other faith representatives offer something that Christian chaplains cannot, namely the opportunity to receive support from somebody who views the world as you do. If this is important, why should it not be available to all prisoners?

## 5 Marginalisation of non-religious pastoral carers

Research interviews uncovered a variety of ways in which the providers, as well as the users, of non-religious pastoral care are marginalised. This affects their ability to do their work, which in turn limits access to that support for service users. All NRPSN interviewees described feeling unwelcome and unsupported, at least initially. Reported obstacles fell into two categories: those related to their professional settings, such as poor access to prisoners, difficult relationships and low status within the prison; and those inherent in volunteering, specifically the interrelated problems of lack of pay, lack of time and lack of numbers.

Hierarchies exist not just for prisoners, but also for pastoral carers. Managing Chaplains act as gatekeepers, controlling the access that prisoners of minority or no faith have to pastoral care that corresponds with their belief. Other faith representatives need the chaplains' invitation, permission, support and, sometimes, patronage in order to gain access to 'their' prisoners (Beckford and Gilliat, 1998):

'That's the frustration in my case: I feel I'm not actually getting to them. And I do talk to lots of people, and I have great conversations and people sometimes say thank you, but I don't think I've talked to a single person yet who is actually down as "nil religion".' (Participant 3, NRPSN member)

Christian chaplains, who have legislative mandates in every prison and are usually the managing chaplain, are in powerful positions. Minority-faith representatives are dependent on them to an extent but are by now well established, respected and typically able to go about their work without interference. These power imbalances are most acute for non-religious carers, as relative newcomers who do not share the fact of belief that unites majority- and minority-faith representatives. Non-religious pastoral carers are marginalised within their institutions and report that their lack of standing makes them feel like 'a bit of an add-on and not really part of the organisation' (Participant 16, NRPSN member).

Beckford and Gilliat describe how the reliance on religious team leaders reproduces relations of dependence, to the point that 'what the chaplains regard as their even-handedness and tolerance is interpreted by some of their critics as exclusion and discrimination' (Beckford and Gilliat, 1998, p. 56). Although their data are over twenty years old, what is striking about the work is how closely

the challenges faced by Visiting Ministers and minority-faith representatives in the 1990s mirror the experiences of non-religious pastoral carers today. In both cases, the marginalised group reports poor access to prisoners, difficult internal politics, unequal standing and terms compared to Christian colleagues, and the impression that they are there 'to tick the equality box' (Participant 5, Head of Pastoral Support at Humanists UK) but viewed as unnecessary or even a nuisance.

One way in which non-religious pastoral carers are the most disadvantaged of all is that they are the only team members who are not told which prisoners have registered as being of their belief group: 'We're treated differently to religious people. Religious people ... would get access to a list of people of their religion, whether they're Buddhists or Sikhs or whatever. We should have the same access' (Participant 6, NRPSN member).

Section 10(5) of the Prison Act 1952 stipulates that

'the governor of a prison shall on the reception of each prisoner record the religious denomination to which the prisoner declares himself to belong, and shall give to any minister who under this section is appointed to the prison or permitted to visit prisoners therein a list of the prisoners who have declared themselves to belong to his denomination; and the minister shall not be permitted to visit any other prisoners.'

Prisoners' religious identity is recorded on arrival, but because non-religious pastoral carers are not ministers, and because HMPPS does not consider prisoners who indicate that they are of 'No Religion' to be in fact non-religious,<sup>6</sup> these volunteers do not receive a list of the so-called 'nils' and are consequently not permitted to approach anyone:

*Participant 4, NRPSN member:* 'A Catholic chaplain can look at all the Catholics in the prison and go to them all and say, "Do you want to come to service?" I can't do the equivalent thing; I can't go to all the people who've said "nil".'

*KH:* 'Ah, because "Catholic" means Catholic, but "nil" doesn't mean ....'

*P4:* 'Anything! It doesn't mean humanist; it doesn't really mean anything.'

The result is that every belief representative in the prison has a list of prisoners who have indicated their membership of that belief group and whom they may visit, except non-religious pastoral carers, despite almost a third of prisoners identifying themselves in this way. Contact between non-religious prisoners and non-religious pastoral carers is therefore only possible when the former specifically request to see the latter, but of course this cannot happen when 'they don't know that we exist' (Participant 14, NRPSN member):

'If they want support, they need to put in an application to chaplaincy, and then they need to request you specifically, so they need to know there's someone non-religious there. And if they don't want to speak to someone who's religious, they're not likely to write to chaplaincy unless they've heard of you.' (Participant 3, NRPSN member)

Anglican chaplains are available more often and for longer periods than are representatives of other beliefs, especially non-religious team members, who often feel that they are 'not substantially there' (Participant 3, NRPSN member). Because the work is unpaid, 'the only people really that can do it are people who can afford to do it or retired people' (Participant 9, NRPSN member). The thin spread of volunteers and the limitations on their time bring a degree of precarity to the service, with the result

<sup>6</sup>I would question whether a third of the population are non-religious. I accept that a third might say they're "nil". "Nil" is simply "I'm not declaring what my faith or belief system is"; it doesn't mean that you're non-religious' (Participant 10, then Chaplain-General of Prisons).

that ‘most days there’s no non-religious person there, and [prisoners] just can’t get access to the care’ (Participant 6, NRPSN member).

Several NRPSN members pointed out that they were doing just as much work as sessional chaplains for minority faiths but remained unpaid. They perceived this as exploitative, and a marginalisation of non-religious worldviews and the needs of non-religious prisoners: ‘It is insulting because it’s like, “Well, because this person is Catholic, they are worth being paid, whereas this person is non-religious ...”. We’re not worth paying’ (Participant 9, NRPSN member).

The fact that NRPSN members can only offer a small amount of time also has an impact on ‘how we actually embed ourselves and get ourselves recognised’ (Participant 3, NRPSN member), meaning that members often struggle to develop a visible presence in the institution and be treated as colleagues. While many non-religious pastoral carers found their religious colleagues ‘welcoming’ (Participant 3, NRPSN member), ‘supportive’ (Participant 9, NRPSN member) and ‘totally accepting’ (Participant 14, NRPSN member), some described a culture of conflict, with ‘them on one side and us on the other’ (Participant 4, NRPSN member). The positive impact that the NRPSN can make depends on the extent to which the Head Chaplain and prison management value and facilitate its members, but chaplains cannot always be relied upon to signpost secular or non-Christian services (‘even though I was standing right behind her, she did not mention that there was a non-religious chaplain’ (Participant 4, NRPSN member)) and may even suppress them. For example, Participant 16’s managing chaplain frequently removed posters advertising the availability of non-religious care:

‘The Head Chaplain ... put every obstacle in my way to try and stop it from happening, and was quite abusive, really, and I ended up having to put a complaint of bullying in against him. So, yeah, it was very difficult.’ (Participant 9, NRPSN member)

Pierce (1974) coined the term ‘microaggressions’ to describe the everyday slights and indignities that cumulatively create an atmosphere of hostility towards a particular group. These can occur even when the perpetrator believes their actions to be neutral or benevolent:

‘Even with the people that are quite nice to you, you still get some of those questions. “How can you have morals if you don’t believe in a God?” “How can you comfort somebody at the end of their life, or if they’re bereaved, if you can’t offer any hope?”.’ (Participant 9, NRPSN member)

Originally used in the context of race relations in America, the word ‘microaggressions’ refers here to what Beckford and Gilliat call ‘the many irritations which were insignificant in themselves, but which added up to a serious and long-running injustice’ (Beckford and Gilliat, 1998, p. 84). Some of these were petty indeed. When a non-religious prisoner was unable to attend the funeral of the grandmother who had raised him, Participant 9 helped him mark her passing:

‘I took him to the multi-faith room and gave him some poems to choose from. He asked me to read one and he read one as well, and we played her favourite song and talked about his memories of her, instead of having a pray. We had one of those plastic electric candles to switch on because we’re not allowed candles. You’re only allowed candles in the prison if it’s for holy reasons.’ (Participant 9, NRPSN member)

Between Christian prisoners and chaplains, it is common practice to mark funerals and anniversaries of deaths by lighting a candle, but because the occasion was not ‘holy’, a grieving man had to commemorate the life of a loved one with a battery-operated tea light, cheapening what could have been a poignant moment had he only been religious.

Adding a non-religious pastoral carer to the chaplaincy team depends on there being a trained and accredited NRPSN member locally who is willing to work in the prison, and a prison governor and a

managing chaplain who are willing to admit them. The retention rate is variable (HMP Wormwood Scrubs has four NRPSN members serving one prison, while large parts of the country have no volunteers at all), but generally low. If members are to provide their services for free, they typically find that universities, hospitals and hospices are safer and more welcoming environments in which to do so.

## 6 The coronavirus pandemic

Since the beginning of the pandemic, the number of prisons who are served by a non-religious pastoral carer has fallen from one in five to one in eight. In March 2020, HMPPS responded to the crisis by suspending all volunteering as a safety precaution. The disparate impact of this is obvious: while the representatives of major religious belief groups are usually employed by prison chaplaincies, all non-religious pastoral carers are volunteers. For at least twelve months, not one non-religious prisoner in England and Wales had access to secular pastoral care at the time when it was needed most, while the vast majority of Anglican, Catholic and Muslim prisoners continued to receive in-house support from a like-minded minister, as an employee of the prison.

The extra time spent locked in cells and the increased risk of bereavements (Hunt, 2021) are likely to have added to the mental distress of prisoners, strengthening the case for better pastoral support, but by the time social restrictions were lifted in July 2021, volunteers had been out of their roles for a long time, and some did not wish to return. Many of the prisons that do have a partnership with NRPSN have paused or severely limited their secular care provision, either at the governor's discretion or because volunteers feel vulnerable. At times of crisis, the inequalities in care provision and access to support are writ large.

## 7 Recommendations

Indications of inequality in the Prison Service are particularly troubling, as those primarily affected are the prisoners themselves, who are one of the most vulnerable groups in society and whose well-being has significant implications for overstretched public services and the safety of communities. The disenfranchisement and inequality experienced by minority-faith prisoners that Beckford and Gilliat (1998) uncovered over twenty years ago in prison chaplaincy persist today for prisoners of no faith (and, to a lesser extent, minority faiths). The fact that these inequalities have existed for so long suggests that the management and operation of prison chaplaincy remain unsatisfactory. The importance of effective pastoral care in the criminal justice system puts pressure on HMPPS to do more to support those whom the chaplaincy cannot reach. My research calls for amendments to both legislation and policy, to narrow the gaps between the religious and non-religious, so that all prisoners have equal access to pastoral care.

Religious and non-religious people are treated differently by PSI 05/2016 *Faith and Pastoral Care for Prisoners* (Ministry of Justice, 2016) and this is upheld and justified by outdated provisions in the Prison Act 1952. As the ways in which prisoners of no faith are marginalised range from everyday microaggressions to statutory inequalities, meaningful reform requires changes to chaplaincy practices at an institutional level, changes to prison policy across HMPPS and changes to legislation.

### 7.1 Chaplaincy practices

Chaplaincy services today are, for the most part, provided by and to those with Christian beliefs. This is reinforced in the way that most chaplaincy departments advertise to potential service users and in their recruitment of staff and volunteers. Prison chaplaincies are run by a multifaith team intended to reflect the denominational make-up of the prison population. However, this has so far been understood to mean the denominational make-up of the *religious* prison population. Accredited non-religious pastoral carers do not have the same opportunities to work in prisons as representatives of religious beliefs. With 31 per cent of prisoners registering as being of 'No Religion/Nil' (Ministry of Justice, 2021), a truer proportional composition would require around a third of chaplaincy staff to

be people with non-religious beliefs. This would reduce the religious disincentive experienced by some prisoners, so that every person serving a custodial sentence feels able to access the help that is right for them.

So far, while a small minority of prisons have accepted volunteers, not one prison employs a non-religious pastoral carer. It should be remembered that prison chaplaincy is supported by the state, so it is the tax-paying population that funds these facilities:

‘A lot of it is coming from taxpayers’ money, it’s not all being supplied by churches and mosques, you know, in hospitals or in prisons. ... If I’m paying for that, why can’t I pay for some non-religious support for people that is more in tune with what that area of the population wants?’ (Participant 3, NRPSN member)

Prison pastoral care is a state-funded service when provided by Christians and a voluntary service when provided by the non-religious. Head Chaplains and prison management should change recruitment practices so that non-religious pastoral carers can be appointed on equal terms with their religious counterparts and chaplaincy teams can reflect the communities they serve. The evidence suggests that visible representation of non-religious worldviews would lead to increased engagement from the non-religious. In his study of hospital chaplaincy, Savage (2015) found that after an NHS Trust employed a Muslim chaplain and publicised his availability, the proportion of visits requested by Muslim patients more than trebled. It is likely that the recruitment and advertisement of non-religious pastoral carers would have the same effect:

‘What I’d like to see long term is that we have paid positions for non-religious chaplains ... and that the numbers are proportionate to the amount of prisoners that identify as non-religious, so we can provide a decent service to everyone.’ (Participant 9, NRPSN member)

Though chaplaincy departments aim to serve prisoners of ‘all faiths and none’, much of the language and imagery of the chaplaincy are religious, and especially Anglican, in a way that obstructs this and undermines the welcoming policy. Language can be a powerful tool of inclusion and exclusion, and some terms, such as describing a service as ‘chaplaincy’, can act as barriers to effective communication (Savage, 2019). Pastoral care services convey their aims and nature through words, symbols, spaces, behaviours and other visual cues, all of which can be encouraging or familiar to some and discouraging or alienating to others. A genuine attempt to engage prisoners of minority faith and no faith must start with redesigning the physical space of the department and adopting less religious wording in its labelling and leaflets. This is likely to require abandoning the words ‘chaplain’ and ‘chaplaincy’, widely perceived as inherently Christian and especially Anglican (Humanists UK, 2016). This is inappropriate for a prison population of whom only 14 per cent belong to the Church of England (Ministry of Justice, 2021). Multifaith prison chaplaincy cannot be neutral and inclusive when even the word ‘chaplaincy’ is not neutral and inclusive (Savage, 2019).

## 7.2 Prison policy

The changes outlined above may create more inclusive atmospheres but will not lead to equal treatment alone. For prisoners of no faith to have the same access to pastoral care as their religious counterparts, policy change is needed.

A restrictive (mis)interpretation of the Equality Act 2010 has resulted in prison policy that is unduly narrow and implemented in a way that is incompatible with antidiscrimination legislation. PSI 05/2016 has been carefully drafted to, as far as is possible, create equality between faith groups. It seeks to provide an equal experience for prisoners of minority faiths, but this does not extend to people who are not religious or who have specific secular worldviews like humanism. This is no accident. Research interviewees described campaigning when the PSI was revised in 2016 for the use of the

broader term ‘faith and belief’, to incorporate those with non-religious views and promote parity between prisoners. This suggestion was repeatedly rejected:

‘They reviewed the PSI, and I basically went through it and highlighted everywhere where it talked about faith and just said, “Well, can you just add ‘and belief’ into that sentence?” It came back that they weren’t reviewing the actual PSI, they were reviewing the bit at the end which gives an overview of all the different faiths. But they were reviewing it!’ (Participant 9, NRPSN member)

Following its 2011 and 2016 iterations, the PSI was next due for revision in 2021, although this process was delayed and, at the time of writing (December 2021), had not yet begun. This revision presents an opportunity to formally recognise the inequality that currently exists in service delivery and to publish plans to close gaps in care provision and accessibility for non-religious prisoners. This need not involve a dramatic overhaul; a significant difference could be made by something as simple as replacing the word ‘faith’ with ‘religion or belief’ throughout. To bring the policy in line with section 10 of the Equality Act 2010, it should be explicit that this includes lack of religion or belief.

The PSI sets out a range of desired ‘Outputs’ relating to different aspects of pastoral care. Changing the focus from faith groups to religion or belief groups and recognising that the latter includes those of no religion would alter the interpretation and results of these outputs. For example, it would mean that Output 1, that ‘the chaplaincy provision reflects the faith/denominational requirements of the prison’, would require approximately the same percentage of chaplaincy staff to be of no religion as the prisoners who have registered as being of no religion. Output 2, that ‘where [a prisoner’s] faith is not represented, arrangements are made for them to have access to a Minister of their own faith’, would give all non-religious prisoners the right to non-religious pastoral care and require them to be informed of that right so that they can exercise it. Section 2.2, which advised that ‘prisoners must be treated as being of the faith by which they are registered’, would require prisoners who identify as being of no religion to be considered to be non-religious and not merely ‘floating voters’ (Participant 12, prison chaplain). These opportunities were missed during the last revision and should not be missed in the next.

### 7.3 Legislative reform

These inequalities are deeply rooted in tradition and perpetuated by legislation, much of which now appears outdated and even unsuitable. The Prison Act 1952 provides for a chaplaincy in every prison in England and Wales, run by Anglican clergymen. Unsurprisingly given the time of its drafting and the existence of an established Church, it accords special power and privilege to the Church of England above other Christian denominations and other religions or beliefs. Beckford and Gilliat, mindful of ‘the need to abolish the structural ascendancy of Anglican chaplains’ called for ‘a new Prison Act to ensure that all religions were treated equally’ (Beckford and Gilliat, 1998, pp. 164, 139). Now seventy years old, the Act was designed for a very different prison system in a very different society to the present. Three of its provisions in particular are problematic for our purposes.

Section 7(4) requires that ‘the chaplain and any assistant chaplain shall be a clergyman of the Church of England’. Representatives of other beliefs may be appointed but do not enjoy the same legal status and are not entitled to call themselves chaplains. Subsection 9(2) introduces a gatekeeping measure: ‘the chaplain or assistant chaplain shall not officiate in the prison except under the authority of a licence from the bishop.’ To subject all candidates to approval by the diocese supposes that all appointments will be Anglican and disadvantages those who represent other worldviews. Section 10 (5), discussed above, means that ‘ministers’ do not have the right to visit anyone not listed as being of their belief group, which, because prisoners who indicate that they are of ‘No Religion/Nil’ are not understood as being non-religious, prevents NRPSN members from visiting any prisoners at all.

Subsections 7(4), 9(2) and 10(5) all discriminate, directly or indirectly, against non-religious pastoral carers, which in turn reduces non-religious prisoners’ access to that care. These provisions are

incompatible with modern attitudes towards religious diversity, and even with equality law, premised as they are on protecting Anglicanism as the norm while extending a degree of toleration, at best, to other beliefs (Sandberg, 2011). They should be repealed.

## 8 Conclusion

Comprehensive pastoral care services are a vital part of the criminal justice system, but their provision is inconsistent, inadequate and often religionised. While every prisoner may benefit from the support that is provided by, or accessible through, chaplaincy, the religious nature of this facility can be discouraging to people with non-religious beliefs. Empirical research including the work of Savage (2015; 2019), Humanists UK (2016) and the present study demonstrates that religious services are inappropriate for a large portion of the diverse prison population.

This key finding of this study is that prison chaplaincy operates in conflict with equality legislation, best-practice guidance and basic moral principles about the provision of care. This paper has demonstrated that prison chaplaincies – and, crucially, the secular services and benefits they offer – are less accessible to the non-religious and that the non-religious have far fewer opportunities to access and provide support than people of faith. It submits that people with non-religious beliefs are treated less favourably than religious prisoners and are particularly disadvantaged by universal prison policy, specifically the multifaith chaplaincy intended to serve prisoners of all faiths and none.

To some extent, this marginalisation is built into the constitutional and legal landscape, as an inevitable consequence of having an established Church, but the effect is needlessly compounded by providing universally beneficial services exclusively through a religious facility. Even in the rare cases in which secular pastoral support is available, this is offered as part of rather than an alternative to chaplaincy provision.

Because religion or belief is a protected characteristic under section 1 of the Equality Act 2010 and because this section explicitly covers non-religious belief and lack of religious belief, policies and practices that have a disproportionate negative impact on people of no faith may be discriminatory and therefore unlawful.

The entrenchment of religious people and services in the prison system derives from the idea that nobody is beyond reform, and that everyone deserves care and support in overcoming emotional conflicts and leading healthy lives. If this is so, and few could argue otherwise, then a different approach is needed. So far, obstacles to the introduction of secular pastoral carers have largely come from prison chaplains and governors, who consider the addition to be unnecessary, impractical or undesirable. I end with the words of one interviewee who elegantly summarised the proposed changes and the spirit of this paper:

‘They can move to fully inclusive recruitment, that doesn’t cost any money. They can change the law to make it inclusive, that doesn’t cost any money. They can change the attitude so that they make prison governors aware of the needs among non-religious people, that doesn’t cost any money. It does require a change in attitude.’ (Participant 6, NRPSN member)

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