

BHA BRIEFING: High Court ruling on need to include non-religious worldviews in Religious Education

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Summary



The High Court has ruled that the Government's new GCSE Religious Studies subject content for English schools is unlawful.¹ More specifically, the Court ruled that the Government's statement in the content that simply teaching the new GCSE would fulfil the statutory requirement for religious education at key stage 4 (ages 14-16) as a whole was 'false and misleading' because such a syllabus may well not include non-religious worldviews to any great extent and so would not meet the requirement under human rights law for teaching to be neutral, impartial and pluralistic. The Government now has to respond. It could do so by amending the content and/or otherwise making clear that the GCSE course will need to be supplemented by teaching about non-religious worldviews.

The decision focuses on key stage 4, but logically it also has consequences elsewhere. The broader message is that at all key stages, schools (other than 'faith' schools) must not in their RE prioritise the teaching of religions over the teaching of non-religious worldviews. We expect schools, agreed syllabus conferences and Academy chains will now want to include Humanism to a comparable extent to their teaching about each of the principal religions (other than Christianity) – as lots already do. The logic also applies across the UK, not just in England.

Background

In February 2015 the Department for Education (DfE) published new subject content on GCSE Religious Studies.² It requires the detailed, systematic study of two of the six 'principal religions', but does not allow for similar study of a non-religious worldview, such as Humanism. Some thematic content does include non-religious worldviews, but the majority does not. In sum it is easily possible to study the GCSE without studying non-religious worldviews in any detail at all.

This is in spite of the fact that 90% of respondents to the DfE's consultation on the content called for it to be possible to systematically study a non-religious worldview as part of the GCSE. They called for detailed content on Humanism to be included, as the only obvious exemplar of a non-religious worldview. During the consultation process the BHA produced such detailed content at the invitation of the DfE, but the DfE declined to include it.

The BHA's position was supported by the Religious Education Council of England and Wales; 113 leading philosophers, RE academics, consultants, advisors and teachers, and children's authors who signed one letter calling for the annex to be included; and 28 religious leaders, including former Archbishop of Canterbury Rowan Williams, who signed another.³ The National Association of Teachers of RE (NATRE) also took a similar position.

What the law says

Taken overall, the human rights jurisprudence establishes the following points of relevance to this claim. In carrying out its educational functions the state owes parents a positive duty to respect their religious and philosophical convictions; the state has considerable latitude in deciding exactly how that duty should be performed, having regard among other things to available resources, local conditions and, in particular, the preponderance in its society of

¹ <https://humanism.org.uk/wp-content/uploads/R-Fox-v-SSfE-2015-EWHC-3404-Admin-251115.pdf>

² <https://www.gov.uk/government/publications/gcse-religious-studies>

³ <https://humanism.org.uk/2015/02/12/government-rejects-consensus-subject-experts-public-religious-leaders-marginalises-humanism-gcse-levels/>

particular religious views, and their place in the tradition of the country; thus, the state may legitimately give priority to imparting knowledge of one religion above others, where that religion is practised or adhered to by a majority in society; but the state has a duty to take care that information or knowledge included in the curriculum is conveyed in a pluralistic manner; subject to certain threshold requirements, immaterial here, the state must accord equal respect to different religious convictions, and to non-religious beliefs; it is not entitled to discriminate between religions and beliefs on a qualitative basis; its duties must be performed from a standpoint of neutrality and impartiality as regards the quality and validity of parents' convictions.

Mr Justice Warby, in para 39 of his High Court judgment

Case law related to Article 9 of the European Convention on Human Rights (Freedom of thought, conscience and religion) and Article 2 of the First Protocol (Right to education) has established that education about religious and non-religious worldviews in the school curriculum (other than perhaps in religious schools) must be 'objective, critical and pluralistic'. This requirement does not mean that the state cannot, for example, give some priority to teaching about a religion with a particularly prominent place in the beliefs and traditions of a country (for example Christianity in this country).

But it does mean that the state cannot, for instance, prioritise some religions or worldviews over others where the beliefs being prioritised do not have any more of a prominent place in the national or local environment than those not being afforded priority. For example, it cannot prioritise Hinduism in the curriculum over Islam, or Buddhism over Sikhism or Judaism. And equally it cannot prioritise any of those religions over non-religious worldviews, in particular Humanism. Such priority cannot be justified simply on the basis that the former are religions and the latter are not – which is precisely what the DfE said it was seeking to do in the GCSE Religious Studies subject content.

What happened in the case

The GCSE Religious Studies qualification is not necessarily the entirety of a school's Religious Education curriculum for 14-16 year olds (key stage 4). A school could, for instance, teach the GCSE but also do some extra teaching on top of that about non-religious worldviews elsewhere.

The problem with the content, however, is that most of the routes through the qualification do not include any detailed study of non-religious worldviews; and paragraph 2 currently reads 'By setting out the range of subject content and areas of study for GCSE specifications in religious studies, the subject content is consistent with the requirements for the statutory provision for religious education in current legislation as it applies to different types of school.'

This, the judge found, not only 'permits' but 'encourages' schools, agreed syllabus conferences, and other bodies involved in setting the wider RE curriculum, to believe that *just* teaching the GCSE at key stage 4 (even when not including any study of non-religious worldviews) is sufficient to meet the legal requirements that RE has to be neutral, impartial and pluralistic. But such an approach would not be pluralistic as non-religious beliefs would be marginalised. Hence, the judge concluded, 'In that event, the state would need to afford some additional educational provision or fail in its duties.'

What happens next

A declaration has been agreed between the parties to the case that paragraph 2 is unlawful. It will be up to the DfE to decide what to do to make it lawful; but while it could choose to change the rest of the GCSE subject content, it does not necessarily have to do so if it doesn't want to.

However, the implications of the case are much wider than this simple starting point. Schools, Academy chains, standing advisory councils on RE (SACREs), and agreed syllabus conferences (ASCs) will need to ensure that their syllabuses are as inclusive of non-religious worldviews as they are of religions at Key Stage 4. The logical consequence of the decision is that they will also need to ensure

that this is the case at all other key stages as well. If they do not do this then they will also be breaking the law. This is true not just in England but across the UK. The case also has implications for the membership of SACREs and ASCs, in terms of how inclusive they are of humanist representatives.

How the BHA can help

We provide materials and advice to parents, governors, students, teachers and academics, for example through <http://www.humanismforschools.org.uk/> and our school volunteers programme. These resources are available to schools, agreed syllabus conferences and other relevant bodies.

Our longstanding support for RE is also reflected by the fact that many standing advisory councils on RE (SACREs) and agreed syllabus conferences have had humanist representatives (in some cases for decades), including as Chairs and Vice-Chairs. Recent years have seen a rise in the number of humanists who are on SACREs, as documents such as the 2010 RE guidance and 2013 national framework have referred to teaching about non-religious worldviews such as Humanism – with the latter being as inclusive of Humanism as it is of each of the major religions. As a result almost six out of seven English SACREs now have a humanist representative, the vast majority of locally agreed syllabuses include Humanism to some extent, and many do so to a high level of depth. These SACRE representatives will be happy to assist their SACREs and ASCs in ensuring their agreed syllabuses are inclusive.

About the BHA

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.

The BHA has a long history of contributing towards and improving state education, with expertise in the 'religion or belief' equality strand. We provide materials and advice to parents, governors, students, teachers and academics. We also work closely with others on wider equalities issues in a range of forums. The BHA is a member of the National Children's Bureau Sex Education Forum (SEF), the PSHE Association, the Children's Rights Alliance for England and the Religious Education Council for England and Wales.

We have been involved in policy development around RE for over 60 years. We are a founding member of the RE Council for England and Wales, and our Campaigns Manager is the Treasurer of that organisation. In recent years, the BHA has also been on the Department for Education steering groups which developed the 2004 non-statutory national framework (to which we gave our named support); the non-statutory programmes of study and attainment targets for key stages 3-5 in 2007; the abandoned level descriptions and key stage 1/2 non-statutory programme of learning in 2010; and the 2010 non-statutory guidance. We were also on the steering group of the 2013 RE Subject Review, and also sat on similar bodies with Ofsted, Ofqual and the QCDA. We helped to develop Ofsted's guidance on spiritual, moral, social and cultural development.

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