

Email message received on 16 September 2011

Dear Mr Anderson,

I am emailing you to ask if you would grant full membership to, or at least co-opt, a humanist representative to Committee A of your SACRE.

As you may be aware, in January 2010 the government published *Religious Education in English Schools: Non-statutory Guidance 2010* which solidified many positive improvements that have been made in recent years. Importantly, it deleted the explicit prohibition on humanists serving as full members of SACREs and Agreed Syllabus Conferences (ASCs), which had appeared in the previous guidance (*Circular 1/94*). It also observed that SACREs could co-opt members to represent non-religious views (p.13) and noted how this could be done in the interests of inclusion (p.21).

Following on from this, we believe that humanists should be full members of Committee A, and have obtained legal advice which confirms that it is illegal to refuse humanists such admittance. I append a summary of that advice to this email (the full advice is available upon request), but in brief, the Human Rights Act sections 3 and 6 and the Equality Act 2006 section 52, when read together, mean that references in law to 'religions' should be read as 'religions and beliefs'.

With regards to RE syllabuses the 2010 guidance also reaffirmed the government's view that RE should examine both religious and non-religious perspectives. It noted that:

- 'Religious education provokes challenging questions about the ultimate meaning and purpose of life, beliefs about God, the self and the nature of reality, issues of right and wrong, and what it means to be human. It can develop pupils' knowledge and understanding of Christianity, of other principal religions, other religious traditions **and worldviews** that offer answers to questions such as these' (p.7).

The Government had already set out that RE should examine non-religious perspectives in:

- the new secondary curriculum published in 2007, which noted that RE should study a 'secular world view' (p.7 of the KS3 programme of study)
- the new RE programme of learning for the primary curriculum published in September 2009, which recommended that 'over the primary phase as a whole, children should draw on both religious **and non-religious world views**' (p.2)
- the 2004 national framework for RE, which recommended that there should be 'opportunities to study secular philosophies such as **humanism**' (p.14). The framework was endorsed by a wide range of RE professional and religious groups, including the Church of England, the Catholic Education Service and the Muslim Council of Britain.

We are emailing all those SACREs in England that do not currently have a humanist representative on their Committee A, to urge them to admit one. We believe the new guidance has removed any sound reason that SACREs may have had about not admitting a humanist, while we believe there are compelling reasons why you should admit one, whether as a full or co-opted member of Committee A.

Firstly, given that non-religious views should be taught in RE lessons, it follows that humanists should have a role in monitoring how their views are taught. This is a right only extended to religious representatives. Admitting a humanist will ensure that your SACRE is both inclusive and also acting fairly.

Secondly, the addition of a humanist will make a positive contribution to the work of your SACRE and help ensure that the RE in your area remains broad and accurate. Humanists have had a long history of contributing towards and improving RE. The British Humanist Association has been a member of the Religious Education Council for over thirty years, while some of our representatives have served on SACREs throughout this period with distinction, including as Chairs and Vice-Chairs of both SACREs and ASCs.

Thirdly, we question the legality of excluding a humanist, as the appended advice corroborates.

We hope that you will agree that your SACRE should admit a humanist representative as a full member and we would be very happy to help find a suitable humanist for you if you are not already in touch with one. If you would like any more information or would like to explore how to find a humanist to nominate please contact me by email or on 020 7462 4993.

Periodically we discover SACREs that have appointed a humanist representative by going through a local humanist group. If you have already granted full or co-opted membership to a humanist we would be very grateful if you could let us know so we can update our records accordingly. We would also be grateful if we could have their contact details so we can send them useful material. Again please contact me with any of this information.

Yours sincerely,

Richy Thompson
Campaigns Officer (Faith Schools and Education)
British Humanist Association

Humanist membership on a SACRE:

The legal situation

Not only is the extension of full membership of SACREs and ASCs to include humanists required on educational grounds: it is also what the law demands.

The present guidance (*Religious Education in English Schools: Non-statutory Guidance 2010*) fails to fulfil the Department for Education's (DfE's) obligations under the Human Rights Act sections 3 and 6 and the Equality Act 2006 section 52.

The latter prohibits the DfE from doing "any act which constitutes discrimination", and the exception at subsection (4)(k) plainly does not apply to membership of SACREs and arguably not to the scope of the syllabus.

More particularly the Human Rights Act at section 6 prohibits the DfE from "act[ing] in a way which is incompatible with a Convention right". By virtue of reading Article 9 with Article 14, this encompasses discrimination between religions and beliefs.

Moreover, section 3 positively requires that "so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights." That this section needs to be given a wide and powerful interpretation has been underlined by the House of Lords (*Ghaidan v. Godin-Mendoza* (FC) [2004] UKHL 30)^[1].

However, to bring the law on RE and on membership of SACREs and ASCs into compatibility with the European Convention on Human Rights requires no serious or violent re-interpretation of the legislation. If section 3 means anything at all, it must mean that discrimination between religious and non-religious worldviews or lifestyles should be eliminated by reading references to 'religions' in the present law on RE as references to 'religions or beliefs' in the new guidance.

In particular, in references to membership of SACREs and ASCs, 'religions' must be read as 'religions or beliefs', giving humanists the right to be full members alongside the religious representatives.

Not only is such a reading of the law now required by the Human Rights Act – as, of course, it was not in 1994 – but it is wholly in line with the developing consensus in the Council of Europe, the OSCE and other international bodies to which the United Kingdom is committed. We refer, for example to the OSCE's *Toledo Guiding Principles* and the Council of Europe's Committee of Ministers recommendation CM/Rec (2008)12 and the fact that even the United Nations' Special Rapporteur on freedom of religion or belief has singled out the UK's discriminatory approach in RE as an issue of concern.

Further justification for our argument here and further advice on the question is available upon request.

The Legal Situation explained

The BHA believes that the Human Rights Act (HRA) and Equality Act (2006) support the inclusion of humanists on SACREs as full members. Section 3 of the HRA requires that legislation previous to the HRA

^[1] "Section 3 may require a court to depart from the unambiguous meaning the legislation would otherwise bear. In the ordinary course the interpretation of legislation involves seeking the intention reasonably to be attributed to Parliament in using the language in question. Section 3 may require the court to depart from this legislative intention, that is, depart from the intention of the Parliament which enacted the legislation." (per Lord Nicholls of Birkenhead at para. 30)

be interpreted to meet its requirements; so that, for example, references to "religion" should be interpreted to mean "religion and belief". Thus a case could be made for humanists to be full members of Committee A (which includes "other religions").

Education in English Schools: Non-statutory Guidance 2010 is the most up to date non-statutory guidance on SACREs. This document replaced Circular 1/94.

Circular 1/94 (which is no longer applicable) stated that "The inclusion of representatives of belief systems such as humanism, which do not amount to a religion or religious denomination, on Committee A of an agreed syllabus conference or Group A of a SACRE would be contrary to the legal provisions referred to at paragraph 103."

Education in English Schools: Non-statutory Guidance 2010 does not state this however appears to recommend co-opted, non-voting membership of Standing Advisory Councils for RE (SACREs – the local committees that oversee RE) for humanists and no membership at all of Agreed Syllabus Conferences (ASCs – the local committees that set the RE syllabus).

However

- DfE Circulars are guidance only, and do not have legal authority, unless there has been a court ruling on a particular aspect. To our knowledge, there has been no legal challenge to the inclusion of humanists in Group or Committee A.
- In the past a few SACREs have ignored the DfE circulars and allowed humanist representatives to retain full membership of Group A. They have taken the (correct) view that Circular 1/94 is only advice and that the matter has not been tested in court. These SACREs include Westminster and Oxford.
- Humanist representatives have been elected as Chairs or Vice-Chairs of SACREs including in Hounslow, Brent, Camden, Hammersmith and Fulham, Oxford and York. In particular, Humanist representatives have been the chair of the SACRE in Brent and in York
- In addition, Humanists have been invited to serve on ASCs and have taken a full part in conference proceedings and/or they have participated in syllabus working groups. However, because of the ambiguous legal position they are sometimes listed officially as 'observers'.