

Standing Advisory Council on Religious Education
6th July 2016
Report of the Deputy Chief Executive and Director for Families and
Communities

BHA representative correspondence regarding the Agreed Syllabus and response.

BHA correspondence regarding RE and response from NASACRE and AREIAC.

1 Purpose of Report

1.1 To raise awareness amongst SACRE members of correspondence and responses from the BHA and DfE. In addition to raise awareness of correspondence from Paul Moseley to Staffordshire SACRE about the AS and the response from the SACRE chair.

2 Summary

2.1 Members of SACRE will have the opportunity to read and comment on the above correspondence.

3 Recommendation

That members of SACRE read the correspondence and the responses to the communication from the BHA representative correspondence regarding the Agreed Syllabus and the chairs response. To read the BHA correspondence regarding RE and responses from NASACRE and AREIAC and the DfE.

4 Background

4.1 Communication from Paul Moseley the BHA representative on Staffordshire SACRE in response to the draft agreed syllabus and the response from our SACRE chair.

4.2 Communication from the BHA re Humanism in Religious Education-legal guidance.

NASACRE and others have asked the Department for Education to comment on the legal guidance. There are references to Dr. Satvinder Juss's advice and responses from the DfE

5 Equal Opportunities

5.1 This report has been prepared in accordance with the County Council's policies on equal opportunities.

6 Financial implications

6.1 Financial implications may be raised by individual items. These have been dealt with elsewhere, or will be raised at future meetings of SACRE.

Contact officers

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Mary Gale 07816374873

Letter from Paul Moseley to Staffordshire SACRE 10/06/16

Dear SACRE,

This is a well structured and worded document that places religion clearly into an area for study and understanding. I applaud the framing of the topic and wish to support the robustness that this document requires so that there is a clear and coherent infrastructure in which teachers may explore this wonderful subject.

Equally, would be very interested supporting the development of teaching guidance/materials, being an educationalist, as well as providing any useful feedback regarding Right to Withdraw, something that I feel leads to a missed opportunity by those parents that choose to do so.

If I may ask for an area of discussion, it would be in just one particular example of phrasing.

"The religious dimension gives greater breadth and depth to that which is personal, spiritual, social and moral and this should be recognised in any form of combined or integrated course."

Might it be understandable to alter this from an absolute to a conditional phrase, whilst still retaining the intention and capacity of religion to provide these qualities? Otherwise it appears important to qualify what it is greater than, in comparison. There is also a quantifier needed in terms of the reference "breadth and depth" is in relation to. My fear otherwise is that this statement does not give schools and teachers an accurately framed positional statement from the syllabus authors.

For illustration I provide the following example for your consideration.

"The religious dimension can provide a breadth and depth of meaning for believers which is personal, spiritual, social and moral and this should be recognised in any form of combined or integrated course."

Finally, for clarity, I wonder if we could qualify the following statement?

"In following a course of Religious Education, each learner will be considering beliefs, acquiring social skill sand forming moral judgements in addition to developing their own moral values."

Is RE for the understanding of religious diversity and the foundations and cultural expression for each perspective, or is the syllabus striving to take responsibility, perhaps only in part, for the moral development of students? If it is the latter, would you agree there is need to include critical thinking and logic within this remit so that students have a sound basis for moral

considerations? Otherwise, what is the pedagogical framework in which this study sits and should this be cited for clarity?

In essence my questions above is to resolve the dichotomy within the text of the document if the syllabus aims to provide a framework for the study of, or, provide a commentary on, religious perspectives. I feel this is a crucial framing point for schools to recognise their role and how to deliver the syllabus as intended.

If any of my thoughts give rise to any discussion, please consider me available to further explore and/or clarify any points I have raised.

with regards **Paul Moseley.**

Reply to this letter from SACRE chair. 13/06/16

Dear Paul,

Many thanks for your letter circulated to members of Staffordshire SACRE. We are currently in the final stages of shaping up the proposed new Agreed Syllabus in preparation for the meeting on July 6th, and we will certainly take into account your suggestions about re-phrasing some of the existing text. It is important that the language of the Syllabus should be inclusive, balanced, and fair.

You raise some pertinent questions about the purpose of Religious Education, in relation to the ethical dimension in the proposed Agreed Syllabus. Historically, RE has always included the study of moral teachings, in Judaeo-Christianity alone in the distant past, and in other faiths and in secular stances as well more recently. Indeed, we would expect anyone who was "religiously literate" to be aware that religions carry a moral tradition with them, as part of "the package". If we are honest, we would also accept that part of the original role of RE was to inculcate in pupils the ethical values and behaviours taught by Judaeo-Christian morality.

Agreed Syllabus RE no longer has such a "confessional" nature. Pupils now habitually study a variety of ethical teachings in RE, and engage with a wide range of current ethical issues and dilemmas in the light of the ethical traditions they are studying. This aspect of RE has proved very popular with the pupils themselves. Indeed, so many pupils were choosing to take the "Philosophy and Ethics" options in GCSE courses in RE, that it was felt that too little attention was being paid to religion itself, and new guidelines have had to be introduced.

In the proposed new Syllabus, we are deliberately setting out to encourage pupils to grapple with the ethical issues raised by their living alongside people who may be different from them in terms of faith or life stance. In simple words, how can we all live together peaceably and constructively and inclusively? What attitudes and values would help to promote this, and what would obstruct it? Among other outcomes, RE aims generally to train pupils in such skills as critical thinking and logic. We are looking here to give pupils some distinctive tools with which to cope with the particular and quite personal moral challenges of living with diversity.

We are planning to have the final draft Agreed Syllabus ready to be sent out in advance of the meeting on July 6th, and I would welcome any further comments you might wish to make on that draft.

With every good wish,

Michael Metcalf

Rev. Prebendary Michael Metcalf Chair, Staffordshire SACRE

Letter sent to SACRE by Andrew Copson in the name of the BHA, citing the advice of Dr.Satvinder Juss.

Dear Helen,

In November 2015 the High Court ruled against the Department for Education in an important legal case which clarified the law on RE. It made clear that humanism should be studied in the subject and we at the BHA have received requests for help and assistance from a number of schools and teachers thinking ahead to their curriculum planning for September 2016.

Many RE syllabuses already recognise the value and importance of teaching about non-religious worldviews like humanism in RE, but many are unaware of the resources that the BHA provides free of any charge, from trained school speakers to lesson plans. With that in mind, I wanted to point you in the direction of understandinghumanism.org.uk <<https://humanism.org.uk/wp-content/plugins/civCRM/civCRM/extern/url.php?u=7556&qid=587765>> where all these resources can be found, and I am also attaching a short briefing from Professor Satvinder Juss, prepared with the lawyers who won the case in November, setting out the law as clarified by the court.

I hope this will help you in your work. At the BHA, we recognise the potential difficulties that arise because the High Court ruling is not being implemented at a national level and the burdens that may put on LAs, SACREs, and schools. We are here to help in any way we can, so please do get in touch if you'd like any more information.

At the request of a number of teachers and SACREs, we will also be preparing resources on humanism that will be specifically designed to accompany each of the GCSE specifications to be taught from September 2016. I will let you know when these are published.

Yours sincerely,

Andrew Copson

Chief Executive, British Humanist Association

Attachment referenced above. High Court ruling on Religious Education

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

Dr Satvinder Juss Professor of Law King's College London

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 ruled ¹ 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 unlawfully ³. 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 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.

Dr Satvinder Juss Professor of Law King's College London

28 April 2016

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/>

Responses

Joint statement by NASACRE and AREIAC re: non-religious world views and RE

Commentary the Advice of Dr Satvinder Juss, King's College, University of London re: the High Court ruling on Religious Education

We have spoken to the DfE and can confirm that it is not for the British Humanist Association to issue legal guidance to schools. The DfE has confirmed that the guidance published in December is still correct (to access the guidance

[:https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488477/RS_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488477/RS_guidance.pdf))

Likewise they state: *The Judicial Review of the Religious Studies (RS) GCSE was based on a narrow technical point relating to the meaning of a guidance document for Awarding Organisations. We strongly believe the judgment has no broader impact on any religious education (RE) curriculum or the RS GCSE subject content in either faith or non-faith schools)*

Recently clerks to SACREs, professional officers to SACRE, schools and academies will have received a mailing from the British Humanist Association that has an attachment with the title:

High Court ruling on Religious Education. Legal guidance on what it means for local authorities, academies, schools, teachers, Agreed Syllabus Conferences, and SACREs.

The publication comes directly from Professor Juss, Kings College, University of London in light of his understanding of the High Court judgement of Mr Justice Warby of 25th November, 2015.

It is important to recognise that the judgement by Mr Justice Warby was answering a specific point. The claim was that The Assertion made in the 2nd paragraph of the Religious studies GCSE subject content that was published in February 2015 was unlawful. The contested 2nd paragraph states, “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.”

In making his judgement on this specific question Mr Justice Warby said: I have no doubt that an RS GCSE specification consistent with The Subject Content *could* satisfy the state’s legal obligations. The question however, is whether it is true to say that such a specification *will* satisfy those obligations. The answer to that question is no; and it follows that in my judgment The Assertion is materially misleading.” (para 68)

To explain his judgement Mr Justice Warby, in paragraph 74, adds the following words: ‘...the complete exclusion of any study of non-religious beliefs for the whole of Key Stage 4, for which the Subject Content would allow, would not in my judgment be compatible with A2P1’[\[1\]](#). It is important to note that Professor Juss’s publication is guidance by one lawyer and not the statutory requirement as set out in current legislation. SACREs and ASC would normally consult their local authority’s legal services on matters such as these. Professor Juss finishes his advice by stating: *a syllabus that excluded detailed study of Humanism but included such study of minority religions would almost certainly be unlawful*. There are three points to note here:

1. It is the opinion of Professor Juss that to include minority religions but not Humanism would *almost certainly* be unlawful. Only a court could decide this.
2. The guidance appears to be discouraging agreed syllabuses to require the study of a ‘minority’ religion if Humanism is not to be studied. The legislation is clear that RE syllabuses must reflect the fact the religions to be studied are in the main Christianity and the principal religions represented in Great Britain – although what those principal religions are is determined by each Agreed Syllabus Conference.
3. The implication of the guidance is that there will be a systematic study of any religion as a requirement of an agreed syllabus. This does not follow.

According to our latest communication from the DfE (10th May, 2016), Mr Justice Warby’s judgement does not have broader impact on any RE curriculum, especially as it was explicitly confined to Key Stage 4. Whilst an ASC may wish to include the study of a non-religious world view, Professor Juss’s statement: ‘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' does not follow from the judgement. An agreed syllabus could make it explicit that in any module on a religion there should be critical engagement with the material and issues should be raised and explored as to the truth and worth of what the religion claims or asserts within a context of mutual respect. This would satisfy the expectation of the judicial review that non-confessional education about religions needs to be 'critical and pluralistic'. This is not the same as having the requirement to have a module on a non-religious worldview, such as Humanism, to sit alongside modules on the principal religions represented in Great Britain. Professor Juss appears to be arguing that a non-religious worldview should have equality of time with specific religious traditions, something that the judicial review specifically rules out (see paragraph 74 of the High Court judgement). SACREs and ASCs might wish to note Professor Juss's guidance, but there is no compulsion to act upon it. David Hampshire Dilwyn Hunt

Chair of NASACRE

Chair of AREIAC

ⁱⁱ A2P1 relates to: Human Rights Act 1998, of Article 9 of the Convention (Freedom of thought, conscience and religion) and Article 2 of the First Protocol ("A2P1") (Right to education)

Response from Andrew Copston to

Rt Hon Nicky Morgan MP Secretary of State for Education Department for Education
Sanctuary Buildings 20 Great Smith Street London SW1P 3BT
27 May 2016

I am writing to you about a statement from your Department (published in a joint statement by two Religious Education (RE) bodies)¹ regarding the High Court judgment on RE and the guidance on it that we have circulated from lawyers to schools and to other relevant educational bodies.²

I am dismayed by the claims you have made about the BHA and its work in your statement and am writing for clarification on three points. Firstly, you say that it is not for the British Humanist Association to issue legal guidance to schools. I am not clear

on what grounds you are saying this about us. The BHA is a charity lawfully registered in England and Wales with legal Objects that include the promotion of Humanism and the provision of educational resources on Humanism. Seeking to support schools and those who set syllabuses to understand their legal obligations in relation to the teaching of Humanism in RE is an important and uncontroversial aspect of these objects. I would be grateful for clarification as to why the Government is questioning this activity. Secondly, you say the guidance is inaccurate. This is a very significant claim, which has the potential to undermine the BHA's credibility. We stand by the guidance absolutely, written as it has been by legal experts in the field. I would be grateful for details of the inaccuracies you allege. Lastly, you state that the legal challenge we sought to explain concerned a 'narrow technical point' and the judgment 'should not be taken as having any broader impact on any religious education curriculum'. In this, you are completely incorrect. The judgment is absolutely clear that, as a result of the relegation of non-religious worldviews like Humanism in the subject content for Religious Studies GCSE, the exam boards' 'GCSE specifications could be compliant with The Subject Content and yet fall short of delivering the RE obligations'. In other words, if an RE curriculum as a whole relegates non-religious worldviews like Humanism to the full extent that your subject content allows a GCSE specification to relegate them, then that RE curriculum would not be lawful. Given that many RE curricula around the country do this, your assertion that the judgment has no impact is misleading and risks encouraging schools and others to act unlawfully. We had previously understood that the statements to this effect contained within your December 'guidance' were simply a reflection of Government policy, rather than formal Government guidance on the law which you expected schools to follow. These recent statements, however, suggest that the latter is the case. Please can you clarify what it is that schools and those who set syllabuses should be doing in light of the judgment. As you will appreciate, we take the Government's claims about our work very seriously and so too its claims about what the law says. I look forward to your response in relation to our three points above.

Best wishes, Andrew Copson, Chief Executive, British Humanist Association

1 Joint NASACRE and AREIAC statement: <http://www.nasacre.org.uk/file/nasacre/1-290-nasacreareiacresponsetodrsatvinderjussadviceupdated.pdf> 2 High Court Judgement on Religious Education: Legal guidance on what it means for local authorities, academies, schools, teachers, Agreed Syllabus Conferences, and SACREs: <https://humanism.org.uk/wp-content/uploads/2016-04-28-FINAL-High-Court-ruling-on-Religious-Education-legal-guidance.pdf>