
STATE OF CHILDREN'S RIGHTS IN ENGLAND 2018: CALL FOR EVIDENCE

Response from Humanists UK, September 2018

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 70,000 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.

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

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

SUMMARY

In response to the call for evidence, we raise the following issues within the area of **Education**. In each of the following issues there has been significant policy development since the 2017 report.

- Faith school admissions, specifically the Government's plan to allow new voluntary aided (VA) schools to open, bypassing the free-school presumption, which would be permitted to select 100% of students on the basis of religion.
- Relationships and Sex Education (RSE), and concern that faith schools may be entitled to teach a narrow and discriminatory version of RSE due to an exemption in law.
- Compulsory participation in daily acts of collective worship in publicly funded schools as a violation of the child's right to freedom of thought, conscience and religion.
- Illegal religious schools, with a focus on the failure of relevant authorities to address what are flagrant violations of the rights of the children within them.

FAITH SCHOOL ADMISSIONS

State-funded schools designated with a religious character are legally able to discriminate against children on the basis of their own or their parents' religion when deciding which children to admit. There are specific exemptions in the Equality Act 2010

that allow such schools to do this,¹ and as a result 16% of all places at state schools in England are subject to religious discrimination in this way. This amounts to 1.2 million places, more than the number of places at private, single-sex, and grammar schools combined.

Retention of the 50% cap on religious selection at Free Schools

Since 2007, all new religious academies and free schools have been restricted to selecting up to half of their pupils on the basis of religion as part of their admission arrangements. This is commonly referred to as the '50% cap'.² We support this as a way to ensure both that parents retain access to their local schools and that schools promote integration between those from different religious and non-religious backgrounds. In fact we would go further and for the same reason end religious selection by state schools entirely.

In 2016, the Government announced that it intended to remove the 50% cap and allow new and existing religious free schools to religiously select for all of their places. This prompted us to campaign for the maintenance of the cap as it has been an effective measure in improving fair access to education and promoting social integration. We were pleased that in May 2018 the Secretary of State for Education Damian Hinds announced that cap would remain in place.³

Opening of 100% religiously selective voluntary aided schools

However, in lieu of the removal of the 50% cap, the Government announced that it would allow new voluntary aided (VA) schools to open that will be able to select 100% of students on the basis of religion. For the past ten years, the free school presumption has meant that Government funding has only been available to new schools under the free school/academy programme, so new schools with a religious character were subject to the cap. Therefore, it has not practically been possible to open new VA schools and the Government is unclear as to how many new religious VA schools will now open and to what extent they will impose full religious selection.⁴

This decision not only runs against the grain of educational policy for the past decade but is a serious concern for children's rights. Religious selection clearly violates the Article 2 rights of children in discriminating either on the basis of their own beliefs or on the basis of their parents' beliefs. It is also contravenes Article 14 (as indeed does the existence of faith schools more generally) since the right of children to be independent and hold different beliefs to their parents is severely limited by the ability of faith schools to define and discriminate against children based on parental belief and practice. Such selection based first and foremost on the beliefs of parents rather than on the beliefs of children fails to respect the right of children to hold their own beliefs.

¹ Schedule 11(5) Equality Act 2010:

<http://www.legislation.gov.uk/ukpga/2010/15/schedule/11/paragraph/5>

² *Free School admissions: guidance*, Department for Education (December 2014):

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

³ *Government U-turn on 50% cap on religious free school admissions (May 2018)*

<https://humanism.org.uk/2018/05/11/humanists-uk-wins-government-u-turn-on-50-cap-on-faith-school-admissions/>

⁴ *Damian Hinds 'cannot say' how many new voluntary-aided schools will open (May 2018)*

<https://schoolsworld.co.uk/damian-hinds-cannot-say-how-many-new-voluntary-aided-schools-will-open/>

It is well-established that religious selection does not simply have the effect of discriminating on the basis of religion but also by extension discriminates on the basis of ethnicity and socio-economic status. Research conducted by Humanists UK looking into the effectiveness of keeping 50% of places open to all students revealed that religious free schools are significantly more accessible to children from Asian backgrounds than are religious schools that select all of their places with reference to religion. Indeed, at Christian free schools opened under the cap, 18% of pupils are from Asian backgrounds, but that figure is just 5% at Christian schools that religiously select all of their pupils.⁵

These findings were echoed by research commissioned by the Department for Education and published in August 2017 into the relative benefits of mixed versus segregated schools. The study, which examined the contact between young people from White British and Asian British backgrounds at secondary schools in Oldham, assessed the extent to which mixing in school can 'improve both attitudes towards outgroups and intergroup relations.' It found that 'attitudes were more positive and, as would be expected, mixing was more frequent in mixed than segregated schools', and that 'mixed schools do result in more social mixing between ethnic groups over time, and mixing is reliably associated with more positive views of the outgroup.'⁶ It is surprising that the Government could still push ahead with plans that would increase the amount of segregation in the education system in spite of having published such research.

Research also suggests that religious selection disadvantages students from lower socioeconomic backgrounds. In 2016, the Education Policy Institute conducted research to assess the merits of the Government's proposal to drop the 50% cap on religious selection. The report noted that, as a result of selective admission arrangements, faith schools 'educate a lower proportion of disadvantaged children'.⁷ The Sutton Trust conducted similar reactive research last year, concluding that lifting the 50% cap is 'likely to make [faith schools] even more unrepresentative of their local areas, reducing the number of good school places available to pupils across the socio-economic spectrum. The admissions process for faith schools should instead be opened up so that their admissions are fairer and begin to reflect their local population.'⁸ A move to allow 100% religious selection in new VA schools would therefore only increase such socio-economic discrimination and further deprive children from poorer backgrounds of the rights that their more affluent peers enjoy.

Recommendation: The Government should drop plans to allow new VA schools to open that can select up to 100% of students on the basis of religion, and consideration should be given to ultimately removing religious selection altogether.

⁵ *Ethnic diversity in religious free schools*, Humanists UK, September 2016: <https://humanism.org.uk/wp-content/uploads/2016-09-15-FINAL-Ethnic-diversity-in-religious-Free-Schools.pdf>

⁶ *Diversity and Social Cohesion in Mixed and Segregated Secondary Schools in Oldham*, Department for Education, August 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/634118/Diversity_and_Social_Cohesion_in_Oldham_schools.pdf

⁷ *Faith schools, pupil performance, and social selection*, Education Policy Institute, December 2016: <http://epi.org.uk/report/faith-schools-pupil-performance-social-selection/>

⁸ *Selective Comprehensives 2017*, Sutton Trust, March 2017: <https://www.suttontrust.com/research-paper/selective-comprehensives/>

RELATIONSHIPS AND SEX EDUCATION (RSE)

In April 2017 the Children and Social Work Act was signed into law, introducing compulsory relationships and sex education (RSE) in all English secondary schools and compulsory relationships education in all English primary schools.⁹ In July this year, the Government also announced teaching about good mental and physical health will be made compulsory in all English schools under plans to introduce Health Education as a subject to sit alongside RSE. However, after significant delays in implementation, schools are not expected to begin teaching these subjects until September 2020.

Since the passing of the Act, we have taken part in two consultations held by the Department for Education on what content should be included in the guidance and regulations of these subjects. We are currently awaiting a response from the Government to these.

However, despite these provisions applying to all schools in England, section 34(3)(b) of the Act requires that 'when relationships education or relationships and sex education is given - the education is appropriate having regard to the age and religious background of the pupils.' And in a written ministerial statement clarifying the legislation, the Department for Education stated that 'faith schools will continue to be able to teach in accordance with the tenets of their faith'.¹⁰

All the evidence suggests that high-quality RSE leads to the best outcomes in terms of improving sexual health, reducing unwanted pregnancy, challenging gender stereotypes, educating about consent, protecting children from abuse, and tackling homophobic, biphobic, and transphobic bullying.¹¹ Given the benefits of RSE to the wellbeing of pupils, it is simply not appropriate to be providing it to some whilst denying it to others.

Furthermore, relationships and sex education is concerned with equipping children to engage in respectful relationships, to challenge and be resilient to damaging gender stereotypes and other discriminatory attitudes, and ultimately to stay safe and healthy. As such, it must be relevant to them and to the choices they are free to make irrespective of their religious or non-religious background. Clearly, if RSE in all types of schools is not fully LGBT-inclusive, if it withholds information or passes judgement on the various forms of family relationship, or if it presumes the availability of only a limited range of options for staying safe within relationships, sexual or otherwise, then it fails children and young people.

Our view, therefore, is that a child's access to accurate, evidence-based information about relationships and sex should not be determined by their religious or non-religious background, nor by the type of school to which they happen to have been sent or allocated. If children have a right to comprehensive, age-appropriate RSE, as we maintain they do under articles 24(e), 28, and 29 of the UNCRC, then all children must have access to it. To allow certain types of school to opt out of this teaching, as is

⁹ Section 34, Children and Social Work Act 2017:

<http://www.legislation.gov.uk/ukpga/2017/16/section/34/enacted>

¹⁰ Sex and Relationships Education: Written Statement, Department for Education, March 2017:

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2017-03-01/HLWS511/>

¹¹ SRE - the evidence, Sex Education Forum, 2015:

www.sexeducationforum.org.uk/media/28306/SRE-the-evidence-March-2015.pdf

proposed, is either to declare that no such right exists, or to endorse the widespread violation of that right.

We were pleased that in July this year, the Government announced an end to the parental right to withdraw their child from sex education up to the age of 18 citing that the policy 'is no longer compatible with English case law, or the European Convention of Human Rights, as it does not take into account the point at which a child becomes competent to make this decision for themselves.'¹²

Instead from 2020 onwards, headteachers will have the power to grant a parental request to withdraw a child with support from statutory guidance. That guidance states that such requests should ordinarily be granted until three terms before the child is 16 (essentially age 15). This policy change enhances the rights of those over this age, who now will be able to exercise the right to make their own decision about opting in or out from sex education, now they are mature enough to make their own mind up on the subject.

Recommendation: The Government should make clear that regardless of the religious character of the school, RSE must be taught in line with the Equality Act 2010 and provide students with comprehensive, accurate, and unbiased information about contraceptives, STIs, abortion, gender identity, and sexual orientation, among other topics.

COMPULSORY COLLECTIVE WORSHIP

The School Standards and Framework Act 1998 mandates that all schools in England must ensure that pupils 'on each school day take part in an act of collective worship.'¹³ For schools with a designated religious character this act of worship must be in line with that character. For schools without a religious character worship must be 'wholly or mainly of a broadly Christian character' defined as reflecting 'the broad traditions of Christian belief without being distinctive of any particular Christian denomination'.¹⁴ Students do not have the right to withdraw from such worship without parental permission before entering the sixth form.

The Fifth Periodic Review into the UK's implementation of the UN Convention of the Rights of the Child 'recommends that the State party repeal legal provisions for compulsory attendance at collective worship in publicly funded schools and ensure that children can independently exercise the right to withdraw from religious worship at school.'¹⁵ The report cites that the current requirement violates the child's right to freedom of thought, conscience, and religion by denying them the opportunity to choose their religion and belief.

¹² *Heads will decide if pupils can be withdrawn from sex education*

<https://schoolsweek.co.uk/heads-will-decide-if-pupils-can-be-withdrawn-from-sex-education/>

¹³ *School Standards and Framework Act 1998 ss. 70-71.*

<http://www.legislation.gov.uk/ukpga/1998/31/section/70>

¹⁴ *School Standards and Framework Act 1998 Schedule 20.*

<http://www.legislation.gov.uk/ukpga/1998/31/schedule/20>

¹⁵ *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, United Nations Committee on the Rights of the Child (July 2016)

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en

In 2017, a coalition of Scottish charities wrote to the Scottish Cabinet Secretary for Education calling for young people to have the right to withdraw themselves from religious observance in state schools.¹⁶ Northern Ireland Humanists (which is part of Humanists UK) has an ongoing campaign 'Let Pupils Choose' to similarly give pupils the choice about whether to attend collective worship.

Across the UK, Humanists UK ultimately wants to see collective worship or religious observance scrapped and replaced with a requirement for inclusive assemblies. In England and Wales, this move has been supported by all of the teaching unions, most national religious education bodies, most national religious bodies, and the Local Government Association, as well as most of the population.

Recommendation: The Government should implement the recommendation of the UN Committee on the Rights of the Child and repeal the relevant sections of the 1998 School Standards and Framework Act.

ILLEGAL RELIGIOUS SCHOOLS

It is now well-known that a significant number of unregistered, illegal schools are operating throughout England, and it is equally well-known that many of these settings are religious in character. Such settings serve a variety of different religious communities, including Muslim, Jewish, and Christian communities - all of which in some respect tend towards a fundamentalist, extreme, or isolationist outlook.¹⁷

The educational experience within these illegal schools represents a grave threat to the rights of the children within them. To take the unregistered schools serving boys in the 'strictly Orthodox' Charedi Jewish community as an example, both personal testimony from former pupils and (rare) Ofsted inspection reports¹⁸ reveal that the education in these full-time 'yeshivas' is confined almost entirely to scriptural study. No, or almost no, 'secular education' is provided in subjects such as English, Maths, and Science (nor is any time dedicated to physical education or activity). As a result Charedi boys often finish their education completely ignorant to, and unprepared to exist in, the outside world, making it almost impossible for them to leave their communities. In addition, there is almost no effort to teach children about other cultures or religions, and where such teaching does exist, the information provided to children is often not accurate and is designed to encourage a negative opinion of those outside their immediate community. The schools themselves tend to be housed in entirely unsuitable buildings,¹⁹

¹⁶ *Joint call to Scottish Government to respect youth choice on religion and belief in schools*
<https://www.humanism.scot/what-we-do/news/call-action-religious-observance-coalition-scottish-charities/>

¹⁷ *Ofsted to throw the book at rogue faith schools*, Sunday Times, July 2017:
<https://www.thetimes.co.uk/edition/news/ofsted-boss-to-throw-the-book-at-rogue-faith-schools-whether-jewish-christian-or-islamic-pqsnw6rtm>

¹⁸ Pre-registration inspection reports for Talmud Torah Tashbar, Ofsted, 2013-2015:
<https://humanism.org.uk/wp-content/uploads/Talmud-Torah-Tashbar-pre-registration-inspection-reports-2012-14.pdf>

¹⁹ *Revealed: Pupils' lives at risk after fire safety breaches at illegal schools*, Schools Week, June 2017:
<http://schoolsweek.co.uk/revealed-pupils-lives-at-risk-after-fire-safety-breaches-at-illegal-schools/>

the school day lasts significantly longer than is normal, often in excess of 12 hours, and former pupils report widespread abuse and physical punishment.²⁰

Similar situations are known to exist in certain Muslim communities, too, where Ofsted has previously reported that illegal schools are teaching 'misogynistic, homophobic and anti-Semitic material' and 'narrow' curriculums 'failing to prepare [pupils] for life in modern Britain'.²¹

So, to draw on the summary of the educational experience within illegal schools given above, it is easy to identify a wide range of rights that are violated by the current situation. These include, though are not limited to: the right for the institutions and facilities responsible for children's care to conform with standards established by competent authorities, as enshrined in Article 3(3); the rights corresponding to the state's duty to ensure to the maximum extent possible the development of children, as enshrined in Article 6; the right of the child to form and freely express their own views in matters concerning the child, as enshrined under Article 12; the right to freedom of expression, including freedom to seek, receive, and impart information and ideas of all kinds as enshrined in Article 13; the right to freedom of thought, conscience, and religion enshrined in Article 14, which includes the right to manifest one's beliefs; the right to protection from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, as enshrined in Article 19; the right, of course, to education enshrined in Article 28, and for that education to be directed towards 'the preparation of the child for responsible life in a free society', as enshrined in Article 29; and the right to leisure, and to engage in play and recreational activities and participate freely in cultural life, as enshrined in Article 31.

There can be few other children in England whose rights are violated to this extent.

Despite this situation, however, very little has been done in 2018 (or in preceding years) by the relevant authorities. For instance, in January 2016 the Government consulted on proposals to require all supplementary schools providing more than six to eight hours of education a week to individual children to register with the DfE, meet certain regulatory standards, and face periodic inspection. The proposals would have the effect of preventing illegal schools from masquerading as supplementary schools to avoid Ofsted inspection and the need to register, something which Ofsted has said is very common.

Disappointingly, the proposals were dropped largely as a result of lobbying by the Church of England (and the Catholic Education Service), despite the fact that any regulations would be unlikely to affect Sunday schools.²² This decision ignored the advice of Ofsted, which has consistently called for greater powers to tackle illegal

²⁰ *Physical punishment was commonplace at the atmosphere was one of perpetual fear*, Faith Schoolers Anonymous, May 2016:

<https://faithschoolersanonymous.uk/2016/05/life-in-a-charedi-school/>

²¹ *Unregistered schools: Ofsted advice notes*, Sir Michael Wilshaw HMI, 2015-6:

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

²² *Government reportedly dropped illegal religious school regulation following Church of England lobbying*, Humanists UK, July 2017:

<https://humanism.org.uk/2017/07/26/government-reportedly-dropped-illegal-religious-school-regulation-following-church-of-england-lobbying/>

schools,²³ and leaves the children in illegal schools with little hope that their situation might improve through a change in regulation.

Despite this set-back, we have continued to shine a light on the existence and abuses taking place in illegal schools, including working on a joint BBC/Humanists UK investigation that was aired on BBC News at Six and Ten, and continuing to work closely with Ofsted. In May this year, Education Minister Nick Gibb stated his intention to prosecute illegal schools whilst speaking at an evidence session held by the House of Commons Education Committee. He said 'We are devoting quite a bit of resource to prosecuting and closing down unregistered school settings... They do need to be registered and they do need to be inspected by Ofsted, and if they're not then it is unlawful and we prosecute. Ofsted has a pot of money in order to pursue those prosecutions and we take those things very seriously.'

Ofsted now does have a dedicated team of inspectors investigating illegal schools, but does not have the power to close down these settings once identified, and there has so far not been a single prosecution in relation to an illegal school. However, we were pleased the Government's Integrated Communities Strategy included a commitment to reviewing Ofsted's powers in this area.²⁴

Recommendations: The Department for Education, with the help of Ofsted and relevant local authorities, should move to immediately shut down any school found to be operating illegally. To the extent to which this is not possible because of the law, the law should be immediately amended.

For more details, information and evidence, contact Humanists UK:

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²³ *Ofsted Chief Inspector demands new powers to tackle illegal religious schools*, Humanists UK, July 2017:

<https://humanism.org.uk/2017/07/03/ofsted-chief-inspector-demands-new-powers-to-tackle-illegal-religious-schools/>

²⁴ *Humanists UK comment: Government integration strategy*

<https://humanism.org.uk/2018/03/14/humanists-uk-comment-government-integration-strategy/>