
NSS response:

East Lothian Council consultation: Voting rights of unelected representatives on the education and children's services committee

October 2023

SUBMITTED ONLINE: <https://eastlothianconsultations.co.uk/council-resources/voting-rights-of-unelected-representatives/>

What is your interest in this survey? (parent/guardian, teacher etc.)

This response is made on behalf of the National Secular Society (NSS). The NSS is a not-for-profit, non-governmental civil society organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual human rights, which should never be overridden on the grounds of religion, tradition or culture.

If you have any comments or concerns you wish to express please provide details.

The NSS strongly supports removing the voting powers given to religious representatives on East Lothian Council's education and children's services committee.

Religious appointees on councils are undemocratic, unrepresentative and unjustified. No one should be granted a privileged place in local democracy just because of their religion. While it remains a legal duty to appoint religious representatives, the NSS strongly recommends councils exercise their power to remove the voting privileges of religious appointees.

The Local Government (Scotland) Act 1973 requires local authorities in Scotland to appoint three religious representatives to their education committees. At least one of them must be appointed by the Catholic Church and one by the Protestant Church of Scotland.

This law is being increasingly questioned by local authorities. Last year Shetland Isles councillors criticised the requirement to appoint a religious representative, with Gary Robinson of Lerwick North saying the requirement was "quite frankly ridiculous in the 21st century".

This year alone, five councils in Scotland have voted to remove religious representatives' voting powers: Orkney Council, Highland Council, Fife Council, Stirling Council and City of Edinburgh Council. They join Perth and Kinross Council, Moray Council and Scottish Borders Council in making their councils fairer and more democratic by removing these voting powers.

We know many other councils are considering the same move. We urge East Lothian Council to follow suit.

Like the majority of western democracies, Scotland has moved over the last two centuries from a patchwork of voluntary schools provided by religious and other charities, to a modern universal state-funded education system. Given this transformation – alongside radical changes to the nation's increasingly diverse and irreligious population – there is no justification for granting special voting concessions to religious appointees.

What is needed is a system that is accountable and responsive to all of its citizens' needs. One where citizens of all faiths and beliefs can contribute to decisions about education, through both the democratic process, and by volunteering as governors, attending public meetings, or contributing to consultations and public debates.

The simplest overriding argument against religious appointees is one of principle: if Scotland is to be a country where all citizens irrespective of background have an equal chance to participate in decision making, it cannot give one select group a privileged role.

The system of religious appointees runs counter to democratic principles not only in that they are unelected by the voters, but that they are subject to almost no indirect democratic control. Councils must accept the appointments made by the Church of Scotland and the Catholic Church. A council may exercise some choice over the third appointee, but this process is extremely unclear and inconsistent.

Reserving a special role in policymaking for representatives of specific religious institutions, and in so doing excluding the majority of Scottish citizens based on their protected characteristics of religion or belief, clearly runs counter to principles of equality. There is also a hierarchy of inequity, caused by one place each provided for Catholics and members of the Church in Scotland, while representatives of all other religions must compete for the remaining third place.

The appointment system of one Catholic and one Protestant also entrenches outdated sectarian notions about the identities and divisions between the people of Scotland.

The religious appointees do not speak for the vast majority of Scots. They serve to uphold the agendas of religious institutions, primarily the Church of Scotland and the Catholic Church.

Scotland is increasingly irreligious and religiously diverse. The most recently available Scottish Social Attitudes Survey data shows that 58% of Scots (including 74% of 18–34s) have no religion.

It should be noted that religious representatives on councils are not appointed by or answerable to religious citizens, but religious institutions. A wealth of evidence exists that religious organisations of all stripes diverge from the views of their ordinary members.

Any arguments that religious representatives provide special moral insight are based on anti-atheist, pro-religious prejudice. This notion is a wholly illegitimate basis for public policymaking and an insult to the non-religious majority of Scots. If elected councillors value the moral insight of religious representatives, they would continue to be free to seek them even if religious appointees or their voting concessions were removed.

Some religious appointees seek to promote extremely controversial views. This includes Dr Nagy Iskander, one of "Europe's most active creationists", who was reappointed to South Lanarkshire Council's education committee in 2018.

No one disputes the historic role of churches in helping to establish Scotland's education system. But this is not a good reason for them to be given a special privileged voice in decisions about educational issues today.

Churches have historically been very successful at lobbying and would continue to be well placed to do so even if their institutional privilege was removed. The pluralistic Scotland of today is utterly unrecognisable from that which existed before universal state education. Churches are now simply one voice among many and cannot expect that voice to be given the same deference as in centuries past.

Contrary to common misconceptions, religious representatives are not necessary to protect the identity and interests of denominational schools. These schools already have many entrenched legal protections which negate any 'need' for religious appointees. The trustees of denominational schools have a legal duty to protect their ethos. Denominational bodies have the legal right to be consulted over any changes and play a central role in the formation of such schools' curriculum and policies. And teaching and leadership positions in denominational schools can be subject to religiously motivated selection by denominational bodies.

For more information on this issue, please see our 2019 report 'Religious Reps: Unrepresentative, Unnecessary And Unjustified': <https://www.secularism.org.uk/uploads/religious-reps-unrepresentative-unnecessary-and-unjustified.pdf>

Finally, we would like to raise our concern that it is not possible on the online form to omit the question regarding removing the voting powers of unelected Trade Union representatives. The form cannot be submitted unless an answer of "Yes" or "No" is given. Many organisations and individuals completing this form will be neutral on this topic, or the question will be beyond their remit, or they would prefer not to answer for another reason. The form should be modified to allow users to skip any questions requiring them to give their opinion, or to give a "neutral" answer.

It should be noted that while there are arguments for removing the voting powers of unelected Trade Union representatives, Trade Union membership is not a protected characteristic, whereas religion or belief is a protected characteristic for the purposes of the Equality Act 2010. This means that granting voting powers to Trade Union representatives is not incompatible with equality law. In contrast, in 2013 the Equality and Human Rights Commission raised the possibility that the statute on religious appointees may be incompatible with Section 149 of the Equality Act. This section requires public authorities in Scotland to "give due regard to the need to eliminate unlawful discrimination, harassment and victimization", "advance equality of opportunity between different groups", and "foster good relations between different groups".

Allowing particular religion and belief groups the right to appoint members of education councils, while denying others this right, fails to "advance equality of opportunity between different groups". If the terms of the 1973 Act are incompatible with the Equality Act, then it may even fail to "eliminate unlawful discrimination". The need for smaller minority religions to compete for the 'third slot', where the Church of Scotland and Catholic Church are granted automatic seats, has the potential to damage "good relations between different groups". Such good relations can also be damaged by religious appointees' support for sectarian denominational schooling or the tendency of more active religious members to be out of step with mainstream societal views on social issues. The commission recommended that: "an appropriate course of action for Scottish Ministers may be to assess whether these provisions and the policies and practices which flow from them meet the requirement to give due regard to the three elements of the Equality Duty listed above." See: https://archive2021.parliament.scot/S4_PublicPetitionsCommittee/General%20Documents/PE1498_G_Equality_Human_Rights_Commission_11.02.14.pdf