

CHILDREN'S RIGHTS ALLIANCE FOR ENGLAND: CALL FOR EVIDENCE ON UNCRC



Response from Humanists UK, AUGUST 2020

ABOUT HUMANISTS UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by over 85,000 members and supporters and over 100 members of the All Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

We have 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 and the curriculum for over 60 years. We also provide materials and advice to parents, governors, students, teachers and academics, for example through our Understanding Humanism website¹ and our school speakers programme. We have made detailed responses to all recent reviews of the school curriculum in England, Wales, and Northern Ireland, and submit memoranda of evidence to MPs, civil servants and parliamentary select committees on a range of education issues.

We are an active member of many organisations working in education in the UK, including the Religious Education Council for England and Wales (REC), of which we are a founding member; the Sex Education Forum; the PSHE Association; Rights of the Child UK (ROCK); and the Children's Rights Alliance for England (CRAE).

Our primary interests in children's rights relate to issues relating to education (in particular RE, PSHE/RSE, citizenship, and science), collective worship/school assemblies, state-funded religious schools, and illegal religious schools.

SUMMARY

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

- 1) Legal requirement to conduct Christian collective worship in schools;
- 2) Religiously selective school admissions policies;
- 3) Lack of fully inclusive provision in religious education (RE);
- 4) Religious exemptions in the provision of relationships and sex education (RSE);
- 5) Lack of proper regulation for unregistered/illegal schools.

Issues 1-4 fall primarily under area 5 of the call for evidence, Education, Leisure, and Cultural Activities. However, issue 5 also falls under area 3, Safeguarding Children including Violence against Children.

¹ Understanding Humanism (2020) <<https://understandinghumanism.org.uk/>> [accessed 18 August 2020].



Each section includes questions for use in the List of Issues Prior to Reporting (LOIPR) that are designed to push the Government to address how it will rectify the existing shortcomings in its response to the Committee.

1. LEGAL REQUIREMENT TO CONDUCT CHRISTIAN COLLECTIVE WORSHIP IN SCHOOLS

Despite the UN Committee's recommendation that the requirement be repealed,² schools are still legally mandated to carry out a daily act of collective worship that is 'wholly or mainly of a broadly Christian character'.³ Although schools can opt – through a process called 'determination' – to have worship that aligns with an alternative faith, they are not permitted to opt out of delivering worship altogether.

Parents have a legal right to withdraw their children from collective worship in England, Wales, and Northern Ireland. And, since 2006, sixth-form pupils in England and Wales have been permitted to withdraw themselves from these sessions. However, this ignores the fact that, under both the Human Rights Act 1998 and Article 14 of the United Nations Convention on the Rights of the Child (UNCRC), younger children also have the right to freedom of religion or belief; a right that is not respected when religious worship is imposed upon them. Furthermore, by treating Christian worship as the default, the current system illegitimately favours one faith perspective over other religious and non-religious beliefs and presupposes that children will participate in religious activities unless they or their parents opt-out. This not only risks the freedom of conscience of pupils and families who are not aware of the right to withdraw, but indirectly requires those who do exercise this option to reveal information about what they believe in a way that could risk the right to privacy outlined in Article 16.

By only allowing children to opt out of collective worship at the age of 16, we also do not feel that UK law currently enables children to fully realise their 'Gillick competence' rights in a 'manner that is consistent with' their 'evolving capacities', 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

² UN Convention on the Rights of the Child, Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (July 2016) <<http://docs.tore.ohchr.org/SelfServices/FilesHandler.ashx?enc=60kG1d%2FPPrICAqhKb7yhskH0j6VpDS%2E%2FJgg2Jxb9gncnUyUgbnuttBweOlylfyYPkBbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bj0B0LNTNv09fUIE0vA5Ltw0GL>> [accessed 18 August 2020].

³ School Standards and Framework Act 1998 <<https://www.legislation.gov.uk/ukpga/1998/31/part/II/chapter/VI/crossheading/religious-worship>> [accessed 18 August 2020].



on Human Rights (JCHR), for example in reports in 2006⁴, 2008,⁵ and 2010.⁶ The issue of withdrawal is particularly pertinent for young people in the latter stages of secondary education who may even have reached the age of 16 but, because they have not yet begun sixth-form, may still not be able to opt out of worship.

What's more, even when parents request an exemption, the process of withdrawal is often difficult (not least because the law is not always well understood by schools). Children who have been removed from worship are rarely given a meaningful alternative of equal educational value during the time their peers are attending worship. Indeed, in 2019 two non-religious parents, Lee and Lizanne Harris (supported by Humanists UK), took a legal challenge against their children's school in England because it refused to provide just such an alternative.⁷ When the trust that runs the school eventually backed down after the Harrises won permission to have their case heard at the High Court, the school agreed to provide an inclusive alternative to the Harris children and any other withdrawn children whose parents wished them to receive it.

Although this logically ought to mean that similar arrangements are possible at other schools, the case did not set a legal precedent and, in private correspondence the Department for Education (DfE) explicitly stated that the outcome 'does not require the provision of meaningful alternatives across all schools'. Not every parent who would like to see a meaningful alternative to collective worship in their child's school will be in a position to mount time-consuming legal proceedings. What's more, such action may risk alienating the family from the school. For this reason, this is clearly not the most desirable means by which to ensure that children get the kind of non-discriminatory provision to which they are entitled under article 2 of the UNCRC. Instead, this aim would be far better met by a change to the law.

Questions for the List of Issues Prior to Reporting:

1. Why has the Government failed to repeal the requirement for schools to provide worship that is 'wholly or mainly of a broadly Christian character' in line with the recommendations of the UN Committee's last set of Concluding Observations?

⁴ Joint Committee on Human Rights, *Legislative Scrutiny: Thirteenth Progress Report, Twenty-fifth Report of Session 2005-06*, paragraphs 2.1-2.6 <<https://publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/241.pdf>> [accessed 19 August 2020].

⁵ Joint Committee on Human Rights, *Legislative Scrutiny: Education and Skills Bill, Nineteenth Report of Session 2007-08*, paragraphs 1.40-1.45 <<https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/107/107.pdf>> [accessed 19 August 2020].

⁶ Joint Committee on Human Rights, *Legislative Scrutiny: Children, Schools and Families Bill; other Bills, Eighth Report of Session 2009-10*, paragraphs 1.30-1.40 <<http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/57/57.pdf>> [accessed 19 August 2020].

⁷ Humanists UK, 'School concedes in collective worship case - will provide alternative assemblies' <<https://humanism.org.uk/2019/11/20/school-concedes-in-collective-worship-legal-case-will-provide-alternative-assemblies/>> [accessed 19 August 2020].



2. Why hasn't the Government taken any steps to ensure a meaningful educational alternative is offered to children and young people who have been withdrawn from collective worship so that they are not disadvantaged in terms of their spiritual, moral, social, and cultural development on the grounds of their religion or belief?
3. Given the existing requirement for Christian worship in all schools, how does the Government intend to ensure that the article 14 rights of young people who are not of sixth-form age are respected in line with their 'evolving capacities'?
4. What steps has the Government taken to ensure that children can independently exercise the right to withdraw from religious worship at school?
5. What assessment has the Government made of the numbers of non-religious children and young people for whom worship is an inappropriate activity currently attending English schools that are compelled to provide Christian worship?

2. RELIGIOUSLY SELECTIVE SCHOOL ADMISSIONS POLICIES

State-funded schools designated with a religious character enjoy an exemption to the Equality Act which means they are legally permitted to select their pupils on the basis of faith.⁸ In the case of voluntary aided (VA) schools and converter academies, up to 100% of pupils may be selected in this way if the school is oversubscribed. However, this is capped at 50% for new academies or 'free schools'.

Following a public outcry and 20 months of sustained campaigning led by Humanists UK, in May 2018 the Government decided to abandon a proposal to remove the 50% cap on religious selection in free schools.⁹ However, as a concession to religious groups such as the Catholic Education Service, who had refused to open any new schools if the cap remained in place, it simultaneously proposed a new funding scheme for a wave of fully selective VA schools to open.

The first of these new selective VA schools is set to open in Peterborough in 2022.¹⁰ This decision was taken despite strong local opposition. There was also evidence to suggest that key funding criteria – such as local demand for faith-based places and a plan outlining how the school would promote community cohesion – had not been adequately met. The Government has stated that a new funding round will be launched in due course.

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

⁸ Equality Act 2010, Schedule 11(5) <<https://www.legislation.gov.uk/ukpga/2010/15/schedule/11>> [accessed 19 August 2020].

⁹ Humanists UK, 'Humanists UK wins Government U-turn on 50% cap on faith school admissions' (11 May 2018) <<https://humanism.org.uk/2018/05/11/humanists-uk-wins-government-u-turn-on-50-cap-on-faith-school-admissions/>> [accessed 19 August 2020].

¹⁰ Humanists UK, 'Final approval granted for the most religiously selective state school in a decade' (13 February 2020) <<https://humanism.org.uk/2020/02/13/final-approval-granted-for-most-religiously-selective-state-school-in-a-decade/>> [accessed 19 August 2020].



parents is severely limited by the ability of faith schools to discriminate on the basis of parental belief and practice.

Further, there is a wealth of robust evidence to demonstrate that religious selection not only segregates pupils according to religion, but also along ethnic and socio-economic lines, as well as by prior attainment.¹¹ As studies that control for pupil background show,¹² it is this, rather than a faith ethos, that accounts for any enhanced levels of attainment or performance in national league tables. However, this data tends to fuel the idea that faith schools are 'better' than other types of school and encourages parents (particularly the highly educated and those from more advantaged socio-economic groups) to use all the means at their disposal to gain a place, and exacerbating existing inequalities.

To put it another way, faith schools are socio-economically selective, because their religious admissions policies enable them to skim the richest, most advantaged pupils from their areas while the rest fail to meet their more complex admissions criteria. Evidence shows that, overall, comprehensive secondaries with no religious character admit 5% more pupils eligible for free school meals than live in their local areas. But comprehensive Church of England secondaries admit 15% fewer; Roman Catholic secondaries 28% fewer; Jewish secondaries 63% fewer; and Muslim secondaries 29% fewer.¹³ Research by the Sutton Trust has also established a trend for faith schools to be some of the most socially selective, both at the primary level¹⁴ and among top-performing comprehensive secondaries.¹⁵

Religious admissions policies have also been demonstrated to segregate along ethnic lines. For example, Catholic schools take 4.4 % fewer Asian pupils than would be expected given the makeup

¹¹ For an overview see Accord Coalition, Databank of Independent Evidence on Faith Schools (2020) <<http://accordcoalition.org.uk/research/>> [accessed 13 May 2020] and Fair Admissions Campaign, Research into religiously selective admissions criteria (2017) <<http://fairadmissions.org.uk/wp-content/uploads/2017/08/2017-08-29-FINAL-Religious-Selection-Research-Survey.pdf>> [accessed 14 May 2020].

¹² See Education Policy Institute, *Faith Schools, pupil performance, and social selection* (2016) <<https://epi.org.uk/publications-and-research/faith-schools-pupil-performance-social-selection/>>; or Stephen Gibbons and

Olmo Silva, 'Faith Primary Schools: Better Schools or Better Pupils', *Discussion Paper No. 72* from the Centre for the Economics of Education (CEE) at CEP <<http://cee.lse.ac.uk/cee%20dps/ceedp72.pdf>>; or Humanists UK, 'Secondary league tables unfairly benefit religious schools by ignoring pupil backgrounds say academics' (2019) <<https://humanism.org.uk/2019/01/24/secondary-league-tables-unfairly-benefit-religious-schools-by-ignoring-pupil-backgrounds-say-academics/>> [accessed 12 May 2020].

¹³ Fair Admissions Campaign, 'Overview of issues to do with religious selection in schools' (2015) <<http://fairadmissions.org.uk/wp-content/uploads/2015/09/Overview-of-issues-to-do-with-religious-selection-in-school-admissions.pdf>> [accessed 12 May 2020].

¹⁴ Rebecca Allen and Meenakshi Parameshwaran (for The Sutton Trust), *Caught Out: Primary schools, catchment areas and social selection* (2016) <https://www.suttontrust.com/wp-content/uploads/2019/12/Caught-Out_Research-brief_April-16-1.pdf> [accessed 14 May 2020].

¹⁵ Carl Cullinane, Jude Hillary, Joana Andrade and Stephen McNamara (for The Sutton Trust), *Selective Comprehensives 2017: Admissions to high-attaining non-selective schools for disadvantaged pupils* (2017) <<https://www.suttontrust.com/wp-content/uploads/2019/12/Selective-Comprehensives-2017.pdf>> [accessed 12 May 2020].



of their local areas.¹⁶ There is a well-established relationship between poverty, disadvantage, and being a member of a Black, Asian or Minority Ethnic (BAME) group. Given this, it seems plain that the issue of socio-economic diversity simply cannot be addressed without acknowledging the detrimental impact of religiously selective admissions.

Religiously selective policies clearly do not 'reduce the effects of the social background... on... achievement in school' or 'guarantee the right of all children to a truly inclusive education in all parts of the State party.'¹⁷ Indeed, unlike other schools (which are legally obliged to prioritise looked after and previously looked after children in their admissions policies), faith schools are permitted to prioritise all children who share the faith over looked after and previously looked after children who do not. Forthcoming research from Humanists UK demonstrates that 76% of state-funded Catholic schools and 100% of state-funded Jewish schools do this.¹⁸

Not only does religious selection involve discrimination that violates Article 2 of UNCRC and contradicts the recommendation, outlined in the 2016 Concluding Observations, that the Government should 'strengthen... preventive activities against discrimination and stigmatization'.¹⁹ But the segregation it perpetuates also means many young people are denied the opportunity to mix with those from differing backgrounds. This robs them of the meaningful interactions necessary to build sustainable inter-communal relationships and fails to properly prepare them for 'a responsible life in a free society' as required by Article 29.

Research from 2017 published on the DfE's own website²⁰ shows that pupils in ethnically mixed schools are more trusting and have more positive views of children from different backgrounds than do pupils in segregated schools. Elsewhere, the authors of that same study argue that 'faith schools, to the extent that they are segregated, deprive young people of the opportunity to mix across ethnic and religious lines' in a manner that thwarts positive attitudes to members of so-called 'outgroups'.²¹ For this reason, religiously selective policies actively work against the Committee's recommendations on tackling bullying in schools by 'building capacities of students

¹⁶ Fair Admissions Campaign, 'Overview of issues to do with religious selection in schools' (2015) <<http://fairadmissions.org.uk/wp-content/uploads/2015/09/Overview-of-issues-to-do-with-religious-selection-in-school-admissions.pdf>> [accessed 12 May 2020].

¹⁷ UN Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, (2016) para 72(a) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en> [accessed 19 August 2020].

¹⁸ Forthcoming report due for publication in Autumn 2020.

¹⁹ Ibid. para 21 (c) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en> [accessed 19 August 2020].

²⁰ Miles Hewstone et al. *Diversity and Social Cohesion in Mixed and Segregated Secondary Schools in Oldham* (2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/634118/Diversity_and_Social_Cohesion_in_Oldham_schools.pdf> [accessed 15 May 2020].

²¹ Miles Hewstone et al. 'Influence of segregation versus mixing: Intergroup contact and attitudes among White-British and Asian-British students in high schools in Oldham, England' *Theory and Research in Education* (2018) Volume: 16 issue: 2, page(s): 179-203 <<https://journals.sagepub.com/doi/full/10.1177/1477878518779879>> [accessed 15 May 2020].



and staff members to respect diversity.²²

Questions for the List of Issues Prior to Reporting:

1. What assessment has the Government made of the impact of religiously selective admissions on access to a good school for a) children from non-religious backgrounds; b) children from ethnic minorities; c) children who are socio-economically disadvantaged; d) looked after and previously looked after children; e) children with special educational needs or disabilities (SEND)?
2. What steps does the Government plan take to minimise the negative impact of religious selection on the school choice and educational attainment of each of these groups?
3. What justification does the Government have for providing funding for new fully religiously selective VA schools given the evidence that this form of selection impacts negatively on social cohesion and attitudes towards diversity among pupils attending such schools?
4. What, if any, steps has the Government made to improve fairness in school admissions since the last set of Concluding Observations?
5. How does the Government plan to ensure that all children attending schools in England have the opportunity to interact with others from a diverse range of backgrounds?

3. LACK OF FULLY INCLUSIVE PROVISION IN RELIGIOUS EDUCATION (RE)

In 2015, the High Court found that the Government had made an 'error of law' when it claimed that a school that simply teaches GCSE Religious Studies, the specification for which does not include non-religious worldviews like humanism, would be providing sufficient teaching to meet its mandatory duty to provide religious education (RE). This was because the failure to ensure that Key Stage 4 pupils would receive RE that considered both religious and non-religious perspectives amounted to a breach of the duty, under the European Convention on Human Rights, to 'take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner'.²³

Despite this ruling RE in many schools still excludes non-religious beliefs. Following the case, the landmark report of the Commission on Religious Education (CoRE) also argued that the subject should be fully inclusive of humanism and renamed Religion and Worldviews to reflect the fact it should cover both religious and non-religious perspectives.²⁴ Nevertheless, the Government has again chosen not to take further steps to ensure that they do. Indeed, one of the reasons that was given for not implementing the CoRE recommendations was that 'some stakeholders have

²² UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (2016) para 48 (a) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en> [accessed 19 August 2020].

²³ *R (Fox) v Secretary of State for Education* 2015, para 39 <<https://www.judiciary.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf>> [accessed 20 August 2020].

²⁴ Commission on Religious Education, *Religion and worldviews: the way forward, a national plan for RE* (2018) <<https://www.commissiononre.org.uk/wp-content/uploads/2018/09/Final-Report-of-the-Commission-on-RE.pdf>> [accessed 21 August 2020].



concerns that making statutory the inclusion of “worldviews” risks diluting the teaching of RE,²⁵ a discriminatory view of non-religious beliefs that has been repeated on several occasions by the Catholic Education Service.²⁶

Further, despite repeated requests from Humanists UK, the DfE has refused to instruct local authorities that humanist representatives may participate as full voting members of the bodies that oversee and produce the locally agreed RE syllabuses, saying that this is a decision for LAs. Unfortunately, this means that, contrary to the Human Rights Act 1998 which treats religious and non-religious beliefs equally, many still exclude humanists and that syllabuses are not adequately inclusive as a result. Here it is worth noting that, as part of an overhaul of the curriculum in Wales, the Welsh Government has recently laid a Bill before Senedd that will see humanism and humanist representatives explicitly included in the curriculum and the bodies responsible for it.²⁷

According to the most recent British Social Attitudes Survey, more than half of British adults (52%) now identifies as belonging to no religion,²⁸ a figure that rises to 62.6% amongst those aged 18-24.²⁹ The failure to include adequate coverage of the beliefs of such a significant proportion of the population is not in keeping with the spirit of Article 13 of the UNCRC, which guarantees the right of the child ‘to seek, receive and impart information and ideas of all kinds,’ as well as with the overall principles of non-discrimination in Article 2, and the freedom of religion or belief enshrined in Article 14. As the changes in Wales illustrate, the failure to adequately include humanism is also inconsistent with the Human Rights Act 1998, which together with case law demands equal treatment of religious and non-religious worldviews.

Questions for the List of Issues Prior to Reporting:

1. What assessment has the Government made of the proportion of schools that teach about non-religious perspectives like humanism in RE lessons?
2. What steps has the Government taken to ensure that, following the ruling in *R (Fox) v Secretary of State for Education 2015*, all pupils receive their full entitlement to statutory RE

²⁵ Letter to the Chair of the Commission on RE from Secretary of State for Education, Damian Hinds, 6 December 2018 <<https://www.religiouseducationcouncil.org.uk/wp-content/uploads/2018/12/Letter-to-The-Very-Reverend-Doctor-John-Hall-from-Rt-Hon-Damian-Hinds-MP...-1.jpg>> and <<https://www.religiouseducationcouncil.org.uk/wp-content/uploads/2018/12/Letter-to-The-Very-Reverend-Doctor-John-Hall-from-Rt-Hon-Damian-Hinds-MP...-2.jpg>> [accessed 20 August 2020].

²⁶ Catholic Education Service (2019) <<https://www.catholiceducation.org.uk/component/k2/item/1003674-statement-from-the-catholic-education-service-on-the-consultation-to-re-and-rse-in-wales>> [accessed 20 August 2020].

²⁷ *Curriculum and Assessment (Wales) Bill* (2020) <<https://senedd.wales/laid%20documents/pri-ld13294/pri-ld13294%20-e.pdf>> [accessed 21 August 2020].

²⁸ Humanists UK, ‘Latest British Social Attitudes Survey shows continuing rise of the non-religious’ (11 July 2019) <<https://humanism.org.uk/2019/07/11/latest-british-social-attitudes-survey-shows-continuing-rise-of-the-non-religious/>> [accessed 20 August 2020].

²⁹ See British Social Attitudes Information System, 2018 survey with cross-tabs by age <http://www.britisocat.com/BodyTwoCol_rpt.aspx?control=CCFSDMarginals&MapID=REFLIGSUM&SeriesID=12> [accessed 20 August 2020].



that is 'objective, critical, and pluralistic' and treats religious and non-religious perspectives equally?

3. Why has the Government failed to issue guidance making it clear to local authorities that, in line with the provisions of the Human Rights Act 1998, humanist representatives may legitimately sit as full voting members on SACREs and ASCs?
4. How does the Government intend to ensure that the RE curriculum fully acknowledges and respects the beliefs of the growing number of non-religious people in the UK?
5. How does the Government justify the decision not to implement the recommendations of the landmark Commission on RE report?

4. RELIGIOUS EXEMPTIONS IN THE PROVISION OF RELATIONSHIPS AND SEX EDUCATION (RSE)

Relationships and Sex Education (RSE) will become mandatory in all state-funded secondary schools from September 2020. From that date, Relationships Education will be similarly mandatory for all primary age pupils attending state schools, and Health Education will become compulsory in all schools (except independent schools, where PSHE is already compulsory). Sex education will not be compulsory in primary schools, although individual primary schools may choose to offer it at their own discretion.

The decision to introduce RSE as a compulsory subject will have a hugely positive impact on the rights and interests of all young people, particularly for those with a range of protected characteristics, including LGBT pupils, women and girls, and people with disabilities. All the best evidence shows that teaching about different types of relationship, including sexual relationships, as well as about consent, sexual health, and the advantages of delaying sex, ensures that young people grow up healthier, happier, and more able to keep themselves, and those around them, safe.

³⁰ RSE also plays a very important safeguarding role which brings it into line with Article 19 of the UNCRC which requires that 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'.

With that said, the new subject will only go part of the way towards addressing the recommendation set out in paragraph 64(b) of the last set of Concluding Observations, that the Government should 'ensure that meaningful sexual and reproductive health education is part of the mandatory school curriculum for all schools.'³¹ This is for three reasons.

³⁰ Sex Education Forum, SRE: The Evidence (2015) <<https://www.sexeducationforum.org.uk/sites/default/files/field/attachment/SRE%20-%20the%20evidence%20-%20March%202015.pdf>> [accessed 19 September 2019].

³¹ UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (2016) para 64(b) <https://tbinternet.ohchr.org/_layouts/15/tr eatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en> [accessed 19 August 2020].



First, although the subject is becoming compulsory, no particular curriculum content is being made compulsory, so some schools may well choose to teach very little RSE or relationships education at all.

Second, although parents will have no right to remove their children from relationships education, they will retain the right to withdraw children from sex education in all but 'exceptional circumstances'. This is particularly concerning if a parent is subjecting a child to abuse of a sexual nature. In such circumstances, it is alarming to think an abusive parent could simply exercise the right to withdraw a child from sex education and, by so doing, prevent them from receiving adequate safeguarding education.

Pupils who are three terms (or less) from the age of 16 may attend lessons in sex education without parental consent, bringing the policy more closely into line with the law on Gillick competence. However, leaving the option to receive sex education to such a late stage exacerbates the risk that pupils will suffer harms (including the potential contraction of STIs, teenage pregnancy, sexual exploitation, and abuse) that they are ill equipped to understand or to know how and when to seek the advice of someone who could help them.

It is also worth pointing out that the right to withdraw may not just be abused by parents, but by schools themselves. We are mindful that there are a small number of schools in England that may well attempt to use their duty to engage with parents on RSE (outlined in the guidance³²) as a means of encouraging those parents to exercise the right of withdrawal. Indeed, in the past we have been made aware of schools putting pressure on parents to withdraw,³³ or even cutting out parental consultation altogether by refusing to teach the subject, and stating this is because 'in practice, all parents will exercise their statutory right to withdraw their children from Sex Education'.³⁴

Finally, the statutory guidance on RSE explicitly states that **'the religious background of all pupils must be taken into account when planning teaching.'**³⁵ The impact of this will be felt in the

³² Department for Education, *Relationships Education, Relationships and Sex Education (RSE) and Health Education: Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers* (2019) p.17 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805781/Relationships_Education_Relationships_and_Sex_Education_RSE_and_Health_Education.pdf> [accessed 20 August 2020].

³³ Humanists UK, 'Jewish school caught encouraging mass withdrawal of children from RSE so school can foster 'good religious girls'' (24 July 2019) <<https://humanism.org.uk/2019/07/24/jewish-school-caught-encouraging-mass-withdrawal-of-children-from-rse-so-school-can-foster-good-religious-girls/>> [accessed 20 August 2020].

³⁴ Humanists UK, 'Yesodey Hatorah says censoring exam questions 'has successfully been in place within the Charedi schools throughout England for many years'' (28 March 2014) <<https://humanism.org.uk/2014/03/28/yesodey-hatorah-says-censoring-exam-questions-successfully-place-within-charedi-schools-throughout-england-many-years/>> [accessed 20 August 2020].

³⁵ Department for Education, *Relationships Education, Relationships and Sex Education (RSE) and Health Education: Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers* (2019) para. 20, p.12 and para. 68, p. 24. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805781/Relationships_Education_Relationships_and_Sex_Education_RSE_and_Health_Education.pdf> [accessed 20 August 2020].



teaching of a range of topics, including abortion and contraception, but is perhaps at its most significant when it comes to LGBT-inclusive RSE. The statutory guidance says only that the Government expects 'all pupils to have been taught LGBT content at a timely point'.³⁶ It leaves schools free to determine when this point is. It also suggests that, on the basis of consultation with 'parents and the local community', schools may require a 'differentiated curriculum',³⁷ leaving individual schools vulnerable to pressure from a vocal minority who don't want certain topics taught. This clearly means that children in some religious groups will be denied lessons about LGBT and other issues on the grounds of their school's or parents' beliefs. This undermines the right of such children to 'have access to accurate information on their sexuality'³⁸ in the event that they are LGBT themselves. And it will do nothing to address the issues of stigmatisation and bullying that LGBT children are frequently subject to when their peers do not receive properly inclusive education in this area.³⁹

Questions for the List of Issues Prior to Reporting:

1. Why has the Government retained the right to withdraw from sex education and permitted primary schools to opt out of teaching the subject altogether?
2. What steps will the Government be taking to ensure that parents do not abuse the right to withdraw to prevent children receiving vital safeguarding education?
3. How will the Government prevent schools with a religious character from misusing the right to withdraw so that they can avoid their duty to teach sex education, or avoid teaching certain topics?
4. How will the Government protect the rights of LGBT children and young people from religious backgrounds or who attend schools with a religious character and are offered a 'differentiated curriculum' in RSE on the basis of their parents' faith?
5. How will the Government ensure that older pupils who are entitled to opt-in to sex education are supported to make this choice, especially when it contradicts the views of their parents?

5. LACK OF PROPER REGULATION FOR UNREGISTERED/ILLEGAL SCHOOLS

A significant number of unregistered, illegal schools are operating in England, many of which are religious. Since 2014, we have led the campaign for better regulation of these settings and have worked with whistleblowers who attended such institutions to bring public attention to the issue.

³⁶ Department for Education, *Relationships Education, Relationships and Sex Education (RSE) and Health Education: Statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers* (2019) para. 37, p.15. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805781/Relationships_Education_Relationships_and_Sex_Education_RSE_and_Health_Education.pdf> [accessed 20 August 2020].

³⁷ *Ibid.* para. 114, p.41.

³⁸ UN Committee on the Rights of the Child, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (2016) para 63b <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en> [accessed 19 August 2020].

³⁹ Research shows that 45% of LGBT pupils are subject to bullying because of their identity, and the majority hear discriminatory language in school (see Stonewall, *School Report 2017* <<https://www.stonewall.org.uk/school-report-2017>> [accessed 21 August 2020].



Unregistered or illegal faith schools serve a variety of different religious groups – including Muslim, Jewish, and Christian – but all tend to be fundamentalist, extreme, or isolationist in their outlook, and provide their pupils with a narrowly religious curriculum that is unsuitable for children growing up in modern Britain. Many of these schools operate in unsafe, unhygienic conditions, with joint investigations between the BBC and Humanists UK uncovering serious health and safety concerns such as overcrowding,⁴⁰ and Ofsted reporting it has found rat traps and exposed electrics in classrooms.⁴¹ There is also evidence of severe failures in safeguarding, with children exposed to physical abuse as well as extremist, homophobic and sexist literature.⁴²

In 2019, Ofsted revealed that approximately 6,000 children are being taught in illegal or unregistered schools.⁴³ Ofsted has investigated nearly 700 (694) suspected illegal schools since the unregistered schools unit was set up in January 2016. Of these, 109 were known to be places of religious instruction. A further 184 were settings providing general education, which may or may not have a faith character but are not broken down by religion in the published data.⁴⁴

Of the 345 unregistered settings Ofsted have physically inspected, 19 were identified as Christian, 20 Jewish, and 46 Muslim. However, because inspectors lack the power to properly examine and seize evidence, it is difficult to ascertain what proportion of the remaining schools are linked to faith groups, so non-faith settings are grouped together with those of unknown religious affiliation.

Clearly then unregistered, illegal schools constitute a huge risk to the health, safety, and education of the pupils attending them. But despite this, loopholes in the existing law relating to independent school registration have made it difficult (in some cases impossible) to close or regulate them. The problem is especially acute when these settings have a religious character because, by law, such institutions only need to register if they provide a curriculum that is 'suitable for children of primary or secondary age'.⁴⁵ In other words, it actually benefits these institutions to give children a narrow,

⁴⁰ See YouTube, 'BHA exposé on indoctrination by illegal Jewish schools which are registered as charities' (2016) <<https://www.youtube.com/watch?v=ACgWIZLxhBw>> [accessed 20 August 2020]; Humanists UK, 'Joint BBC/Humanists UK investigation: abuse at illegal religious schools' (26 February 2018) <<https://humanism.org.uk/2018/02/26/joint-bbc-humanists-uk-investigation-abuse-at-illegal-religious-schools/>> [accessed 21 August 2020]; YouTube, 'Jay Harman discusses illegal religious schools on Victoria Derbyshire programme' (16 September 2016) <<https://www.youtube.com/watch?v=Lvsz6Bn29Bo>> [accessed 21 August 2020].

⁴¹ Humanists UK, 'Education pamphlet endorsed by religious community leaders is a manifesto for corporal punishment, Ofsted head tells inquiry' (22 May 2020) <<https://humanism.org.uk/2020/05/22/education-pamphlet-endorsed-by-religious-community-leaders-is-manifesto-for-corporal-punishment-ofsted-head-tells-inquiry/>> [accessed 21 August 2020].

⁴² Ofsted, *Unregistered schools: Ofsted advice notes* (2015–2016) <<https://www.gov.uk/government/publications/unregistered-schools-ofsted-advice-note>> [accessed 21 August 2020].

⁴³ Humanists UK, 'New data on illegal schools reveals grave situation, says Humanists UK' (12 April 2019) <<https://humanism.org.uk/2019/04/12/new-data-on-illegal-schools-reveals-grave-situation-says-humanists-uk/>> [accessed 21 August 2020].

⁴⁴ Ofsted, *Statistical data set: Unregistered schools management information* <<https://www.gov.uk/government/statistical-data-sets/unregistered-schools-management-information>> [accessed 21 August 2020].

⁴⁵ See *Education Act 1996* section 2 <<https://www.legislation.gov.uk/ukpga/1996/56/section/2>> and section 4 <<https://www.legislation.gov.uk/ukpga/1996/56/section/4>> [accessed 21 August 2020].



unsuitable form of education because then they are not legally required to register even when the children they 'teach' receive all or most of their education in the setting. Former pupils who have worked with us to draw attention to the problem of these schools say they weren't taught secular subjects like science or geography at all, and some left school unable to speak English despite being born and raised in England. One said he had the education level of a 9 or 10-year-old, and when he left the community as an adult found it extremely difficult to find work.

The existence of illegal and unregistered schools clearly undermines a number of key Convention rights, including Article 19 – which requires state parties to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment [and] maltreatment', be that by parents or in school; and Article 28 – the right to education, which also explicitly requires that school discipline should be administered in a manner consistent with the child's human dignity and in conformity with the present Convention. Pupils in unregistered schools with a religious character are also denied their Article 14 freedoms of religion or belief through being forced to study a narrowly religious curriculum that is designed to indoctrinate only one perspective.

However, to date, largely as a result of the flaws in the legal framework, there have been just four successful prosecutions of the providers of illegal schools, three of which involved Muslim schools.⁴⁶ And, alongside Humanists UK, Ofsted has repeatedly called for additional powers to tackle the problem⁴⁷ which it currently has to do with one arm tied behind its back.

In early 2020, as part of a consultation entitled *Regulating independent educational institutions*, the Government finally proposed three key changes to the law that will make it easier to tackle the problem of unregistered religious settings:

1. Widen the range of educational setting that must register with the Department for Education and establish a legal definition of 'full time' education;
2. Give the Government additional powers to change the law if providers are found to be using legal loopholes to continue to deny pupils a broad and balanced education;
3. Change the way the deregistration process works so that independent schools that continually fail inspections can be tackled more quickly.

We strongly support the proposals, which largely reflect what we have been asking the Government to bring forward for many years. However, the consultation has since been suspended, purportedly because of the Covid-19 crisis, further postponing the point at which action will be taken to protect the rights, interests, and safety of the children at risk in illegal and unregistered schools.

⁴⁶ Humanists UK, 'Humanists UK welcomes successful prosecution for running an illegal school' (5 March 2020) <<https://humanism.org.uk/2020/03/05/humanists-uk-welcomes-successful-prosecution-for-running-an-illegal-school/>> [accessed 21 August 2020].

⁴⁷ Humanists UK, "'No real progress" made on illegal schools as Ofsted expresses frustration at lack of regulatory teeth' (21 January 2020) <<https://humanism.org.uk/2020/01/21/no-real-progress-made-on-illegal-schools-as-ofsted-expresses-frustration-at-lack-of-regulatory-teeth/>> [accessed 21 August 2020].



Questions for the List of Issues Prior to Reporting:

1. What assessment has the Government made of the number of children currently at risk in illegal or unregistered schools and what proportion of these are known or suspected to attend settings with a religious character?
2. How many additional unregistered settings does the Government estimate could be prosecuted as illegal schools were the registration requirements widened in the manner laid out in the recent 'Regulating independent educational institutions' consultation?
3. When does the Government intend to bring forward the legislative proposals laid out in the 'Regulating independent educational institutions' consultation?
4. When does the Government intend to legislate to strengthen Ofsted's powers to investigate, prosecute, and close unregistered schools?
5. How does the Government intend to monitor and protect the children at risk in illegal and unregistered settings in the period between now and when the proposed legislation is implemented?

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