
EQUALITY AND HUMAN RIGHTS COMMISSION (EHRC) DRAFT STRATEGIC PLAN 2019-2022

Response from Humanists UK, December 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.

We are a strong proponent of human rights and equality, and the UK's laws in this area underpin almost all the public affairs work we do. We are a member of the Equality and Diversity Forum and the British Institute of Human Rights' Human Rights Alliance. We are accredited at the United Nations Human Rights Council, the only national humanist group to hold accreditation, and we make interventions at every session. We are an active member of the All Party Parliamentary Group for International Freedom of Religion or Belief and have campaigned against religious persecution and blasphemy laws both in the UK and internationally.

HUMANISTS UK'S PRIORITIES IN LINE WITH EHRC'S MANDATE

- **Humanist marriage:**
In 2013, the Government gave itself the power to grant legal recognition to humanist marriages in England and Wales as is current law in Scotland and Northern Ireland. This would give non-religious people the same choice that religious people have of a meaningful ceremony composed by a person who shares their values and approach to life. In Northern Ireland, the change in law was brought about in 2018 through a human rights case, and logically the ruling should have bearing England and Wales too.
- **The school curriculum and religion or belief:**
We campaign for reform to the current subject of 'Religious Education' (RE) so that, as required by human rights law, it becomes inclusive, impartial, objective, fair, balanced, and a relevant subject allowing pupils to be equally able to explore a variety of religions and humanism, sitting alongside other Humanities subjects in the curriculum. The Commission on RE recently recommended that the subject be renamed to 'Religion and Worldviews'.¹ We would like the EHRC to support this and other inclusive changes recommended in the RE curriculum.
- **Religious discrimination in the school admissions and employment:**
We do not think that state schools should be allowed to religiously select pupils and discriminate access to a public service that should be open to all.

¹ Commission On Religious Education, September 2018

<https://www.commissiononre.org.uk/wp-content/uploads/2018/09/Final-Report-of-the-Commission-on-RE.pdf>

Furthermore, we do not believe that state schools should be free to select teachers and other staff based on their religion, particularly where this goes beyond a genuine occupational requirement (GOR). On the latter, there is a mistransposition into UK law of the European Employment Directive, and we know this is something the EHRC has taken an interest in in the past.

- **Employment in chaplaincy/pastoral support teams:**

We campaign for an end to unlawful religious discrimination in publicly funded posts such as pastoral support jobs in hospitals, the armed forces, universities, and prisons, which are often unfairly reserved only for religious people or for people of certain religions. We have previously worked with the EHRC on this issue, and are grateful that the EHRC is showing an ongoing interest in the matter.

- **Asylum on the basis of religion or belief:**

We support humanist asylum claimants in making their case to the Home Office and in making representations at asylum tribunals. This year we have been working with the Home Office to introduce mandatory training for all asylum assessors on claims on the basis of religion or belief, which have often not been made fairly. We would like to see the EHRC play an active role in ensuring that those processing asylum claims on the basis of religion or belief are adequately trained to be able to carry out fair and accurate assessments of claims.

Priority Aim 1: People are better able to seek redress when they are wronged and people have a fair trial in the criminal justice system

Overall, we agree with the types of activities suggested by the EHRC in this area and that improving access to justice should be the first priority for the organisation. We would like to suggest some additional areas of focus related to the work of Humanists UK that are relevant to this priority aim.

Asylum claims on the basis of religion or belief

We support non-religious people in the UK who are seeking asylum because they have a well-founded fear of persecution if they were to return to their country of origin. Through this work we have encountered two major problems for their gaining a fair hearing at the Home Office.

The first is the lack of adequate training and guidance for asylum decision makers on religion or belief claims, which has led to claimants being asked inappropriate or unfair questions at their substantive interviews, such as 'can you name any ancient Greek philosophers that were humanists?' (in the case of one asylum seeker we were working with, who was subsequently told he is not a humanist for failing to name Plato and Aristotle - in spite of their both being religious), or 'what colour is the bible?' (in a case we have heard about). No current guidance includes references to humanists or the persecution of non-religious people, instead incorrectly referring to the asylum ground as simply 'religion'. We have been working with All Party Parliamentary Group for International Freedom of Religion or Belief to push for the introduction of adequate training, which we are hoping will be rolled out in early 2019.

The second problem is the inappropriate use of exclusions from protection under the Refugee Convention for individuals who have committed crimes. The Home Office has the power to exclude individuals from protection. This power was intended to be used for the most serious of crimes, such as individuals who have committed war crimes, or

crimes against humanity, in their home countries. However, as part of the hostile environment it appears this power is being misused to exclude individuals who have committed much lesser crimes and who have served time in prison in this country.

Recommendation: We would like the EHRC put pressure on the Home Office to publish the new training materials for asylum decision-makers on religion or belief cases as soon as possible. We would also like the EHRC to launch an inquiry into the Home Office's use of powers to exclude asylum claimants from humanitarian protection.

Hate crime legislation

The Law Commission is conducting a review of the current provision for hate crime legislation. Whilst the definition of 'religious hatred' used in the Racial and Religious Hatred Act 2006, the Crime and Disorder Act 1998, and the Criminal Justice Act 2003 does protect 'no religion', it does not protect individuals who are targeted because they positively hold non-religious worldviews. While leaving a religion may be protected, humanism, for example, as a positively held non-religious worldview, would not. This definition is at odds with Section 10 of the Equality Act and the Human Rights Act that do positively include beliefs. Therefore, there is no parity between discrimination law and hate crime legislation for those who positively hold non-religious worldviews.

A further issue is that the name 'religious hatred' also frequently leads stakeholders to incorrectly conclude that the non-religious are not protected. This year we have found this confusion extending across police forces and even amongst Home Office staff. It has not been helped by the current Government poster campaign against hate crimes that refers specifically to 'religion'.²

Recommendation: We would like the EHRC to seek a change in the law so that individuals who are targeted in a hate crime because they positively hold a non-religious worldview will have the same access to justice as religious victims, and so that 'religious hatred' becomes 'religion or belief hatred'.

Priority Aim 2: Ways to tackle prejudice are better understood and good relations are promoted particularly through the education system

We agree that the most effective approach to encouraging integration and tackling prejudice is to facilitate the mixing of children in school. We also believe that tackling prejudice and promoting respect for human rights should be among the EHRC's top priorities. Below, we set out the various barriers to both integration and the preparation of children for life in modern Britain that exist in this country, and our recommendations for overcoming them.

Faith school admissions

When faith schools use faith-based admissions criteria to select their pupils, children and families are segregated in three important ways: along religious, ethnic, and socio-economic lines. The evidence for this is clear and is detailed in our recent

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<https://www.prweek.com/article/1498227/m-c-saatchi-unveils-home-office-hate-crime-campaign>

submission to the Department for Housing, Communities and Local Government's recent green paper on its Integrated Communities Strategy.³

For example, in 2017 the Department for Education published research that it had commissioned into 'diversity and social cohesion in mixed and segregated secondary schools'. The study, which examined the contact between young people from White-British and Asian-British pupils at secondary schools in Oldham, sought to assess the extent to which mixing in school can 'improve both attitudes towards outgroups and intergroup relations.' Researchers found that:

- 'Attitudes were more positive and, as would be expected, mixing was more frequent in mixed than segregated schools'.
- '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.'
- 'Attitudes of pupils who mix with other backgrounds were more positive compared to those who remain with their own ethnicities.'

Recommendation: We would like the EHRC to target decision-makers at the Department for Education to end its support for fully selective faith schools and to reverse its recent decision to allow new 100% selective religious voluntary aided schools to open.

Religious Education

There has been a decline in the number of schools and pupils offering or taking Religious Education, especially at GCSE and A-Level. We believe that teaching about religions and humanism is an important part of the curriculum, which should be used to challenge prejudice and promote integration. In September, the Commission on RE recommended that the subject in England be renamed to Religion and Worldviews, in part to ensure full inclusion of humanism. This is in line with the 2015 judicial review *Fox vs Secretary of State for Education*, which established that the curriculum must be inclusive in this way. The Commission also recommended that a national entitlement (the text of which is included in the report) to the subject be introduced in place of existing legal requirements.⁴ We welcome both recommendations, which are strongly in line with its own position of many decades standing, enhance children's rights to learn about and impart ideas of all kinds (as mandated in e.g. the UN Convention of the Rights of the Child), and improve their understanding of those of different religions and beliefs (as mandated in e.g. the public sector equality duty, or the British values requirements).

Recommendation: We would like the EHRC to support the recommendations of the Commission on RE.

Unregistered schools

³ Humanists UK's responses, Integrated Communities Strategy Green Paper, June 2018.
<https://humanism.org.uk/wp-content/uploads/2018-05-14-Integrated-Communities-Strategy-consultation.pdf>

⁴ Commission for Religious Education, FINAL REPORT. Religion and Worldviews: the way forward. A national plan for RE
<https://www.commissiononre.org.uk/final-report-religion-and-worldviews-the-way-forward-a-national-plan-for-re/>

The education provided in many unregistered religious schools is known to be narrow in its scope, predominantly scriptural in its content, and deeply conservative, intolerant, and extreme in its outlook. In a series of advice notes to the Secretary of State for Education in 2015 and 2016, former Ofsted Chief Inspector Sir Michael Wilshaw detailed the findings of inspectors in a number of unregistered Muslim settings, including 'a narrow Islamic-focused curriculum', 'inappropriate books and other texts including misogynistic, homophobic and anti-Semitic material', and 'children and young people... at significant risk of harm and indoctrination'.⁵

Similarly, Ofsted reports published by Humanists UK in 2016 exposed the situation within illegal Charedi schools, revealing that the curriculum 'encourages cultural and ethnic insularity' and prevents pupils from 'developing a wider, deeper understanding of different faiths, communities, cultures and lifestyles, including those of England.'⁶ Former pupils report to us that they only study the Talmud and the Torah, often for fourteen hours a day, six days a week, and leave education as adults unable to speak any English, in spite of sometimes being third or fourth generation Londoners. They report having frequently experienced physical abuse by staff, something that was recently exposed as part of a joint investigation by Humanists UK and the BBC, as well as being aware of child sexual exploitation too.⁷

Needless to say, the children trapped within these settings are neither integrated with wider society nor prepared to live in it even if they were. In fact, as the above evidence illustrates, much of the teaching within these settings is explicitly designed to isolate and to foster a negative opinion of people living outside the immediate community.

The Government has announced that it 'intend[s] to amend the registration requirement for independent education settings so that all such settings which children attend full-time during the school day have to register, and we will consult in due course on detailed proposals.'

This is an incredibly welcome step and one that we have been calling for for some time. We have gathered substantial evidence that the education provided in many unregistered religious schools is narrow in its scope, often entirely scriptural in its content, and deeply conservative, intolerant, and extreme in its outlook. It is explicitly designed to isolate and to foster a negative opinion of people living outside the immediate community. It denies children their right to education.

Recommendation: We would like the EHRC to seek changes to the law to grant Ofsted the power to enter, inspect, and report on unregistered schools.

Priority Aim 3: New technologies and digital services promote equality and human rights

⁵ <https://www.gov.uk/government/publications/unregistered-schools-ofsted-advice-note>

⁶ Humanists UK reveals illegal faith schools allowed to stay open for years despite repeated Ofsted warnings, January 2016:

<https://humanism.org.uk/2016/01/15/bha-reveals-illegal-jewish-school-allowed-to-stay-open-for-years-despite-repeated-ofsted-warnings/>

⁷ Joint BBC/Humanists UK investigation reveals abuse at illegal religious schools, February 2018: <https://humanism.org.uk/2018/02/26/joint-bbc-humanists-uk-investigation-abuse-at-illegal-religious-schools/>

We agree with the recommended types of activities in this priority aim and have no further suggestions to make.

Priority Aim 4: Public transport and the built environment are accessible to disabled and older people so as to support their economic and social inclusion

We agree with the recommended types of activities in this priority aim and have no further suggestions to make.

Priority Aim 5: Access to essential public services is improved for particularly disadvantaged groups

Section 6 of the Human Rights Act

We believe that section 6 of the Human Rights Act (HRA) has not been successful in protecting public service users from discrimination because its definition of what constitutes a public body is too narrow and does not cover many organisations that are providing public services under contract. A feature of the contemporary UK is the increasing contracting out of public services, from housing to transport, from social care services to welfare and employment services, to private and third sector providers. This means that increasing numbers of service users are left in a lottery as to whether they are covered by the HRA or not. Human rights have not adapted to the changing situation in UK service provision and increased involvement of non-state bodies.

Increasingly such services are being delivered by religious organisations, who are not defined as public bodies. If a service user, who has no choice over which organisation is providing the service, feels that their rights have been violated by that organisation on the basis of religion or belief, sex, or sexual orientation, they will not be able to use the HRA as a mechanism of redress.

The belief systems of various religious organisations and the tenets of the HRA can be in conflict and this can affect the level of service experienced by users. Professional standards can easily be compromised if religious motivations are allowed to colour the service provided. Whereas secular services focus on addressing the causes of problems and on actualising human capacity, regardless of who the individual is, or of their beliefs, there is evidence that religiously motivated individuals and organisations can be as interested in the promotion of their religion as addressing the practical needs of service users.

For example, in a memorandum to the Joint Committee on Human Rights in 2006 the Salvation Army, an evangelical Christian organisation, stated, 'whilst it is appropriate for the state to be religiously neutral, this is impossible for an organisation such as The Salvation Army, which delivers its services as a direct outworking of the Christian faith.'⁸ The Salvation Army, which holds contracts to provide services to vulnerable trafficked women, openly propagates discriminatory views about homosexuality and openly admits that its mission is to proselytise.

⁸ British Humanist Association, *Quality and Equality: Human Rights, Public Services and Religious organisations*
<https://humanism.org.uk/wp-content/uploads/BHA-Public-Services-Report-Quality-and-Equality.pdf>

Recommendation: We recommend that the EHRC seeks a change in the law to ensure that the definition of a public body under Section 6 is extended to include all organisations carrying out a state function under contract.

Priority Aim 6: People in Britain have equal access to the labour market and are treated fairly at work

We agree that seeking equal access and opportunity to flourish in the labour market must be a top priority for the EHRC. We campaign to challenge religious discrimination in the employment in two key sectors: education and healthcare.

Pastoral support employment

We campaign for an end to religious discrimination in publicly funded posts, most notably in the provision of chaplaincy/pastoral support services in the NHS, the prison service, armed forces, and universities. In the past two years we have challenged a number of NHS Trusts who have unlawfully restricted roles to candidates of certain religions.

Faith school employment

The European Employment Directive is mistransposed into UK law with respect to employment in English and Welsh religious schools. Currently, the Equality Act 2010 has an exception written into it (Schedule 22(4)) permitting much wider discrimination on the basis of religion or belief in these settings than just where a GOR can be demonstrated. The Directive has no similar exception and quite rightly only allows such discrimination in the case of a GOR.

From 2010-16 there was a formal investigation by the European Commission into this discrepancy. In private correspondence as part of this the UK Government admitted the issue is genuine, but said that the courts could be relied upon to interpret the Equality Act correctly in light of the Directive, effectively rendering the exemptions it includes meaningless. That is clearly not an acceptable solution, however, and in light of Brexit it may soon be the case that the courts cannot be relied upon in this way and the discrepancy in transposition could therefore not be rectified.

The EHRC has itself called for reform of religious discrimination in a report into religion and belief in the workplace in 2016.⁹ Amongst other things, the EHRC has concluded:

- The law around 'faith' school employment in England, in allowing religious schools to widely discriminate – often against every teacher – on the basis of religion in who they employ, is 'arbitrary' and goes beyond what is permitted by European law. UK law should be reviewed (and hence, possibly, amended) so that religious schools can only discriminate where there is a genuine and legitimate requirement that the occupation has to be filled by someone of a certain faith – for example, for the head of RE in a religious school that teaches faith-based RE.
- There should be no change in the law to explicitly require employers to 'reasonably accommodate' employees – because in fact, employers have to do this already, to the extent to which such accommodation does not lead to discrimination against others. Any changes would therefore either have no

⁹ <https://www.equalityhumanrights.com/en/religion-or-belief-workplace>

impact or actually enable certain religious employees to put their colleagues or service users at a disadvantage.

- Commercial organisations should not be permitted to discriminate on the basis of religion or belief, or sexual orientation.

Priority Aim 7: The social security system is fair and operates without discrimination

We agree with the recommended types of activities in this priority aim and have no further suggestions to make.

Priority Aim 8: Improved rules governing entry into detention and conditions institutions

Prison Service Instructions

We campaign for equal access to pastoral support for non-religious people in the prison service as is currently provided for prisoners with religious beliefs by chaplaincy. Currently the Prison Service Instructions for 'Faith and Pastoral Care for Prisoners' does not mention non-religious prisoners or contain instruction for their care.

Recommendation: We would like the EHRC to use its powers to force Her Majesty's Prison and Probation Service to make all prison service instructions compliant with their obligations under the Human Rights Act and Public Sector Equality Duty.

Prison Act 1952

Section 7(4) of the Prison Act 1952 mandates that every prison must employ an Anglican minister as the prison's 'chaplain', regardless of the religion or belief demographic of its population. This means that in the circumstance that a prison is only able to employ one chaplain, that post by law must be restricted to a candidate from the Church of England. This is an unjustified example of religious discrimination in the law, which is not compliant with the Equality Act's employment provisions and with the Human Rights Act.

Recommendation: We would like the EHRC to seek the repeal of Section 7(4) of the Prison Act 1952.

Priority aim 9: Public bodies with responsibility for addressing violence against women and girls comply with equality and human rights requirements

We agree with the recommended types of activities in this priority aim and have no further suggestions to make.

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

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