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Sent: 15 March 2012 15:50
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Cc: Libby.Jones@wrexham.gov.uk; edward@laleston.org.uk
Subject: Representation on SACRE - response to the legal question

Annwyl Glerc i GYSAG

Mae CYSAAGau yn ymwybodol bod CCYSAAGauC wedi ysgrifennu at Lywodraeth Cymru i ofyn am eglurhad ynghylch y cwestiwn cyfreithiol a godwyd mewn llythyr gan y Gymdeithas Dyneiddwyr Prydain i CYSAAGau yng Nghymru. Rydym yn derbyn llythyr gan Leighton Andrews ar 21 Chwefror a oedd yn dweud na allai'r Llywodraeth Cymru yn darparu cyngor cyfreithiol ar y mater hwn ond mae adran 390 o Ddeddf Addysg 1996 yn rhoi gwybodaeth ddefnyddiol. Mae hyn wedi'i gynnwys yn yr atodiad. Felly, mae'r Pwyllgor Gwaith yn cynghori CYSAAGau i ddilyn y gyfraith fel y mae'n cael ei gyflwyno yn adran 390.

Cofion,
Tania

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Dear Clerk to SACRE

SACREs are aware that WASACRE wrote to the Welsh Government to ask for clarification about the legal question which was raised in a letter from the British Humanist Association to SACREs in Wales. We received a letter from Leighton Andrews on 21 February which said that the Welsh Government could not provide legal advice on this matter but section 390 of the Education Act 1996 provides helpful information. This is included in the attachment. Therefore, the Executive Committee advises SACREs to continue to follow the law as it is presented in section 390.

With best wishes,
Tania

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Deddf Addysg 1996

390 Cyfansoddiad cynghorau ymgynghorol.

(1) Bydd awdurdod addysg lleol yn cynnwys cyngor ymgynghorol sefydlog ar addysg grefyddol i'r dibenion y soniwyd amdanynt yn adran 391(1),

(2) Bydd y cyngor yn cynnwys grwpiau o bobl a benodwyd gan yr awdurdod fel aelodau cynrychiadol ("grwpiau cynrychiadol") fel sy'n ofynnol gan isadran (4).

(3) Gall y cyngor hefyd gynnwys aelodau cyfetholedig (sef, unigolion a gyfetholwyd fel aelodau o'r cyngor gan aelodau o'r cyngor sydd heb eu cyfethol).

(4) Y grwpiau cynrychioliadol sy'n ofynnol gan yr isadran yma yw -

(a) grŵp o unigolion i gynrychioli enwadau Cristnogol o'r fath a chrefyddau eraill ac enwadau o grefyddau o'r fath a fydd ym marn yr awdurdod yn briodol yn adlewyrchu prif draddodiadau crefyddol yr ardal;

(b) ac eithrio yn achos ardal yng Nghymru, grŵp o unigolion i gynrychioli Eglwys Lloegr;

(c) grŵp o unigolion i gynrychioli cymdeithasau o'r fath sy'n cynrychioli athrawon fel y dylai gael eu cynrychioli ym marn yr awdurdod, gan ystyried amgylchiadau'r ardal; a

(d) grŵp o unigolion i gynrychioli'r awdurdod.

(5) Ble fo angen grŵp cynrychiadol gan isadran (4)(b) ni fydd y grŵp cynrychiadol sy'n ofynnol gan isadran (4)(a) yn cynnwys unigolion a benodwyd i gynrychioli Eglwys Lloegr.

(6) Bydd nifer yr aelodau cynrychiadol a benodwyd gan unrhyw grŵp cynrychiadol dan isadran (4)(a) i gynrychioli pob enwad neu grefydd sy'n ofynnol eu cynrychioli, cyn belled a bo hynny yn gyson gydag ymgymryd yn effeithlon â swyddogaethau'r grŵp, yn adlewyrchu yn fras cryfder cyfatebol yr enwad neu'r grefydd honno yn yr ardal.

(7) Ar unrhyw gwestiwn i'w benderfynu gan y cyngor dim ond y grwpiau cynrychiadol ar y cyngor fydd â'r hawl i bleidleisio a bydd gan bob grŵp cynrychiadol un bleidlais.

Education Act 1996

390 Constitution of advisory councils.

(1) A local education authority shall constitute a standing advisory council on religious education for the purposes mentioned in section 391(1).

[F1(2) The council shall consist of such groups of persons appointed by the authority as representative members (“representative groups”) as are required by subsection (4).]

(3) The council may also include co-opted members (that is, persons co-opted as members of the council by members of the council who have not themselves been so co-opted).

(4) The representative groups required by this subsection are—

(a) a group of persons to represent such Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;

(b) except in the case of an area in Wales, a group of persons to represent the Church of England;

(c) a group of persons to represent such associations representing teachers as, in the opinion of the authority, ought to be represented, having regard to the circumstances of the area; and

(d) a group of persons to represent the authority.

(5) Where a representative group is required by subsection (4)(b), the representative group required by subsection (4)(a) shall not include persons appointed to represent the Church of England.

(6) The number of representative members appointed to any representative group under subsection (4)(a) to represent each denomination or religion required to be represented shall, so far as consistent with the efficient discharge of the group’s functions, reflect broadly the proportionate strength of that denomination or religion in the area.

(7) On any question to be decided by the council only the representative groups on the council shall be entitled to vote, and each representative group shall have a single vote.

From: Richy Thompson [mailto:richy@humanism.org.uk]
Sent: 20 September 2011 14:46
To: Robinson Kenneth Wyn (ADDYSG)
Subject: Humanist on SACRE

Dear Mr Robinson,

I am emailing you again to ask if you would grant full membership to, or at least co-opt, a humanist representative to Committee A of your SACRE. First of all let me apologise as I believe I previously sent to Gwynedd SACRE the email intended for English SACREs, and I would appreciate it if you discard that email and instead consider the email below intended for Welsh SACREs.

We believe the current guidance, Circular 10/94, is out of date and incompatible with current legal practises. Equality cases in the European Court of Human Rights have established that 'religion' should always be interpreted as 'religion or belief' which would prohibit SACREs withholding full membership to committee A to those whose beliefs are non-religious. We have obtained legal advice which confirms this, a summary of which I have appended.

We are emailing all those SACREs in Wales that do not currently have a humanist representative on their Committee A, to urge them to admit one. We believe laws passed since Circular 1/94 have removed any sound reason that SACREs may have had about not admitting a humanist, while we believe there are compelling reasons why you should admit one, whether as a full or co-opted member of Committee A.

Firstly, given that non-religious views should be taught in RE lessons, it follows that humanists should have a role in monitoring how their views are taught. This is a right only extended to religious representatives. Admitting a humanist will ensure that your SACRE is both inclusive and also acting fairly.

Secondly, the addition of a humanist will make a positive contribution to the work of your SACRE and help ensure that the RE in your area remains broad and accurate. Humanists have had a long history of contributing towards and improving RE. The British Humanist Association has been a member of the Religious Education Council for over thirty years, while some of our representatives have served on SACREs throughout this period with distinction, including as Chairs and Vice-Chairs of both SACREs and ASCs.

Thirdly, we question the legality of excluding a humanist, as the appended advice corroborates.

We hope that you will agree that your SACRE should admit a humanist representative as a full member and we would be very happy to help find a suitable humanist for you if you are not already in touch with one. If you would like any more information or would like to explore how to find a humanist to nominate please contact me by email or on 020 7462 4993.

Periodically we discover SACREs that have appointed a humanist representative by going through a local humanist group. If you have already granted full or co-opted membership to a humanist we would be very grateful if you could let us know so we can update our records accordingly. We would also be grateful if we could have their contact details so we can send them useful material. Again please contact me with any of this information.

Yours sincerely,

Richy Thompson
Campaigns Officer (Faith Schools and Education)
British Humanist Association

Humanist membership on a SACRE:

The legal situation

Not only is the extension of full membership of SACREs and ASCs to include humanists required on educational grounds: it is also what the law demands.

The present guidance (*Circular 10/94*) fails to fulfil the Department for Education and Skills' (DfES's) obligations under the Human Rights Act sections 3 and 6 and the Equality Act 2006 section 52.

The latter prohibits the DfES from doing "any act which constitutes discrimination", and the exception at subsection (4) (k) plainly does not apply to membership of SACREs and arguably not to the scope of the syllabus.

More particularly The Human Rights Act at section 6 prohibits the Department for Education and Skills from "act[ing] in a way which is incompatible with a Convention right". By virtue of reading Article 9 with Article 14, this encompasses discrimination between religions and beliefs.

Moreover, section 3 positively requires that "so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights." That this section needs to be given a wide and powerful interpretation has been underlined by the House of Lords (*Ghaidan v. Godin-Mendoza (FC)* [2004] UKHL 30)^[1].

However, to bring the law on RE and on membership of SACREs and ASCs into compatibility with the European Convention on Human Rights requires no serious or violent re-interpretation of the legislation. If section 3 means anything at all, it must mean that discrimination between religious and non-religious worldviews or lifestyles should be eliminated by reading references to 'religions' in the present law on RE as references to 'religions or beliefs' in the new guidance.

In particular, in references to membership of SACREs and ASCs, 'religions' must be read as 'religions or beliefs', giving humanists the right to be full members alongside the religious representatives.

Not only is such a reading of the law now required by the Human Rights Act – as, of course, it was not in 1994 – but it is wholly in line with the developing consensus in the Council of Europe, the OSCE and other international bodies to which the United Kingdom is committed. We refer, for example to the OSCE's *Toledo Guiding Principles* and the Council of Europe's Committee of Ministers recommendation CM/Rec (2008)12 and the fact that even the United Nations' Special Rapporteur on freedom of religion or belief has singled out the UK's discriminatory approach in RE as an issue of concern.

^[1] "Section 3 may require a court to depart from the unambiguous meaning the legislation would otherwise bear. In the ordinary course the interpretation of legislation involves seeking the intention reasonably to be attributed to Parliament in using the language in question. Section 3 may require the court to depart from this legislative intention, that is, depart from the intention of the Parliament which enacted the legislation." (per Lord Nicholls of Birkenhead at para. 30)

Further justification for our argument here and further advice on the question is available upon request.

The Legal Situation explained

The BHA believes that the Human Rights Act (HRA) and Equality Act (2006) support the inclusion of humanists on SACREs as full members. Section 3 of the HRA requires that legislation previous to the HRA be interpreted to meet its requirements; so that, for example, references to "religion" should be interpreted to mean "religion and belief". Thus a case could be made for humanists to be full members of Committee A (which includes "other religions").

Circular 10/94 (which is out of date) stated that "The inclusion of representatives of belief systems such as humanism, which do not amount to a religion or religious denomination, on Committee A of an agreed syllabus conference or Group A of a SACRE, would be contrary to the legal provisions referred to at paragraph 103."

However

- Welsh Office Education Department Circulars were guidance only, and do not have legal authority, unless there has been a court ruling on a particular aspect. To our knowledge, there has been no legal challenge to the inclusion of humanists in Group or Committee A.
- In the past a few English SACREs have ignored the Department for Education circulars and allowed humanist representatives to retain full membership of Group A. They have taken the (correct) view that Circular 1/94 (the equivalent to 10/94) is only advice and that the matter has not been tested in court. These SACREs include Westminster and Oxford.
- Humanist representatives have been elected as Chairs or Vice-Chairs of English SACREs including in Hounslow, Brent, Camden, Hammersmith and Fulham, Oxford and York. In particular, Humanist representatives have been the chair of the SACRE in Brent and in York
- In addition, Humanists have been invited to serve on ASCs and have taken a full part in conference proceedings and/or they have participated in syllabus working groups. However, because of the ambiguous legal position they are sometimes listed officially as 'observers'.
