

Faith- shaped holes:

HOW RELIGIOUS PRIVILEGE IS
UNDERMINING EQUALITY LAW



national
secular
society

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FOREWORD



It is a decade since the Equality Act 2010 came into force. Heralding an important step forward in the fight to protect individual rights and freedoms, it is one of the most important pieces of legislation to have been enacted in recent times.

The Equality Act is something that, as a country, we should be extremely proud of. It has contributed to the UK becoming, on the whole, a more tolerant nation and has been vital in tackling discrimination against minorities and safeguarding individuals' rights.

This ten-year anniversary provides a timely opportunity to assess the impact of the Act. As this excellent, informed, and forensic report by the National Secular Society demonstrates it is certainly not a case of 'job done'.

For those of us who campaign for justice and equality, *Faith-shaped holes* is a much-needed reminder that the battle is far from over. We cannot become complacent in defending and promoting freedoms and rights for all.

As the report makes clear, the continued existence of exemptions for religious privilege is completely at odds with ambitions to create a fair society. Whilst the aspirations of the Equality Act were – and remain – laudable, this should not blind us to the fact that provisions within the Act itself have created stark areas of on-going discrimination and gaps in the guarantees of equality. Until exemptions that create religious privilege are tackled and ended, we cannot claim to have created a just and fair society.

We are all too aware that these are not abstract concepts and theoretical debates. As the UK becomes increasingly diverse, getting this right is vital for community cohesion; for democratic participation and legitimacy; and for ensuring all individuals are afforded the same opportunities and have the same chance in life. This goes to the heart of how we want shape our country and our obligations to protect everyone across our society.

With this in mind, it is extremely welcome to see the National Secular Society identify practical reforms and measures that can overcome three areas of critical and growing concern. As is set out in greater detail in this report, religious exemptions within the Equality Act continue to create problems across the UK's education system; across communities with caste-based discriminations issues; and in terms of employment opportunities on the grounds of belief. The proposals put forward by the National Secular Society would tackle these challenges head-on and will have a positive impact across the entirety of the UK – they need our backing and they need government to act.

Now is the time to redouble our efforts and continue to build a just and equal society. The Equality Act has created a wonderful base for us to build on – *Faith-shaped holes* shows us how we go further and continue the fight for a fair, just and inclusive Britain.

The Rt Hon Baroness Featherstone

EXECUTIVE SUMMARY

The Equality Act 2010 was a landmark piece of legislation intended to build a fairer Britain, and safeguard and positively promote the rights of everyone. This report highlights how exceptions within the Act intended to accommodate historic religious privileges are undermining efforts to achieve this.

Equality is an essential principle not merely for its own sake. It underpins community cohesion, democratic participation, and personal liberty.

Freedom of religion or belief is an indispensable component of personal liberty. It also pertains to an area of UK society that has undergone dramatic change within the past ten years since the Equality Act became law.

Firstly, diversity of different religions has increased. Islam, Hinduism and Sikhism are amongst the religions on the rise.

Secondly, the UK is now more irreligious than ever, with more than 50% of British adults saying they have no religion. This rise coincides with a dramatic fall in adherents of the established church, the Church of England. Only 2% of young adults identify as belonging to the C of E.¹

But according to Humanist International's Freedom of Thought Report 2018, this non-religious majority in the UK suffer from systemic discrimination in all areas monitored: government, education, society, and free expression. This is in stark contrast to some of our surrounding European neighbours – France, Belgium, the Netherlands, Norway, Sweden, and Iceland – where the non-religious enjoy 'free and equal' treatment in all or most of these areas.²

As a nation that prides itself on fairness and justice, we should be alarmed and disturbed that in spite of the Equality Act, the non-religious majority in Britain are not afforded the same rights and opportunities as their European neighbours. And where the non-religious suffer injustice, members of minority religions are likely to do so too.

This report finds many of these disparities in opportunity are due to exceptions and omissions that were built into the Equality Act from the outset, often due to lobbying from religious groups. These glaring gaps in equality legislation are leading to undesirable and unnecessary religious discrimination, fuelling societal segregation, and reducing opportunities for people because of who they are or what they believe. This report examines three specific areas in equality law where reform is urgently needed: education, caste-based discrimination, and employment.

¹ NatCen, 'British Social Attitudes 36'. 2019 <https://www.bsa.natcen.ac.uk/latest-report/british-social-attitudes-36/religion.aspx> Accessed 13 August 2020

² Humanists International, 'The freedom of thought report'. <https://fot.humanists.international> Accessed 17 August 2020

KEY FINDINGS

Education

- The religious ‘gaps’ in the Equality Act take their heaviest toll on our children. Although our nation’s schools should be beacons of tolerance and equality, the entrenchment of religion in British education systems shatters these aspirations. This report finds that exceptions to accommodate faith schools, faith-based admissions and religious practice in schools are leading to a level of religious discrimination that would not be tolerated in any other area of society.

Caste-based discrimination

- Migration into the UK from Asia has meant caste-based discrimination and harassment has become a feature of British life. Although tens of thousands, perhaps even hundreds of thousands of people belonging to oppressed castes live in the UK, they still have no genuine protection from discrimination.

Employment

- There is evidence that some organisations might be using the ‘genuine occupational requirement’ exceptions in the Equality Act as ‘loopholes’ to avoid employing people who don’t belong to the ‘right’ religion in seemingly secular roles. This shuts off job opportunities for talented people who do not share the same beliefs.

If the ‘faith-shaped holes’ in the Equality Act are not closed, we will see inequalities caused by these gaps grow bigger, and the divisions between different communities grow deeper.

The recommendations in this report aim to enhance the Equality Act so it can truly fulfil the mission which it was created to serve: that of ensuring fairness and freedom for all individuals in Britain.

RECOMMENDATIONS

1. Remove exceptions that enable state-funded schools to discriminate against individuals on the basis of religion or belief.

This would have broad and positive implications for our school system. It would mean no state-funded school could discriminate against pupils in their admissions on the basis of their family’s religion or religious activities, or by having a curriculum that favours a particular religion or belief. It would also protect staff and governors from religion-based discrimination, and necessitate the removal of the collective worship requirement for all schools. Finally, it would end the privileging of religious families in the school transport policies of local authorities.

2. Add ‘caste’ as a protected characteristic.

This would provide a legal remedy for people affected by the insidious problem of caste-based discrimination.

3. Strengthen protections against discrimination in recruitment for religious organisations.

At present, some organisations appear to be applying the ‘genuine occupational requirement’ exceptions from equality law too broadly, resulting in unnecessary and potentially unlawful discrimination on the basis of religion or belief. There needs to be greater clarification of what does and does not count as a ‘genuine occupational requirement’, and greater enforcement where the law is potentially breached.

INTRODUCTION

The Equality Act 2010 came into force on 1 October 2010, bringing together over 116 pieces of legislation into one single Act. It provides a legal framework to advance equality of opportunity for all in Great Britain,³ and protect the rights of individuals from unfair treatment.

Primarily, the EA protects people from discrimination, i.e. treating someone less favourably than another because of one or more of their protected characteristics. This is known as *direct discrimination*.

The EA also protects against *indirect discrimination*, i.e. when a policy that applies in the same way for everybody has an effect which particularly disadvantages people because of their protected characteristics. For example, if a woman was forced to leave her job because her employer operated a shift pattern which she was unable to comply with due to parental responsibilities, this could be a case of indirect discrimination.

There are two other forms of “prohibited conduct” defined in the EA. One is *victimisation*, which is where one person treats another badly because that person has taken action to address conduct prohibited by the EA. The other is *harassment*, which involves unwanted conduct related to a protected characteristic and has the purpose or effect of creating an “intimidating, hostile, degrading, humiliating or offensive environment” for an individual, or of violating their dignity.⁴

The protected characteristic of “religion or belief”

Under the EA, it is unlawful to discriminate against, harass or victimise someone based on specific personal characteristics. These characteristics are known as “protected characteristics” and are as follows:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Each of these characteristics is defined within the EA. “Religion or belief” is defined as follows:

“(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

(3) In relation to the protected characteristic of religion or belief –

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.”⁵

³ The Equality Act 2010 does not apply to Northern Ireland.

⁴ Equality Act 2010 c2 www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/2 Accessed 21 August 2020.

⁵ Equality Act 2010 s.10 www.legislation.gov.uk/ukpga/2010/15/section/10 Accessed 21 August 2020.

The definition is clear that people with non-religious beliefs (e.g. atheists, humanists, or simply religious 'nones') are entitled to the same protection as people with religious beliefs.

Defining religion or belief as a protected characteristic is not intended to protect those religions or beliefs themselves. The EA only applies to people. In other words, the EA is not intended to protect beliefs and ideas (religious or otherwise) from criticism, scrutiny or mockery.

EXCEPTIONS TO THE EQUALITY ACT

There are many times and places in society where it is necessary to treat a person differently because of one or more of their protected characteristics.

In many cases, this form of 'discrimination' is necessary in order to protect people from a greater harm than from the discrimination itself. One example might be age restrictions on provisions designed specifically for children or adults, because these two groups have differing needs. It is necessary to exclude children from adult-only spaces in order to protect the rights of the more vulnerable party, in this case the children.

For this reason, the EA includes a number of schedules and provisions outlining where the EA does not apply for certain protected characteristics under particular circumstances. Many of these exceptions are non-contentious, especially when those exceptions are there to protect people's safety and well-being.

But some exceptions are highly controversial. Perhaps few are as contentious as the exceptions that exist to accommodate religious beliefs.

This report will examine those exceptions, specifically those relating to education and employment. It will also discuss the omission of 'caste' as a protected characteristic from the EA. It will include background details on why these exceptions and omissions were made, making reference to the legislative scrutiny of the Joint Committee on Human Rights (26th report of session 2008-09) which details the discussions surrounding the drafting of the EA. Additionally, individual testimonies and case studies have been included to demonstrate the effects that these EA exceptions have on the lives of individuals.

Finally, the report will outline recommendations for improving the EA to 'fill the faith-shaped holes'. These will include technical recommendations referencing the specific pieces of legislation, together with plain English explanations. The specific parts of the EA referenced can be found in the appendices.

The gaps identified in this report should not be considered an exhaustive list. There are many exceptions in equality law designed to accommodate religion, but this report has selected a few of the most egregious exceptions and omissions that demonstrably lead to unfairness and injustice for ordinary people in their daily lives.

DISCRIMINATION IN EDUCATION

INTRODUCTION

In theory, schools should be models of equality in action. In 2014, the Department for Education strengthened its guidance on improving the “spiritual, moral, social and cultural” development of pupils by requiring all schools, including independent schools, to actively promote “fundamental British values”. These values are defined as democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs. According to Lord Nash, then-Parliamentary Under Secretary of State for Schools, the aim of the requirement was to “ensure children become valuable and fully rounded members of society who treat others with respect and tolerance, regardless of background.”⁶

Furthermore, all schools (including independent schools) are subject to the public sector duty to promote equality. In summary, all institutions subject to this duty must have due regard for the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the EA.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.⁷

It is therefore surprising that some of the most egregious examples of discrimination are to be found in our primary and secondary schools.

The reasons for this exceptionalism in our schools are partly historical, relating to the 1944 Education Act, and its incorporation of schools run by the Church of England and the Roman Catholic Church into a national state school system. The result was that schools run by religious institutions would be wholly or mostly funded by taxpayers but would still retain considerable freedom to teach according to their religious ethos. The 1944 Act also resulted in the law requiring all schools – including those not run by religious institutions – to hold daily collective acts of religious worship.⁸

The current Equality Act was established 66 years after the 1944 Act. By this point, the UK’s demographics looked very different. In 1946, 45% of the British population were members of the Church of England, 11% were Roman Catholic, 8% were Church of Scotland and 19% were members of the Free Church. Only 6% belonged to other religions (including other Christian denominations), and 11% had no religion.⁹

⁶ Department for Education. ‘Guidance on promoting British values in schools’ published 27 November 2014 www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published Accessed 13 August 2020

⁷ Equality and Human Rights Commission. ‘Public Sector Equality Duty’ www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty Accessed 13 August 2020

⁸ Sharpe, Keith. “The 1944 Education Act was a landmark law – but let’s reconsider the privileges it granted to religion.” National Secular Society, 18 December 2019. www.secularism.org.uk/opinion/2019/12/the-1944-education-act-was-a-landmark-law-but-lets-reconsider-the-privileges-it-granted-to-religion Accessed 21 August 2020

⁹ Field, Clive D. Religion in Great Britain, 1939-99: A Compendium of Gallup Poll Data. University of Manchester, 2015, p. 16 www.brin.ac.uk/wp-content/uploads/2011/12/Religion-in-Great-Britain-1939-99-A-Compendium-of-Gallup-Poll-Data.pdf Accessed 13 August 2020

But in 2010 only 20% of the population identified with the Church of England, while 9% were Roman Catholic. Fifteen per cent identified with other Christian denominations, and 6% belonged to other, non-Christian religions. Most striking of all, the proportion that did not belong to any religion had shot up to 50%.¹⁰

Rather than becoming a tool for reforming our educational system for greater equality and inclusivity amid these radically changed demographics, the Equality Act 2010 merely entrenched the existing outdated system by giving special exceptions for schools when it came to discrimination relating to religion or belief. Those exceptions effectively allow faith schools, including those funded primarily by the state, to:

- Discriminate against pupils and their families in admissions on the grounds of religion or belief.
- Discriminate against teachers in employment and promotion on the grounds of religion or belief.
- Teach according to the tenets of one particular faith tradition, regardless of the religion or belief background of the pupils. This includes teaching religious codes within relationships and sex education (RSE), such as the idea that same-sex relationships are morally wrong.

The exceptions also allow for the law requiring all state schools, including the majority that have no religious character or ethos, to hold acts daily acts of collective worship.

Six separate faith-based institutions (including two representing the Church of England) submitted memoranda to the Joint Committee on Human Rights (JCHR) lobbying for exceptions that would retain their privileges in education, including discriminatory school policies.¹¹

The recommendations this report makes would prevent any state-funded school from discriminating on the grounds of religion or belief in the admissions criteria or any aspect of school life. This would include any school run by a religious institution.

Under these recommendations, religious institutions would still be eligible to run state-funded schools. However, they would no longer have the existing privileges that enable them to promote the interests of their religious body over the educational and welfare needs of their pupils.

These recommendations would also allow independent faith schools, which are not primarily funded by the state, to continue to have more freedom to run in accordance with the tenets of their faith and to prioritise pupils on the grounds of religion or belief.

The recommendations therefore represent a secularist approach to education and equality. They break the links between religion and state by holding state-funded schools run by religious bodies to the same equality standards as all other state-funded schools. To what extent faith-based discrimination should be tolerated at schools not funded primarily by taxpayers is itself a separate discussion that is beyond the remit of this report.

1. COLLECTIVE WORSHIP

The School Standards and Framework Act 1998 in England and Wales,¹² and the Education (Scotland) Act 1980,¹³ impose broadly Christian religious worship in all state schools – including those without a religious character or ethos.

Two schedules in the EA exist to avoid conflict with this law: Schedule 3 Part 2 Paragraph 11 Item (c) (See Appendix 4) and Schedule 11 Part 2 Paragraph 6 (see Appendix 7).

¹⁰ NatCen, 'British Social Attitudes 28'. 2011-12, p. 173 www.bsa.natcen.ac.uk/media/38966/bsa28-full-report.pdf Accessed 13 August 2020

¹¹ Joint Committee on Human Rights, Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009, pp. Ev97 – 202. <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf> Accessed 17 June 2020

¹² School Standards and Framework Act 1998 c.vi www.legislation.gov.uk/ukpga/1998/31/part/II/chapter/VI Accessed 19 August 2020

¹³ Education (Scotland) Act 1980 p.1 s.8 <https://www.legislation.gov.uk/ukpga/1980/44/section/8> Accessed 19 August 2020

While parents have a right to withdraw their children from collective worship (and sixth form pupils may withdraw themselves), “schools are under no obligation to provide opportunities for separate worship for the different religions and beliefs represented among their pupils.”¹⁴

These exceptions, and the legal requirement for collective worship that necessitate them, have been subject to criticism from multiple authorities. The JCHR recommended that instead of enacting these exceptions, the government should “revisit the justification for legally requiring all maintained schools to ensure that pupils participate in a daily act of Christian worship.”¹⁵

Even some faith groups have expressed concerns over the collective worship requirement. The United Synagogue Agency for Jewish Education raised the question over “whether it is appropriate now, in the multi-cultural Britain of the 21st century, to require the daily act of collective worship to be ‘mainly of a broadly Christian character’.” Unsurprisingly, the Church of England was unequivocal in its support of the requirement.¹⁶

In spite of these concerns, the government has defended the requirement on the grounds that religious traditions in Great Britain are, in the main, Christian. It cited evidence from the 2003 Census that 73% of the population identify as “Christian.”¹⁷ But as stated previously, other more recent surveys have found that over 50% of the population have no religion.

The government also defended the collective worship law by citing the parental right of withdrawal from acts of worship (and religious education). But the right of withdrawal is itself fraught with problems.

Firstly, in most cases the right of withdrawal applies only to parents and not to pupils. Only sixth form pupils are allowed to withdraw themselves from acts of collective worship. This contradicts Article 14 (freedom of thought) of the United Nations Convention on the Rights of the Child (UNCRC). The JCHR has consistently called for “children of sufficient age and maturity” to have the right to withdraw from collective worship and religious education.¹⁸

Secondly, although the parental right of withdrawal is absolute in theory, it can be difficult to implement in practice. Many schools, particularly faith schools, can be obstructive in granting parental requests to withdraw their children from worship. The testimonials and case study of the Harris family at the end of this section demonstrate some of these difficulties.

Finally, withdrawing children from collective worship alienates them by separating them from their peers and singling them out as ‘different’.

The collective worship requirement is not popular. A 2011 ComRes survey found the majority of adults in England surveyed said the collective worship law should not be enforced.¹⁹ The majority of Scots also favour reform of the law.²⁰ More recently, a Censuwide survey found that while most Brits (52%) say school assemblies should be about moral issues, only 26% agree that they should feature religious worship.²¹

¹⁴ Equality Act 2010 c. 15 Sch 11 (Explanatory notes) www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/28/2 Accessed 13 August 2020

¹⁵ Joint Committee on Human Rights, ‘Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009.’ 12 November 2009, p76. <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf> Accessed 17 June 2020

¹⁶ *ibid*, p.74

¹⁷ *ibid*, p.75

¹⁸ *ibid*, p.76.

¹⁹ BBC News, ‘State schools ‘not providing group worship’.’ 6 September 2011 <https://www.bbc.co.uk/news/uk-england-14794472> Accessed 14 August 2020

²⁰ Sanderson, Daniel. ‘Take religion out of the classroom’. The Times, 29 December 2016. www.thetimes.co.uk/edition/scotland/take-religion-out-of-the-classroom-9j6x06mzw Accessed 14 August 2020

²¹ National Secular Society, ‘British public opposes religious influence in education, poll finds’. 11 June 2018 www.secularism.org.uk/news/2018/06/british-public-opposes-religious-influence-in-education-poll-finds Accessed 14 August 2020

TESTIMONIALS: COLLECTIVE WORSHIP

The following quotes are from parents and pupils who have experienced discrimination and alienation due to collective worship in school. All quotes come from signatures of the No More Faith Schools campaign petition at www.nomorefaithschools.org.

“My son has been placed into a faith school at the secondary school allocations. This was not one of my 6 choices, but no other school is available. The school say that they must attend all Catholic services i.e. Mass, even if they don't pray!” - VICTORIA, MEDWAY

“My daughter has been scolded in front of the school for not praying correctly when she is an atheist who doesn't believe in praying.” - DEBORAH, PRESTON

“I attend a faith school for sixth form purely to learn my A Levels. I am not interested in partaking in the 'Catholic Ethos' of the school, however I have missed at least 15 hours of crucial A Level lessons over the past two years in order to attend 'compulsory' religious ceremonies like mass. I constantly receive threats and unfair punishments from the school for not taking part in these. I think it is wrong that I am missing important hours of education, which a school is fundamentally supposed to provide, in order to celebrate religion against my will. I was not made aware of the amount of education I would be missing out on when joining the school for these reasons. I believe people should be able to choose their faith and practise it privately, and beliefs should not be forced upon pupils who attend a school. They often use the excuse 'you chose to attend this faith school' however many pupils like myself it would be impractical and scarcely affordable to attend a school much further away purely on the basis of wanting an education not negatively impacted by compulsory worship.” - ELLIE, GLOUCESTER

“I have attended two non-faith and two faith secondary schools (C of E & Catholic). I have experienced discrimination due to my non-belief from teachers as well as pupils, one instance of which resulted in a teacher not letting me participate in the lesson at all. I had to sit at the back of a class of ten, on the other side of the room, and wasn't allowed to talk or ask questions, because I wouldn't say the school prayer.” - LEWIS, SHEFFIELD

“I spent 11 years in C of E schools. I wasted many hours being forced to simulate praying, making up my own words to hymns and listening to silly fairy tales from the Bible. My family were not religious but there were no secular schools nearby.” - JOHN, DARTFORD

CASE STUDY: BURFORD PRIMARY SCHOOL

This is a summary of casework handled by the NSS. The full versions can be read at:

www.secularism.org.uk/opinion/2018/12/my-childrens-school-has-become-christian-by-default

www.secularism.org.uk/news/2019/11/coe-trust-to-introduce-alternative-to-worship-after-legal-challenge

Burford Primary School is a community ethos school in Oxfordshire. Lee and Lizanne Harris enrolled their children there “primarily because it was a non-faith-based community”, one of a minority of non-faith schools within four miles. The parents were both active contributors to the school, with Lizanne taking a leading role in the Parent-Teacher Association.

In 2015, the school joined the Church of England's Oxford Diocesan Schools Trust (ODST) under the condition that its community school ethos would be protected. But the Harrises discovered through conversations with their children that regular assemblies were being held by the church in the school. The children said they were encouraged to participate in active prayer, Christianity was positioned as truth, and Bible stories were 'acted out' including beatings and crucifixion.

When the Harrises raised concerns, the head explained that she was legally entitled to run daily worship and was simply operating within the law.

The Harrises decided to withdraw their children from collective worship. This led to the children feeling “increasingly excluded” from assemblies and school activities, left to sit in side-rooms for long periods of time with a teaching assistant. “More and more it felt like our children were being discriminated against”, Lee said. “Daily activities that could help to provide an inclusive environment were seemingly being ignored.”

In July 2019, the Harrises launched a judicial review against Burford Primary School, arguing that the school must provide an inclusive assembly as a meaningful alternative for pupils withdrawn from Christian worship.

In response, ODST agreed to provide an inclusive alternative assembly for pupils withdrawn from Christian collective worship.

This case represents a rare win for the parents, but it shows the damage caused to inclusion and cohesion in school life, and the relationship and trust between school and parents, when religious worship is imposed. No parents should have to threaten legal action in order to ensure their children are treated equally to others. No school should impose collective worship.

NSS RECOMMENDATION

Repeal all laws requiring acts of worship in UK schools, and remove the relevant EA exceptions that enable them.

This would result in it no longer being lawful to impose religious worship of any kind on pupils or teachers in schools.

To avoid conflicting laws, the relevant parts of the School Standards and Framework Act 1998 and the Education (Scotland) Act 1980 should also be repealed.

Changes to the EA:

- Remove Item (c) “Acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum)” from Schedule 3 Part 2 Paragraph 11
- Remove Paragraph 6 from Schedule 11 Part 2

2. THE ESTABLISHMENT OF FAITH SCHOOLS

Schedule 3 of the EA, particularly Paragraphs 6, 7 and 11 (see Appendices 3 and 4) make the necessary exceptions to equality law to allow the existence of schools with a religious character or ethos.

The EA makes it unlawful to discriminate against or harass a person because of a protected characteristic, or victimise someone when providing services under Section 29.²² Paragraphs 6 and 7 of Schedule 3 mean Section 29 does not apply to local authorities in relation to religion or belief with regard to the provision of schools.

The reason for this exception is, according to the EA’s explanatory notes, “to prevent a local authority being bound to provide schools for pupils of different faiths, or no faith, or for particular age groups, in every catchment area”.²³

Item (f) (‘the establishment, alteration or closure of schools’) strengthens the ability of local authorities to open or close faith schools without being brought to court for discrimination on the grounds of religion or belief.

²² Equality Act 2010 s.29 www.legislation.gov.uk/ukpga/2010/15/section/29 Accessed 13 August 2020

²³ *ibid*, c.15 (Explanatory notes) www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/20/2 Accessed 13 August 2020

Similar exceptions for religion or belief were in the Equality Act 2006.²⁴ They exist solely as a result of Britain's unique state school system, which includes both schools of a particular religious ethos and schools with no religious ethos.

The practical necessity of these provisions is clear in such a system; otherwise, local authorities could find themselves bound to provide schools of every single religion or belief represented within their catchment area.

But if all schools were to provide inclusive education with no particular religion or belief ethos (which would be the result if the other recommendations in this chapter were implemented), these exceptions would become redundant.

The NSS does not believe removing these exceptions would result in local authorities being challenged for *not* ensuring faith schools are provided for religious families who want them. A sufficiently pluralistic system of secular community schools would by its nature treat families of all religion and belief backgrounds equally. Under the European Convention on Human Rights, parents do not have a specific right to have their children educated at a school with a religious character. Many countries, including those in Europe and subject to the European Court of Human Rights, do not have faith-based schools in the state school system.

NSS RECOMMENDATION

Create a duty on local authorities to provide schools that treat pupils, family and staff equally by having no specific religion or belief ethos.

The only purpose of these exceptions is to enable the current state education system in Britain, which includes faith-based schools. The other recommendations in this chapter would mean all state-funded schools would have to be equally inclusive of all faith and belief backgrounds, so these paragraphs would become redundant.

Changes to the EA:

- Remove references to “religious or belief-related discrimination” from Paragraphs 6 and 7 from Schedule 3 Part 2 in conjunction with other recommendations in this report regarding faith schools.
- Remove Item (f) ‘the establishment, alteration or closure of schools’ from Schedule 3 Part 2 Paragraph 11

3. DISCRIMINATION IN FAITH SCHOOL ADMISSIONS

Two exceptions in the EA enable state-funded faith schools to operate discriminatory admissions criteria: Schedule 3 Part 2 Paragraph 11 Item (b), and Schedule 11 Part 2 Paragraph 5 (see Appendices 4 and 6).

These exceptions enable faith schools to apply pupil admissions criteria that prioritise pupils from particular faith backgrounds over others. For example, a Church of England school with more applicants than places can give priority to Church of England pupils when choosing between applications for admission. A Voluntary Aided (VA) school can select 100% of its intake based on parents' religious observance if oversubscribed. Newly-established free schools have this capped at 50% (the remaining 50% must be selected on non-religious criteria, such as distance from the school).

²⁴ Equality Act 2006 <https://www.legislation.gov.uk/ukpga/2006/3/contents> Accessed 21 August 2020.

As a result, faith schools frequently have highly complex and highly exclusive admissions criteria. It is common, for example, for Catholic schools to prioritise baptised Catholics first, then unbaptised church-going Catholics, then other church-going Christians, then children from other religious backgrounds, and finally all other children.

The JCHR expressed doubts over the compatibility of this exception with the Human Rights Act, pointing to the lack of directly relevant case-law of the European Court of Human Rights.²⁵ In response to questions over this issue, Solicitor General Vera Baird QC MP said, “We have faith schools, they are fact and they are not going to go away.”²⁶

Baird was also questioned on whether it is necessary for faith schools to apply discriminatory admissions policies in order to maintain a faith ethos, as many schools had given evidence saying that they did not need to apply faith-based criteria to maintain their ethos. Baird’s response was: “I think it is a principle that if we are going to have faith schools at all, and we are, then they must be entitled, if they see fit and they need to, to select their pupils on the limited basis which is allowed of religion or belief.”²⁷

Ten years on, Baird was quite correct in that faith schools have not gone away – they have increased in number and variety – while the number of Brits who consider themselves to be religious has dropped to less than 50%.

It is this non-religious majority who are most disadvantaged by faith-based admissions criteria. Forty per cent of all state-funded faith secondary schools in England discriminate against non-religious families specifically, by giving priority to families who are of any religion over the non-religious. This includes a quarter of Church of England state secondary schools, despite the Church’s opposition to Church schools being labelled as ‘faith schools’ and its insistence that Church schools are ‘for the whole community’. Sixty per cent of Catholic state secondary schools discriminate against the nonreligious specifically - significantly more than any other kind of school.²⁸

Because faith schools are able to discriminate on the basis of faith, they can limit school choices for families of no faith or minority faiths. The National Secular Society’s ‘Choice Delusion’ report suggested the problem is widespread: almost three in ten families across England live in areas where most or all of the closest primary schools are faith schools.²⁹

Furthermore, statistics suggest that faith-based admissions criteria are unpopular with the general public. Seventy-two per cent of voters oppose state-funded schools, including faith schools, being allowed to select or discriminate against prospective pupils on religious grounds in their admissions policy. This includes 68% of Christians.³⁰ Seventy per cent of teachers in England oppose religiously selective admissions; only 18% support them. Seventy-five per cent of teachers working in non-faith schools oppose religiously selective admissions, as do 66% of teachers in Church of England faith schools and 41% of teachers in Catholic schools.³¹

In addition to marginalising those of no faith or minority faiths, faith schools with discriminatory admissions criteria disproportionately disadvantage lower income families, because they are less

²⁵ Joint Committee on Human Rights, ‘Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009.’ 12 November 2009, p70. <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf> Accessed 17 June 2020

²⁶ *ibid*, p. Ev 16.

²⁷ *ibid*, p. Ev 16.

²⁸ Humanists UK, ‘Non-religious need not apply: Targeted discrimination against non-religious families by state faith schools’. 2018. <https://humanism.org.uk/wp-content/uploads/2018-05-10-LW-FINAL-Non-religious-discrimination.pdf> Accessed 13 August 2020

²⁹ National Secular Society, ‘The choice delusion: how faith schools restrict primary school choice in England’. 2018. <https://www.secularism.org.uk/faith-schools/choicedelusion.html> Accessed 13 August 2020

³⁰ Accord Coalition, ‘Faith Schools Survey Online Fieldwork: 14th - 16th October 2016’ https://accordcoalition.org.uk/wp-content/uploads/2016/10/0mFaith-Schools_Q2.pdf Accessed 13 August 2020

³¹ Teacher Tapp, ‘Teachers are losing their religion – part two’. <https://teachertapp.co.uk/teachers-are-losing-their-religion-part-two/> Accessed 13 August 2020

likely to 'play the system' to get their children into their school of choice. Research by the Sutton Trust found parents from more affluent backgrounds are more than 80% more likely than average to fake religiosity in order to get into good selective faith schools.³²

TESTIMONIALS: DISCRIMINATION IN FAITH SCHOOL ADMISSIONS

The following quotes are from parents and school governors who have experienced or witnessed discrimination in faith school admissions. All quotes come from signatures of the No More Faith Schools campaign petition at www.nomorefaithschools.org.

"My child has autism and the closest school with small intakes operates a faith based criteria which would make it unlikely for him to be admitted because I don't go to church." - INGRID, SHEFFIELD

"As a parent myself, I find my children locked out from local schools for no other reason than religious affiliation. Around 60% of children attending the local secondary do not even come from our county, this leads to the bizarre situation of children being bussed in and out each day. This is a crazy system."
- PETER, GUILDFORD

"I am a victim of religious apartheid and I am actually funding it through the tax I pay the government. My daughter has no school to go to in her borough due to draconian and discriminatory criteria used by faith schools." - OWEN, LONDON

"Being non-religious limits my daughter's choices in Liverpool. She should have the right to access any school and not be discriminated against. If non-religious schools presented criteria that discriminated against those of faith, there would be uproar. What is the difference?" - CLAIRE, LIVERPOOL

"Why is my child facing such blatant discrimination due to the beliefs of her parents? I have always encouraged her to learn about all religions and decide for herself when the time feels right. So I haven't had her christened or baptised because that isn't my choice to make for her. But now we need to apply to high schools and it seems she isn't worthy enough to even be considered for half of the faith schools in my area based on religious criteria." - EMMA, WARRINGTON

"My daughter will not be able to get into the closest school because she has not been indoctrinated to believe certain supernatural beliefs. She is discriminated against because of that. And we pay taxes towards that school. It's totally nonsensical and unjust." - MICHAEL, ROMFORD

"As a school governor (and chair of governors) I have observed first-hand the harm caused to communities by faith schools. In my local area, privilege awarded to faith criteria above distance from school are used to select pupils based not on their faith but on their parents' willingness to attend a certain church on a weekly basis in the year or so leading up to admission. These are two completely different things. The system is ruthlessly exploited by middle class parents, who have turned the local church schools into state funded independent schools, excluding children from disadvantaged backgrounds who are forced to attend school in a different village. The result is segregation by socioeconomic status which is utterly unacceptable. It would be naive to imagine that the poorest families, families with a single parent, or parents working shifts or weekends, or two or three jobs to survive can possibly play this ridiculous game that the middle classes play." - ISABEL, CAMBRIDGE

"I had to lie to get my children into a C of E School because it was in a better neighbourhood. The alternative was in the middle of a council estate of thugs and drug dealers. Nothing to do with faith."
- PHIL, BATH

"Parents are going to church just to get their children into a certain school, and I know for a fact they are atheists. It's a farce." - CAROL, PRESTON

³² Ryan, Conor. 'Parent power for all'. The Sutton Trust, 18 December 2013. www.suttontrust.com/news-opinion/all-news-opinion/parent-power Accessed 13 August 2020

Indirect discrimination in faith school admissions based on other protected characteristics

According to the EA's Explanatory Notes, Schedule 11 Part 2 Paragraph 5 “does not allow faith schools to discriminate because of any other of the protected characteristics, such as sex, race or sexual orientation.”³³

However, enabling faith schools to discriminate in this way potentially results in *indirect* discrimination according to a number of protected characteristics, including those specifically referenced in the explanation. For example:

- **Gender reassignment** – A number of religious institutions do not recognise the concept of transgender and consider it sinful for a person to adopt the clothes and other attributes associated with the opposite sex. Parents/guardians who are transgender, or have a child who might be transgender, might therefore be less likely to have baptised or initiated their child into a faith tradition that expresses these teachings. In turn, they are less likely to be able to send their child to a school that prioritises children who are recognised as formally belonging to the religious institution that runs the school.

While the NSS is unaware of any faith schools that explicitly teach that transgender people do not exist or are ‘sinful’, many faith schools do explicitly teach that same-sex relationships are morally wrong and that same-sex marriages are less valid.³⁴ This is likely to be discriminatory to pupils who are transgender or who have a transgender parent/guardian. Furthermore, a 2019 document released by the Congregation for Catholic Education (for Educational Institutions), a Vatican department which oversees Catholic schools and other educational institutions, rejects the concept of ‘transgender’ and calls on Catholic schools to do likewise.³⁵

- **Disability** – Some faith school admissions policies prioritise pupils of a particular faith background over pupils who have applied to the school because it is able to accommodate medical needs or disabilities. Discriminatory faith school admissions policies can therefore have a disproportionate effect on disabled pupils. In one recent case, the mother of a young girl undergoing tests for hypermobility syndrome applied to a Catholic primary school because she thought it would best accommodate her condition: It was nearby and her daughter already attended the nursery, where the staff had been helping her with her condition. However, the school rejected the daughter on the grounds that she was not a baptised Catholic.³⁶
- **Race** – Religious affiliation is closely linked to race. Certain ethnicities are far less likely to follow a particular religion than others; this is especially true of non-Christian faiths.³⁷ Faith school admissions policies that prioritise members of particular faiths are therefore likely to be intrinsically biased towards particular racial groups as well.
- **Sexual orientation** – Almost all major religious institutions that run schools in the UK consider same-sex relationships to be sinful, and do not recognise same-sex marriage. Parents/guardians who are gay, lesbian or bisexual might therefore be less likely to be able to send their child to a faith school that prioritises children who are recognised as formally belonging to the religion of the school.

³³ Equality Act 2010 Sch.11 [p.2, para.5] (Explanatory notes) <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/28/2> Accessed 14 August 2020

³⁴ National Secular Society, ‘The risk of letting religious schools teach within the tenets of their faith’. April 2018. www.secularism.org.uk/uploads/unsafe-sex-report-april-2018.pdf Accessed 13 August 2020

³⁵ Congregation for Catholic Education (for Educational Institutions), ‘Male and female he created them: Towards a path of dialogue on the question of gender theory in education.’ Vatican City, 2019. http://m.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20190202_maschio-e-femmina_en.pdf Accessed 13 August 2020

³⁶ Local Government and Social Care Ombudsman, ‘St Christopher’s RC Primary School, Ashton (19 006 279)’ Decision date 20 Jan 2020. www.lgo.org.uk/decisions/education/school-admissions/19-006-279 Accessed 14 August 2020

³⁷ The Challenge, the iCoCo foundation and School Dash, ‘Understanding school segregation in England: 2011-2016.’ <http://tedcantle.co.uk/wp-content/uploads/2013/03/Understanding-School-Segregation-in-England-2011-2016-Final.pdf> Accessed 13 August 2020

Additionally, many faith schools (particularly Catholic schools) explicitly teach that same-sex relationships are wrong and that same-sex marriages are not valid. This is discussed further in section 8, “‘Harassment’ of pupils on the grounds of gender reassignment, religion or belief, or sexual orientation’.

NSS RECOMMENDATION

Remove all exceptions that permit state-funded schools to prioritise pupils in admissions on the basis of baptism, religious affiliation or the religious activities of a child’s parent(s) or carers.

Schools should not be permitted to discriminate against pupils on the basis of their family’s religion or belief for any reason.

Changes to the EA:

- Remove Item (b) ‘admission to a school which has a religious ethos’ from Schedule 3 Part 2 Paragraph 11
- Remove all types of school listed under Paragraph 5 of Schedule 11, with the exception of:
 - (b) a school [F4(other than an alternative provision Academy)] listed in the register of independent schools for England or for Wales, if the school’s entry in the register records that the school has a religious ethos;
 - (f) a school registered in the register of independent schools for Scotland if the school admits only pupils who belong, or whose parents belong, to one or more particular denominations;
 - (g) a school registered in that register if the school is conducted in the interest of a church or denominational body.

4. FAITH-BASED CURRICULA

Schedule 3 Part 2 Paragraph 11 item (a) means claims cannot be raised against public bodies on the grounds that the curriculum of a school discriminates against pupils on the grounds of religion or belief (see Appendix 4).

On the one hand, this protects all schools – including those without a religious ethos – from claims on the grounds of discrimination because they omit particular religions or beliefs from the curriculum. For example, a school that taught about Christianity, Judaism, Islam and Sikhism as part of its religious education curriculum could not be the subject of a claim on the basis that it did not teach about Buddhism as well. This is a practical measure: because belief systems are so numerous, no school, however inclusive, could teach about every religion or belief system, giving identical attention to each one.

This provision also protects schools and local authorities from discrimination claims by teaching something that contradicts religious teachings. A school should not be expected to censor its teachings about the big bang or evolution because some religious traditions reject these theories. Indeed, government guidance requires that all schools in England, even independent faith schools, keep creationism outside the science curriculum.³⁸

But on the other hand, this same exception enables faith schools to teach about religion in a subjective and confessional manner that excludes teachings about other religions and beliefs. Furthermore, faith

³⁸ Department for Education, ‘The Independent School Standards’. April 2019, p. 8. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/798511/Independent_School_Standards-Guidance.pdf Accessed 13 August 2020

schools have a further ‘protection’ of their religious character by a specific part of Schedule 11 (Part 2 Paragraph 5; see Appendix 6), which allows them to “conduct themselves in a way which is compatible with their religious character or ethos”.³⁹

Every faith organisation that submitted evidence to the JCHR regarding education supported these exceptions. The exceptions enable faith groups to continue to establish faith schools, with an exclusive faith-based curriculum.⁴⁰ The JCHR itself expressed concerns over this, saying: “A religious education syllabus which teaches a particular faith as truth is likely to lead to unjustifiable discrimination against pupils of other faiths.”⁴¹

Perhaps as means of assuaging these concerns, the explanatory notes for Schedule 11 say the schedule does not allow faith schools to “discriminate because of religion in other respects, such as by excluding a pupil or subjecting him to any other detriment.”⁴²

But this is a weak, perhaps even meaningless, statement. There is nothing in Schedule 11 that expressly sets out this provision. And neither is the statement borne out in reality.

By definition, any school that promotes one particular religious worldview over all worldviews will unavoidably subject pupils who do not share the school’s worldview to detriment. Faith schools implicitly treat children who do not share the faith as ‘second class’ pupils by giving less attention to their particular religion or belief, and by giving pupils who do share the faith of the school more opportunities to participate in school life. For example, in a Catholic school, baptised Catholic pupils will usually participate in important school events such as First Holy Communion, which exclude pupils who are not baptised Catholic.

The issue is exacerbated by the fact that many pupils are not there out of choice. Parents frequently send their children to a local faith school, usually either Church of England or Roman Catholic, despite not sharing the faith of the school or wishing their children to be educated according to the tenets of a particular religion. Their reasons for choosing a faith school are practical; for example, it is the closest school to their home.

In some cases, there might not be any local schools apart from faith schools. The National Secular Society’s 2018 report *The Choice Delusion* found almost three in ten families across England live in areas where most or all of the closest primary schools are faith schools. And in September 2018, 20.6% (7,727) of those who missed out on their first choice of a non-faith primary school were assigned a faith school. This includes 1,398 people who had made all their preferences (typically five) for a non-faith school.⁴³

In a country where over 50% of the population is non-religious, and where adherents of minority faiths such as Islam and Hinduism are growing in number, it is unsurprising that many parents feel discriminated against in an education system where a third of the schools’ curricula are based on Church of England or Roman Catholic teachings. Pupils might also feel this way, with many having different personal beliefs but under pressure to affirm the religious beliefs of the school.

There are other problems regarding faith-based curricula. Many parents express concerns that their children are being ‘indoctrinated’ by their schools, and disapprove of them being educated about beliefs for which there is no objective evidence. Others find their children suffer anxiety or fear as a

³⁹ Equality Act 2010 Sch.11 [p.2, para.5] (Explanatory notes) <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/28/2> Accessed 14 August 2020

⁴⁰ Joint Committee on Human Rights, ‘Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009.’ 12 November 2009, p72. <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf> Accessed 17 June 2020

⁴¹ *ibid*, p73.

⁴² Equality Act 2010 Sch.11 [p.2, para.5] (Explanatory notes) <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/28/2> Accessed 14 August 2020

⁴³ National Secular Society, ‘The choice delusion: how faith schools restrict primary school choice in England’. 2018. <https://www.secularism.org.uk/faith-schools/choicedelusion.html> Accessed 14 August 2020

result of being taught about sin. Pupils from different faith and belief backgrounds are also likely to experience alienation at schools that teach according to the tenets of a specific religion that is not held by their family at home.

Sexism in faith school curricula

In addition to being discriminatory on the basis of religion and belief, some faith school curriculum policies are also discriminatory on the basis of the protected characteristic of sex.

Some Jewish and Islamic faith schools appear to teach stigmatising taboos around menstruation, which is discriminatory towards female pupils. Additionally, many faith schools teach that abortion and effective forms of contraception are sinful, which again is arguably discriminatory towards female pupils because these teachings deny bodily autonomy to women.⁴⁴

In 2017, the National Secular Society found male and female pupils at some state-funded Jewish schools were not being given an equal education, because they were taught a different curriculum during Religious Studies.⁴⁵ The NSS has also raised concerns about state-funded and independent faith schools that impose gendered religious clothing and ‘modesty codes’ on pupils, such as hijabs (headscarves) on girls⁴⁶ and kippahs (skullcaps) on boys.⁴⁷

There have been incidents of more egregious acts of sex discrimination in some faith schools in England, including sex segregation, resulting in unequal treatment of male and female pupils within the same school.⁴⁸ While the school inspectorate Ofsted has challenged these schools, it is clear that there is a serious problem in enforcing sex-based protections under the EA within faith schools.

There are additional concerns regarding harassment of pupils on the basis of sexual orientation; this is covered in more detail in section 8, “‘Harassment’ of pupils on the grounds of gender reassignment, religion or belief, or sexual orientation’.

TESTIMONIALS: DISCRIMINATION WITHIN FAITH SCHOOLS

The following quotes are from parents, pupils and teachers who have experienced or witnessed discrimination and alienation due to the religious curriculum at faith schools. All quotes come from signatures of the No More Faith Schools campaign petition at www.nomorefaithschools.org.

“My children were always under pressure to believe in God in their C of E primary. It was seen as naughty/disrespectful to question or disagree with the school ethos.” – AMANDA, BIRMINGHAM

“My son is currently being forced by his C of E secondary school (an academy) to take a GCSE in RE which means he will have to drop either history (his preferred choice of humanity) or triple science. This is a ridiculously stressful and unnecessary thing to put a young person through. This is the only secondary school in our town and we had no choice but to send him there.” – JENNY, BATH

“The overwhelming emphasis on religion at my children’s Church of England school is affecting my son’s mental health. He is constantly being reprimanded for questioning Christianity.” – NANCY, READING

⁴⁴ National Secular Society, ‘The risk of letting religious schools teach within the tenets of their faith’. April 2018. www.secularism.org.uk/uploads/unsafe-sex-report-april-2018.pdf Accessed 13 August 2020

⁴⁵ National Secular Society, ‘Pupils in Jewish schools gender segregated for different RE lessons’. 29 November 2017. www.secularism.org.uk/news/2017/11/pupils-in-jewish-schools-gender-segregated-for-different-re-lessons Accessed 14 August 2020

⁴⁶ National Secular Society, ‘Girls forced to wear hijabs in English schools, NSS reveals’. 24 September 2017. www.secularism.org.uk/news/2017/09/girls-forced-to-wear-hijabs-in-english-schools-nss-reveals Accessed 14 August 2020

⁴⁷ National Secular Society, ‘Most state Jewish schools enforce religious dress’. 21 November 2017. www.secularism.org.uk/news/2017/11/exclusive-most-state-jewish-schools-enforce-jewish-dress Accessed 14 August 2020

⁴⁸ National Secular Society, ‘Ofsted head criticises segregation as Islamic school is taken over’. 18 July 2017. <https://www.secularism.org.uk/news/2017/07/ofsted-head-criticises-segregation-as-islamic-school-is-taken-over> Accessed 14 August 2020

“As someone who is about to finish their time at a Catholic school, I have seen first-hand over the last 13 years the toxic environments they can be. I hold no ill will towards religion, that’s not what this is about. This is about a more equal and inclusive society where people aren’t indoctrinated. Since finding out about my atheist beliefs, I have been singled out, berated and humiliated by more than one teacher, even though my personal religious beliefs are none of their business. Despite my respect for them, they evidently show a lack of respect for me.” – FRANKIE, GLASGOW

“My daughter was discriminated against repeatedly at age 4 for coming from a nonreligious family. First she wasn’t able to attend our local state school because we had to prove we attended Catholic mass for her to be admitted. Then she was repeatedly discriminated against at the Church of England school she attended. Despite not being voluntary aided, the local vicar and people from his congregation who did not have children or grandchildren at the school had taken up all the school’s governor positions. This resulted in the school holding mass rather than assembly every morning, making the children pray four times a day and overall an inordinate religious influence. Although we had officially requested that she not have to attend RE – as this was taken as an opportunity for indoctrination rather than teaching tolerance and understanding of different beliefs – we were told this would be too difficult for the school to implement so she was forced to attend. Following repeated night terrors after being told by the vicar that nails were put into Jesus’s hands and feet due to YOUR sins, she asked please not to go into assembly again and was punished by the school for making this request.” – EUGENIA, YORK

“My son has to go to a Roman Catholic school because of SENS needs - his timetable includes five periods of RE every two weeks. This is more than any other subject and is straight up evangelising. Educational should be secular, faith schools severely limit the choice of pupils especially in areas like mine which is a grammar area.” – SALLY, CANTERBURY

“As a non-Catholic who has worked as a supply teacher in a Catholic school for two years, I have seen first-hand religious discrimination and horrible attitudes. This has no place in our society and would be illegal in any other work place.” – HAYLEY, GLASGOW

“I come from Slovenia where religion has no place in the educational system. I am now facing a tremendous problem finding a school for my child that will teach her to think for herself instead of valuing faith as a virtue. She has been given a place at a Church of England school because all non-religious schools in the area are full. I am an atheist, a scientist, an engineer. I suffer from anxiety knowing my kid is at risk of being indoctrinated into a religion... The only alternative the UK government is giving me is to have her home-schooled and deprive her of the social aspects of going to school.” – ELIZABETH, READING

“We have taken the very hard decision to remove our children from our local C of E school. The attempted indoctrination and divisive nature of the school became too much.” – CHRISTINA, PETERBOROUGH

“Our children’s infant and primary schools were both C of E, which caused them a great deal of confusion - their teachers telling one thing, when they knew we didn’t believe. Our son in particular became very upset about it. I find it almost beyond belief that in 2018, when only a minority of people in the UK still believe in a god, our local schools can still exclude on the basis of faith.” – CHRISTOPHER, GUILDFORD

“My great grandchildren attend a village faith school and are raised as free thinkers by their family which causes conflict and confusion for the children.” – MARK, COLCHESTER

NSS RECOMMENDATION

Require all state schools to teach about religion or belief in an unbiased and objective way.

At present EA exceptions enable schools to have a specific faith ethos and teach the curriculum in a subjective and sometimes exclusionary manner on matters of religion. This item could be modified in a way that would enable schools to teach an objective and pluralistic curriculum, but disallow state schools to operate from a specific faith ethos. Alternatively, it could be removed

entirely if legal opinion considered the risk of schools without a specific faith ethos being subject to legal action over their curriculum in matters of faith and belief was low.

Another option could be to enact a duty on schools to teach about religion or belief in an objective, critical and pluralistic way, as per human rights jurisprudence concerning religious education in state schools in Europe.

Changes to the EA:

- Remove or modify Item (a) ‘the curriculum of a school’ from Schedule 3 Part 2 Paragraph 11
- Remove all types of school listed under Paragraph 5 of Schedule 11, with the exception of:
 - (b) a school [F4(other than an alternative provision Academy)] listed in the register of independent schools for England or for Wales, if the school’s entry in the register records that the school has a religious ethos;
 - (f) a school registered in the register of independent schools for Scotland if the school admits only pupils who belong, or whose parents belong, to one or more particular denominations;
 - (g) a school registered in that register if the school is conducted in the interest of a church or denominational body.

5. DISCRIMINATION IN EMPLOYMENT AT FAITH SCHOOLS

Schedule 22 Paragraph 4 enables faith schools to take account of religious considerations in employment matters (see Appendix 8).

As a result, voluntary controlled religious schools (often Church of England schools) can apply a religious test in appointing, remunerating and promoting one fifth of teaching staff, including the head teacher.

In voluntary aided religious schools (often Roman Catholic, but also sometimes Church of England and minority faiths), the governing body employs the staff and may theoretically apply a religious test in appointing, remunerating and promoting all teachers. In addition, all teachers can be disciplined or dismissed for conduct which is ‘incompatible with the precepts of the school’s religion’.

The situation in academies and free schools with a religious character depends on the school’s funding agreement, but generally speaking these will also have the ability to place religious requirements on teaching positions.

Schedule 22 also enables religious discrimination in employment at denominational schools in Scotland (almost all of which are Catholic).⁴⁹

The degree of discrimination legally permitted on the grounds of religion and belief against teachers and other school staff in state-funded schools is unreasonable and unacceptable. No suitably qualified teachers should be blocked from teaching positions in publicly-funded schools on the basis of their beliefs or religious activities.

Barring teachers from employment because they do not belong to the ‘correct’ religion limits career options for teachers and fuels segregation and sectarianism. It also limits possibilities for the school – both in reducing the pool of talented teachers who could potentially contribute to the school, and in limiting the possibility for pupils to interact with adults of different religions and beliefs. As with pupil discrimination in admissions, faith-based discrimination against teachers sends the message that those of different religions and beliefs are an unwelcome, inscrutable ‘other’.

There are further discussions about religious discrimination in other employment settings later in this report; see ‘Discrimination in the workplace: “Genuine occupational requirements”’.

⁴⁹ National Secular Society, ‘End employment discrimination in faith schools’. www.secularism.org.uk/faith-schools/end-employment-discrimination.html Accessed 21 August 2020

TESTIMONIALS: EMPLOYMENT DISCRIMINATION IN FAITH SCHOOLS

The following quotes are from individuals who have experienced or witnessed discrimination in faith schools. All quotes come from signatures of the No More Faith Schools campaign petition at www.nomorefaithschools.org.

“As a young teacher brought up in the Protestant faith, but having no religious beliefs in adulthood, I became aware of the obstacles facing me as regarding promotion in Biology and Guidance in the 1980s. I was effectively barred from applying to denominational (Roman Catholic) schools for promotion within my subject speciality or Guidance (now known as Pastoral Care) because I was not a Roman Catholic. No barrier to promotion exists in Scotland for Roman Catholic teachers, meaning that they have more opportunities for promotion than non-Roman Catholic teachers. In the non-denominational schools in which I worked in Glasgow and East Renfrewshire, I knew Roman Catholic teachers who worked as principal teachers of Guidance (Pastoral Care/Support), deputy heads and even head teachers (Williamwood High School). However, I know of no-one who is not of the Catholic faith who has ever worked in these posts in denominational schools. This blatant religious discrimination is totally unacceptable in this day and age.” - GWENDOLINE, GLASGOW

“As a former parent and chair of governors of a faith school I have seen first-hand how a school that was good in so many ways could exclude members of the local community and discriminate in employment practices.” - JOSEPH, LONDON

“Many people I know are overlooked for positions in Catholic schools because they are not Catholic, this is sectarianism at its finest!” - ELEANOR, GLASGOW

NSS RECOMMENDATION

Remove exceptions allowing state-funded schools to discriminate on the basis of religion or belief in employment.

The degree of discrimination legally permitted on the grounds of religion and belief against teachers and other school staff is unreasonable and unacceptable.

Changes to the EA:

– *Modify Schedule 22 Paragraph 4 so it only applies to independent schools.*

6. DISCRIMINATION IN SCHOOL GOVERNING BODIES

Schedule 3 Part 2 Paragraph 11 Item (d) enables faith schools, as well as non-religious academies belonging to religious academy trusts, to appoint governors specifically for religious reasons – in other words, discriminating against those who do not match the faith ethos of the school or academy trust (see Appendix 4). In voluntary controlled faith schools, 20–25% of governors are ‘foundation governors’, appointed to represent the religious body. In voluntary aided faith schools, the majority are ‘foundation governors’.

Giving preferable treatment to religious representatives in their governing body serves no purpose but to ensure faith schools can continue to promote a religious agenda unimpeded.

TESTIMONIAL: RELIGIOUS APPOINTEES IN SCHOOL GOVERNING BODIES

The following quote is from a signature of the No More Faith Schools campaign petition at www.nomorefaithschools.org.

“Our village school is now a MAT academy. It is being operated and run by Lichfield Cathedral Diocese. The ‘superhead’ is on the board of the diocese – as are all the trustees, and there’s a strong Christian agenda being pushed. It’s a 14 mile round trip to any parent who doesn’t like their child in a religious school to go to the non-religious one.” – WILLS, WALSALL

NSS RECOMMENDATION

Remove exceptions allowing state school governing bodies to reserve places for religious representatives.

School governing bodies should not be able to discriminate against potential members on the basis of religion or belief.

Changes to the EA:

– Remove item (d) ‘the responsible body of a school which has a religious ethos’ from Schedule 3 Part 2 Paragraph 11.

7. DISCRIMINATORY SCHOOL TRANSPORT POLICIES

Schedule 3 Part 2 Paragraph 11 Item (e) enables local authorities to discriminate against families on the basis of religion or belief in their free school transport policies (see Appendix 4).

Statutory school transport arrangements give preferential treatment to those attending the nearest school preferred on the grounds of religion and belief. By law, local education authorities must provide free transport to a child’s nearest school if that school is beyond a walking distance of two or three miles, depending on the age of the child. Local authorities provide free transport to pupils from low-income families who chose a school in accordance with their religious or philosophical beliefs attending schools up to 15 miles from their home. In practice this almost exclusively applies to children attending faith schools. Meanwhile, those with no religious preference are given free transport only up to six miles.

In addition, many councils provide school transport on a discretionary basis to children attending schools on the grounds of religion and belief. This again almost exclusively applies to children attending faith schools.

Pupils can even miss out on subsidised transport to a particular faith school if they don’t come from the same religious background as the faith of the school. The National Secular Society has dealt with cases of parents who have to pay the full amount for transport because their children aren’t Catholic, while pupils from Catholic backgrounds have their bus travel to the same school subsidised.

The JCHR has said the government “has not demonstrated the necessity for this exception from the prohibition on discrimination on grounds of religion or belief for school transport.”⁵⁰

This is an EA exception which clearly has the greatest impact on low-income families who are already struggling.

⁵⁰ Joint Committee on Human Rights, ‘Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009.’ 12 November 2009, p.78. <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf> Accessed 17 June 2020

CASE STUDY: 'MS C' AND 'SCHOOL F'

The following case study is summarised from a report from the Local Government & Social Care Ombudsman. All names have been anonymised. The full case can be read at www.lgo.org.uk/decisions/education/school-transport/19-002-276.

In 2018, 'Ms C' enrolled her granddaughter 'CC' at 'School F'. School F happened to be a faith school, but like many parents and guardians, Ms C selected it for reasons other than its faith ethos.

Ms C is on benefits. She applied to Newcastle upon Tyne City Council for school transport funding and was refused. Its reasoning was that School F was not one of the three closest suitable schools to their home, and CC's place at School F had not been awarded her place on faith grounds.

When Ms C complained, the ombudsman found that had she and her granddaughter shared the faith of the school, she would have been entitled to free transport. But the ombudsman determined Ms C hadn't been unlawfully discriminated against because of exceptions in the Equality Act.

It will strike many as absurd and unfair that a grandmother on benefits cannot get assistance with school transport funding simply because she isn't the right religion.

NSS RECOMMENDATION

Remove exceptions allowing faith-based privilege in the transport policies of local councils.

Children and their families should not be treated differently in school transport policies according to their religion or the ethos of their school.

Changes to the EA:

– Remove item (e) 'transport to or from a school' from Schedule 3 Part 2 Paragraph 11.

8. 'HARASSMENT' OF PUPILS ON THE GROUNDS OF GENDER REASSIGNMENT, RELIGION OR BELIEF, OR SEXUAL ORIENTATION

Part 6 Section 85 of the EA makes it unlawful for schools to discriminate against, harass or victimise a pupil.

As covered previously, Schedule 11 makes exceptions for faith schools. But there also appears to be another exception made by Paragraph 10 within Section 85 itself (see Appendix 2).

The Explanatory Notes for Section 85 state that this paragraph means "the prohibition on harassment of pupils or prospective pupils does not cover gender reassignment, sexual orientation or religion or belief."⁵¹

Section 26 of the Equality Act defines harassment as any unwanted behaviour that violates a person's dignity, or creates an "intimidating, hostile, degrading, humiliating or offensive environment" for a person, in connection with their protected characteristics.

The Explanatory Notes give an example of what would constitute harassment based on sex: "A teacher ridicules a particular pupil in class because of his disability, or makes comments which have the result of making the girls in the class feel embarrassed and humiliated. This would be harassment."⁵²

⁵¹ Equality Act 2010 p.6 (Explanatory notes) www.legislation.gov.uk/ukpga/2010/15/notes/division/3/6/1/2 Accessed 13 August 2020

⁵² *ibid.*

This would imply that it is lawful for any school to violate a pupil's dignity, or create an "intimidating, hostile, degrading, humiliating or offensive environment", on the basis of that pupil's religion or belief or if they are LGBT+ (this also would apply to their family).

However, the Explanatory Notes do not give a reason for this seemingly incongruent exception. Why should it be unlawful for a school to harass a pupil on the basis of their sex or race (which are not included in the exception), but lawful on the basis of religion or belief, sexual orientation or gender reassignment status?

Evidence provided by the JCHR hints at where these exceptions came from. In a letter to Baird, the JCHR asked: "What is the justification for exposing a gay student to being taught that their sexual orientation and relationships with people of the same sex, are sinful?"

Baird said it is "essential that schools are able to maintain their academic freedom and deliver a broad-based and diverse curriculum", and that without certain exceptions the use or non-use of certain texts, theories on evolution, mixed P.E. lessons and use of computers could all be challenged under discrimination law.⁵³ All of these are examples of aspects of school life that have been censored or forbidden in conservative religious settings, so this justification seems to point specifically to challenges based on religion or belief discrimination.

But what about gender reassignment and sexual orientation?

Baird's response continues:

"With regards to your specific question about the ramifications of faith schools being able to deliver sex and relationship education in a way consistent with their ethos, as I explained in my original response, their ability to do this does not therefore mean that schools are justified in teaching to a gay student that their own sexual orientation or single-sex relationships are a sin, as you imply."⁵⁴

However, recent research by the National Secular Society has found that some state-funded faith schools *do* appear to explicitly teach that same-sex relationships are sinful. In its 2018 report *Unsafe sex education: The risk of letting religious schools teach within the tenets of their faith*, the NSS highlighted examples of Catholic schools stating in their relationships & sex education (RSE) policies that same-sex relationships are "unacceptable", "against the natural order" and "morally wrong", and that people who are homosexual are "objectively disordered".⁵⁵

Baird goes on:

"Issues such as single sex relationships and religious views on that subject should be presented by schools in ways which would not be offensive to individuals or single out any particular pupils for criticism. Such explanations would have to be in an educational context and setting – for example in a religious education lesson."⁵⁶

While it is fairly easy to argue that a school without a religious character could objectively teach about different religious attitudes to homosexuality, the same cannot be said for faith schools. By their very nature, faith schools approach religious education from a subjective, rather than an objective, standpoint. They not only teach their specific religious views – they actively endorse them and place either an implicit or explicit expectation for pupils to uphold them.

⁵³ Joint Committee on Human Rights, Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009, p. Ev 94. <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf> Accessed 17 June 2020

⁵⁴ *ibid.*

⁵⁵ National Secular Society, 'The risk of letting religious schools teach within the tenets of their faith'. April 2018, pp. 17–19. www.secularism.org.uk/uploads/unsafe-sex-report-april-2018.pdf Accessed 13 August 2020.

⁵⁶ Joint Committee on Human Rights, Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009, p. Ev 95. <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf> Accessed 17 June 2020

Furthermore, there is surely no way for faith schools to teach their religion's teachings on homosexuality in a non-humiliating manner, if the religion holds that same-sex relationships are sinful. To imply that LGBT+ people should live a life of celibacy (as Catholic schools do) is itself humiliating, no matter how euphemistically it is expressed.

Issues regarding gender reassignment are less often directly addressed in faith school RSE policies. However, teachings regarding same-sex relationships could apply to transgender individuals. And as referenced previously, a recent publication from the Catholic Church suggests Catholic schools may be expected to teach that the concept of transgender does not exist.

Despite Baird's assertions to the contrary, the evidence would suggest that the exceptions on harassing pupils on the basis of sexual orientation and gender reassignment has meant the state has failed to protect children who are LGBT+, or who have LGBT+ family members, from stigmatising and derogatory teachings in their schools.

Discrimination and prejudice against those who are LGBT+ has real life consequences. According to Stonewall's 2017 'School Report' on the experiences of LGBT+ young people, just 10% LGBT+ pupils at faith schools have learnt about where to go for help and advice about same-sex relationships at school, compared to 20% LGBT+ pupils overall. Similarly, only 10% LGBT+ pupils at faith schools learn about safe sex in relation to same-sex relationships, compared to 20% overall.

The effect this has on LGBT+ pupils is not negligible. 'School Report' quotes one pupil at a secondary faith school who says, "In religious education we learnt that the Bible was against anything other than heterosexuality. I was so scared. I had to teach myself everything. What we learnt in religious education about how we are viewed by our peers, teachers and parents made people terrified." Additionally, LGBT+ pupils of faith are somewhat more likely to have tried to take their own life than those who are not of faith (30% compared to 25%).⁵⁷

TESTIMONIALS: HARASSMENT OF LGBT+ PUPILS AT FAITH SCHOOLS

The following quotes are from pupils and teachers who have experienced or witnessed possible incidents of harassment on the basis of sexual orientation or gender reassignment in faith schools. All quotes come from signatures of the No More Faith Schools campaign petition at www.nomorefaithschools.org.

"Catholic high school affected my mental health and well-being, and as a pansexual woman, I felt as though I could never express my true self in that environment. The idea that you have to keep your true identity hidden is toxic, especially for kids who are LGBT+." - REBECCA, PETERBOROUGH

"I have worked in faith schools and found it appalling that students as old as 18 feel 'comfortable' being openly homophobic in class." - VALERIE, LONDON

"Attending Catholic school for 12 years severely impacted my mental well-being. As a teen questioning my sexuality, the toxic and dated attitudes of the Church were reflected in the school's atmosphere. Left out of PSHE, LGBT+ teachers disallowed from disclosing that they weren't straight or talking about their partners even as heterosexual teachers were allowed to invite students to their weddings, shaping students' beliefs to think of LGBT+ people as Other... Such indoctrination and discrimination should not be funded by the state." - STEPH, BRIGHTON

"I went to Catholic schools. Religion is divisive. I was taught that abortion is wrong, that contraception is wrong, that homosexuality is wrong, etc etc." - CATHERINE, ILFORD

⁵⁷ Bradlow et al., 'School report: The experiences of lesbian, gay, bi and trans young people in Britain's schools in 2017'. Stonewall, 2017. https://www.stonewall.org.uk/sites/default/files/the_school_report_2017.pdf Accessed 13 August 2020

“Attended Catholic school and witnessed a teacher telling two 10-year-old girls that they would turn into lesbians for linking arms and listened to another teacher declare that they would disown their children if they were gay, to a class of 30 pupils. The school also refused to allow a male student to attend prom in a dress.” - CATHERINE, DARLINGTON

NSS RECOMMENDATION

Pupils should be protected from harassment on the basis of gender reassignment, sexual orientation or religion or belief.

It seems incongruous to protect pupils from harassment on the basis of the protected characteristics of race or sex, but not on the characteristics of gender reassignment or sexual orientation. Furthermore, evidence suggests that faith schools are endorsing views that are discriminatory towards LGBT+ people. A possible solution could be to remove references to gender reassignment and sexual orientation from Paragraph 10.

If the purpose of including religion or belief in this exception is to prevent conflicts between school activities and religious taboos, it should be retained, or at least modified to ensure a balance between the freedom to teach a broad and balanced curriculum, and protecting pupils from harmful discrimination on the basis of their religion or belief, or that of their families.

Changes to the EA:

- *Modify Paragraph 10 of Part 6 Section 85, possibly removing item (a) gender reassignment and (c) sexual orientation. Assess the possible outcomes of removing (b) religion or belief, and remove if there would be no detriment to a school's curriculum.*

CASTE-BASED DISCRIMINATION

Caste systems are found in multiple religions and cultures. Castes are forms of hereditary social stratification, frequently with roots in religious ideas about hierarchy and purity. In the UK, caste awareness is concentrated amongst people who descend from the Indian sub-continent.⁵⁸ Although caste is not religion-specific and can affect people of any or no religion, within the UK it is most commonly associated with Hindu and Sikh communities.

Those most affected by caste discrimination are those perceived to be of ‘low caste’ or outside the caste groups entirely; these people are sometimes derogatorily called ‘untouchables’ or ‘outcastes’ in English. Members of this caste often prefer to be referred to as ‘Dalits’.

Dalits face oppression and persecution worldwide. As Lord Harries puts it:

“The Dalits suffer disproportionately by every indicator: trafficking of girls, bonded labour, rape, murder, access to clean water, education and justice in India. The way they are so often treated is cruel and inhumane.”⁵⁹

Research has estimated there are at least 50,000⁶⁰ (other estimates say as many as 500,000⁶¹) people living in the UK who are regarded by some as low caste and are therefore at risk of caste discrimination. The research found evidence of caste-based discrimination, harassment and bullying present in employment, education and in the provision of services. It recommended the government take “educative or legislative approaches” to eliminate caste discrimination in the public sector, but warned that non-legislative approaches would be “less likely to be effective in the private sector”. It also said relying on the Indian community to take action to reduce caste discrimination and harassment is “problematic”.⁶²

Some Commonwealth and European states have legislated against caste discrimination,⁶³ and the issue of caste was debated during the development of the Equality Act 2010. Organisations that lobbied for protection on the basis of caste in the EA included the Bhagwan Valmiki Trust, Central Valmiki Sabha International and Kailash Kaler, who submitted evidence to the JCHR.⁶⁴

Some have argued that caste could be considered an aspect of a person’s race or religion, but there is nothing specific in the definitions of race or religion or belief in the EA that makes this explicit. The definition of race in Chapter 1 Section 9 of the EA includes a provision to amend the definition to make it clear whether or not caste is included, but this provision has not yet been invoked (See Appendix 1).

⁵⁸ Metcalf, Hilary and Rolfe, Heather. ‘Caste discrimination and harassment in Great Britain’. National Institute of Economic and Social Research, 28 July 2011, p.vi. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf Accessed 13 August 2020

⁵⁹ iNews, ‘Why hasn’t Britain done more to outlaw the forced labour of ‘untouchable’ Indians?’ November 29 2016 <https://inews.co.uk/news/long-reads/dalits-indian-caste-discrimination-britain-uk-modern-slavery-33842> Accessed 17 August 2020

⁶⁰ Metcalf, Hilary and Rolfe, Heather. ‘Caste discrimination and harassment in Great Britain’. National Institute of Economic and Social Research, 28 July 2011, p.vi. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf Accessed 13 August 2020

⁶¹ iNews, ‘Why hasn’t Britain done more to outlaw the forced labour of ‘untouchable’ Indians?’ November 29 2016 <https://inews.co.uk/news/long-reads/dalits-indian-caste-discrimination-britain-uk-modern-slavery-33842> Accessed 17 August 2020

⁶² Metcalf, Hilary and Rolfe, Heather. ‘Caste discrimination and harassment in Great Britain’. National Institute of Economic and Social Research, 28 July 2011, p.vi. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf Accessed 13 August 2020

⁶³ Joint Committee on Human Rights, Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009, pp. 28-29 <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf>. Accessed 17 June 2020

⁶⁴ *ibid*, p.126

When questioned as to why caste had not been included in the EA, Baird responded that “to date insufficient evidence has been presented to indicate that this is a significant problem domestically that could be resolved by anti-discrimination legislation.” But the JCHR expressed concerns that caste discrimination “is a problem which may be hidden but real within some ethnic minority groups.”⁶⁵

In the oral evidence taken before the JCHR in 2009, Lord Lester of Herne Hill commented that Greville Janner, MP for Leicester for 27 years, found that caste discrimination in his constituency was “a much more serious problem than anything affecting the Muslim community there”.⁶⁶

Opposition to including caste discrimination in the EA has come from members of ‘higher’ castes, who by the very nature of caste are less likely to suffer adversely from discrimination, and in fact be likely to benefit from the status quo. Opponents claim such legislation would be an ‘attack’ on Hindus and deny that the problem of caste discrimination exists. It has also been claimed that legislation would displease the Modi-led Indian Government, which is increasingly identified with Hindus.⁶⁷

Because caste is not expressly defined in the EA, victims of caste discrimination currently have to use unclear and precarious case law to secure justice. An express provision in the EA would remove any legal uncertainty. Both parliament and the United Nation Human Rights Council have called on the government to explicitly outlaw caste-based discrimination, but it has delayed doing so for years.

In July 2018, following a year-long consultation, the government announced that it would not explicitly recognise caste-based discrimination under equality legislation, a decision criticised by the NSS, the Equality and Human Rights Commission and various organisations and individuals in the field of human rights.⁶⁸

A number of politically influential Hindu charities welcomed the decision to exclude “caste” from the Equality Act 2010. One was Hindu Swayamsevak Sangh UK (HSS),⁶⁹ which is associated with Rashtriya Swayamsevak Sangh (RSS),⁷⁰ an Indian right-wing, nationalist, paramilitary volunteer organisation. RSS is regarded as the parent organisation of the ruling party of India, the Bharatiya Janata Party.⁷¹ In 2016 HSS was reprimanded by the Charity Commission for England & Wales for promoting Hindu nationalist (*Hindutva*) ideology.⁷²

Another charity welcoming the decision was the National Council of Hindu Temples UK (NCHT UK).⁷³ They too have been investigated by the Charity Commission for appearing to endorse the Conservative Party in the 2015 and 2017 general elections. In both cases perceived Labour support for outlawing caste discrimination was seen as a significant factor. Bob Blackman, the Conservative MP for Harrow East, is chair of the All Party Parliamentary Group for British Hindus and a vocal campaigner against efforts to outlaw discrimination based on the idea of caste.⁷⁴

⁶⁵ *ibid*, p. 29

⁶⁶ *ibid*, p. Ev 13.

⁶⁷ National Secular Society, ‘Briefing: The campaign to outlaw caste discrimination’. Updated July 2018. <https://www.secularism.org.uk/uploads/caste-discrimination-briefing-1.pdf?v=1533039900> Accessed 17 August 2020

⁶⁸ National Secular Society, ‘NSS: government decision on caste discrimination shows “callous disregard for victims”’. 23 July 2018 www.secularism.org.uk/news/2018/07/nss-government-decision-not-to-outlaw-caste-discrimination-shows-callous-disregard-for-victims Accessed 21 August 2020

⁶⁹ Hindu Swayamsevak Sangh UK, ‘Caste Consultation – PRESS RELEASE’ 20 July 2018 <https://hssuk.org/wp-content/uploads/2018/07/HSS-UK-casteconsultation-PressRelease.pdf> Accessed 17 August 2020

⁷⁰ “From US to UK, how RSS went global with overseas wing Hindu Swayamsevak Sangh in 39 countries.” Zee News. 21 December 2015. http://zeenews.india.com/news/india/from-us-to-uk-how-rss-gone-global-with-overseas-wing-hindu-swayamsevak-sangh-in-39-countries_1836942.html Accessed 17 August 2020

⁷¹ Haynes, Jeff (ed.). *Democracy and political change in the ‘third world’*. Routledge, 2001, p. 168. https://books.google.co.uk/books?id=YdWAAgAAQBAJ&pg=PA168&redir_esc=y#v=onepage&q&f=false Accessed 17 August 2020

⁷² Charity Commission for England and Wales, “Inquiry Report: Hindu Swayamsevak Sangh (UK).” GOV.UK. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/549675/hindu_swayamsevak_sangh_uk.pdf Accessed 17 August 2020

⁷³ ‘National Council of Hindu Temples UK, ‘NCHT (UK) response to caste consultation decision’, 24 July 2018 <https://www.nchtuk.org/index.php/8-news/latest-news/468-ncht-uk-response-to-the-caste-consultation-decision> Accessed 17 August 2020

⁷⁴ National Secular Society, ‘Charity Commission to investigate Hindu group over ‘extremist’ speaker’. 31 October 2017. <https://www.secularism.org.uk/news/2017/10/commission-to-investigate-hindu-charity-over-extremist-speaker> Accessed 17 August 2020

It is worth noting that India outlawed caste discrimination in its 1947 Constitution⁷⁵ and has set up programs of positive action for those deemed low caste. While it is true that caste discrimination and persecution remains a serious problem in India, it is a poor reflection on the UK that a person of Indian descent deemed low caste is (at least on paper) afforded more legal protections against discrimination in India than in the UK, one of the world's wealthiest democracies.

CASE STUDIES: CASTE DISCRIMINATION IN THE UK

The following case studies are summarised extracts from the National Institute of Economic and Social Research report 'Caste discrimination and harassment in Great Britain'. All of their case studies can be viewed in full at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf

[Case study 3] X worked in the catering section of a hospital for over 20 years. Her colleagues were mainly Indians. Most were *Jatt* ('high caste') Sikhs. She experienced discrimination from them after they found out her caste. During lunch breaks X and her friend, also low caste, would sit on a separate table as the other women did not want to sit with them. They were excluded from casual conversations. The other women would openly ridicule the "*Chamars*" (Dalits) and the "dirty work" they do. X challenged them a few times, but that did not stop their behaviour.

[Case study 11] X worked as a mechanical engineer. In the workplace, employees had to clean their own spillages. A Sikh *Jatt* refused to clean his own spillage. He said to the foreman, "It's not my job, I'm high caste. It's the job he should be doing," indicating X. X raised this with the company and the union, but they did not understand why it was so offensive.

[Case study 12] X's first job in the UK was in a clothing factory where he worked for a very short while before being asked his caste. Soon after he was told that there was no more work, although he found out that they had recruited a replacement worker and was told that the employer did not want a *Chamar* in the factory. X lacked the confidence to do anything about this and also did not know what he could do.

[Case study 20] X stood for chair of his workplace social club, against a Sikh. He had been on the committee for several years. His friends, who were mostly young *Jatt* Sikhs, told him that older *Jatt* Sikhs were saying not to vote for him because he was low caste. He heard them calling him '*Chamar*' and saying "We don't want the *Chura*" (Dalit).

NSS RECOMMENDATION

Add 'caste' to the list of protected characteristics.

An explicit inclusion of caste as a protected characteristic in the Act would enshrine protection for those at risk of caste-based discrimination in law.

Because the connections between caste and race or religion or belief can be ambiguous, including caste as a separate protected characteristic may afford the best protection without ambiguity.

Changes to the EA:

– Include 'caste' as a specific protected characteristic (not as an aspect of race) under Part 2, Chapter 1 of the Act.

⁷⁵ 'Constitution of India'. Ministry of Law, Government of India. <https://web.archive.org/web/20120402064301/http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm> (Archived) Accessed 21 August 2020

DISCRIMINATION IN THE WORKPLACE: 'GENUINE OCCUPATIONAL REQUIREMENTS'

Schedule 9 of the EA (see Appendix 5) allows for limited forms of discrimination in employment under certain circumstances, i.e.:

- The requirement is an **occupational** requirement, i.e. it is genuinely necessary to do the particular job.
- The employer must have a good reason or a **legitimate aim** for applying the requirement.
- It is **proportionate** to apply the requirement in this particular case – i.e. having the requirement is the best way to achieve the employer's aim.
- The employee (or candidate) doesn't meet the requirement or the employer has reasonable grounds for believing they don't meet the requirement.⁷⁶

An example given in the EA explanatory notes is: "unemployed Muslim women might not take advantage of the services of an outreach worker to help them find employment if they were provided by a man." Therefore, the provider of these services would be able to lawfully require employees in this role to be female.

Where employment is for the purposes of an organised religion, employers can discriminate not only on the basis of religion or belief, but also on the basis of sex, gender reassignment, marriage/civil partnership, and sexual orientation in order to comply with the doctrines of the religion.

According to the EA explanatory notes, the Schedule is intended to cover only a "very narrow range of employment" including ministers of religion and "a small number of lay posts, including those that exist to promote and represent religion".⁷⁷

The idea that Schedule 9 is intended to have a minimal scope is reinforced by statements from the government during the development of the EA. When the JCHR asked if the genuine occupational requirement exception could permit employers in certain circumstances to require employees to adhere to religious doctrine in their lifestyles and personal relationships, the government replied: "It is very difficult to see how in practice beliefs in lifestyles or personal relationships could constitute a religious belief which is a requirement for a job, other than for ministers of religion".⁷⁸

The point on the "small number of lay posts" for promoting and representing religion is somewhat difficult to interpret. There are over 35,000 charities registered under the charitable purpose of "the advancement of religion" in England and Wales.⁷⁹ The majority of workers and volunteers in these organisations will be in 'lay posts'. This number is surely not small.

The EA explanatory notes attempt to provide some clarity on what does and does not amount to a genuine occupational requirement in religious settings. They say: "This exception is unlikely to permit a requirement that a church youth worker who primarily organises sporting activities is celibate if he is gay, but it may apply if the youth worker mainly teaches Bible classes."

⁷⁶ Citizens Advice, 'Check if your problem at work is discrimination'. www.citizensadvice.org.uk/work/discrimination-at-work/what-doesn-t-count-as-discrimination-at-work/discrimination-at-work-exceptions-relating-to-religion-and-belief Accessed 13 August 2020.

⁷⁷ Equality Act 2010 p.16 [Sch. 9] (Explanatory notes) www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/26 Accessed 13 August 2020

⁷⁸ Joint Committee on Human Rights, Legislative Scrutiny: Equality Bill, 26th Report of Session 2008-2009, p. 58 <https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/169/169.pdf> Accessed 17 August 2020

⁷⁹ Data from search of Charity Commission for England and Wales online register of charities, made 13 August 2020. <https://apps.charitycommission.gov.uk/showcharity/registerofcharities/RegisterHomePage.aspx>

But roles in religious organisations aren't always so clear-cut. They might well mix promoting religious teachings together with a more secular role. In these cases, it's very unclear as to whether the genuine occupational requirement applies or not.

In 2018, the National Secular Society conducted research on jobs posted on three online jobs sites for religious organisations to see what sort of faith-related occupational requirements were being applied. It found many examples of job adverts in the faith sector specifying or implying that candidates must be of a particular faith. Most of these did not give a clear explanation why a person of a particular faith was required. Some of the adverts where the justification for applying a faith test to the role was not clear are listed below. The job description summaries have been cut down to their first sentence for brevity, but at time of writing the full descriptions are available to view online.

Job title: Video & Digital Producer

Where advertised: www.charityjob.co.uk/jobs/barnabas-fund/video-digital-producer/567982

Organisation: Barnabas Fund

Job description summary: "The successful candidate will work alongside our digital marketing, design and editorial teams in planning and delivering engaging content; including regular videos, audio, motion graphics and interactive media"

Occupational requirement statement: "Applicants must be in agreement with Barnabas Fund's statement of faith and aims."

Statement of faith: *"We believe in the sovereignty and grace of God the Father, God the Son and God the Holy Spirit in creation, providence, redemption and final judgement..."*⁸⁰

Job title: Web Specialist and Creative

Where advertised: www.charityjob.co.uk/jobs/bms-world-mission/web-specialist-and-creative/567306

Organisation: BMS World Mission

Job description summary: "We're looking for a multi-skilled human being to manage our website – a major channel for communicating with our supporters across the UK – and a small suite of other sites."

Occupational requirement statement: *"This role requires you to be a practicing Christian as a specific occupational requirement."*

Job title: Events Officer

Where advertised: <https://www.charityjob.co.uk/jobs/london-city-mission/events-officer/571546>

Organisation: London City Mission

Job description summary: "We are looking for an Events Officer to support the Fundraising and Supporter Relations team in achieving their objectives by successfully managing events from concept to delivery, to deadline and in accordance with available resources."

Occupational requirement statement: *"There is an Occupational Requirement that the person appointed be an evangelical Christian."*

⁸⁰ Full statement available at Barnabas Fund website, <https://barnabasfund.org/about/statement-of-faith> Accessed 17 August 2020

Job title: Travel & Speaker Coordinator

Where advertised: www.charityjob.co.uk/jobs/open-doors/travel-speaker-coordinator/570925

Organisation: Open Doors

Job description summary: *“You’ll manage diaries, liaise with the travel team, book flights, visas and accommodation and prepare and collate documents.”*

Occupational requirement statement: *“There is an occupational requirement under Schedule 9 of the Equality Act 2010 for this post to be held by an active, practising Christian who assents to our statement of faith.”⁸¹*

Job title: Safeguarding Advisor

Where advertised: <https://www.indeed.co.uk/viewjob?jk=1398f366f0ef373a>

Organisation: Tearfund

Job description summary: *“The successful candidate will be up to date on the UK legislative framework and Charity Commission requirements, and will play a strategic role on behalf of Tearfund in developing sector wide best practice.”*

Occupational requirement statement: *“All applicants must be committed to Tearfund’s Christian beliefs.”*

Job title: Oxford Centre for Christian Apologetics (OCCA) Tutors’ Assistant

Where advertised:

www.charityjob.co.uk/jobs/the-zacharias-trust/oxford-centre-for-christian-apologetics-occa-tutors-assistant/565590

Refreshed on: 3 May 2018

Organisation: The Zacharias Trust

Job description summary: *“As a successful applicant, you would be providing administrative support, bringing a high level of competency and professionalism to diary management, communication and other support.”*

Occupational requirement statement: *“Please note: as a result of our Christian ethos, this post is covered by an Occupational Requirement (OR) under the Equality Act 2010. The successful applicant will be expected to be a practising Christian and to clearly demonstrate a personal commitment to the mission, principles, values and practices of the Trust.”*

These findings suggest that Schedule 9 might be being exploited as a ‘loophole’ for religious organisations to only hire people with the same religious beliefs and values, even if there is no real requirement for them to do so in order to fulfil the duties specified in the role.

What is particularly concerning is that charities contracted by local government to perform public services (for example, helping the homeless or youth outreach) are often religious. If these charities apply Schedule 9 in recruitment of their employees or volunteers, this would amount to public funds going to an organisation that does not practice equal opportunities or comply with the public sector duty of equality. One example is Just Around the Corner (JAC), a Christian group that Woodley Town Council has contracted to deliver youth outreach work.⁸² JAC appears to only hire Christians for at least some of its roles.⁸³

It should be noted that organisations that require employees to be Christian might, by extension, automatically discriminate against LGBT+ people because many Christian institutions do not believe it is possible to live according to Christian values while having same-sex relationships.

⁸¹ Full statement of faith available at Open Doors website, www.opendoorsuk.org/about/statement-faith Accessed 17 August 2020

⁸² Woodley Town Council, ‘Just Around the Corner (JAC)’ <http://www.woodley.gov.uk/partnerships/just-around-the-corner> Accessed 17 Aug 2020

⁸³ An example JAC job advert placed at CharityJob in 2017 for an ‘Equine Assisted Psychotherapist’ required the postholder to be a ‘committed Christian and an active member of a local Church’.

<https://www.charityjob.co.uk/jobs/miss/equine-assisted-psychotherapist/510466> Accessed 17 August 2020

NSS RECOMMENDATION

Tighten the conditions under which faith-based organisations can discriminate on the grounds of religion or belief in employment, and ensure this is rigorously enforced.

Schedule 9 is an important part of the EA that enables organisations that help some of the most vulnerable and marginalised people in society to exist. However, we are concerned that some religious organisations are not using the provisions under Schedule 9 in the spirit in which they were intended. There is evidence that some organisations might be using Schedule 9 incorrectly to build a religiously homogenous workforce.

Greater clarity within Schedule 9 might be needed to ensure it is not used in order to discriminate against individuals without genuine need. Additionally, authorities need to do more to ensure employers are applying the law correctly when recruiting, and do not use discriminatory methods of recruitment unnecessarily.

Changes to the EA:

- *More rigorous penalisation of employers that do not comply with the conditions under which Schedule 9 exceptions can be used. Greater clarity on what is considered a genuine occupational requirement within Schedule 9 may be necessary.*

CONCLUSION

This report has highlighted how religious exceptions and omissions in the Equality Act 2010 have resulted in widespread discrimination across many areas in public life, especially in education and employment.

Multiple EA exceptions for schools have led to extraordinary privilege for religious groups, especially the Church of England and the Catholic Church. These privileges come at the expense of pupils, parents and staff who are not religious or belong to minority religion, who find themselves marginalised for their beliefs and with fewer opportunities to attend a school that's right for them.

The omission of 'caste' from protected characteristics has led to huge numbers of people without any meaningful protection against a particularly cruel form of discrimination, based on religious ideas about social hierarchy. This omission has come about largely due to lobbying from 'high caste' groups who will never experience caste discrimination themselves.

And evidence suggests the 'genuine occupational requirement' exception allowing faith-based employers to discriminate on the basis of religion or belief is being overused, putting non-Christian job seekers in particular at a disadvantage.

The EA is meant to protect those who are the most vulnerable or oppressed in society. Yet this report has identified that those most likely to be negatively impacted by religious exemptions and omissions in the EA are those who are already struggling on the margins of society.

One of the groups most greatly affected by religious discrimination in school admissions are low-income households. Families under financial pressures have less scope to 'play the system' and start attending church in order to increase their potential school choices – and moving into a new catchment area or enrolling their child into an independent school are simply impossible options. As one of our case studies show, even households on benefits can miss out on financial assistance with travel to school, because they don't belong to the 'right' religion.

Furthermore, religious discrimination in education can have a disproportionate effect on those already facing discrimination or marginalisation because of their protected characteristics, including disability, gender reassignment, sexual orientation or indeed religion or belief.

Those affected by caste discrimination are again those who are most marginalised. By the very nature of caste, 'Dalits' are defined by historic oppression based on religious social hierarchy. But they have no explicit protection under the EA, which is in part due to lobbying by religious groups who wish to deny that caste discrimination exists.

Finally, exploitation of EA exceptions permitting religious discrimination in employment for 'genuine occupational requirements' potentially has a disproportionate effect on the disadvantaged, by reducing the job pool for unemployed job seekers.

So who in fact benefits from these religious exceptions and omissions in equality law? The answer is an elite minority.

Religious discrimination at schools first and foremost benefits the religious organisations that run the schools, primarily the Church of England and the Catholic Church. Broad EA exceptions enable these groups to continue their mission of promoting their religious teachings in the schools, effectively using them as mission fields to inculcate the next generation of church-goers. More specific exceptions permitting faith-based discrimination in admissions, governance and school transport additionally mean they create more favourable conditions for their stakeholders – i.e. their clergy and members – to access education for their children in their schools. This in turn creates an incentive for aspirational parents to attend church, thus boosting the churches' attendance numbers.

Similarly, faith-based organisations exploiting exceptions in equality law create favourable conditions for members of their own religious community, ensuring that jobs within religious institutions are made available only to the faithful.

And blocking legislation protecting the 'low caste' from discrimination benefits the elite in Hindu and Sikh communities by maintaining the status quo. Additionally, religious institutions are highly motivated to ensure nothing tarnishes the image of their particular religion; denying that caste discrimination exists is one way to do this.

Equality law that benefits the privileged at the expense of the disadvantaged clearly isn't working. For the Equality Act 2010 to guarantee protection to all, including the most marginalised, it must be regularly reviewed and renewed to move in the same direction as British society. And British society is moving into a future of increased diversity of race, culture and religion. If we are to ensure social cohesion, democratic engagement and opportunities for all in this future, we must challenge religious privilege in our equality law.

APPENDICES

The following appendices cite the sections of the EA that this report recommends changing, in order of appearance within the EA.

Appendix 1: Part 2 Equality: key concepts – Chapter 1: Protected characteristics – Section 9

9 Race

- (1) Race includes—
 - (a) colour;
 - (b) nationality;
 - (c) ethnic or national origins.
- (2) In relation to the protected characteristic of race—
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
 - (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
- (3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.
- (4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.
- (5) A Minister of the Crown—
 - (a) [must by order] amend this section so as to provide for caste to be an aspect of race;
 - (b) [may by order] amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.
- (6) The power under section 207(4)(b), in its application to subsection (5), includes power to amend this Act.

Available at <https://www.legislation.gov.uk/ukpga/2010/15/section/9>

RECOMMENDATIONS

Include 'caste' as a specific protected characteristic (not as an aspect of race) under Part 2, Chapter 1 of the Act.

See 'Caste-based discrimination'

Appendix 2: Part 6 Education – Chapter 1 Schools – Section 85 Pupils: admission and treatment, etc. Paragraph 10

(10) In the application of section 26 for the purposes of subsection (3), none of the following is a relevant protected characteristic—

- (a) gender reassignment;
- (b) religion or belief;
- (c) sexual orientation.

Available at www.legislation.gov.uk/ukpga/2010/15/section/85

RECOMMENDATIONS:

Modify Paragraph 10 of Part 6 Section 85, possibly removing item (a) gender reassignment and (c) sexual orientation. Assess the possible outcomes of removing (b) religion or belief, and remove if there would be no detriment to a school's curriculum.

See Discrimination in education – 8. 'Harassment' of pupils on the grounds of gender reassignment, religion or belief, or sexual orientation

Appendix 3: EA Schedule 3: Services and public functions: exceptions – Part 2: Education Paragraphs 6 and 7

6 In its application to a local authority in England and Wales, section 29, so far as relating to age discrimination or religious or belief-related discrimination, does not apply to—

- (a) the exercise of the authority’s functions under section 14 of the Education Act 1996 (provision of schools);
- (b) the exercise of its function under section 13 of that Act in so far as it relates to a function of its under section 14 of that Act.

7 In its application to an education authority, section 29, so far as relating to age discrimination or religious or belief-related discrimination, does not apply to—

- (a) the exercise of the authority’s functions under section 17 of the Education (Scotland) Act 1980 (provision of schools);
- (b) the exercise of its functions under section 1 of that Act, section 2 of the Standards in Scotland’s Schools etc. Act 2000 (asp 6) or section 4 or 5 of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (general responsibility for education) in so far as it relates to a matter specified in paragraph (a);
- (c) the exercise of its functions under subsection (1) of section 50 of the Education (Scotland) Act 1980 (education of pupils in exceptional circumstances) in so far as it consists of making arrangements of the description referred to in subsection (2) of that section.

Available at www.legislation.gov.uk/ukpga/2010/15/schedule/3/part/2

RECOMMENDATION

Remove references to “religious or belief-related discrimination” from Paragraphs 6 and 7 from Schedule 3 Part 2 in conjunction with other recommendations in this report regarding faith schools.

See Discrimination in education – 2. The establishment of faith schools

Appendix 4: EA Schedule 3: Services and public functions: exceptions – Part 2: Education Paragraph 11

11 Section 29, so far as relating to religious or belief-related discrimination, does not apply in relation to anything done in connection with—

- (a) the curriculum of a school;
- (b) admission to a school which has a religious ethos;
- (c) acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum);
- (d) the responsible body of a school which has a religious ethos;
- (e) transport to or from a school;
- (f) the establishment, alteration or closure of schools.

Available at www.legislation.gov.uk/ukpga/2010/15/schedule/3/paragraph/11/enacted

RECOMMENDATIONS:

Remove or modify Item (a) from Schedule 3 Part 2 Paragraph 11

Remove items (b), (c), (d), (e), and (f) from Schedule 3 Part 2 Paragraph 11

See Discrimination in Education – 1. Collective worship, 2. The establishment of faith schools, 3. Discrimination in faith school admissions, 4. Faith-based curricula, 6. Discrimination in school governing bodies, 7. Discriminatory school transport policies

Appendix 5: EA Schedule 9: Work: Exceptions – Part 1 Occupational requirements – General – Paragraph 1

1(1) A person (A) does not contravene a provision mentioned in sub-paragraph (2) by applying in relation to work a requirement to have a particular protected characteristic, if A shows that, having regard to the nature or context of the work—

- (a) it is an occupational requirement,
- (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
- (c) the person to whom A applies the requirement does not meet it (or A has reasonable grounds for not being satisfied that the person meets it).

Available at www.legislation.gov.uk/ukpga/2010/15/schedule/9

RECOMMENDATION:

More rigorous penalisation of employers that do not comply with the conditions under which Schedule 9 exceptions can be used. Greater clarity on what is considered a genuine occupational requirement within Schedule 9 may be necessary.

See Discrimination in the workplace: ‘Genuine occupational requirements’

Appendix 6: EA Schedule 11 – Part 2 Religious or belief-related discrimination (School with religious character etc.) – Paragraph 5

School with religious character etc.

5 Section 85(1) and (2)(a) to (d), so far as relating to religion or belief, does not apply in relation to—

- (a) a school designated under section 69(3) of the School Standards and Framework Act 1998 (foundation or voluntary school with religious character);
- (b) a school [F4(other than an alternative provision Academy)] listed in the register of independent schools for England or for Wales, if the school's entry in the register records that the school has a religious ethos;
- (c) a school transferred to an education authority under section 16 of the Education (Scotland) Act 1980 (transfer of certain schools to education authorities) which is conducted in the interest of a church or denominational body;
- (d) a school provided by an education authority under section 17(2) of that Act (denominational schools);
- (e) a grant-aided school (within the meaning of that Act) which is conducted in the interest of a church or denominational body;
- (f) a school registered in the register of independent schools for Scotland if the school admits only pupils who belong, or whose parents belong, to one or more particular denominations;
- (g) a school registered in that register if the school is conducted in the interest of a church or denominational body.

Available at www.legislation.gov.uk/ukpga/2010/15/schedule/11/paragraph/5

RECOMMENDATIONS:

- Remove all types of school listed under Paragraph 5 of Schedule 11, with the exception of:
(b) a school [F4(other than an alternative provision Academy)] listed in the register of independent schools for England or for Wales, if the school's entry in the register records that the school has a religious ethos;
(f) a school registered in the register of independent schools for Scotland if the school admits only pupils who belong, or whose parents belong, to one or more particular denominations;
(g) a school registered in that register if the school is conducted in the interest of a church or denominational body.

See Discrimination in Education –3. Discrimination in faith school admissions

Appendix 7: EA Schedule 11 – Part 2 Religious or belief-related discrimination (School with religious character etc.) – Paragraph 6

Curriculum, worship, etc.

6 Section 85(2)(a) to (d), so far as relating to religion or belief, does not apply in relation to anything done in connection with acts of worship or other religious observance organised by or on behalf of a school (whether or not forming part of the curriculum).

Available at www.legislation.gov.uk/ukpga/2010/15/schedule/11/paragraph/6

RECOMMENDATION:

Remove Paragraph 6 from Schedule 11 Part 2

See Discrimination in Education – 1. Collective worship

Appendix 8: Schedule 22 – Educational appointments, etc: religious belief – Paragraph 4

Educational appointments, etc: religious belief

4A person does not contravene this Act only by doing anything which is permitted for the purposes of—

- (a) section 58(6) or (7) of the School Standards and Framework Act 1998 (dismissal of teachers because of failure to give religious education efficiently);
- (b) section 60(4) and (5) of that Act (religious considerations relating to certain appointments);
- (c) section 124A of that Act (preference for certain teachers at independent schools of a religious character).
- (d) section 124AA(5) to (7) of that Act (religious considerations relating to certain teachers at Academies with religious character).

Available at www.legislation.gov.uk/ukpga/2010/15/schedule/22

RECOMMENDATION:


Modify Schedule 22 Paragraph 4 so it only applies to independent schools.

See Discrimination in Education – 5. Discrimination in employment at faith schools

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