



High Court ruling on Religious Education

Legal guidance on what it means for local authorities, academies,
schools, teachers, Agreed Syllabus Conferences, and SACREs

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Summary and background

1. A ruling by the High Court in November 2015 in a case brought by three families against the Department for Education has extensive implications for the way religious education is taught in schools without a religious character. This legal note is intended to help local authorities, academies, schools, teachers, Agreed Syllabus Conferences, and SACREs understand the law as set out in the judgement and their duties in relation to it. It has been prepared with input from the lawyers who won the case.
2. The High Court ruled¹ that the Department for Education had made ‘an error of law’ in its specification of content for the new GCSE Religious Studies (RS) for English schools.² The error was in asserting that teaching the new RS GCSE would meet the legal requirements for the provision of Religious Education (RE) in general, and the consequent implication that it could therefore be used by schools as the entirety of their RE teaching at Key Stage 4.
3. The High Court said this assertion was unlawful because statutory RE in schools without a religious character must be ‘objective, critical and pluralistic’ and a syllabus that covered religions 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. As the judgement states:

‘the state has a duty to take care that information or knowledge included in the curriculum is conveyed in a pluralistic manner... 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.’

(Paragraph 39)

4. In what follows we explain what the implications of this clarification of the law are for those who set RE syllabuses and/or teach RE.

What does this mean for RE at Key Stage 4?

5. The Court said the Government’s claim that the RS GCSE could form the entirety of a Key Stage 4 RE course was ‘false and misleading’ and would encourage others to act unlawfully³. This was because such a syllabus might not include non-religious worldviews

1. R (Fox) v Secretary of State for Education [2015]: <https://www.judiciary.gov.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf>

2. The Religious Studies GCSE Subject Content, February 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403357/GCSE_RS_final_120215.pdf

3. Paragraph 81.

to the extent required under the law for RE as a whole to be neutral, impartial, and pluralistic. It would not even be adequate to balance the GCSE with teaching about non-religious beliefs in earlier key stages. The judge said:

'...it is obvious that GCSE is a vitally important stage in the development of a young person's character and understanding of the world. I do not consider it could be said that a complete or almost total failure to provide information about non-religious beliefs at this stage could be made up for by instruction given at earlier stages.' (Paragraph 78)

6. The Government was required by the judge to clarify that using the RS GCSE as the entirety of the key stage 4 RE course might not be enough to fulfil the statutory requirements for RE. It has now done this. Technically this would mean that schools would have to provide additional teaching on non-religious worldviews alongside the GCSE course in order to meet those statutory requirements (see paragraph 8.d. below).'

What does it mean for RE syllabuses and teaching more generally?

7. As a statement of the current law, the judgement has significant implications for RE syllabuses in schools without a religious character:
 - a. RE syllabuses remain bound by the statutory requirement set out in the Education Act 1996 that they 'reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practice of the other principal religions represented in Great Britain'. However, the phrase 'principal religions' now has to be read as including non-religious worldviews and includes Humanism.⁴
 - b. The legal requirement for RE to be 'objective, critical and pluralistic'⁵ in line with the state's 'duty of impartiality and neutrality' means that non-religious worldviews cannot be excluded but it does not mean that strict 'equal air-time' must be given to all religions and non-religious worldviews. As outlined in 7.a. above, it is still acceptable in law for syllabuses to give more attention to Christianity than to other worldviews, religious or otherwise. Similarly, a syllabus may give more attention to a religion or non-religious worldview that has a particularly high local following or relevance. As the judgement states, 'an RE syllabus can quite properly reflect the relative importance of different viewpoints within the relevant society... region or locality'.⁶
 - c. What the law does require, however, is that 'equal respect' be given to different religions and non-religious worldviews. For example, an RE course which provides for the study of religions of a small size or little relevance without giving comparable attention to non-religious worldviews of the same or a greater size or relevance will be unlawful. The judgement states that a syllabus that 'give[s] priority to the study of religions (including some with a relatively very small following and no significant role in the tradition of the country) over all non-religious world views (which have a significant following and role in the tradition of the country)'⁷ would be unlawful. Such a syllabus would not afford 'equal respect', would not be pluralistic, and would therefore be unlawful.

4. Paragraph 22, citing section 3 of the Human Rights Act 1998.

5. Paragraph 31(5) and *passim*.

6. Paragraph 74.

7. Paragraph 77.

What does this mean in practice?

8. The need to accord equal respect means:
 - a. other than in the case of 7.b., above, if at any key stage it is compulsory to systematically study a module on one or more of the principal religions other than Christianity, then it should also be compulsory to systematically study a module or modules on one or more principal non-religious worldviews (which in practice means Humanism);
 - b. similarly, if there is an option to study a module or modules on one or more principal religions, the choice should include a module or modules on one or more principal non-religious worldviews;
 - c. if there are thematic modules, those modules should include or allow for the study of principal non-religious worldviews to the same extent as any of the non-Christian principal religions;
 - d. at Key Stage 4, given (as explained in 6. above) that the examination boards' new GCSE courses will almost certainly not (owing to the new Department for Education specification) provide for the study of non-religious worldviews in the way specified in 8.a, b, and c, the GCSE course cannot be used as the entirety of the RE syllabus. Technically, additional teaching on non-religious worldviews would have to be provided alongside the GCSE, and agreed syllabuses cannot simply direct schools to follow the GCSE or a similar accredited qualification as the specified content for Key Stage 4. This is obviously not an ideal situation, but it is, regrettably, the unavoidable consequence of the relegation of non-religious worldviews in the GCSE specification by the Department for Education.
9. Schools that are legally obliged to follow their locally agreed RE syllabus must go on teaching that syllabus. However, schools should provide additional content on non-religious worldviews if their local syllabus does not include non-religious worldviews to the extent outlined above.
10. Schools without a religious character that are not bound to follow their locally agreed syllabus have responsibility for ensuring that the RE they provide properly reflects the

law as set out in the judgement. If such a school's syllabus does not include non-religious worldviews to the extent outlined above, the school should take steps to revise it.

11. Agreed Syllabus Conferences must take steps to ensure that their syllabuses include non-religious worldviews to the extent outlined above. Local authorities advised by their Agreed Syllabus Conference to adopt a syllabus that does not meet these standards should refer the draft syllabus back to their Conference. SACREs should take note of the legal requirements for RE in their deliberations and the advice they provide.

Humanism

12. About half the population regularly say they have no religion.⁸ Humanism is the non-religious worldview most relevant to the legal requirement, as it has a significance in the history, culture and present-day life of Great Britain as great as or greater than that of any of the non-Christian principal religions. In terms of followers, 6% of people identify as being not just non-religious but humanist (YouGov, 2014),⁹ more than those who identify as Muslim, Jewish, Buddhist, Sikh, or Hindu. Around 36% hold the humanist worldview (IpsosMori, 2007).¹⁰ There are more humanist funerals in Britain than there are of many minority religions, and more humanist weddings than there are of any non-Christian religion (in Scotland, there are more humanist marriages than Roman Catholic or Church of Scotland marriages). There is a strong humanist movement in Britain and Humanism is well articulated, with numerous books both popular and learned. Humanists from George Eliot to Bertrand Russell, David Hume to David Attenborough have been enormously influential in the formation of British culture. Therefore, to the extent that Humanism is the most prominent non-religious worldview in Britain, a syllabus that excluded detailed study of Humanism but included such study of minority religions would almost certainly be unlawful.

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8. British Social Attitudes: see <https://humanism.org.uk/campaigns/religion-and-belief-some-surveys-and-statistics/the-british-social-attitudes-survey/>

9. YouGov/British Humanist Association, November 2014.

10. Ipsos MORI/British Humanist Association, November 2006 - see <https://humanism.org.uk/campaigns/religion-and-belief-some-surveys-and-statistics/>