

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, that the BHA document has no official status and is inaccurate. The DfE has confirmed that the guidance published in December is still correct (to access the guidance go to: 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 single paragraph in a guidance document for Awarding Organisations. That has been dealt with; and led to the guidance which is linked above. Contrary to the BHA document, the judgment should not be taken as having any broader impact on any religious education curriculum or the RS GCSE subject content in either faith or non-faith schools.”

A further communication from the DfE informed us that to clarify the policy position they have published further guidance about the judicial review of the Religious Studies GCSE. This can be found here: www.gov.uk/government/uploads/system/uploads/attachment_data/file/535131/160704_further_RE_guidance.pdf

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’.

¹A2P1 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).

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:

- a. 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.
- b. 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.
- c. 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 (20th 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.

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