



CRAE State of Children's Rights 2016: Evidence from the British Humanist Association

18 July 2016

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 30,000 members and supporters, and over 70 local and special interest affiliates.

The BHA has a long history of work in education, children's rights and equality, with expertise in the 'religion or belief' strand. We have been involved in policy development around the school curriculum for over 60 years. We also provide materials and advice to parents, governors, students, teachers and academics, for example through <http://www.understandinghumanism.org.uk> and our school volunteers programme. We have made detailed responses to all recent reviews of the school curriculum, and submit memoranda of evidence to parliamentary select committees on a range of education issues.

The BHA is an active member of many organisations working in education, including the Religious Education Council for England and Wales (REC), National Children's Bureau Sex Education Forum (SEF), the PSHE Association, the Children's Rights Alliance for England (CRAE) and Rights of the Child UK (ROCK).

Our primary interests in education pertain to issues related to state-funded religious schools ('faith' schools), curriculum issues (in particular RE/RS, PSHE/SRE, citizenship and science), and collective worship/school assemblies.

Summary

In response to the call for evidence, we raise the following issues within the area of **Education**:

- Religious Studies GCSE and High Court ruling
- 'Faith' school admissions
- Personal, Social, Health, Economics Education (PSHE) and Sex and Relationships Education (SRE)
- Illegal religious schools

Religious Studies GCSE and High Court ruling

In a judgment handed down in the High Court in November 2015, a judge ruled in favour of the three humanist parents and their children who challenged the Government's relegation of non-religious worldviews in the latest subject content for GCSE Religious Studies. In sum, the court ruled that RE (in schools without a religious character) must be 'objective, critical, and pluralistic', and a syllabus that covered religion in detail but did not give pupils the opportunity to learn similarly about a non-religious worldview such as Humanism would not meet this requirement.

Despite this ruling and its clear implications for the many RE syllabuses that do not currently include non-religious worldviews like Humanism, the Department for Education (DfE) has continued to deny that it has any impact at all. In December last year the DfE went as far as to issue guidance stating that the ruling 'does not affect how schools are teaching religious education', and also making a number of misleading statements which overtly contradict the judgement. This has continued, and only this month the DfE issued fresh guidance repeating the assertions it made in December.¹

Surveys suggest that as many as 69% of young people in the UK are not religious, and the Government's continued effort to relegate their and their parents' beliefs in the school curriculum below those of the religious is both discriminatory and not in keeping with a number of their UNCRC rights. This includes those set out in Article 2 guaranteeing protection 'against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs'; Article 13 guaranteeing the right of children 'to seek, receive and impart information and ideas of all kinds'; and Article 14 guaranteeing the 'right of the child to freedom of thought, conscience and religion'.

Recommendation: The Government should clarify its statements on last year's High Court ruling on RE and issue new guidance making clear that RE syllabuses must place religions and non-religious worldviews on an equal footing. Going forward, it should be possible to systematically study a non-religious worldview at GCSE and A level, and an annex on Humanism should be added at GCSE to sit alongside the seven existing annexes on the principal religions.

'Faith' school admissions

In deciding which children to admit, state-funded schools designated with a religious character are legally able to discriminate against children on the basis of their own or their parents' religion. There are specific exemptions in the Equality Act 2010 that allow them to do this.² 16% of places at state schools are subject to discrimination in this way, amounting to 1.2 million places.

50% limit on religious selection at Free Schools

Whilst there has been little recent movement on religious discrimination in schools admissions in either direction, over the course of the last year there have been increasing calls for the 50% limit on faith-based selection at new Free Schools to be dropped.³ Currently, 'All new faith free schools (or faith independent school converting to become free schools) must adopt admission criteria that, if the schools is oversubscribed, will ensure that at least 50% of the intake is admitted without reference to faith'.⁴ The requirement is designed to strike a balance between the perceived virtue of allowing religious parents to send their children to an appropriate religious school, and ensuring that there are enough places for local children at local schools. Its contribution to promoting integration between those from different religious and non-religious backgrounds also forms an important part of its rationale.

¹ See *GCSE Religious Studies*, Department for Education (2015-2016):

<https://www.gov.uk/government/publications/gcse-religious-studies>

² Schedule 11(5) Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/schedule/11/paragraph/5>

³ See <http://www.bbc.co.uk/news/education-35411525>;

<http://www.catholicnews.org.uk/Home/News/2015/July-Sept/Free-Schools>; <http://www.thejc.com/comment-and-debate/analysis/160274/the-politics-and-numbers-lying-behind-bid-a-new-school>

⁴ *Free School admissions: guidance*, Department for Education (December 2014):

<https://www.gov.uk/government/publications/free-schools-admissions>

Despite this, an intensifying of the lobbying on this issue from a number of religious groups, not least of which the Catholic Education Service who insist that the 50% cap leaves them 'unable' to open new schools, appears to have increased the likelihood that the cap may be dropped. This would evidently represent a significant step back given that religious discrimination in school admissions clearly violates Article 2 of the UNCRC, as well as Article 14 since the right and ability of children to be autonomous and hold different beliefs to their parents is severely limited by the ability of 'faith' schools to discriminate on the basis of parental belief and practice. Further, religious selection does not simply amount to religious discrimination, but to ethnic and socio-economic discrimination too. All the evidence tells us that religiously selective schools are less diverse than their local areas in terms of ethnicity,⁵ and also admit far fewer children from more deprived backgrounds than they should given their area.⁶ Again, a move to scrap the 50% cap (when, in fact, it ought to be extended) would only increase the extent of such discrimination in the system.

Violations of the School Admissions Code by religiously selective schools

In October 2015 the BHA and Fair Admissions Campaign published a report revealing that virtually all religiously selective schools in England were breaking the law by failing to comply with the School Admissions Code.⁷ The report detailed the ruling of the Office of the Schools Adjudicator on the admission arrangements of a sample of such schools, which found widespread violations of the Code in almost every case. Particularly notable findings of the report include:

- Almost one in five schools were found to **require practical or financial support to associated organisations** – through voluntary activities such as flower arranging and choir-singing in churches or in the case of two Jewish schools, in requiring membership of synagogues (which costs money).
- A number of schools were found to have **broken the Equality Act 2010 in directly discriminating on the basis of race or gender**, with concerns also raised around discrimination on the grounds of sexual orientation and socio-economic status.
- A majority of schools were found not to be sufficiently prioritising **looked after and previously looked after children** (LAC and PLAC) – in most cases discriminating in unlawful ways against LAC and PLAC who were not of the faith of the school, and in a few rare cases not prioritising LAC and PLAC at all. A quarter of schools were also found to not be making clear how children with statements of **special educational needs** were admitted.

⁵ '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/>

⁶ '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/>; for more on the correlation between religious selection and socio-economic selection, see e.g.

- 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>

⁷ *An Unholy Mess: How virtually all religiously selective state schools in England are breaking the law*, BHA and Fair Admissions Campaign, 2015: <http://fairadmissions.org.uk/anunholymess/>

- Almost 90% of schools were found to be **asking for information from parents that they do not need**. This included asking parents to declare their support for the ethos of the school and even asking for applicants' countries of origin, whether or not they speak English as an additional language, and if they have any medical issues.
- Nearly every school was found to have **problems related to the clarity, fairness, and objectivity of their admissions arrangements**. This included a lack of clarity about the required frequency of religious worship and asking a religious leader to sign a form confirming religious observance, but not specifying what kind of observance is required.

In January 2015, following the publication of the report, the Department for Education announced plans to ban civil society organisations from formally raising concerns with the OSA about the unlawful admission arrangements of schools. The proposals, which are yet to be consulted upon, will mean that only local parents (and councils) will have the right to object, despite the fact that the vast majority of parents lack both the time and expertise to navigate what is an incredibly complicated system. This is a counter-intuitive reaction to the revelation that a significant proportion of schools are breaking the law and in the absence of any independent body actively enforcing compliance with the Code, it substantially weakens the means of ensuring that schools adhere to the law and do not attempt to manipulate their intakes or unlawfully discriminate against children.

The proposals also ignore the recommendations made in the report that would serve to improve the admissions system and ensure that the fair access of parents and children to their local schools is upheld. These recommendations to the Government included producing guidance for schools on complying with the Code, revising the Code to address the areas of confusion identified in the report, establishing an independent monitoring body to enforce the Code, creating standard templates of admission policies for schools to follow, and having the admission arrangements of all schools' set by an external body.

Recommendation: The 50% limit on places subject to religious selection at Free Schools should be maintained, and consideration should be given to extending it to all state-funded schools. The right of civil society organisations to formally lodge objections to schools' unlawful admission arrangements should also be maintained, and consideration should be given to the recommendations made in the *Unholy Mess* report towards improving schools' compliance with the Code.

Personal, Social, Health, Economics Education (PSHE) and Sex and Relationships Education (SRE)

Progress towards ensuring that all children receive the comprehensive, age-appropriate, and high-quality sex and relationships education to which they are entitled, and which they need if they are to be safe, healthy, and responsible, suffered a significant setback this year. In February the Government decided not to put PSHE, including SRE, on a statutory footing in English schools.

Currently, no teaching of PSHE is required in school, and only extremely basic SRE, incorporating the relevant topics within National Curriculum Science as well as teaching on STIs and HIV/AIDS, must be taught in maintained schools. No SRE at all is required in Academies, which now make up 65% of secondary schools and nearly 20% of primaries.

Furthermore, all the available evidence indicates that PSHE and SRE provision in schools is patchy and low-quality around the country. The two most recent PSHE-specific Ofsted reports from 2007 and

2013, for instance, entitled *Time for change?*⁸ and *Not yet good enough*,⁹ stated very clearly that improvements needed to be made in, among other areas, the training of teachers, the curriculum time given to the subject, and the rigour of assessment in the subject. PSHE teaching in 40% of schools was found to be less than good.

The decision not to place the subject on a statutory footing not only flew in the face of the evidence, it also went against the recommendations of a wide variety of education, health, and children's rights experts. At the time the decision was made, recommendations had been made by, among others, the Education Committee, the Children's Commissioner, the Chief Medical Officer, the Association for Directors of Public Health, the Association of Independent Local Safeguarding Children Boards Chairs, the NSPCC, two royal societies, six medical royal colleges, over 100 expert bodies, and 88% of teachers, 90% of parents, and 92% of young people.¹⁰

Subsequent to the Government's decision, in June 2016, the UN Committee on the Rights of the Child (UNCRC) published its major periodic review of the state of children's rights in the UK.¹¹ It found that '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 report recommended that meaningful sexual and reproductive health education be made part of the mandatory school curriculum for all schools, including academies, special schools and youth detention centres.

Recommendation: PSHE, including SRE, should be put on a statutory footing, with no opt outs for 'faith' schools and no rights of withdrawal for parents.

Illegal religious schools

The existence of a number of illegal religious schools, particularly in conservative Muslim and Jewish communities, continues to pose a threat to the rights of children in the UK. Since November 2015, Ofsted's Chief Inspector Sir Michael Wilshaw has written to the Secretary of State Nicky Morgan on three occasions to express concerns about this 'urgent and escalating problem'. Findings of Ofsted inspectors include the teaching of 'misogynistic, homophobic and anti-Semitic material', 'narrow' curriculums 'failing to prepare [pupils] for life in modern Britain', and 'clear evidence of segregation, with separate classrooms for boys and girls.'¹²

The examples given in Sir Michael's letters were predominantly Muslim settings, and it is clear that the increased activity on unregistered schools is part of the Government's wider counter-extremism and 'Prevent' strategies. However, similar problems have also been found to exist within strictly Orthodox Charedi Jewish communities, predominantly within the London Borough of Hackney.

⁸ *Time for change? Personal, social and health education*, Ofsted (2007):

[http://dera.ioe.ac.uk/7351/1/Time%20for%20change_Personal,%20social%20and%20health%20education%20\(Word%20format\).pdf](http://dera.ioe.ac.uk/7351/1/Time%20for%20change_Personal,%20social%20and%20health%20education%20(Word%20format).pdf)

⁹ *Not yet good enough: personal, social, health and economic education in school*, Ofsted (2013):

<https://www.gov.uk/government/publications/not-yet-good-enough-personal-social-health-and-economic-education>

¹⁰ See *PSHE Association response to Government statement on status of the subject*, PSHE Association,

February 2016: <https://www.pshe-association.org.uk/news/pshe-association-response-government-statement>

¹¹ *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, UN Committee on the Rights of the Child (June 2016) https://humanism.org.uk/wp-content/uploads/CRC_C_GBR_CO_5_24195_E.docx

¹² Sir Michael Wilshaw, *Unregistered schools: Ofsted advice notes*, 2015-6:

<https://www.gov.uk/government/publications/unregistered-schools-ofsted-advice-note>;

Earlier this year, for instance, three Ofsted pre-registration inspection reports for an unregistered Charedi school in Hackney were published, stating that the curriculum was almost entirely scripture-based, 'encouraged cultural and ethnic insularity' and prevented pupils from 'developing a wider, deeper understanding of different faiths, communities, cultures and lifestyles, including those of England'.¹³ This is consistent with findings at similar unregistered schools.

The education described in both Sir Michael's letters and in the Ofsted reports for unregistered schools that have become available this year evidently infringes on a whole host of the rights set out in the UNCRC, not least of which 'the right of the child to education' enshrined in Article 28, and the right for that education to be directed towards 'the preparation of the child for responsible life in a free society' enshrined in Article 29. Given this, the record of the state in defending these rights is a cause for particular concern, as evidence has been published over the course of this year revealing that Ofsted, the Department for Education, and relevant local authorities have known about the existence of these schools, as well as the appalling level of education provided within them, for some time. Nonetheless, meaningful action has not been taken, and a great many of the unregistered schools known to the Government continue to operate.¹⁴

Recommendation: The Department for Education, with the help of Ofsted and relevant local authorities, should move to immediately shut down any school found to be operating illegally. They should also put in place clear procedures for ensuring that any children within such schools do not simply go missing from the system, but rather are found suitable alternative education, preferably within a registered school.

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¹³ <https://humanism.org.uk/wp-content/uploads/Talmud-Torah-Tashbar-pre-registration-inspection-reports-2012-14.pdf>

¹⁴ For example, see: <https://humanism.org.uk/wp-content/uploads/Talmud-Torah-Tashbar-pre-registration-inspection-reports-2012-14.pdf>; <http://www.independent.co.uk/news/uk/home-news/illegal-jewish-schools-department-of-education-knew-about-council-faith-school-cover-up-as-thousands-a6965516.html>; and <http://www.independent.co.uk/news/uk/home-news/pupils-at-illegal-faith-school-almost-died-after-being-taken-on-hike-up-a-cliff-in-traditional-ultra-a7116956.html>