

**Faith Schools:  
Freedom of Choice or Recipe for Division?**

**Their Impact on Education and Wider Society**

**Windsor Castle, 13 – 14 November 2009**

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**National Secular Society Paper: The Impact of Faith Schools on Teachers**

**The impact of religious schools on teachers**

The National Secular Society has been at the forefront of challenging religious privilege since its foundation in 1886, nowhere more so than in the field of education, where today around a third of all publicly-funded schools are of a religious character.

This Paper does not deal with non-maintained schools. References to the Church or CofE are to the Church of England. The term “churches” is used, given nearly all religious schools are Christian, but where the context so permits this should be taken to include minority religious institutions. The terms such as non-religious and non-religious staff are used but should be taken also to include where the context so permits non-Christians and liberal Christians whose belief, observance and conduct both inside and outside school premises leaves them vulnerable over appointment, promotion and dismissal under the provisions of the Schools Standards and Framework Act 1998 (SSFA).

This report deals primarily with England and Wales as the principal Act extends to England and Wales but not Scotland. Nevertheless the same principles apply in Scotland.

Controversy over state-funded religious schools is growing. Matters receiving greater coverage include the religious (and therefore frequently also cultural and ethnic) segregation of children, discriminatory admissions policies, and the ‘cherry picking’ of pupils. The teaching of creationism has also ensured the debate surrounding religious schools doesn’t go away. Indeed, religious schools have been thrust into the spotlight again recently by the case of the Jewish Free School and the legality of its admissions policies<sup>1</sup>. Similarly, the “given” that religious-based organisations make excellent academy sponsors has been seriously undermined by the poor performance of some Anglican academies, particularly the United Learning Trust and Faithworks-connected Oasis academies.

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<sup>1</sup> When state and religion mix: Guardian 29 October 2009 <http://www.guardian.co.uk/commentisfree/belief/2009/oct/29/jfs-supreme-court-judaism>

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An area that has received less attention, however, is the adverse impact that religious schools have on many teachers and other school staff such as teaching assistants, unless they are (or are prepared to pretend to be) of the faith and abide by its precepts both at school and away from it.

While we recognise that many religious schools do not discriminate to the limit permitted by law (and by law we also include the provisions of the Employment Regulations and the EU Directive), the fact remains that the law and some existing employment practises impact harshly on staff solely because they have not made a leap of faith.

### **Executive Summary**

**Action sought - we call on the Governments in Westminster the Welsh Assembly and Holyrood to:**

- A. Urgently instate effective and considerate transitional provisions<sup>2</sup> to reduce the hardship caused by the regressive changes permitting employers to require VC school headteachers to be reserved teachers. This closes off promotion and transfers to thousands of teachers from which they could reasonably have expected to have benefitted.**
- B. Institute an independent commission of enquiry of Human Rights experts to look into the adverse Human Rights implications toward the non-religious and not frequently practising religious population in respect of the operation of maintained schools and academies in England, Scotland and Wales. This should cover: employment and the matters raised in this report; admissions; the opening, classification and closure of schools and academies; worship; and Religious Education.**
- C. Repeal all legislation discriminating against staff in schools. This includes (i) repealing Sections 58 and 60 of the School Standards and Framework Act 1998 in their entirety in respect of England and Wales. (This is also a LibDem policy.), and/or (ii) materially amending Section 21 of the Education (Scotland) Act 1980.**
- D. Investigate non-statutory restrictions potentially affecting equality in employment, such as the existing The Catholic Certificate in Religious Studies and (Scottish) Certificates of Approval. We understand the Church of England is contemplating some similar arrangements.**

### **Main points in Paper**

1. By any 21st Century standard of equality, the degree of discrimination legally permitted on the grounds of religion and belief against teachers and other school staff is unreasonable and unacceptable. In England and Wales the relevant statute is the School Standards and Framework Act 1998 Sections 58 and 60, as amended; in Scotland, the Education (Scotland) Act 1980. Very few people could live up to the standards that the 1998 statute permits the churches to impose on employees or potential employees. It also permits, unreasonably, selection or dismissal on grounds of religion/belief or conduct outside the workplace.
2. The scale of employment subject to this legislation and the hardship is very substantial.

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<sup>2</sup> By virtue of the Education and Inspections Act 2006, Section 37

- a. Some measure of the extent of the discrimination can be gleaned from the fact that a third of schools are religious schools (around 7,000 of them) and in half a dozen shire counties there are as many religious primary schools as there are community schools. In religious schools in England we estimate there to be around 100,000 teachers<sup>3</sup> and substantial additional numbers of teaching assistants and non-teaching staff. Many of these are, or will be, adversely affected by this legislation. Especially vulnerable are both teachers and some school staff of the “wrong” faith and none — and the many less “pious” or observant Christian employees too.
  - b. Around twenty times as many people do *not* go to church on an average Sunday (surely the minimum expectation of a reserved teacher) compared with those who do<sup>4</sup>.
  - c. In many areas where “faith schools” dominate, teachers have little alternative employment, so this aggravates the material hardship.
  - d. It is difficult to imagine any employee whose conduct has not at some stage been (as shown in Section 60) “incompatible with the precepts, or with the upholding of the tenets, of the religion”, which is sufficient to merit dismissal. Section 58 permits dismissal of VA teachers and VC reserved teachers on wide grounds and “by the governing body without the consent of the local education authority.”
  - e. We are not alone in believing that both the Church of England and Roman Catholic Church are becoming more dogmatic. In the CofE, evangelicals are becoming much more prominent in senior positions. The Pope seems set on a similar route as his materially harder line not just on homosexual acts, but homosexuals, demonstrates. The haemorrhaging attendance in both churches tends to lead to a harder line as it is the more liberal/moderate who tend to leave. This is, we believe, following through into more pressure on schools to employ Christians who are more observant.
  - f. An additional hardship is that these discriminatory provisions are so unfair and so likely to deprive staff of a living, they encourage school staff to be dishonest about their beliefs, and some will succumb while others will not, whatever the benefit. Those that are dishonest, will gain advantage over those who do not, so these provisions will lead to the dishonest being favoured over the honest.
3. With the long term decline in Christian observance in the UK forecast to continue, the special privileges granted to the churches in selecting teachers on religious grounds become more unreasonable and unsustainable. Some recent evidence of the shortage of religious teachers (and presumably therefore also of the small and decreasing number being increasingly privileged) appears in the Appendix. The scale of the discrimination against the non-religious will increase exponentially as the decline in Christian adherence further reduces the number of ‘eligible’ teachers while at the same time increasing the number of ineligible ones. The dramatic scale of this effect is explored below. Suffice it to say that normal Sunday attendance in Britain for

<sup>3</sup> Based on [http://www.dcsf.gov.uk/news/content.cfm?landing=schools&type=3#Number\\_of\\_teachers](http://www.dcsf.gov.uk/news/content.cfm?landing=schools&type=3#Number_of_teachers) showing well over 400,000 in all schools, and a third of schools being religious schools.

<sup>4</sup> Based on less than 5% church attendance for those of working age, itself based on 6.3% overall attendance per UK Christian Handbook - Religious Trends 6 -2006/2007 ISBN 9781853211744 Tables 12.2 and 12.3. The 6.3% relates to Britain; figures for England alone are around 0.4% less, taking it to around 5.9% for all ages and nearer 4½% for those of working age.

both churches combined totalled 1.6 million in 1990, is less than a million in 2009 and is independently forecast to drop to around 50,000 by 2050.

4. Under pressure from Anglican bishops, and doubtless other religious representatives, the Government has gone to extraordinary lengths to retain and preserve the relevant legislation un-amended. The legislation would have contravened the EU Employment Directive 2000 were it not for last minute provisions that the Government forced through to exempt existing legislation. This undignified self-interested manoeuvre undermined the noble purpose of the Directive.
5. These already unreasonable legislative provisions were considerably tightened in 2006 to the detriment of the careers of senior teachers and some non-teaching staff. These changes, at the behest of Anglican bishops, were made without consultation with the General Secretaries of any relevant unions and without any consultation at all with the principal union, the NUT, even after the Society drew this to the attention of the Ministers<sup>5</sup> in the Lords and the Commons in the lengthy series of interventions on this topic that we instigated in both Houses.<sup>6</sup>
6. Both the legislation and the hardship it causes are unnecessary because even employees not able to match up to what can statutorily be required of reserved teachers can be required to act with “loyalty to the organisation’s ethos”. This should be sufficient measure to satisfy any reasonable concerns about the maintenance of ethos.
7. The Government set its face against any transitional provisions worthy of the name, causing grievous additional hardship to those who had reasonable expectations of promotion in VC schools, including those of headteachers hoping to move to larger schools.

The hardship caused by such legislation is not just theoretical. We point to the case in Sheffield in 2009 where a clearly exceptional and popular headteacher at a Catholic primary school was forced to resign his position because of his plans to remarry.<sup>7</sup> In a letter to parents he said:

*“This is a decision that has been taken for me as a result of the forthcoming change in my personal life....As a consequence my position as headteacher is no longer compatible with the conditions and services of my contract. Therefore I have no option but to leave.”*

The parents and children were clearly distraught, but not the Diocese. We can put it no better than Claire Bolsover, whose daughter attends the school, who stated:

*“Catholic views on marriage and divorce are very strict, but if it is going to put our children's learning in jeopardy then I think it needs rethinking”.*

Another local parent commented:

*“I had to think which century we were living in and, yes, we do live in the 21st century and not the dark ages.”*

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<sup>5</sup> This may seem at first sight to be in conflict with the assurances worded so carefully by the Minister in the debate on the Education and Inspections Bill, but it is not. Nothing the Minister said contradicts our assertion that no General Secretary of a relevant union was aware of this legislative change, none of them supported it when they were informed for the first time (which was by the National Secular Society), and that no one at all in the largest relevant union, the NUT, had been informed as they are not party to the Workforce Agreement Monitoring Group (Lords Hansard 30 Oct 2006 : Column 53).

<sup>6</sup> House of Lords (Hansard 30 October 2006, Col 50 onwards). House of Commons (Hansard 2 Nov 2006 : Column 510 onwards)

<sup>7</sup> Headteacher about to remarry forced to leave Catholic school Parents

<http://www.guardian.co.uk/education/2009/jul/22/headteacher-remarry-forced-resignation>

These findings need to be viewed in the context of more than a century and a half of decline in church attendance<sup>8</sup>, less than 5% of the population of working age being in church on an average Sunday<sup>9</sup> (i.e. roughly twenty times as many, 95%, do not). The 5% figure reduces to 3% if taken as a percentage of the whole population. The churches are not paying even a penny towards the salaries of these staff being discriminated against; the payment comes entirely from public funds.

The National Secular Society has long argued that the lack of equality of employment opportunities within the religious school system is discriminatory and increasingly privileges a small and diminishing group of teachers by giving them preference in jobs to the detriment of a much larger and growing group that are neither of the religion of the school nor prepared to pretend they are.

### **Schools Standards and Framework Act 1998**

Sections 58-60 of the Schools Standards and Framework Act 1998 (SSFA), as amended by the Education and Inspections Act 2006, limit the pool of teachers and head teachers who can apply for posts in religious schools. Not only does this do an injustice to the teachers, but also the students who may not as a result be taught by the best person for the job. Furthermore, the number of non-religious teachers or teachers who cannot meet the exacting standards required of reserved teachers is set to grow as belonging to Christianity declines and belonging to no religion increases<sup>10</sup>.

The legislation licenses discrimination primarily against the non-religious, particularly within voluntary-aided schools, but also to a lesser extent within voluntary-controlled schools, ostensibly to enable religious schools to protect their 'religious character'. It is not clear why this legislative victimisation is needed, however, given the EU Employment Directive<sup>11</sup> 2000 specifically allowed religious organisations "to require individuals working for them to act in good faith and with loyalty to the organisation's ethos".

The National Secular Society maintains religious faith is not a necessary precondition to teach any subject, whether academic or not. Indeed, non-believers could teach Religious Education, given it is supposed not to be proselytising.

An exception we acknowledge would be teaching Religious Education in Voluntary Aided (VA) schools where the intention is to take advantage of the legal opportunity remaining to retain what is in effect legally sanctioned sectarian Religious Instruction. This state-funded license to proselytise is rarely mentioned (and certainly not raised in the context of legislative reform). This permission to proselytise is admittedly even more disturbing in the context of some minority religions.

Reserved teachers (defined below) are "selected for their fitness and competence to give such religious education". In effect, all teaching posts in VA schools are reserved posts, as are up to (according to the Act) a number that "shall not exceed one-fifth" of posts in Voluntary Controlled (VC) schools. Despite this definitive statement, a school with six teachers could have two reserved posts, i.e. equivalent to a third, as even a 1/5th or greater fraction is rounded up.

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<sup>8</sup> Question Bank Commentary: Religion - Researching Religion by Peter Brierley (ESRC 11 December 1999) Page 4 section 4.

<sup>9</sup> Derived from UK Christian Handbook - Religious Trends 6 -2006/2007 ISBN 9781853211744 Tables 12.2 and 12.3; actual figure 4.9%

<sup>10</sup> [http://www.statistics.gov.uk/downloads/theme\\_social/Social\\_Trends38/Social\\_Trends\\_38.pdf](http://www.statistics.gov.uk/downloads/theme_social/Social_Trends38/Social_Trends_38.pdf) Table 13.18. Extrapolating the 1996-2006 to 2009 makes Christianity and non-belief "belonging" to be roughly level pegging. However "belonging" seems a much lower standard of adherence to that expected by the School Standards and Framework Act 1998 Section 58 and 60 for reserved teachers and VA teachers

<sup>11</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML> extract from Article 4(2)

The powers relative to reserved teachers are given in Section 60(5) under which preference may be given, in connection with the appointment, remuneration or promotion of reserved teachers in VC schools or all VA teachers, to persons-:

- (i) “whose religious opinions are in accordance with the tenets of the religion or religious denomination specified in relation to the school under section 69(4), or
- (ii) “who attend religious worship in accordance with those tenets, or
- (iii) “who give, or are willing to give, religious education at the school in accordance with those tenets; and

(b) “regard may be had, in connection with the termination of the employment of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified.”

We consider these provisions to be unfair and unnecessary and they should be repealed.

## **Background**

As is well known, the major church state settlement over schools of modern times came in the Education Act 1944, known as the “Butler Act”. It contained no provisions for discrimination against the non-religious in employment. The 1998 legislation amounted to the first major renegotiation of the 1944 “Butler” settlement, creating the category of schools with a religious character (some of which the current teachers hadn’t realised they were), paving the way for codifying the ability to discriminate ahead of the EU Employment Directive which was finalised in 2000.

The Government went to extraordinary lengths to protect the 1998 legislation following pressure by clerical interests in both Houses to ensure it was not neutered in any way by the Employment Directive with which it would otherwise have been in conflict. It was prepared to abort the entire anti-discrimination directive<sup>12</sup> for the whole of the EU if that was the price it took to preserve these sections.

## **Further inroads against equality made in 2006**

Yet even this was apparently insufficient for the churches. By 2006, by which time normal Sunday attendance in England had fallen by another half million, they pressed for even more discrimination.

At the behest of two Anglican Lord Bishops<sup>13</sup> the Government has colluded to materially increase the level of licensed discrimination against non-religious staff in religious schools:

- a) including the right, until then legislatively proscribed, to designate the head teacher post as a reserved teacher post in VC schools.  
This is despite the legislation already containing the sub clause: “In connection with the appointment of a person to be head teacher of the school (whether foundation or voluntary controlled) regard may be had to that person’s ability and fitness to preserve and develop the religious character of the school.”  
Since then, the Church of England – or its National Society (or to give it its original name, The National Society for the Education of the Poor in the Principles of the Established Church throughout England and Wales) has made clear its determination that *all* VC head teacher posts under its control will automatically

<sup>12</sup> <http://www.secularism.org.uk/uploads/nss-annual-report-2009.pdf> Page 3, based on letter to NSS from Government Equalities office dated 28 August 2009.

<sup>13</sup> Bishops of Peterborough and Southwell & Nottingham (Amendment 129 to the Education and Inspections Bill (later Act) 2006 appearing on marshalled list dated 26th June 2006 later picked up by the Government).

become reserved teacher posts regardless of the injustice and hardship this causes<sup>14</sup>.

By enabling VC head teacher posts to be reserved for teachers with a degree of religious commitment that few will be able to muster, the Government has potentially destroyed the promotion prospects of thousands of teachers. Furthermore, given the cavalier attitude (to put it in the most charitable way possible) to equality and fairness of the Church displayed in this document, it is difficult to imagine that at least some of the head teachers will not give preference to fellow pious Christian applicants for posts beyond the maximum quota of reserved teacher posts.

- b) Seeking to remove the protection for non teacher employees in **VA** schools in England: "If the school is a voluntary aided school, no person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed for the purposes of the school otherwise than as a teacher."

Anyone except a specialist lawyer reading amendment b) can be expected to assume that protection has been lifted from all non-teaching posts, but this is not the case. Despite our protests there has been no attempt to define the non-teaching staff from which the Government sought to remove protection. We understand that the intended targets may have been teaching assistants or school secretaries, but there is no mention of this in the legislation, leaving those reading it in isolation presumably to conclude it means what it appears to say. Yet no lawyer we have spoken to would think it possible to deny a cook or janitor a job in a religious school based on their religion; to do so would fall foul of the Directive. The imprecision in the statute is likely to deter litigants and cost them more than should be necessary.

### **The Church's insatiable appetite to discriminate**

The Right Reverend prelates had their way over amendments a) and b) above; the Education Minister dutifully picked them up and gave them the full power of Government amendments. The prelates had sought to go even further, by removing this vital protection negotiated in 1998 for non-teaching staff's rights for **VC** schools of a religious character. They had tabled a further amendment to delete this provision for VC schools:

No person shall be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship from being employed for the purposes of the school otherwise than as a teacher.

Unusually – the only instance we have found - the Government did not deliver this to the Church.

However, the Church's record in influencing the Government legislation is normally second to none, regardless of the potentially adverse affect it may have on others. In 2003 the Archbishops' Council managed to introduce a controversial insertion to the Employment Equality (Sexual Orientation) Regulations 2003 Regulation 7(3). This permitted discrimination on grounds of sexual orientation in employment for purposes of an organised religion in order to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers. The Church's proposal became law almost *verbatim* as it had demanded. This was despite it being made after the closure of the public consultation and serious concerns of the Joint Committee on Statutory Instruments on its

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<sup>14</sup> The National Society advises that VC schools should as a matter of course make all future Headteachers also Reserved Teachers in the interests of strengthening the school ethos and thus enhancing the wide educational outcomes of the pupils. (per October 2008 document somewhat misleadingly entitled "Equal Opportunities In Church of England Schools" [www.natsoc.org.uk/downloads/equalopportunitiesdec08.doc](http://www.natsoc.org.uk/downloads/equalopportunitiesdec08.doc) )

*vires*. The first public indication of this major change was many months later with the publication of the relevant Statutory Instrument ahead of it being debated in Parliament<sup>15</sup>.

### **Transitional provisions not worthy of the name**

When the legislation was passed, the National Secular Society met the Education Secretary, at that time the Rt Hon Alan Johnson,<sup>16</sup> and asked him to instigate meaningful provisions that would go some way to mitigate the damage to career paths caused. We had hoped for an exemption for those already teachers in VC schools, but at least those who had already started to climb the promotion ladder. Despite a further meeting with and written representations to the Department, and a consultation, no transitional arrangements were made, except an agreement not to re-designate headteacher posts as reserved teacher posts without the permission of the existing holder; such re-designation would not have been legal, whether permitted by transitional provisions or not.

### **The Government's Motivations – and the embarrassing correlation between the degree of their legislation's discrimination against the non-religious and the decline in church attendance**

Why has the Government acted in the way it has? The most likely explanations are that the Government's willingness to give the churches practically everything they want in this area is a reflection of the religious zeal of the current and previous Prime Ministers<sup>17</sup>, the Government appearing to be in thrall to the Established Church<sup>18</sup> that is becoming more demanding, and a complete disregard bordering on contempt for those who do not belong to any religion, despite the fact that they constitute the largest single religion/belief group and are not that short of half of the population<sup>19</sup>.

Normal Sunday church attendance approximated to 15% of the population in the first known survey after the 1944 Act (in 1948/9); it had fallen to around 8% by the 1998 Act and to 6.5% by the 2006 Act<sup>20</sup>.

Surely, logic, fairness and any sincere commitment to equality would dictate that the level of licensed discrimination be *reduced* or eliminated with these reductions in adherence, yet the opposite happened. We hope that the Government did not (whether in response to pressure or not) progressively step up its legislative discrimination against the non-religious teachers and school staff in 1998 and 2006 *because of* rapidly falling church attendance (and in an attempt to stem it).

What has become clear in our negotiations over the Equality Bill 2009, following yet further declines in adherence, is that any prospect of reducing discrimination against the non-religious in this area is something the Government will not even contemplate<sup>21</sup>, once more

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<sup>15</sup> Draft Employment Equality (Sexual Orientation) Regulations 2003 (Extract relating solely to Regulation 7)  
<http://www.secularism.org.uk/uploads/sexl-orntion-reg-7.pdf>

<sup>16</sup> 27 March 2007

<sup>17</sup> See NSS 2009 Annual Report pages 1 and 3 <http://www.secularism.org.uk/uploads/nss-annual-report-2009.pdf>

<sup>18</sup> Draft Employment Equality (Sexual Orientation) Regulations 2003 (Extract relating solely to Regulation 7)  
<http://www.secularism.org.uk/uploads/sexl-orntion-reg-7.pdf> (also mentioned in a more precise context in the section headed "The Church's insatiable appetite to discriminate")

<sup>19</sup> [http://www.statistics.gov.uk/downloads/theme\\_social/Social\\_Trends38/Social\\_Trends\\_38.pdf](http://www.statistics.gov.uk/downloads/theme_social/Social_Trends38/Social_Trends_38.pdf) Table 13.18.

Extrapolating the 1996-2006 to 2009 makes Christianity and non-belief "belonging" to be roughly level pegging.

<sup>20</sup> 1948/9: Question Bank Commentary: Religion - Researching Religion by Peter Brierley (From an article written for the Economic and Social Research Council, 11 December 1999). 1998/2006: Religious Trends 7, 2007/2008 published by Christian Research

<sup>21</sup> <http://www.publications.parliament.uk/pa/cm200809/cmpublic/equality/090702/am/90702s04.htm> Commons Hansard  
Cols 634 - 638 2 July 2009

we must conclude for fear of upsetting the churches and perhaps the pro-religious and anti-equality media.

## The Future

### Discrimination will move from being unfair and unjustified to being state sponsored victimisation

As we observe in the Executive Summary above, “Around twenty times as many people do *not* go to church on an average Sunday ... compared with those who do”. This statistic will seem shocking to many in the context of the legalised discrimination against school staff who are not pious Christians, as described in much more detail in this Paper. But this figure is as nothing compared with the position forecast by Christian Research for the future.

These are normal church attendance projections by Christian Research for Britain for the two major denominations with the most schools. They assume, for simplicity, that the age profile of these denominations matches those of the whole churchgoing population. All figures are in thousands.

Assuming that the size of the church school sector remains at broadly current levels, the independent projections below demonstrate the unsustainability of the existing model of discrimination against non-religious staff in future decades. It is already grossly unacceptable justifying such discrimination with a ratio of 1: 20 church attendance; when this rises further as it inevitably will, it becomes indefensible. In this scenario the ratio rises to one in more than 150 by 2050. The figures below are for Britain; those for England are obviously lower as is the percentage of the working population’s normal Sunday attendance relative to the working population (taken as ages 20-64).

Year	Normal Sunday Attendance Anglican	Normal Sunday Attendance Catholic	Population of working age	Normal Sunday Church attendance all denoms % of working population	Previous column as a ratio, 1:
1990	673	944	32,409	8.5	12
1995	616	839	33,133	7.6	13
2000	532	684	34,002	6.5	15
2005	486	588	35,097	5.7	17
2010	441	506	36,037	5.1	20
2015	352	396	36,321	4.1	24
2020	281	292	36,668	3.3	31
2025	218	207	36,658	2.5	39
2030	158	142	36,252	2.0	50
2035	107	102	35,978	1.6	64
2040	69	72	36,253	1.2	84
2045	45	45	36,404	0.9	110
2050	23	27	36,555	0.6	155

## **Scotland**

Education (Scotland) Act 1980, including 1989 amendments, Section 21 reads, in part:

(2A) A teacher appointed to any post on the staff of any such school by the education authority shall satisfy the Secretary of State as to qualification, and shall be required to be approved as regards his religious belief and character by representatives of the church or denominational body in whose interest the school has been conducted;

(2B) Where the said representatives of a church or denominational body refuse to give the approval mentioned in subsection (2A) above they shall state their reasons for such refusal in writing.

This appears to give the religious authorities *carte blanche* to reject candidates, which could be in contravention of the Employment Directive 2000.

Mr. Jim Nixon, a teacher with nearly thirty years' experience, has complained<sup>22</sup>:

This act gives denominational bodies the right to issue Certificates of Approval based solely on adherence to a particular religious denomination, certificates which are a prerequisite for employment by public bodies, namely local authorities.

My current employer, the Glasgow City Council, claims to be an Equal Opportunity Employer and states that all applicants for teaching posts will receive equal treatment irrespective of race, colour, disability, age, sex or religion. Yet in a recent internal newsletter dated 22/8/00 of the 20 posts advertised only 12 were available for teachers not possessing the Certificate of Approval whilst colleagues with a Certificate could apply for all 20. Equal Opportunity clearly does not exist in this situation.

## **Glasgow City Council v McNab, 2007**<sup>23</sup>

The Employment Appeal Tribunal (EAT) upheld<sup>24</sup> an earlier tribunal decision that an atheist teacher, David McNab, employed by a Catholic school maintained by Glasgow City Council, had suffered direct discrimination under the Religion or Belief Regulations 2003 when he was refused an interview for the post of principal teacher of pastoral care.

The EAT said that the tribunal was right to conclude that the post was not one for which the Roman Catholic Church required a Catholic teacher (as set out in a 1991 agreement between the Council and the Church). The council was wrong, therefore, to assume that the Church would not have approved the appointment of Mr McNab.

The EAT also upheld the tribunal's finding that there was no general GOR for the principal teacher of pastoral care in a Catholic school, to be a Catholic. The EAT held that a local authority has no religious ethos and so cannot use the religious organisation's GOR, even for employment in religious schools.

An agreement<sup>25</sup> between the Roman Catholic Church and local authorities reserving certain key teaching posts for Catholics approved by their local priest has no legal standing, according to the employment tribunal.

Glasgow City Council came in for criticism for launching the appeal against the teacher and in effect siding with the Church and using its own resources to do so: "Neither the

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<sup>22</sup> <http://www.scottishunionistparty.co.uk/content/view/8/6/>

<sup>23</sup>

[http://209.85.229.132/search?q=cache:Kc\\_plvxopTwJ:www.employmentappeals.gov.uk/Public/Upload/UKEATS\\_0037\\_06\\_RN..doc+%22Glasgow+city+council%22+atheist+teacher+McNab&cd=3&hl=en&ct=clnk&gl=uk](http://209.85.229.132/search?q=cache:Kc_plvxopTwJ:www.employmentappeals.gov.uk/Public/Upload/UKEATS_0037_06_RN..doc+%22Glasgow+city+council%22+atheist+teacher+McNab&cd=3&hl=en&ct=clnk&gl=uk)

<sup>24</sup> <http://www.teachingexpertise.com/articles/when-can-employers-specify-religion-or-sexual-orientation-2669>

<sup>25</sup> <http://www.tes.co.uk/article.aspx?storycode=2124457>

respondents nor their education department have any business having an ethos. Whilst we would suggest that they ought to accept, at least, that they are bound to follow the ethos encapsulated in the Nolan principles of standards in public life, we would accept that they, as a local authority, have no business seeking to follow or further any particular religious ethos at all.”<sup>26</sup>

### **The churches’ motivations – and their non-legislative plans**

*Christian Research* has demonstrated that by 2050 Sunday attendance will fall well below 100,000, compared with just under a million now<sup>27</sup>. This follows 60 years of decline in church attendance. There is clear evidence that the Anglican Church in particular regards state funded religious schools as a useful method of spreading the Christian message in the communities in which they are situated, and we suspect together with involvement in state-funded faith based welfare their only chances of survival as a national church. The Church of England document *The Way Ahead*<sup>28</sup> points out the difficulties the Church has experienced in attracting young people to its services, then by contrast points to the opportunities that religious schools provide them with in “offering children and young people the opportunity to experience the meaning of the Christian faith”. For example, section 3 *The Way Ahead* states:

*3.3. The Church has a major problem in attracting young people to its services and as a means of discharging its mission, and one that causes much concern. This bears directly on the future of the Church.*

*3.4. In contrast, the Church has some 900,000 young people attending its schools...*

*3.8. We have also noted that through the children attending its schools, the Church has an opportunity to reach out to parents. The 900,000 children provide access to parents, very many of whom would otherwise have no contact with the Church.*

*3.9. ...Whether they come into Church or not, Church schools are giving them the opportunity to know Christ, to learn in a community that seeks to live by his word, and to engage in worship.*

But as further legislative help seems unlikely at the moment, the churches have their eye on other non-statutory methods of destroying equality. In terms of the impact such a strategy has for the employment of staff, *The Way Ahead* is quite clear that the Church aims to encourage Christians into the teaching profession and agrees with the diocese that asserted the Church should promote teaching as “a vocation of equal status to the Priesthood”. It also makes clear a commitment, not to equality, but to “enhancing opportunities” for Christians seeking qualified teacher status by offering additional qualifications necessary for teaching in church schools. *The Way Ahead* states:

*One way of providing enhanced opportunities for Christians seeking Qualified Teacher Status (QTS) has been to offer specific additional qualifications designed to meet the needs of new entrants to work in Church schools. The Catholic Certificate in Religious Studies (CCRS) and its recent variations have provided a well-established route for teachers entering Roman Catholic schools. The energy invested in the Certificate over the years by Roman Catholic schools and dioceses has meant that it is now a well-established requirement for many teachers working in that sector.*

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<sup>26</sup>

[http://209.85.229.132/search?q=cache:Kc\\_plvxopTwJ:www.employmentappeals.gov.uk/Public/Upload/UKEATS\\_0037\\_06\\_RN..doc+%22Glasgow+city+council%22+atheist+teacher+McNab&cd=3&hl=en&ct=clnk&gl=uk](http://209.85.229.132/search?q=cache:Kc_plvxopTwJ:www.employmentappeals.gov.uk/Public/Upload/UKEATS_0037_06_RN..doc+%22Glasgow+city+council%22+atheist+teacher+McNab&cd=3&hl=en&ct=clnk&gl=uk) at para 61

<sup>27</sup> Church attendance 'to fall by 90%': Guardian 21 December 2008

<http://www.guardian.co.uk/world/2008/dec/21/anglicanism-religion>

<sup>28</sup> [http://www.natsoc.org.uk/schools/the\\_way\\_ahead/wa-whole.pdf](http://www.natsoc.org.uk/schools/the_way_ahead/wa-whole.pdf)

Such strategies are designed to enhance the prospects of teachers 'of the faith' and have the effect of disadvantaging non-Christians who apply for teaching position within religious schools.

The Church has made clear its intention to ensure that the schools they run are centres of worship and the teaching of Christian faith. It has made equally clear that it wishes to staff its schools with Christians, showing little interest in giving all teachers equal access to the teaching and support positions available. From the perspective of the Church of England such a strategy makes perfect sense. But from an equality and Human Rights perspective, we believe the fact that these schools exist within the state sector – entirely funded by the state – renders the current situation unacceptable. The State has a special role in promoting equality and protecting citizens against discrimination and with 93%<sup>29</sup> of children being educated in the state sector, the vast majority of teachers spend their entire careers within that sector. Teachers of all faiths and none deserve better protection from discrimination on ground of religion and belief.

## **APPENDIX**

### **Teaching unions and religious schools**

Teaching unions generally do not favour religious schools, but we have omitted their comments generally critical of schools, concentrating on ones dealing with employment matters.

The **Association of Teachers and Lecturers (ATL)**<sup>30</sup> is unequivocal. In their latest position statement<sup>31</sup> the ATL said:

*ATL believes that the rights of religious schools to select candidates on the basis of their religion to be discriminatory and calls for an immediate halt to any extension of this privilege to new categories of staff.*

*It is not only our members and teacher colleagues who lose out as a result of these selection practices but also schools and pupils. We know that there is a particular recruitment problem in religious schools. For head teacher positions, not only must the pool of candidates be of the same religion as the religious school but they must also fit within certain parameters of personal behaviour; for example, practising Catholics can be ruled out if they have chosen to live with their partner before marriage, been divorced or are openly gay. This problem of recruitment in religious schools will only worsen should the religious school sector expand and increasingly, schools, staff, pupils and their parents will lose out.*

In Summer 2009 **Unison**, Britain's biggest trade union, showed their alertness to the issue in a motion which was carried at their LGBT Summer Conference. Motion 96 called for the Union to lobby for all state-funded schools to have recruitment and employment policies that do not discriminate on grounds of religion and belief. In their LGBT equality newsletter, an article entitled 'LGBT and faith. Do they clash?'<sup>32</sup> said:

*"Changes that came into force in September 2008 allow faith-based voluntary-aided schools to discriminate against non-teaching staff on grounds of faith (for example, say they must be practising Catholics) and can require them to act 'in accordance with the ethos of*

<sup>29</sup> Percentage of pupils in independent schools – 6.4% - See Hansard 3 July 2008 Col 981 <http://bit.ly/za39r>

<sup>30</sup> [http://www.atl.org.uk/atl\\_en/news/Media\\_office/archive/archive07/March\\_2007/faith\\_school.asp](http://www.atl.org.uk/atl_en/news/Media_office/archive/archive07/March_2007/faith_school.asp)

<sup>31</sup> <http://www.atl.org.uk/policy-and-campaigns/policies/Faith-schools.asp>

<sup>32</sup> <http://www.unison.org.uk/file/Out%20in%20UNISON%2038.pdf>

*the school'. Case law will test the exact scope of this, but it is not hard to imagine that a school might claim that having a same-sex partner was against its ethos. What sort of message does this send to students from LGBT families or those questioning their own sexual orientation or gender identity?"*

### **Difficulties with recruitment**

Unsurprisingly, there is evidence in the public domain about the difficulties in recruiting 'reserved' teachers.

The *Schools Review Group Consultation Report*<sup>33</sup>, published by the Church of England's Archbishops' Council admits that its expansion plans will be set at naught if there are not enough "Christian teachers" to staff its schools. In fact, there are nowhere near enough teachers fulfilling the strict faith criteria to staff existing Church schools, far less an expanded number.

As long as religious schools block perfectly qualified teachers from applying for available posts, it is clear that such schools will face growing staff shortages, and these will be aggravated by any expansion. What's worse is that there is absolutely no justification for such discrimination because teachers do not need to be religious to teach maths or science, for example, and all teachers in religious schools are already required to uphold their ethos. Surely it is only fair that it is the best teacher who gets the job and this is without question in pupils' best interests too.

### **Schools facing head teacher shortage – January 2009 (Telegraph)**

*Schools are facing a leadership crisis as hundreds of them cannot find head teachers, according to a new report*

<http://www.telegraph.co.uk/education/educationnews/4175702/Schools-facing-head-teacher-shortage.html>

*More than a third of primary schools and a quarter of secondaries were forced to re-advertise for a head last year after failing to recruit staff at the first attempt.*

*It will raise fears many are being left without a top teacher, creating disruption for thousands of children.*

*Shortages among state secondaries in England were worse than in 2007 even though salaries of £100,000 are "now regarded as commonplace", it was claimed.*

*Professor John Howson, a former Government advisor and director of Education Data Surveys, which compiled the report, said high wages were "no longer a guarantee that a school will find a head teacher".*

*Church schools struggled more than others in the state sector, he said.*

*Almost half of Roman Catholic schools - which only recruit Catholic heads - were forced to advertise for suitable staff more than once. Some were forced to place up to four adverts in trade magazines and newspapers before finding a head teacher.*

*"Solving the faith school issue in an increasingly secular society is a real challenge for both the various faiths that run schools and education policy makers at local and national levels," said the report.*

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<sup>33</sup> [http://www.cofe.anglican.org/news/church\\_schools\\_review\\_group\\_issues\\_consultation.html](http://www.cofe.anglican.org/news/church_schools_review_group_issues_consultation.html)

## **Head teacher shortage continues - January 2009 (BBC)**

<http://news.bbc.co.uk/1/hi/education/7817936.stm>

*Roman Catholic and Church of England schools had higher levels of re-advertisement for headships in 2007/08 than the year before.*

*Among Catholic schools, 57% of those advertising for heads had to re-advertise, while for Church of England schools the proportion was 43%.*

## **Faith Schools – January 2003 (TES)**

<http://www.tes.co.uk/article.aspx?storycode=373619>

*Church schools rely heavily on non-believers to bolster their staff, particularly in secondary schools. Schools have a difficult enough job to find any maths teachers, let alone Roman Catholic ones. Religious factors only start to bite higher up the promotion ladder - at senior teacher and deputy head level in Roman Catholic schools, because the church wants committed believers in the top jobs. Similarly, Church of England schools prefer headteachers who are practising Anglicans. The result is a serious shortage of senior staff, and the days when Roman Catholic schools could look to the religious orders for staff are long gone.*

## **Head teacher: The job no one wants – January 2007 (Independent)**

Schools are having to advertise five or six times to find a head teacher. Peter Stanford finds out why

<http://www.independent.co.uk/news/education/education-news/head-teacher-the-job-no-one-wants-433507.html>

*There is a particular recruitment problem in faith schools. St Anthony's Catholic Primary in Fareham, Hampshire, had to advertise five times over eight months before it could appoint a new head. Three of the advertisements attracted no applicants. On the other side of the Solent, Archbishop King Catholic Middle School in Newport, Isle of Wight, struggled to recruit and eventually found a new head by agreeing to share one with a nearby Anglican college.*

*"Catholic heads are expected to be the spiritual leaders of their school as well as [carrying out] all their other responsibilities," says Joe Hughes, head teacher of English Martyrs School in Hartlepool and a spokesperson for the Catholic Association of Teachers, Schools and Colleges. "And that can put potential applicants off." There are, for example, many practising Catholics who see a distinction between their private beliefs and promoting the official line of their church in public as the head of a Catholic school. So while several Catholic primaries in the archdiocese of Westminster have had trouble finding a head in recent years, a number of church-going Catholics are heads of non-denominational or Anglican schools in the same area.*

*But if suitable Catholic candidates are more reluctant than in the past to take on the "faith leader" role that goes with headship in Catholic schools, then it is equally often the governors who are obliged to turn down those who would willingly embrace it but who are ruled out because of personal circumstances.*

*While there is a logic in Catholic schools refusing to have non-Catholics as heads because of fears that such a move would inevitably dilute the special ethos, it is harder to defend the number of practising Catholics who are ruled out of contention because they have chosen,*

*in good faith, to live with their partners before marriage, or who have been divorced despite the church's teaching on the sanctity of marriage, or who are openly gay.*

*The growing backlog of vacancies doesn't seem to be prompting the church authorities to give governors any more discretion in overlooking such personal circumstances when making appointments.*

### **Making sense of religion – Ofsted News**

<http://ofstednews.ofsted.gov.uk/article/180>

*A lack of specialist RE teachers in schools across the country is having a detrimental effect on the quality of teaching, although in schools where there is a good head of department the impact of this can be lessened. The hope is that the recent introduction of bursaries and financial incentives to attract more RE graduates to teaching will start to make a difference for pupils.*

