



# Human Rights Check **UK**

## Call for Evidence

In April/May 2017, the United Kingdom will be examined for the third time by the United Nations on our human rights record under the Universal Periodic Review. Civil society organisations have the opportunity to contribute to the United Kingdom's examination by providing evidence to the UN about the human rights situation on the ground.

Human Rights Check UK is gathering information and evidence from groups across the United Kingdom which will form part of a joint civil society shadow report. You can provide information and evidence in three ways:

1. Complete the form online at: <https://www.bihr.org.uk/hrcheckyoursay>
2. Send the completed form to [submissions@bihr.org.uk](mailto:submissions@bihr.org.uk)
3. Print and send the completed form by post to:

Human Rights Check UK  
c/o British Institute of Human Rights  
School of Law  
Queen Mary University of London  
Mile End Road  
London  
E1 4NS

If you would like this form in another format, please contact us at [submissions@bihr.org.uk](mailto:submissions@bihr.org.uk).



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## 1. What human rights issues are of concern to you and your organisation?

You may want to include information on how the issues came about, when the issues were of concern or whether they are still of concern, and who was affected. You may also want to include information on any obstacles or challenges you and your organisation faced in dealing with these issues.

### **About us**

The British Humanist Association is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. We promote Humanism, support and represent the non-religious, and promote a secular state and equal treatment in law and policy of everyone, regardless of religion or belief. Founded in 1896, we have around 40,000 members and supporters, and over 70 local and special interest affiliates.

We are a human rights-based charity, with our area of expertise being religion or belief. Human rights underpin all of our public affairs work. We are a member of the British Institute of Human Rights' Human Rights Alliance, the Equality and Diversity Forum, the Children's Rights Alliance, and Rights of the Child UK. We are accredited at the UN Human Rights Council and make regular interventions at the thrice-annual sessions in Strasbourg.

### **Summary**

In response to the call for evidence, we raise the following issues:

- a. The current threats to our human rights settlement of the proposed repeal of the Human Rights Act
- b. Religious discrimination in 'faith' school admissions
- c. Religious discrimination in 'faith' school employment
- d. Exclusion of non-religious worldviews from the school curriculum
- e. Requirement for Christian collective worship in schools
- f. The status of Personal, Social, Health, Economics Education (PSHE) and Sex and Relationships Education (SRE) in schools
- g. Religious discrimination in the provision of public services
- h. Religious discrimination in the recruitment of chaplains/pastoral support
- i. Unbalanced broadcasting about religion or belief issues by the BBC and others
- j. The illegality of assisted dying
- k. The inconsistency of marriage laws across the UK
- l. The illegality of abortion in Northern Ireland



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## **a. The current threats to our human rights settlement of the proposed repeal of the Human Rights Act**

We are deeply concerned that the proposed repeal of the Human Rights Act, and its replacement by a British Bill of Rights, may well lead to a weakening of our human rights settlement. The proposed reforms seem entirely motivated by taking rights away from certain individuals, and many of the claims in favour of their removal seem to be fictitious.<sup>1</sup> Worse, some members of the Government wish to go further and pull out of the European Convention on Human Rights entirely.<sup>2</sup> This would remove even more human rights protections, and seriously damage efforts to strengthen human rights globally.

## **b. Religious discrimination in 'faith' school admissions**

In deciding which children to admit, state-funded schools designated with a religious character are able to discriminate against children on the basis of their own or their parents' religion<sup>3</sup>. 16% of places at state schools in England and Wales, and a much higher proportion in Northern Ireland, are subject to discrimination in this way. This violates Article 2 of the UDHR and, similarly, Article 2 of the UNCRC which requires state parties to '*ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status*'.

The ability of 'faith' schools to discriminate on the basis of parental belief and practice also severely limits the rights of young people to be autonomous and hold different beliefs to their parents, as set out in Article 18 of the UDHR, as well as in its preamble, and Article 14 of the UNCRC. In addition, religious selection in schools causes both religious and ethnic segregation, the consequences of which severely impact on the realisation of an education system that '*shall promote understanding, tolerance and friendship among all nations, racial or religious groups*', as articulated in Article 26 of the UDHR. Further, there is significant evidence that religious selection criteria cause significant socio-economic selection of pupils,<sup>4</sup> violating Article 2 of the UNCRC.

<sup>1</sup> E.g. 'Theresa May under fire over deportation cat claim', *BBC News*, 4 October 2011:

<http://www.bbc.co.uk/news/uk-politics-15160326>

<sup>2</sup> 'UK must leave European convention on human rights, says Theresa May', *The Guardian*, 25 April 2011:

<http://www.theguardian.com/politics/2016/apr/25/uk-must-leave-european-convention-on-human-rights-theresa-may-eu-referendum>

<sup>3</sup> Schedule 11(5) Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/schedule/11/paragraph/5>

<sup>4</sup> For the correlation between religious selection and socio-economic selection in England, see e.g.

- 'Groundbreaking new research maps the segregating impact of faith school admissions', Fair Admissions Campaign, 2013: <http://fairadmissions.org.uk/groundbreaking-new-research-maps-the-segregating-impact-of-faith-school-admissions/> and <http://fairadmissions.org.uk/map/>



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With respect to Northern Ireland, the 2016 report of the UN Committee on the Rights of the Child said: '*In Northern Ireland segregation of schools by religion persists. **The State party, in Northern Ireland, actively promote a fully integrated education system and carefully monitor the provision of shared education, with the participation of children, in order to ensure that it facilitates social integration***'.<sup>5</sup>

## c. Religious discrimination in 'faith' school employment

The European Employment Equality Directive prohibits discrimination on the basis of religion or belief in employment, except where there can be said to be a genuine, legitimate and justified occupational requirement (GOR) that the post-holder shares the particular religion or belief in question.<sup>6</sup> The Directive is implemented by the Equality Act 2010,<sup>7</sup> except that there is an exemption that unilaterally allows religious schools to discriminate

- Allen, Rebecca and West, Anne, *Religious schools in London: school admissions, religious composition and selectivity*, 2009: <http://eprints.lse.ac.uk/25635/>
- Allen, Rebecca and West, Anne, *Why do faith secondary schools have advantaged intakes?: the relative importance of neighbourhood characteristics, social background and religious identification amongst parents*, 2011: <http://eprints.lse.ac.uk/32192/>
- Harris, Richard, *Geographies of transition and the separation of lower and higher attaining pupils in the move from primary to secondary school in London*, 2012: <http://onlinelibrary.wiley.com/doi/10.1111/j.1475-5661.2012.519.x/abstract>
- Shepherd, Jessica and Rogers, Simon, 'Church schools shun poorest pupils', *The Guardian*, 2012: <http://www.theguardian.com/education/2012/mar/05/church-schools-shun-poorest-pupils>

For research showing that church attendance is boosted by religious selection, see e.g.

- 'New Church research shows growth is strongest where there are oversubscribed schools', *Fair Admissions Campaign*, 2014: <http://fairadmissions.org.uk/new-church-research-shows-growth-is-strongest-where-there-are-oversubscribed-schools/>
- 'Church attendance massively boosted by control of state-funded schools', BHA, 2013: <https://humanism.org.uk/2013/12/18/church-attendance-massively-boosted-control-state-funded-schools/>

For research showing that any difference in performance between religiously selective and other schools is due to differences in socio-economic make-ups, see e.g. Gibbons, Stephen and Silva, Olmo, *Faith primary schools: better schools or better pupils?*, 2007: <http://cep.lse.ac.uk/pubs/download/cp228.pdf>

For research on ethnic segregation, see e.g. 'Religious schools most racially segregated state schools, new findings show', BHA, 2013: <https://humanism.org.uk/2013/10/18/religious-schools-racially-segregated-state-schools-new-findings-show/>

<sup>5</sup> [https://humanism.org.uk/wp-content/uploads/CRC\\_C\\_GBR\\_CO\\_5\\_24195\\_E.docx](https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx)

<sup>6</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:en:PDF>

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/2010/15/schedule/9>



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regardless of whether a GOR applies.<sup>8</sup> This combined with education laws<sup>9</sup> means that religiously designated schools can require every single teacher to share the faith of the school, and choose which to promote, remunerate, and dismiss, on that basis. This seems problematic not only under the Directive but also article 23 (taken with article 2) of the Universal Declaration of Human Rights.

In 2010 the BHA complained to the European Commission about the UK breaking EU law in this area.<sup>10</sup> In 2012 the European Commission took the matter up and in 2013 questioned the UK Government on the matter. The UK Government argued that no laws were being breached because in any domestic case that might occur, the courts would correctly interpret international legislation as overriding domestic – even though ECJ case law shows this is an unacceptably lax approach, and the Scottish Government cited a case in which this did not in fact happen.

In late 2014 the Commission decided to close the case, citing a lack of examples of the law being broken.<sup>11</sup> However in early 2015 the Commission re-opened the case after we pointed out it did already have examples, and provided more.<sup>12</sup> But then in late 2015 it closed the case again, this time failing to cite any reasons for doing so. The matter appears to us to be politically motivated, and we are concerned that if the UK withdraws from the EU, then there will be no compulsion from European law to end this discrimination against teaching staff.

It's worth noting that Northern Ireland, uniquely, has in fact got an exemption written into the Employment Directive itself, with respect to teachers and the police service. There is significant political support for ending the employment exemption amongst Northern Irish political parties, although not yet action.<sup>13</sup> There is no similar consensus however in the rest of the UK, in spite of the lack of any similar exemption.

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<sup>8</sup> <http://www.legislation.gov.uk/ukpga/2010/15/schedule/22>

<sup>9</sup> E.g. <http://www.legislation.gov.uk/ukpga/1998/31/section/60> for England and Wales; similar laws exist in Scotland and Northern Ireland, albeit in the latter there is an exemption written into the European Directive itself that permits ongoing discrimination.

<sup>10</sup> 'European Commission to investigate whether 'faith' schools break European employment laws', BHA, 24 July 2012: <https://humanism.org.uk/2012/07/24/news-1084/>

<sup>11</sup> 'European Commission rejects BHA complaint on UK 'faith' school employment laws in failure of justice and transparency', BHA, 20 October 2014: <https://humanism.org.uk/2014/10/20/european-commission-rejects-bha-complaint-uk-faith-school-employment-laws-failure-justice-transparency/>

<sup>12</sup> 'European Commission re-opens investigation into whether UK 'faith' school laws break European employment laws as UK Government shifts position', BHA, 20 February 2015: <https://humanism.org.uk/2015/02/20/european-commission-re-opens-investigation-whether-uk-faith-school-laws-break-european-employment-laws-uk-government-shifts-position/>

<sup>13</sup> *What do the parties say? Comparing key humanist issues to party positions in the 2016 Northern Ireland Assembly elections*, BHA, 2016: <https://humanism.org.uk/wp-content/uploads/2016-Northern-Ireland-Humanists-election-policy-table.pdf>



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## d. Exclusion of non-religious worldviews from the school curriculum

Subject content for religious education largely excludes non-religious worldviews. In England at GCSE level, the subject content specifies that pupils must systematically study two religions and annexes set out detailed content for each of the principal religions. Although including a few token references to Humanism, the revised content – in defiance of almost 90% of respondents to a public consultation<sup>14</sup> – does not allow students to systematically study a non-religious worldview alongside a religion, and excludes an annex on Humanism in spite of one having been produced at the DfE's request. This ignores the beliefs of young people (surveys suggest 31-69% are not religious<sup>15</sup>) and is not in keeping with Article 13 of the UNCRC which guarantees the right of the child 'to seek, receive and impart information and ideas of all kinds'.<sup>16</sup> The exclusion also falls foul of Articles 18 and 19 of the UDHR, and the Human Rights Act 1998, which together with case law demands that references in law to religion be read as inclusive of non-religious worldviews.<sup>17</sup>

In 2015, three parents initiated a judicial review the new England GCSE in Religious Studies, arguing that it permitted and encouraged insufficient inclusion of non-religious worldviews across RE as a whole, and was therefore in breach of article 2, protocol 1 of the European Convention on Human Rights, under which it had been established that religious education

<sup>14</sup> Religious Studies GCSE subject content:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/403357/GCSE\\_RS\\_final\\_120215.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403357/GCSE_RS_final_120215.pdf)

Religious Studies AS and A level subject content:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/400965/Religious\\_Studies\\_A\\_S\\_and\\_A\\_level\\_subject\\_content.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400965/Religious_Studies_A_S_and_A_level_subject_content.pdf)

*Reformed GCSE and A level subject content: Government consultation response*, February 2015:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/403347/Reformed\\_GCSE\\_and\\_A\\_level\\_subject\\_content\\_Government\\_response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403347/Reformed_GCSE_and_A_level_subject_content_Government_response.pdf)

'Government rejects consensus of subject experts, public, and religious leaders, marginalises Humanism in GCSE and A levels', BHA, 2015: <https://humanism.org.uk/2015/02/12/government-rejects-consensus-subject-experts-public-religious-leaders-marginalises-humanism-gcse-levels/>

<sup>15</sup> The 2011 Census found 31% of 0-19 year olds having no religion, with a further 8% not stated. The 2013 *British Social Attitudes Survey* records 69% of 15-24 year olds as not belonging to any religion: see the British Social Attitudes Information System, with cross-tabs by age:

[http://www.britisocat.com/BodyTwoCol\\_rpt.aspx?control=CCESDMarginals&MapID=RELIGION&SeriesID=12](http://www.britisocat.com/BodyTwoCol_rpt.aspx?control=CCESDMarginals&MapID=RELIGION&SeriesID=12)

<sup>16</sup> <http://www.unicef.org/gambia/UNCRC.pdf>

<sup>17</sup> See section 3. Such inclusion was also specifically called for by the UN Special Rapporteur on Freedom of Religion or Belief, in her last country report into the UK:

<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Visits.aspx>

Nowadays it is commonplace for non-religious worldviews to be studied in detail in RE, and the new RS content is out of step with the key stage 1-3 curriculum framework and with the consensus of subject professionals. For more on why Humanism is included in RE, see

<http://humanismforschools.org.uk/guidance/why-humanism-is-included-in-religious-education-re/>



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outside of 'faith' schools has to be 'pluralistic'. The High Court agreed,<sup>18</sup> but unfortunately this merely prompted the Government to produce new guidance on the matter that is even more misleading than its original claim about the GCSE.<sup>19</sup> Coupled with the fact that most 'agreed syllabuses' set by local authorities for teaching in schools are also highly exclusory, it seems inevitable that further court action will be required on this matter.

## e. Requirement for Christian collective worship in schools

State schools are required to hold a daily act of collective worship in England, Wales, and Northern Ireland, and less frequently in Scotland. In English and Welsh schools with no religious character, this must be 'wholly or mainly of a broadly Christian character'.<sup>20</sup> Whilst schools can seek consent to change from Christian worship to another religion, they cannot determine not to have worship at all. Such worship excludes the non-religious, leading to feelings of social exclusion and the possibility of young people who are excused from worship missing out on other aspects of school life such as morning announcements. This is not in keeping with Article 2 of the UNCRC or article 18 of the UDHR.

By only allowing children to opt themselves out of collective worship from the age of 16, UK law fails to enable children to fully realise their 'Gillick competence' rights, as established in European case law and reflected in Articles 12 and 14 of the UNCRC. This view has been repeatedly endorsed by the Joint Committee on Human Rights, for example in reports in 2006<sup>21</sup>, 2008<sup>22</sup> and 2010.<sup>23</sup> And the 2016 report of the UN Committee on the Rights of the Child said:

*'The Committee is concerned that pupils are required by law to take part in a daily religious worship which is "wholly or mainly of a broadly Christian character" in publicly funded schools in England and Wales, and that children do not have the right to withdraw from such worship without parental permission before entering the sixth form. In Northern Ireland and Scotland, children do not have right to withdraw from collective worship without parental*

<sup>18</sup> 'Judge rules Government broke the law in excluding Humanism from school curriculum', BHA, 25 November 2015: <https://humanism.org.uk/2015/11/25/judge-rules-government-broke-the-law-in-excluding-humanism-from-school-curriculum/>

<sup>19</sup> 'High Court ruling on Religious Education: BHA responds to 'misleading' and unfair criticism by Government', BHA, 31 May 2016: <https://humanism.org.uk/2016/05/31/high-court-ruling-on-religious-education-bha-responds-to-misleading-and-unfair-criticism-by-government/>

<sup>20</sup> <http://www.legislation.gov.uk/ukpga/1998/31/schedule/20>

<sup>21</sup> *Legislative Scrutiny: Thirteenth Progress Report: Twenty-fifth Report of Session 2005-06*, Joint Committee on Human Rights, 2006, paragraphs 2.1-2.6: <http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/241.pdf>

<sup>22</sup> *Legislative Scrutiny: Education and Skills Bill: Nineteenth Report of Session 2007-08*, 2008, paragraphs 1.40-1.45: <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/107/107.pdf>

<sup>23</sup> *Legislative Scrutiny: Children, Schools and Families Bill; other Bills: Eighth Report of Session 2009-10*, Joint Committee on Human Rights, 2010, paragraphs 1.30-1.40: <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>



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permission. ***The Committee recommends that the State party repeal legal provisions for compulsory attendance at collective worship in publicly funded schools and ensure that children can independently exercise the right to withdraw from religious worship at school.***<sup>24</sup>

## **f. The status of Personal, Social, Health, Economics Education (PSHE) and Sex and Relationships Education (SRE) in schools**

There are references throughout the UNCRC to the need to ensure children's health and well-being. All the best evidence shows that providing young people with comprehensive, age-appropriate PSHE (including SRE) leads to the best outcomes in terms of health, wellbeing, consent, safe sex, preventing abortions, improving attitudes to women, and tackling homophobic bullying.<sup>25</sup> (The subjects of PSHE and SRE are known by different names across the UK. In Wales they are called Personal and Social Education and SRE. In Northern Ireland SRE is referred to as Relationships and Sexuality Education. And in Scotland the subjects are called Health and Wellbeing Education and Relationships, Sexual Health and Parenthood Education.)

The last report by the UN Committee on the Rights of the Child into the UK said '*Relationships and sexuality education is not mandatory in all schools, its contents and quality varies depending on the school, and LGBT children do not have access to accurate information on their sexuality. The Committee recommends that the State party ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools, including academies, special schools and youth detention centres, in all areas of the State party. Such education should provide age-appropriate information on: confidential sexual and reproductive health-care services; contraceptives; prevention of sexual abuse or exploitation, including sexual bullying; available support in cases of such abuse and exploitation; and sexuality, including that of LGBT children.*<sup>26</sup>

<sup>24</sup> [https://humanism.org.uk/wp-content/uploads/CRC\\_C\\_GBR\\_CO\\_5\\_24195\\_E.docx](https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx)

<sup>25</sup> SRE – the evidence, Sex Education Forum, 2015: <http://www.sexeducationforum.org.uk/media/28306/SRE-the-evidence-March-2015.pdf>. See also *International Technical Guidance on Sexuality Education: An evidence-informed approach for schools, teachers and health educators*, UNESCO, 2009: <http://unesdoc.unesco.org/images/0018/001832/183281e.pdf>. Surveys also consistently show that SRE is what parents want – see e.g. 'Parents support sex and relationships education at primary school', Sex Education Forum, 2014: <http://www.sexeducationforum.org.uk/policy-campaigns/parents-want-sre.aspx> – and what young people want – see e.g. *Heads or tails? What young people are telling us about SRE*, Sex Education Forum, 2016: <http://www.sexeducationforum.org.uk/media/34250/Head-or-tails-SRE-2016.pdf>

<sup>26</sup> [https://humanism.org.uk/wp-content/uploads/CRC\\_C\\_GBR\\_CO\\_5\\_24195\\_E.docx](https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx)





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And in 2009 the Joint Committee on Human Rights regarded proposals for mandatory SRE as a 'significant human rights enhancing measure'.<sup>27</sup> Despite this, maintained schools are required to teach only about anatomy, puberty and the biological aspects of reproduction as part of national curriculum science, and about STIs, HIV and AIDS as part of sex education. Maintained primary schools do not have to teach a separate programme of SRE at all. Academies (including Free Schools) are not required to teach any of this.

## **g. Religious discrimination in the provision of public services**

Exemptions written into the Equality Act 2010 allow religious groups to discriminate in terms of whom they employ, when a GOR can be demonstrated, and against service users.<sup>28</sup> This is *not necessarily* objectionable in itself. But it is particularly concerning when it comes to these groups being contracted by the state to provide public services. Here the exemptions still apply – while the state, if it were providing the services directly, would not be able to discriminate due to the Human Rights Act, the Act does not apply to organisations to which provision of services has been contracted.

As public services become increasingly contracted out, this problem continues to grow. For example, in 2011 the national contract for providing services to trafficked women was given to the evangelical Salvation Army, which regards homosexuality as 'self evidently abnormal', and says that lesbian and gay people should be celibate.<sup>29</sup> In the same month, a local council awarded its children's counselling contract to the anti-LGBT Catholic Children's Society.<sup>30</sup> In 2015, research by the Equality and Human Rights Commission, in its review of the place of religion and belief in the workplace, found many complaining about 'unwelcome "preaching" or proselytising, and the expression of views that were hurtful or derogatory towards other faiths and/or towards lesbian, gay, bisexual and transgender (LGBT) people' – including in public service provision.<sup>31</sup>

Recent unpublished research by the BHA into who holds local contracts with local authorities to provide housing for female victims of domestic violence or abuse has revealed that 15 such contracts, or 6%, are now held by religious groups. The BHA will be

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<sup>27</sup> *Legislative Scrutiny: Children, Schools and Families Bill; other Bills Eighth Report of Session 2009-10*, Joint Committee on Human Rights, 2010:

<http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>

<sup>28</sup> See e.g. <https://humanism.org.uk/campaigns/human-rights-and-equality/strengthening-human-rights-and-equality/> for an explanation.

<sup>29</sup> 'Control of vital service for trafficked women handed to evangelical religious group', BHA, 12 April 2011:

<https://humanism.org.uk/2011/04/12/news-787/>

<sup>30</sup> 'Children's counselling service handed to anti-gay Catholic group', BHA, 15 April 2011:

<https://humanism.org.uk/2011/04/15/news-790/>

<sup>31</sup> 'Equality and Human Rights Commission publishes findings of call for evidence on religion, belief and discrimination', BHA, 12 March 2015: <https://humanism.org.uk/2015/03/12/equality-and-human-rights-commission-publishes-findings-of-call-for-evidence-on-religion-belief-and-discrimination/>



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conducting further research into how these groups conduct their service provision, which is particularly sensitive with this vulnerable section of society.

## **h. Religious discrimination in the recruitment of chaplains/pastoral support**

About £20 million a year is spent by NHS Trusts on the salaries of chaplains, who are overwhelmingly Christian (and overwhelmingly Protestant at that). Further money is spent by prisons and the armed forces on similar roles.

As previously discussed under c., the European Employment Equality Directive prohibits discrimination on the basis of religion or belief in employment, except where there can be said to be a genuine, legitimate and justified occupational requirement (GOR) that the post-holder shares the particular religion or belief in question.<sup>32</sup>

However, unpublished research conducted by the BHA has found that the vast majority of advertisements for chaplain jobs in NHS hospitals (paid for by the NHS Trusts) require the post-holder to be an ordained Anglican or member of the Free Churches, and almost all require the post-holder to be religious. This is in spite of the fact that it is typically the case that almost all existing paid chaplains are Anglicans or members of the Free Churches.

There is also evidence to show that the overwhelming majority of religious and pastoral support provided by Christian chaplains is to Christians. In other words, Christian chaplains cannot meet the needs of the non-religious.<sup>33</sup>

As a result, earlier this year the BHA threatened to judicially review one such NHS Trust, when recruiting such a restricted post, on the grounds that it had failed to discharge the public sector equality duty (including failing to carry out an equality impact assessment); breached article 9 of the European Convention on Human Rights; and failed to take proper account of the relevant NHS England guidelines, which are rightly inclusive on this matter.<sup>34</sup> The result was that the Trust suspended the recruitment process and is now carrying out an EIA.

A further threat to another Trust was similarly successful. Then at the end of May we issued such threats to seven further Trusts – all those that were then advertising in a discriminatory way. This prompted NHS England and the Chaplaincy Leadership Forum to

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<sup>32</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:en:PDF>

<sup>33</sup> Savage, Dr David, "All faiths and none"? An Audit of Chaplains' Visits, "All faiths and none"? *Health and Social Care Chaplaincy*, Vol 3, No 1 (2015): <https://journals.equinoxpub.com/index.php/HSCC/article/view/26550>

<sup>34</sup> *NHS Chaplaincy Guidelines 2015 Promoting Excellence in Pastoral, Spiritual & Religious Care*, NHS England: <https://www.england.nhs.uk/wp-content/uploads/2015/03/nhs-chaplaincy-guidelines-2015.pdf>



commit to sorting the issue out once and for all. The bodies are currently producing guidance for all Trusts on the matter, and have committed to ensuring no more illegal adverts run in the six weeks during which they do so.

## **i. Unbalanced broadcasting about religion or belief issues by the BBC and others**

Broadcasters, in particular the BBC, have long failed to produce any programming about non-religious worldviews such as Humanism, in contrast to the many hours of programmes that are explicitly religious, a high proportion of which consist of Christians preaching Christianity to their own followers. No programme has ever been broadcast on a national network in which humanists have been allowed directly to address humanists on Humanism, with the possible exceptions of two 1955 broadcasts by humanist Margaret Knight on morals without religion<sup>35</sup> and a series of six 15-minute interviews with humanists in 1965.

*Thought for the Day* in particular constitutes a slot, in the middle of the otherwise religiously neutral current affairs programme *Today*, reserved exclusively for religious leaders to reflect on the events of the day, and to which the non-religious are not allowed to contribute. By convention, such individuals do not attack other religions, although they have no such qualms about attacking the non-religious. The implication is that religious leaders have some unique moral contribution to make, which is plainly not the case but at any rate is not impartial as the state is required to be.

We would question whether *Thought for the Day* and the BBC's output as a whole complies with the public sector equality duty.

## **j. The illegality of assisted dying**

Assisted dying for terminally ill and incurably suffering individuals is currently illegal across the UK. In 2014 a case was brought to the UK Supreme Court by the late Tony Nicklinson, his wife Jane, and Paul Lamb, arguing that Tony and Paul's locked-in syndrome and the consequent suffering meant that their right to private life under ECHR was severely disrupted. After Tony died, Jane argued that her right to family life had been disrupted by the fact that Tony had been unable to secure an assisted death.

In an unusual decision, the Supreme Court ruled that it might be willing to consider making a declaration of incompatibility. But given the significant high-profile public ethical implications at play, it would first look to Parliament to resolve the legal issues at hand.

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<sup>35</sup> <https://humanism.org.uk/humanism/humanist-tradition/20century/margaret-knight>



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Parliament was, at the time, considering a bill that would legalise assisted dying for the terminally ill (but not incurably suffering).<sup>36</sup>

However, in September 2015 MPs voted overwhelmingly against any such legalisation.<sup>37</sup> This means that the issue must now return to the courts to resolve. As of writing, no such case has commenced.

## **k. The inconsistency of marriage laws across the UK**

Same-sex marriages are now legal across England, Wales, and Scotland, and humanist marriages have since 2005 been legal in Scotland – where they are widely believed to have overtaken Church of Scotland to become the most popular form of belief-based marriage.<sup>38</sup>

But in Northern Ireland, same-sex marriages are not legal, because in spite of most MLAs voting in favour of legalisation late last year, the DUP used a 'petition of concern' to block it.<sup>39</sup> And humanist marriages are not legal in England, Wales, and Northern Ireland.

While the UK Government gave itself the power to extend legal recognition in England and Wales in a section of the Same-Sex Marriage Act, and committed itself to consulting and deciding on whether to execute that power, it has instead repeatedly deferred making a final decision. In December 2014, after the Government's consultation on the matter found 95% in favour of such recognition, it instead chose to refer the matter to the Law Commission. In December 2015 the Law Commission reported that it was indeed unfair that religious groups can marry people but humanists cannot.<sup>40</sup> But the Government has yet to make a decision on whether to act on that finding.

Such inconsistencies in marriage law across the UK are questionable, as the state is granting rights to some citizens and not others. There are also questions with respect to religion or belief discrimination with respect to humanist marriages in particular (article 9.2 taken with article 14).

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<sup>36</sup> 'Assisted dying appeals supported by the BHA dismissed by Supreme Court, Parliament urged to review law', BHA, 25 June 2015: <https://humanism.org.uk/2014/06/25/assisted-dying-appeals-supported-bha-dismissed-supreme-court-parliament-urged-review-law/>

<sup>37</sup> 'With MPs voting against assisted dying, the fight must now turn back to the courts', BHA, 11 September 2015: <https://humanism.org.uk/2015/09/11/with-mps-voting-against-assisted-dying-the-fight-must-now-turn-back-to-the-courts/>

<sup>38</sup> 'On Scotland's humanist wedding anniversary, humanists call on Michael Gove to allow humanist marriages in England and Wales', BHA, 18 June 2016: <https://humanism.org.uk/2015/06/18/on-scotlands-humanist-wedding-anniversary-humanists-call-on-michael-gove-to-allow-humanist-marriages-in-england-and-wales/>

<sup>39</sup> 'Same-sex marriage: Proposal wins assembly majority but fails over DUP block', *BBC News*, 2 November 2015: <http://www.bbc.co.uk/news/uk-northern-ireland-politics-34692546>

<sup>40</sup> <http://www.lawcom.gov.uk/project/marriage-law/>



## I. The illegality of abortion in Northern Ireland

Currently abortion is legal in Northern Ireland only where there is risk to the mother's life (the Infant Life (Preservation) Act 1929) or where there is serious risk to the mother's physical or mental health (case law known as the 1938 Bourne judgment). There are several ongoing legal issues related to this.

First, and most significantly, last year the Northern Ireland High Court ruled that women's ECHR article 8 rights are infringed by the fact that abortion is not legal in the cases of rape, incest, and fatal foetal abnormality.<sup>41</sup> The Court issued a declaration of incompatibility, turning the matter over to the Northern Ireland Assembly to resolve. However, in February the Assembly voted down amendments that sought to legalise abortion in these three cases.<sup>42</sup> If such behaviour were to continue, this might lead to a constitutional crisis, as it ultimately falls to Westminster, and not devolved administrations, to ensure that domestic law is compatible with the ECHR. Westminster has not yet expressed a view on this situation.

Second, there is a case about to go to the UK Supreme Court over the fact that women from Northern Ireland are charged around £900 by the NHS in England (and Wales and Scotland) for abortion services (except when the services are needed due to a life-threatening emergency), in spite of the fact that such services are free for those from elsewhere in the UK. This challenge is also being brought under articles 8/14 ECHR (due to the unjustified financial barriers to obtaining an abortion).

Finally, there are ongoing cases where women are being prosecuted for taking, or supplying, abortion pills.<sup>43</sup> This is in spite of the fact that the UN Working Group on the issue of discrimination against women in law and in practice said in April that 'States should allow women to terminate a pregnancy on request during the first trimester or later in the specific cases listed above'.<sup>44</sup>

And the last report by the UN Committee on the Rights of the Child into the UK said '*In Northern Ireland, abortion is illegal in all cases except where continuance of the pregnancy*

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<sup>41</sup> 'High Court rules Northern Ireland's abortion laws breach women's human rights', BHA, 30 November 2015: <https://humanism.org.uk/2015/11/30/high-court-rules-northern-irelands-abortion-laws-breach-womens-human-rights/>

<sup>42</sup> 'Northern Ireland fails to uphold women's rights while new campaign seeks to strike abortion from criminal law', BHA, 12 February 2016: <https://humanism.org.uk/2016/02/12/northern-ireland-fails-to-uphold-womens-rights-while-new-campaign-seeks-to-strike-abortion-from-criminal-law/>

<sup>43</sup> 'Second abortion pills case adjourned as defence challenges prosecution of accused mother', *The Irish News*, 28 April 2016: <http://www.irishnews.com/news/northernirelandnews/2016/04/28/news/second-abortion-pills-case-adjourned-as-defence-challenges-prosecution-501140/>

<sup>44</sup> *Report of the Working Group on the issue of discrimination against women in law and in practice*, 8 April 2016: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/32/44](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/44)



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*threatens the life of the mother, and is sanctioned with life imprisonment. The Committee recommends that the State party decriminalize abortion in Northern Ireland in all circumstances and review its legislation with a view to ensuring girls' access to safe abortion and post-abortion care services. The views of the child should always be heard and respected in abortion decisions.*<sup>45</sup> Abortion is, in fact, criminalised across the UK, with Britain simply having broader exceptions to criminal law than Northern Ireland, but women are still being sent to prison across the UK for having unlawful abortions.

## 2. What steps have been taken since to improve the situation?

### a. The current threats to our human rights settlement of the proposed repeal of the Human Rights Act

None. The UK Government is due to consult on the proposals.

### b. Religious discrimination in 'faith' school admissions

None in England, Scotland, and Wales. In England and Wales, in 2007 the Labour Government required all new Academies (but not new maintained schools) to admit at least 50% of pupils without reference to faith. In 2010 the Coalition Government extended this to newly established Academies, known as Free Schools. But new academies are only a tiny proportion of all schools. And in fact the Conservative Government is currently proposing to ban civil society groups from challenging schools' admissions policies, where they break the School Admissions Code, after the BHA was able to use such objections to successfully highlight serious widespread Code breaches by religiously selective schools.<sup>46</sup> A consultation is due.

There is a general political consensus in Northern Ireland on the need to change but little movement to putting it into practice.

### c. Religious discrimination in 'faith' school employment

None in England, Scotland, and Wales. The Government resisted our complaint to the European Commission, albeit while acknowledging that exemptions under European law are narrower than domestic legislation. If the UK pulls out of the EU, then there will no longer be EU law to force the courts into such narrower interpretations.

<sup>45</sup> [https://humanism.org.uk/wp-content/uploads/CRC\\_C\\_GBR\\_CO\\_5\\_24195\\_E.docx](https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx)

<sup>46</sup> 'Government moves to ban organisations from exposing law-breaking schools unfairly restricting access to children and parents', BHA, 25 January 2016: <https://humanism.org.uk/2016/01/25/government-moves-to-ban-organisations-from-exposing-law-breaking-schools-unfairly-restricting-access-to-children-and-parents/>



Again, there is a general political consensus in Northern Ireland on the need to change but little movement to putting it into practice.

#### **d. Exclusion of non-religious worldviews from the school curriculum**

None in England, Scotland, and Northern Ireland. The UK Government is actively briefing against last year's High Court ruling, and any notion that non-religious worldviews need to be taught in depth.<sup>47</sup>

In Wales, the Government is considering replacing RE with a new subject called Religion, Philosophy and Ethics. This could potentially lead to further inclusion of non-religious worldviews in the curriculum there.

#### **e. Requirement for Christian collective worship in schools**

None. The UK, Scottish, and Northern Irish Governments are not proposing to reform the law around Collective Worship.

#### **f. The status of Personal, Social, Health, Economics Education (PSHE) and Sex and Relationships Education (SRE) in schools**

None. No proposals to put PSHE and SRE (or their equivalents elsewhere in the UK) on a comprehensive statutory footing. The UK Government recently decided against such a move for English schools in response to such a recommendation made by, among others, the House of Commons Education Select Committee.

#### **g. Religious discrimination in the provision of public services**

None. Instead further services are being contracted out by the UK Government and local authorities to religious groups.

#### **h. Religious discrimination in the recruitment of chaplains/pastoral support**

The 2015 NHS England Chaplaincy Guidelines for the first time recognised non-religious pastoral support equally to religious chaplaincy. NHS England and the Chaplaincy Leadership Group are currently producing guidelines for NHS Trusts in England when advertising for new chaplains or pastoral carers, with a view to ensuring all such adverts comply with the Equality Act 2010. Similar progress is needed elsewhere in the UK.

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<sup>47</sup> 'High Court ruling on Religious Education: BHA responds to 'misleading' and unfair criticism by Government', BHA, 31 May 2016: <https://humanism.org.uk/2016/05/31/high-court-ruling-on-religious-education-bha-responds-to-misleading-and-unfair-criticism-by-government/>



## **i. Unbalanced broadcasting about religion or belief issues by the BBC and others**

None. The BBC has repeatedly resisted calls for equitable broadcasting about non-religious worldviews, or for inclusion of the non-religious in *Thought for the Day*.

## **j. The illegality of assisted dying**

None. The matter is considered a conscience issue in Parliament where both Houses have voted against legalisation. A further legal case is therefore required to clarify the law.

## **k. The inconsistency of marriage laws across the UK**

There are fresh proposals in Northern Ireland to legalise same-sex marriage there, although indications are that the DUP will again block them.

The UK Government is still due to respond to the Law Commission's report on marriage law and decide whether to legalise humanist marriage in England and Wales.

## **l. The illegality of abortion in Northern Ireland**

Apart from the aforementioned court cases, in March the Northern Ireland Executive published new guidelines on abortion, but these failed to take into account the recent High Court ruling on rape, incest, and fatal foetal abnormality.<sup>48</sup>

## 3. What do you think the government should be doing on this issue?

This includes the UK government, the Scottish and Welsh government if relevant, and any other public bodies such as local authorities or the police.

## **a. The current threats to our human rights settlement of the proposed repeal of the Human Rights Act**

Work to strengthen, not weaken, our human rights settlement, for example by not repealing the Human Rights Act and instead ending loopholes such as the contracting out of public services.

## **b. Religious discrimination in 'faith' school admissions**

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<sup>48</sup> 'New guidelines on abortion released by the Northern Ireland Executive', BHA, 29 March 2016: <https://humanism.org.uk/2016/03/29/new-guidelines-on-abortion-released-by-the-northern-ireland-executive/>





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Bring about an end to religious discrimination in school admissions, through ending the exemptions in the Equality Act 2010.

## **c. Religious discrimination in 'faith' school employment**

Bring about an end to religious discrimination in school employment, except where there can be said to be a genuine occupational requirement, by repealing the exemption for 'faith' schools from GOR laws found in the Equality Act 2010.

## **d. Exclusion of non-religious worldviews from the school curriculum**

Work to include non-religious worldviews equally in the school curriculum to each of the principal religions. In England and Wales, an amendment to section 375 of the Education Act 1996 would best serve to make this clear.

## **e. Requirement for Christian collective worship in schools**

Repeal the law requiring collective worship in schools, and amend the Equality Act 2010 to end the exemptions that permit such worship.

## **f. The status of Personal, Social, Health, Economics Education (PSHE) and Sex and Relationships Education (SRE) in schools**

Introduce new law to put full and comprehensive high-quality PSHE and SRE (and their equivalents across the UK) on a statutory footing.

## **g. Religious discrimination in the provision of public services**

Extend the Human Rights Act 1998 to any group providing public services under contract to a public authority.

## **h. Religious discrimination in the recruitment of chaplains/pastoral support**

Issue new guidance clarifying when it is/is not appropriate to use GORs in the recruitment of chaplaincy/pastoral carer posts.

## **i. Unbalanced broadcasting about religion or belief issues by the BBC and others**

Allow non-religious contributors to *Thought for the Day* and produce comparable content about non-religious worldviews in proportion to the amount of programming about religions.



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## **j. The illegality of assisted dying**

Legalise voluntary assisted dying for the terminally ill and incurably suffering.

## **k. The inconsistency of marriage laws across the UK**

Legalise same-sex marriage in Northern Ireland and humanist marriage in England, Wales, and Northern Ireland.

## **l. The illegality of abortion in Northern Ireland**

Legalise abortion in Northern Ireland and in fact decriminalise abortion across the UK.

4. If you could tell the government one thing about human rights, what would it be?

To recognise the need for equal inclusion for religious and non-religious worldviews in the school curriculum, and act accordingly.

## 5. Your Details

Your Name: Richy Thompson

Your Organisation: British Humanist Association

Contact E-mail Address: [richy@humanism.org.uk](mailto:richy@humanism.org.uk)

Please check the boxes representing the geographical area which your organisations works in:

England   
Scotland   
Wales   
All of Great Britain

If acting on behalf of an organisation or organised group please check the box to confirm that you have the necessary authority to submit this form.

X