

NSS response to the EHRC's 2016 - 2019 Strategic Plan Consultation



December 2015

Q part 1:

In the context of tackling discrimination based on religion or belief we believe there is a need for the Commission to focus on issues stemming from the current arrangements regarding religion and belief in schools.

Q Part 2

Given that the Commission's mission is to challenge discrimination, and to protect and promote human rights, we are concerned that the human rights issues stemming from the current settlement on religion and belief in schools has not been a focus for the EHRC, despite these issues being a considerable topic of public debate and highlighted in various recent reports and studies. These include the Faith Debates' 'A new settlement: religion and belief in schools' report; the Commission on Religion and Belief in British Public Life report; and the Arts and Humanities Research Council (AHRC) funded research network project.

Various legislation and equality exemptions facilitate widespread discrimination and unfairness in our education system. We would hope the Commission would seek to assess the scale, impact and fairness of these issues and lead the way in advocating for a child-centred, inclusive and secular education system, based upon principles of equality and fairness.

These issues fall into four main areas detailed below.

1. Discriminatory admissions arrangements for faith-based schools

We would like the Commission to investigate the effect and possibility of repealing exemptions from equality legislation which allow schools with a religious character to prioritise children from faith backgrounds and select pupils on the basis of baptism, religious affiliation or the religious activities of their parent(s).

Equality Act exceptions permit schools designated as having a religious character to use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed. In many cases this results in children being denied access to their local school.

Admissions policies which discriminate on religious grounds are not only unfair and inimical to integration and social cohesion, there is also compelling evidence that they also encourage socio-economic and ethnic segregation.

Such discrimination is incompatible with an education system which should be based around principles of fairness and equality. Religious parents often have privileged access to religious schools, but equal access to non-religiously designated schools. This puts non-religious parents, non-practicing parents and those of minority faiths at an obvious disadvantage.

2. Discriminatory employment arrangements for faith-based schools

We would like to see the Commission investigate the extent of discrimination in employment at faith-based schools and assess the potential detriment to the career prospects of non-Christian teachers including those seeking promotion to leadership positions. Ideally we would like to see the Commission supporting repeal of the exemptions that permit schools of a religious character to discriminate against teachers on grounds of religion or belief and sexual orientation. An expectation of teachers, including those in leadership positions, to uphold the ethos of the school should suffice.

Otherwise suitably qualified teachers can be discriminated against in a third of all publicly funded schools. Equality Act exemptions permit faith schools to apply a religious test in appointing, remunerating and promoting teachers, including headteachers. In some schools up to one fifth of positions (including since 2006 the headteacher) can be 'reserved', but in other types of faith school, every teaching and leadership position, and we suspect non-teaching posts, can potentially be the subject of a religious test. Furthermore, provisions in the School Standards and Framework Act (SSFA) give the governors of some faith schools the right to discipline and dismiss teachers for any conduct, including private conduct outside the school that they deem to be "incompatible with the precepts, or with the upholding of the tenets, of the religion of the school".

We maintain that the above exemptions go far beyond what could reasonably be considered to be a genuine occupational requirement and therefore the limited level of discrimination permitted by the EU Employment Directive (2000). Permitting teachers to be discriminated against on the basis of personal circumstances irrelevant to their professional duties should not be allowed to continue as it is discriminatory, a breach of their human rights and an illegitimate use of public funds. It is also a breach of natural justice; the best person should be the one entitled to a job.

3. Faith schools and the limited availability of secular provision

We would like to see the Commission advocating for an inclusive and secular education system. At the very minimum the Commission should seek a statutory entitlement for pupils to receive a publicly-funded education in a religiously neutral (non-religiously affiliated) school.

Around a third of publicly funded schools in England & Wales have a religious character, commonly known as 'faith schools'. State funding of religious schools is often justified as a means of providing parental choice. However the more faith schools there are, the greater the restriction of choice for parents who do not want a religious education for their children, or do not share/want to share the faith of that school in their locality. In some parts of the

country, particularly in rural areas where the only school is a church school, parents are left with little or no choice but to send their child to a school with a religious ethos. This clearly undermines their ability to raise their children in accordance with their own religious or philosophical convictions.

4. The legal requirement to provide collective worship in all schools

We would like to see the Commission pushing for a duty on schools to ensure all aspect of the school day are inclusive and appropriate for children of all religion and belief backgrounds. This would necessarily entail a removal of the legal requirement on schools to provide acts of worship.

The legal requirement on schools to provide, and for pupils to “take part in”, a daily act of collective worship violates children’s right to freedom of religion and belief and usurps parental rights.

School communities, including in many schools with a religious character, are made up of pupils from a variety of religion and belief backgrounds. It is therefore wrong to regard such communities as homogenous ‘religious’ or ‘worshipping’ communities.

It is often claimed that the legal right to withdraw protects pupil’s and parents’ religious freedoms. We do not regard the ability of parents to withdraw their children as a satisfactory solution, as the act of withdrawal itself can be problematic. The focus of any solution to these concerns should be on inclusiveness, rather than withdrawal and exclusion.

Religious tribunals and access to justice

We welcome the Commission’s intention to encourage democratic participation and ensure access to justice. We would like the Commission to consider the equality impact of restrictions on access to justice leading to some people having little recourse but to religious tribunals and if necessary to issue guidance.

Although in theory religious tribunals, sometimes referred to as ‘courts’, have no legal authority and are voluntary, we are concerned that in practice access to the secular justice system is being blocked and it is predominantly women and vulnerable groups from minority backgrounds who’s rights are being put at risk.

The main causes are, financial barriers to accessing the secular justice system, social pressures to take matters to religious tribunals, a lack of information and education about individuals’ rights to access the secular justice system and the erroneous impression created by some religious tribunals (intentionally or otherwise) that they do have legal authority.

