

e-mail to:  
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From: Alex Jack – Borough Solicitor

4th October 2011

Dear Gordon

## **HUMANIST ON SACRE**

Thank you for your e-mail and my apologies for the delay in replying.

I am not entirely sure that the e-mail from the Humanist Association demands a response. I would imagine that it has been sent to the Chairman of every SACRE, and I am not convinced that if you fail to respond they will take it further.

The starting point is Section 390 of the Education Act 1996 which provides for each Local Education Authority to constitute a Standing Advisory Council on Religious Education. Section 390 stipulates that a SACRE must consist of the following:-

- a group of persons to represent such Christian denominations and other religions and denominations of such religions as, in the opinion of the Council, will properly reflect the principal religious traditions in the Borough.
- a group of persons to represent the Church of England.
- a group of persons to represent teacher associations
- a group of persons to represent the Authority.

I do not agree with the assertion in the advice sent by the British Humanist Association that references to “religions” in Section 390 should be read and construed as referring to “religions or beliefs” and by extension of “beliefs” to include “non-beliefs”. Accordingly, I do not accept that there is an obligation to appoint a Humanist for the Council to fulfil its duty in relation to the mandatory appointment of members to SACRE under Section 390.

SACRE has itself a power to co-opt other persons. It therefore needs to be considered whether the legislation referred to by the British Humanist Association effectively requires SACRE to co-opt a Humanist.

The assertion from the British Humanist Association is that the Human Rights Act 1998 and the Equality Act 2006 require such a co-option. Section 3 of the Human Rights Act 1998 requires other legislation to be interpreted in such a way as to be compatible with the convention rights. Article 4 of the European Convention of Human Rights provides that convention rights shall be enjoyed without discrimination on any grounds such as race, sex, religion etc. However, the prohibition on discrimination only implies in relation to the enjoyment of a convention right. Article 2 of the First Protocol to the convention provides that no person shall be denied the right to education and that the State shall respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions. It does not seem to me that by confining membership of SACRE to persons of a “religious” belief in the traditional sense the Council is discriminating in the provision of education.

The British Humanist Association make reference to the Equality Act 2006. That Act has largely been repealed by the Equality Act 2010. Section 29 of the Equality Act 2010 stipulates that “a person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation”. Section 29 also prohibits discrimination (by anyone) in the provision of a service. At first blush, given that the Act prohibits discrimination on the grounds of religion (which is defined to include non-belief) one might think that there is a case for considering whether it would be unlawful to discriminate against a Humanist to the appointment of SACRE. However, Schedule 3 to the Act stipulates that Section 29 insofar as it relates to religion does not apply in relation to anything done in connection with the curriculum of a school or acts of worship or religious observance organised by a school. Given that the functions of SACRE are limited to advising on religious education on the school curriculum and acts of religious worship in schools I think it is a fair interpretation of the Act that Section 29 is not intended to apply to the appointment of SACRE. The specific provision in 1996 Act referred to in the e-mail was Section 52. That section has now been replaced by Section 149(1) of the Equality Act 2010 which (in very similar terms to Section 52) stipulates that “a public authority” must, in the exercise of its functions, have due regard to the need to:-

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

“Relevant protected characteristic” is defined to include “religion or belief” which is in turn defined to include non-belief.

“Public Authority” is defined to include local authorities but does not include SACRE’s. However, Section 149(2) stipulates that a person who is not a public authority but who exercises public functions must, in the exercise of those functions have regard to the matters referred to in Section 149(1). I do consider that Section 149(2) applies to SACRE’s.

In my view, the general duty in Section 149 does not **require** a SACRE to co-opt a Humanist to the Committee though it is arguable that in deciding whether or not to do so it should have regard to Section 149 (I say “arguable” because on a narrow interpretation co-opting is not exercising a “function” but on a broader interpretation one could arrive at a different conclusion).

In short, whilst SACRE may co-opt a Humanist it is not obliged to do so.

I hope that assist but if you should wish to discuss please do not hesitate to contact me.

Kind Regards.

**Borough Solicitor**