

Non-religion in Religious Education – why it's a good thing

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Schools without a religious character now need to ensure pupils have the opportunity to learn about non-religious worldviews, such as humanism, in RE. This was the outcome of an important legal case last week. It's worth looking at the judgment in detail, so save this article for a spare ten minutes and a cup of tea.

I think the outcome is a good thing. I don't think this is 'yet another' sign of Christian persecution in the UK by the courts. And I don't agree that non-religious worldviews have no place in Religious Education, despite the subject's name. A statement from the Christian Institute, that "Children don't have to learn about maths in history lessons, so why do they have to learn about atheism in religious education?", ignores the obvious fact that RE is about much more than teaching about theism and, moreover, that many local RE syllabuses already include some study of non-religious perspectives.

It makes sense to me that non-religious perspectives should have greater inclusion in RE. In a democratic, pluralist society, non-religious views deserve as much as respect as religious ones. Moreover, to my mind the exclusion of non-religious views from RE only serves to *exceptionalise* religious ones. The implicit message to young people is that non-religion is the unspoken, well-understood norm; but religious stuff needs to be studied because it is something extra, and the cause of controversy.

That said, it wouldn't necessarily be an easy inclusion. Secular humanism could be taught readily as a relatively coherent category with beliefs and practices, alongside the idealised, doctrinal versions of religions already presented. But this would only capture a subsection of the people who describe themselves as 'non-religious', but who hold a huge variety of beliefs, ranging from the material to the supernatural (as discussed in the Theos report, *The Spirit of Things Unseen: Belief in Post-Religious Britain.*)

But I'll explain my views further below. First, it's worth clarifying the conclusions of the High Court judiciary review, *R (Fox & Ors) v Secretary of State for Education* [2015] EWHC 3404 (Admin). The headlines have naturally squashed some of the legal precisions, and the Department for Education and the British Humanist

Association (which backed the Claimants' case) have had a spat over its interpretation – or at least, interpretation of each other's press releases offering interpretations of it. For clarity's sake I have included some long quotes from the judgment.

The case concerns the new Religious Studies (RS) GCSE Subject Content, which was published in February for implementation in RE in schools next year. (Religious Studies is the name of the new GCSE; Religious Education is the subject as a whole). The RS Subject Content includes a number of different pathways, but by the DfE's own admission in its consultation process on the GCSE, it has "*decided not to include the optional systematic study of non-religious beliefs alongside religious beliefs in the subject content*", because this "*would not be a suitable addition to the content*" and because students have the opportunity in the RS syllabus to study non-religious worldviews in the context of optional themes, such as different religious and philosophical attitudes to crime and punishment.

The Claimants, three families with non-religious parents, argued that the state has a duty to treat "*religious and non-religious views on an equal footing*" and that "*it has failed to discharge that obligation*".^[1] There was no challenge to the prescribed content itself. But their argument was that the RS Subject Content would not exhaust the state's obligations to provide RE. Further, it was argued that the DfE had implied that schools *could* meet their statutory obligations *solely* by using the RS GCSE to deliver Key Stage 4 RE – "*subject content is consistent with the requirements for the statutory provision for religious education in current legislation as it applies to different types of schools*"^[2] – and that this was a misleading assertion.

In a nutshell, the Claimants won because the judge agreed that the Assertion was "*a false and misleading statement of law, which encourages others to act unlawfully*".^[3] The final decisions about RE syllabuses are devolved to the local level by Agreed Syllabus Conferences, ASCs. If a school relied entirely on the new RS subject content to provide RE at GCSE, some pathways within the content would allow the school to meet its statutory obligations concerning RE – but other pathways would not be enough to meet those obligations.

But what are the statutory obligations, and why might some potential syllabuses derived from the Subject Content have failed to meet them?

Handily the judge included a helpful summary of the relevant domestic and EU legislation and case law. The Education Act 1996 requires that every agreed local syllabus should “*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 the country.[4]

Human rights jurisprudence, including case law applying the European Convention on Human Rights, adds further obligations on the state concerning RE. It’s worth spelling these out, as summarised in the judgment:

- 1) “*In carrying out its educational functions the state owes parents a positive duty to respect their religious and philosophical convictions*”;
- 2) “*the state has considerable latitude in deciding exactly how that duty should be performed*” – having regard for things like “*available resources, local conditions and, in particular, the preponderance in its society of particular religious views, and their place in the tradition of the country*”;
- 3) “*the state may legitimately give priority to imparting knowledge of one religion above others, where that religion is practised or adhered to by a majority in society*”;
- 4) “*the state has a duty to take care that information or knowledge included in the curriculum is conveyed in a pluralistic manner*”;
- 5) “*the state must accord equal respect to different religious convictions, and to non-religious beliefs*”, subject to those beliefs being “*worthy of respect in a democratic society and not incompatible with human dignity*”;
- 6) the state “*is not entitled to discriminate between religions and beliefs on a qualitative basis*” and “*its duties must be performed from a standpoint of neutrality and impartiality as regards the quality and validity of parents’ convictions*”. [5]

Spelt out like this, it becomes clearer to see how the RS Subject Content fell down.

According to the judge, the state has a duty to ensure that knowledge in the curriculum is conveyed in a “*pluralistic manner*”, from a position of “*neutrality and impartiality*” regarding the parents’ convictions. (Though on the vexed question of whether any education is ever ‘neutral’, see Trevor Cooling’s Theos report, [Doing](#)

God in Education). The state has a positive duty in education towards the religions and beliefs of parents. That includes the large proportion who describe themselves as non-religious (25% of the population in the 2011 census which the judge referred to;^[6] but 49% in the *2014 British Social Attitudes Survey*). If a school relied on the RS GCSE *solely* in its delivery of Key Stage 4 RE, it could easily choose pathways that would involve little or no study of non-religious perspectives. Any school implementing such a syllabus would fail to meet its statutory obligations in RE.

I.e. – it is unlawful for a school without a religious character to deliver RE without including adequate provision of non-religious worldviews. As the BHA points out, this will also include RE across the board, not just at Key Stage 4. It should be noted that the judge made it clear that his conclusions did not address faith schools.^[7]

The judgment insists that “*it is not of itself unlawful to permit an RS GCSE to be created which is wholly devoted to the study of religion*”.^[8] That’s why, in its response to the case, the DfE could declare that there is no problem with the Subject Content, and that it isn’t required to amend it. If it doesn’t do so, the onus will fall on the schools to ensure that adequate provision of non-religious perspectives is covered in their syllabuses – either by choosing the pathways with non-religious content in the RS GCSE, or by topping up the GCSE with non-religious content.

But a couple of caveats.

Firstly the judge noted that the state is not required to give “*equal air-time... to all shades of belief or conviction*”.^[9] It is compatible with the UK Education Acts and human rights law for an RE syllabus “*to give a greater priority to Christianity than to all other religions, and all other non-religious world views*”.^[10]

And secondly he stated that “*an RS GCSE specification consistent with The Subject Content **could** satisfy the state’s legal obligations*” if the school using the RS GCSE selected the pathways including non-religious content.^[11] As noted above, the non-religious content in the RS GCSE is thematic in nature only, rather than part of a systematic study of beliefs and practices as with the religions. So in other words, this judgment does not explicitly require non-religious content to be studied systematically. The Claimants had challenged this discrepancy. The judge concluded that it is “debatable” whether this lack of systematic study of non-religious worldviews would allow a school to meet its RE obligations, but he didn’t pursue the point

because a safe conclusion could be reached without addressing it.[12] No doubt this will be an area of further legal challenge in the future.

All this explains why the final judgment focused closely on the DfE's Assertion. Despite the headlines, the religion-heavy Subject Content isn't unlawful as such. But implying that a school could meet its statutory obligations just by following the Subject Content *was* an "*error of law*" that could "*encourage*" schools to act unlawfully. So the minimum Nicky Morgan needs to do is rewrite her Assertion in paragraph 2.

So to return to my opening gambit. I welcome the judge's conclusions in this case, and would also have welcomed them had he made clear that non-religious content should be covered systematically.

Firstly, between a quarter and a half of Britons describe themselves as 'non-religious'. It's right that pupils should have the opportunity to learn about some of the worldviews and beliefs held by of such a large proportion of the population. (Though, as noted above, it may be easier said than done to do this). There's also evidence that greater inclusion of non-religious worldviews and beliefs would be popular. In the DfE's own consultation process on the RS GCSE, 85% of respondents called for the optional systematic study of non-religious beliefs in the RE subject content (though admittedly most of those respondents were connected to a BHA campaign on the issue). More recently, the Faith and Civil Society Unit at Goldsmiths, London published findings last week from its research into the views about RE of pupils, parents, teachers and employers. They found that in all four groups there was strong support for the inclusion of non-religion and non-religious beliefs in RE syllabuses – including among an overwhelming majority of teachers who were interviewed. And pupils were very keen to discuss 'controversial' topics – which, one could imagine, might include debates around secularism as much as ISIS.

And secondly, I think it says something important about the nature of religion if non-religion is included.

If non-religious perspectives are excluded, it seems to me that, perhaps ironically, RE serves to exceptionalise the religious. My concern is not that pupils taking an RE course that solely focuses on religion will come to assume that religion is the norm – quite the opposite in fact. In the current set-up, many pupils may come to assume

that religion is an add-on, something that can be discussed in the abstract in the classroom; but that non-religion is normal, instinctive or even the objective starting position, which doesn't need to be discussed, and critically appraised, in school settings. Or further, that non-religious perspectives are all benign, while the real problems that need to be discussed are those created by religious ideas.

In a society where increasing numbers of children grow up in non-religious families, increasing numbers do not have the opportunity to study the beliefs they have been raised with in a rigorous, self-reflective and critical manner. Secular / atheist humanists may hope that greater inclusion of non-religion will strengthen their cause. It may well do. But they should also be ready for some nominally non-religious students to recognise the subjectivity, and elements of faith, inherent within non-religious as much as religious worldviews.

Ultimately, even if the DfE updates its Subject Content, not all pupils in the UK are going to learn about non-religious worldviews systematically. There would never be enough time in the curriculum for students to learn about all the major religious and philosophical perspectives in the UK. But they should be given the *opportunity* to do so through inclusive syllabuses. Some RE teachers will understandably be anxious about potential upheavals to current syllabuses caused by this judgment. It should be up to the DfE to ensure that adequate solutions are found.

- See more at: <http://www.theosthinktank.co.uk/comment/2015/12/01/non-religion-in-religious-education-why-its-a-good-thing#sthash.5lO0LZJS.dpuf>