

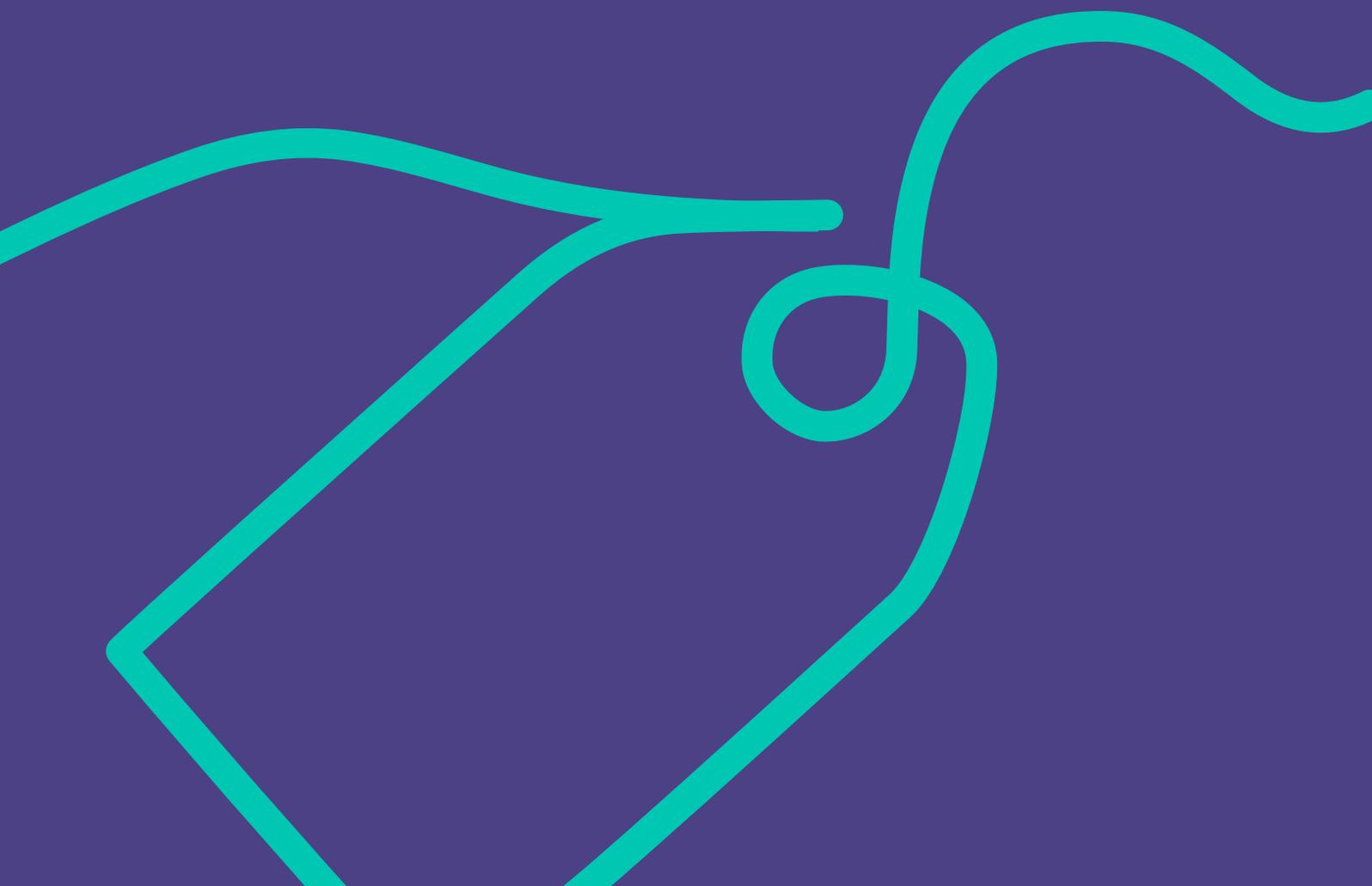


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# NON-RELIGIOUS NEED NOT APPLY

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Targeted discrimination against non-religious families by state faith schools.





**Non-Religious Need Not Apply** was written by Jay Harman, Education Campaigns Manager for Humanists UK.

At Humanists UK, we advance free thinking and promote humanism to create a tolerant society where rational thinking and kindness prevail. Our work brings non-religious people together to develop their own views, helping people be happier and more fulfilled in the one life we have.

Layout and design by Liam Whitton.

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## EXECUTIVE SUMMARY

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The practice of state schools discriminating in favour of prospective pupils on the basis of their parents' religion when setting their admission arrangements is a regrettable feature of our education system. It leads to segregation along religious, ethnic, and socio-economic lines; it emphasises difference instead of encouraging mutual understanding; and it puts the UK on a list of just four countries identified by the OECD that allow discrimination of this kind in state school admissions.<sup>1</sup>

It is equally regrettable, though generally less well-known, that many state faith schools in England also discriminate specifically against the non-religious. That is to say that many faith schools don't simply prioritise children from families that share the particular faith of the school; they prioritise all religious families over all non-religious families.

The justifications for this are weak, often relying on claims that such discrimination is necessary to maintain a faith school's 'ethos'. This is a claim refuted entirely by the fact that a great many faith schools do not operate any form of prioritisation by faith at all, and yet seem to have no problem maintaining their ethos.

The attempt to justify this discrimination is made yet weaker by the growing proportion of people in Britain who identify as non-religious. According to the most recent British Social Attitudes Survey, 53% of the population, including 61% of people who are parent-age, say they belong to no religion.<sup>2</sup> Given the ongoing pressure on school places in England, discriminating against this group in particular only becomes more and more unjust, not to mention impractical.

**This report reveals the scale of this discrimination for the first time, by analysing the admissions policies of all 637 secondary state faith schools in England.**

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1 The Organisation for Economic Cooperation and Development identifies the UK, the Republic of Ireland, Israel, and Estonia as countries allowing for this kind of discrimination. See: [http://www.oecd-ilibrary.org/education/school-choice-and-equity\\_5k9fq23507vc-en](http://www.oecd-ilibrary.org/education/school-choice-and-equity_5k9fq23507vc-en)

2 'Latest British Social Attitudes reveals 71% of young adults are non-religious, just 3% are CofE.' (Humanists UK, 4 September 2017.) <https://humanism.org.uk/2017/09/04/latest-british-social-attitudes-reveals-71-of-young-adults-are-non-religious-just-3-are-church-of-england/>

## Key findings

The report's key findings are as follows:

- **40% of all state faith secondary schools in England discriminate against non-religious families specifically, by giving priority to families who are of any religion over the non-religious**
- **60% of Catholic state secondary schools discriminate against the non-religious specifically - significantly more than any other kind of school**
- **A quarter of Church of England state secondary schools prioritise children from different faiths over children from non-religious families**
- **A fifth of Muslim schools and one in six Jewish schools discriminate against the non-religious specifically**
- **5% of 'Other Christian' schools discriminate against the non-religious in their admission arrangements**
- **No state-funded Hindu or Sikh schools single out the non-religious in this way**

Ultimately, the analysis reveals that **non-religious families face additional restrictions in their access to 240,000 more state secondary places in England (7.4% of all state secondary places)** than they would if targeted discrimination against the non-religious did not take place.

Not only is this an affront to the rights of the majority of the population, it may very well represent unlawful discrimination too.

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# CONTEXT

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In England, state schools with a religious character (faith schools) are able to discriminate against prospective pupils on the grounds of religion or belief, which is generally done to prioritise children from families who share the religion of the school. Not all state faith schools do this, and those that do don't necessarily discriminate in allocating all of their places. For instance, religious 'free schools' are currently only able to select up to half of their places with reference to religion, while the other half must remain open to all children, irrespective of religion or belief (this is known as the 50% cap). Voluntary controlled Church of England schools are also unable to select without their local authority's say-so, and some other Church of England schools in particular choose not to select, or limit the proportion selected, voluntarily.

However, whether state faith schools religiously select or not in practice, they all have the legal freedom to do so, by virtue of specific exemptions from the prohibition on discrimination in admissions contained within the Equality Act 2010.<sup>3</sup>

As above, this freedom to religiously discriminate is ordinarily used by schools to prioritise children whose families share the religion of the school. But some schools additionally use this freedom to prioritise children from any sort of religious family over all children from non-religious families. Is this lawful?

The Equality Act itself merely states that the relevant provisions of the Act, which prohibit discrimination in school admissions on the basis of religion or belief, 'does not apply in relation to— a school designated... with [a] religious character'.

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**Is blanket discrimination against the non-religious either fair or lawful?**

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The Government's non-statutory guidance *The Equality Act 2010 and schools* states in turn that the exemption allowing religious discrimination in school admissions 'is not in fact confined to preferring children of the school's own faith':

'It would, for example, allow a Church of England school to allocate some places to children from Hindu or Muslim families if it wanted to ensure a mixed intake reflecting the diversity of the local population.'<sup>4</sup>

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3 Schedule 11, Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/schedule/11>

4 Equality Act 2010: advice for schools, Department for Education, 2014: <https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

So, whilst this is only an example of how the exemption allowing religious discrimination might be used by a faith school in its admission arrangements, it does suggest that there are general parameters for its use. The question, therefore, is whether or not blanket discrimination against non-religious families *vis a vis* all religious families falls within these parameters.

For an answer, we need to refer to the School Admissions Code (the Code), to which all state schools are required by law to adhere. The purpose of the Code, in its own words, is 'to ensure that all school places for maintained schools... and Academies are allocated and offered in an open and fair way. The Code has the force of law'. At paragraph 14 it states:

'In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.'<sup>5</sup>

Now, an admissions policy that discriminates against non-religious families specifically can very well be both 'clear' and 'objective'. But can such a policy be considered 'fair'?

This is doubtful. It is a general principle of equalities law that discrimination can often only be justified if it is 'a proportionate means of achieving a legitimate aim'. It would therefore be reasonable to suggest that if a school cannot identify a legitimate aim for discriminating against non-religious families specifically, or cannot say that such discrimination is a proportionate way of pursuing that aim, then its admission arrangements fail the test of fairness found in paragraph 14 of the Code, and are therefore unlawful.

So the question then becomes one of identifying the legitimate aim or purpose served by discrimination against the non-religious specifically, and assessing how proportionate it is to achieving this aim or purpose.

The example given in the Equality Act guidance meets this test - the legitimate aim being 'ensuring a mixed intake reflecting the diversity of the local population', and the proportionate means being to prioritise the two groups that would otherwise be underrepresented.

But what about faith schools that specifically prioritise those of all religions over the non-religious? Here, identifying the legitimate aim and proportionate means being pursued is not easy to do. The blanket exclusion of one belief group - the non-religious - cannot be said to promote or achieve diversity in any meaningful sense.

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<sup>5</sup> Schools Admissions Code, Department for Education, 2015 <https://www.gov.uk/government/publications/school-admissions-code--2>

Equally, if the aim is to achieve a unified pupil and parent body, one would have to assume that religious families inherently have more in common with each other than do religious and non-religious families.

Not only is there little evidence that this is the case, but questions should surely be raised as to whether maintaining closed religious silos within schools is beneficial in a diverse and increasingly non-religious society.

In any case, most schools that discriminate in this way provide no justification for it. Those that do tend only to justify their religious criteria in the round, rather than discrimination against the non-religious specifically. In the absence of any clear aim or justification, therefore, this is an issue that the Office of the Schools Adjudicator, or perhaps the courts, would do well to clarify soon.

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**The blanket exclusion of one belief group - the non-religious - cannot be said to promote or achieve diversity in any meaningful sense.**

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# WHY WOULD NON-RELIGIOUS PARENTS CHOOSE A FAITH SCHOOL, ANYWAY?

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This is a question that is often prompted when calls are made for state faith schools to open up their admission arrangements to those of all faiths and none. Before we turn to the various answers to this question, it is important to stress that in many ways the question should be irrelevant.

State schools are paid for by all taxpayers and in our view it follows that they should be open to all taxpayers. This principle is not changed by whether a school has a religious character or not. It is a frustratingly persistent myth that faith schools contribute significantly to their own funding, and that this should entitle them to religiously discriminate against children.

If state faith schools contribute any money towards their own costs, and many do not, it accounts for around 1 or 2% of their overall budget. This is not to mention the fact that some or all of this 1 or 2% is often extracted from parents of the school through fundraising, or occasionally by inappropriate demands for 'voluntary' donations.<sup>6</sup>

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**Such is the prevalence of faith schools in England that many parents are left with little option but to send their child to a faith school.**

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The idea that this gives faith schools a right to close themselves off from certain taxpayers must be challenged.

To return to the question, however, the first answer is that non-religious parents often don't prefer faith schools for their children. Such is the prevalence of faith schools in England that many parents are left with little option but to send their child to a faith school. This can be especially true in rural areas, where avoiding the local state faith school can mean travelling prohibitively long distances to the next nearest state school or paying for a local private school instead. Of course, neither of these options are open to everybody, or even to a majority of people, meaning state faith schools are a 'choice' forced upon them.

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<sup>6</sup> 'Humanists UK research reveals shocking number of state "faith" schools demanding money from parents', Humanists UK, 2015: <https://humanism.org.uk/2015/09/03/bha-research-reveals-shocking-number-of-state-faith-schools-demanding-money-from-parents/>

Faced with a local state faith school as the lesser of two evils, it simply adds insult to injury to then deny parents access to it. It is no wonder that 'prayers for places', 'on your knees or pay the fees', and 'pew-jumping' - all used to describe the faking of religious belief to gain access to schools - have become the mantras of the modern parent.

More broadly, some non-religious parents may be willing to accept sending their child to a faith school as a result of other, overriding considerations (and should have that right). In a 2010 poll carried out by YouGov, parents were asked 'Which, if any, of the following are/were important to you when choosing which school to send your child/children to? (Please select up to three)'.<sup>7</sup> The results were as follows:

Factors influencing school choice	Total
Performance of the school	66%
How easy it was to get to	34%
The area the school was in	33%
Where my child/children wanted to go	24%
Facilities	23%
Class sizes	23%
Curriculum	22%
<b>Religion of the school</b>	<b>9%</b>
Where my child's friends went	9%
Extracurricular activities on offer	7%
That it is a same/mixed-sex school	4%

In other words, parents (including religious parents) tend to choose schools for all of the reasons that one would expect, including its location and its performance in a range of areas. For many - indeed for most - religion is not an important factor in their choice of school. Parents just want a good, local school. The discriminatory admissions policies of many faith schools get in the way of them having that.

<sup>7</sup> YouGov/Daybreak Survey Results, September 2010: [http://cdn.yougov.com/today\\_uk\\_import/YG-Archives-Life-YouGov-DaybreakReligion-130910.pdf](http://cdn.yougov.com/today_uk_import/YG-Archives-Life-YouGov-DaybreakReligion-130910.pdf)

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# ANALYSIS

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This report details the results of a survey of the admissions policies of all 637 state secondary schools with a religious character in England.

Religious character	No. of secondary schools in England
Roman Catholic	322
Church of England	209
Other Christian	73
Jewish	12
Muslim	14
Sikh	6
Hindu	1

Of these schools, 615 or 97% are either voluntary aided schools, foundation schools, or academies and free schools. This means that they are responsible for setting their own admission arrangements, rather than having them set by the local authority, as is the case in the voluntary controlled schools that make up the rest.

The survey examined the most recently available admission arrangements for each school to assess whether or not all children from religious families are given preference over all children from non-religious families. In most cases this meant examining schools' published admission arrangements for the 2019/2020 academic year, though in some cases the most recently available arrangements were for the 2018/2019 year.<sup>8</sup>

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<sup>8</sup> When this occurs in schools attached to particular Christian denominations, it might typically mean the school prioritises that denomination, then other Christians, then those of other religions. However we didn't examine how frequently schools prioritise those of the same faith (but different denominations) over other faiths. Unlike blanket discrimination against the non-religious, this seems to us to be a genuinely proportionate means of pursuing a genuinely legitimate aim.

# FINDINGS

The results of the survey are as follows:

Religious character	No. of schools	No. of schools that discriminate against non-religious specifically	% of schools that discriminate against non-religious specifically
Roman Catholic	322	193	60%
Church of England	209	52	25%
Other Christian	73	4	5%
Jewish	12	2	17%
Muslim	14	3	21%
Sikh	6	0	0%
Hindu	1	0	0%
Total	637	252	40%

The results of the survey reveal that 40% - an alarmingly high proportion - of state-funded faith schools single out non-religious families in their admission arrangements, limiting their access in favour of admitting children from religious backgrounds of any flavour.

The worst offenders by far are state Catholic schools, nearly two-thirds of which discriminate in this way. This is unsurprising, perhaps, given

that Catholic schools are also the worst offenders in terms of religious discrimination in admissions more generally. Virtually every Catholic state school in England applies a religious test in admitting 100% of their pupils. Indeed, the Catholic Education Service (CES), which runs Catholic schools in England and Wales, is so insistent that its schools' admissions policies seek only to admit children from Catholic families, that it has refused to open any new schools since 2010 in protest at the 50% cap on religious selection.

**'40% of state-funded faith schools single out non-religious families in their admissions arrangements, limiting their access in favour of... religious backgrounds of any flavour'**

It is important to note that the increased discrimination against the non-religious specifically by Catholic schools cannot be explained simply by pointing to the increased preponderance of religious selection amongst Catholic schools in general. By comparison, if we only examine the Church of England schools that religiously select to at least some extent, we find that 35% of such schools discriminate against the non-religious specifically. This is a much lower figure than among Catholic schools, almost all of which, as noted above, religiously select all of their places.

Nevertheless, it is troubling to note the discriminatory approach taken by many in the Church of England, which as an organisation increasingly seeks to claim that its schools 'are not faith schools for the faithful, they are church schools for the community'.<sup>9</sup> The results of this survey reveal that this is not the case. In both policy and practice, most CofE schools continue to discriminate along religious lines, and many try to exclude non-religious families altogether.

As we have noted above, reasons for this discrimination are rarely given by the schools themselves, but an indication may have been given by the Archbishop of Canterbury in December 2017. Speaking in a House of Lords debate on education, the Archbishop stated that:

'for schools that are not of a religious character, confidence in any personal sense of ultimate values has diminished.

'... The challenge is the weak, secular and functional narrative that successive governments have sought to insert in the place of our historic Christian-based understanding, whether explicitly or implicitly.'<sup>10</sup>

If this is the Church's - or at least the Archbishop's - view of schools without a religious character, then it is no great leap to suggest that it might be the Church's view of non-religious families too. If so, eschewing the non-religious may be the means by which Church schools seek to eschew the 'weak, secular, and functional' values that the Archbishop describes. This would not only be prejudicial and offensive, it would be an entirely inappropriate position for either a state school or a state Church to take.

The relatively low proportion of 'other Christian' schools that discriminate either against non-religious families specifically or along religious lines more generally is striking in light of the policies at Catholic and Church of England schools.<sup>11</sup> Indeed,

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9 'An education where no passports are required', Nigel Genders, February 2017 <http://cofecomms.tumblr.com/post/157359352637/an-education-where-no-passports-are-required>

10 'Archbishop of Canterbury attacks non church schools', Humanists UK, 2017 <https://humanism.org.uk/2017/12/08/archbishop-canterbury-attacks-non-church-schools-as-immoral/>

11 10% of 'other Christian' secondary schools employ religious selection criteria in their admission arrangements, compared to 99.8% of Catholic secondaries and 49.7% of Church of England secondaries: <http://fairadmissions.org.uk/map/>

whilst all schools designated with a distinct religious character will always be inherently less inclusive than schools without, 'other Christian' schools can evidently claim to be more welcoming of the whole community than most faith schools. Significantly, there has never been any suggestion from such schools that their broadly open admissions policies prevent them from 'preserving their religious character', which is often the justification given by faith schools that do have discriminatory policies. If discrimination against the non-religious is not necessary to achieve this aim, then its lawfulness as a practice in any school must surely be in further doubt.

Minority religious schools, which account for a small fraction of all state secondaries, vary in the extent to which they prioritise children from faith backgrounds over those from non-religious families. In practice, such policies probably have a negligible impact given the small number of non-religious parents in England who are likely to apply to minority religious schools. But the very presence of these discriminatory criteria acts as a statement of the closed attitude of some of these schools (and the communities they serve) to non-religious people. If this is an accurate reflection of the view within these schools, it is disappointing. If it is not accurate, it is unhelpful.

Finally, as of last year just over 600,000 pupils attended state faith secondary schools in England. To the extent that this roughly corresponds to the number of places at these schools, this report reveals that non-religious families face additional restrictions in their access to 240,000 more state secondary places in England (7.4% of all state secondary places) than they would if targeted discrimination against the non-religious did not take place. Of course, non-religious families also have their access restricted to religiously selective state faith schools regardless of whether or not they discriminate against the non-religious specifically. In total, it is estimated that 13% of all mainstream state secondary places are subject to religious selection if oversubscribed, and therefore bar non-religious families.

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# CONCLUSION

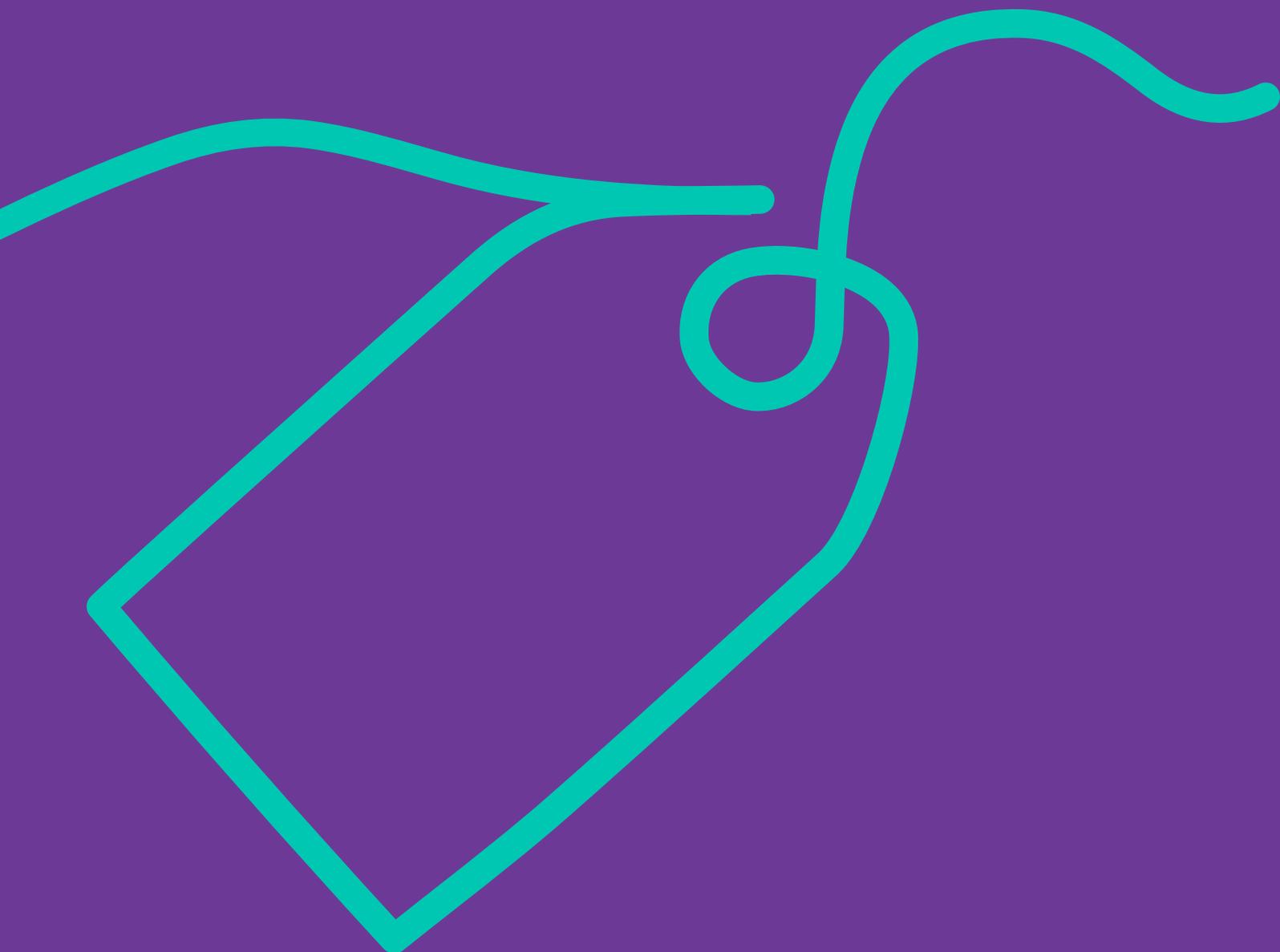
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The non-religious are a mistreated majority in England, singled out for discrimination in a significant proportion of the state schools they are largely responsible for funding. It is difficult to imagine any other religion or belief group being subject to discrimination in this way.

In our view it is no less unjustified for a Church school to discriminate against non-religious families *vis a vis* the religious, than it would be for a Church school to discriminate against Muslims, say, *vis a vis* all other religious families. In both cases the discrimination would divide children who ought to be mixing, and in both cases questions would rightly be asked about what prejudices might have led to an effort to exclude these groups from schools.

Such prejudices are what schools are supposed to challenge, either in their teaching or in the diversity of their intakes (or preferably both). But if the religious and non-religious are treated differently and educated separately, there is little hope that these prejudices will be overcome.





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