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# Achieving pluralism? A critical analysis of the inclusion of non-religious worldviews in RE policy in England and Wales after *R (Fox) v Secretary of State for Education*

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## ABSTRACT

In 2015, the High Court ruled that the British Government had made ‘a false and misleading statement of law’ when it claimed a Religious Studies (RS) GCSE syllabus that excluded the systematic teaching of non-religious worldviews like humanism would meet the statutory requirements for teaching Religious Education (RE) at Key Stage 4. This was because the narrowly religious specification of the syllabus would permit RE teaching that constituted a failure in the state’s duty to ‘take care that information or knowledge included in the curriculum is conveyed in a pluralistic manner’ and ‘accord equal respect to different religious convictions, and to non-religious belief’.

This duty, enshrined in international human rights law via Article 2 of Protocol No. 1 to the European Convention on Human Rights and given further effect in UK law by the Human Rights Act, has underpinned every case regarding RE to come before the European Court of Human Rights. However, to date, *Fox v Secretary of State for Education* is the only domestic case law to deal with the subject in England or Wales. This paper examines the legal implications of the *Fox* judgment, before turning to a critical policy analysis of its influence on RE policy in England and, more recently, Wales.

## KEYWORDS

humanism; religious education; England; Wales; human rights

## Introduction

Practitioners, scholars, and other stakeholders in the field of religious education (RE) increasingly acknowledge that the subject ought to involve teaching about non-religious worldviews (NRWVs).<sup>1</sup> In the UK context, acceptance of the view that inclusivity of this kind is a hallmark of good RE is evident in widespread support amongst RE professional organisations and religion and belief groups<sup>2</sup> for the conclusions of the final report of the Commission on Religious Education (CoRE 2018).<sup>3</sup>

Amongst other things, this landmark vision for the future of RE in England recommended that the subject be renamed ‘Religion and Worldviews’ and that it consider on an equal footing both religious and non-religious perspectives in a more diverse and nuanced way than is currently the case in many RE classrooms.<sup>4</sup>

Although the explicit broadening of the scope of the subject to include NRWVs was not the only (or arguably even the primary) aim of the CoRE recommendations,<sup>5</sup> the Commissioners were quick to point out that these perspectives have ‘become increasingly salient in Britain and Western Europe’ over recent years (CoRE 2018 para. 10). They further appeared to recognise that, in order to remain relevant to the

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needs and interests of pupils and a wider society in which more than half of the population identify as having no religion (some 53% according to the most recent British Social Attitudes Survey (British Social Attitudes Information System 2019), RE needs to adequately accommodate such worldviews if it is to survive, let alone thrive, as a basic curriculum subject.

While not all those who identify as non-religious are humanist,<sup>6</sup> the primary – indeed, arguably the only – ‘institutional’<sup>7</sup> non-religious worldview prevalent in the UK and currently subject to enough rigorous academic consideration and with ideas and a body of literature sufficiently developed to be taught as a comprehensive and coherent worldview in RE lessons is humanism.<sup>8</sup> On this basis, Humanists UK and others<sup>9</sup> drew the straightforward conclusion that, if adopted, the CoRE recommendations would mean that humanism and, by extension, humanists, would finally be fully included as a subject on the RE syllabus and as representatives on the bodies that develop and oversee that syllabus production (Humanists UK 2018).

Unfortunately, despite early enthusiasm from RE professionals, particularly members of the Religious Education Council of England and Wales, at the policy level, the Commission’s recommendations fell largely on deaf ears.<sup>10</sup> The UK Secretary of State for Education at the time the final report was published, Damian Hinds, maintained that ‘now is not the time’ to introduce such reforms (Hinds 2018)<sup>11</sup>

This conclusion was particularly difficult to countenance because, with respect to the issue of the inclusion of NRWVs like humanism on the RE curriculum and humanist representatives on the local authority bodies responsible for overseeing the subject and developing locally agreed syllabuses (known as Standing Advisory Councils for Religious Education or SACREs, and Agreed Syllabus Conferences, ASCs), there were already strong arguments – drawing on both international and domestic human rights law – to support the position that, legally speaking, the subject should already encompass humanism.

Most pertinently, some three years prior to the publication of the CoRE recommendations, the only domestic case law on the matter, *R (Fox and others) v Secretary of State for Education* (henceforth *Fox*) 2015, explicitly established that an RE curriculum that taught about religions but failed to cover humanism would fail in its legal duty under the European Convention on Human Rights (ECHR)<sup>12</sup> to be sufficiently ‘pluralistic’ even if it met the other two requirements that it be ‘objective’ and ‘critical’. On this basis, in the context of schools without a designated religious character, if such provision was the only RE on offer, that provision would be unlawful.

In this paper, I begin by outlining and examining the legal implications of the *Fox* judgment before conducting a critical policy analysis of its influence on RE policy in England and, more recently, in Wales. I argue that, when considered in light of the existing international case law, the hyper-localised approach taken in England – where local authorities have been left entirely free to decide whether non-religious representatives may become full members of SACREs and ASCs, as well as the extent to which non-religious perspectives are included in locally agreed syllabuses – runs contrary to human rights law. I then analyse the contrast between this approach and the one currently being taken in Wales, where the Government has recently passed an Act making RE – which is due to be renamed Religion, Values, and Ethics or RVE – explicitly inclusive of non-religious perspectives, and clarifying that SACREs and ASCs are permitted to enlist humanists as full voting members (Curriculum and Assessment Wales Act 2021).

All things considered, I conclude the Welsh approach should be favoured. Properly understood, the *Fox* ruling means that, to adequately adhere to human rights law, RE policy in England must be amended to ensure the subject is fully inclusive of NRWVs. And, as the only sufficiently coherent perspective with a significant degree of adherence in Britain, in practice this means fully inclusive of humanism.

## **R (Fox and others) v Secretary of State for Education**

In November 2015, the High Court ruled that the British Government had made ‘a false and misleading statement of law’ when it claimed a GCSE syllabus in Religious Studies (RS) that excluded the systematic teaching of NRWVs like humanism would meet the statutory requirements for

teaching RE at Key Stage 4 (Fox 2015 para. 81). To date, the ruling on this case, brought by three humanist parents and their children who believed their children would be disadvantaged by the exclusion of non-religious perspectives from the latter stages of the secondary curriculum, is the only piece of case law pertaining to the subject in the UK.

The case turned on the question of whether an assertion in guidance issued by the Department for Education (DfE) on the content of its new RS GCSE that this was ‘consistent with the requirements for the statutory provision for religious education in current legislation as it applies to different types of school’ (Department for Education 2015a) was ‘materially misleading’ and would, therefore, ‘encourage others [in this case, schools] to act unlawfully’ (Fox 2015, para. 81) by erroneously leading them to believe ‘that RE can be delivered to the relevant age group by nothing more than the RS GCSE curriculum’. (para. 6).

The GCSE content specifications in question (the Subject Content) included a requirement for all students to study two religions for at least 50% of the course, but excluded ‘the optional systematic study of non-religious beliefs alongside [those] religious beliefs’ on the grounds that, ‘as qualifications in Religious Studies’, it was ‘right that the content primarily focuses on developing students’ understanding of different religious beliefs’ (Department for Education 2015b, 23).

In defence of this exclusion – which faced considerable opposition from a wide range of RE stakeholders, numbering amongst their ranks twenty-eight high profile religious leaders, including the former Archbishop of Canterbury, Rowan Williams, and the former Bishop of Oxford, Richard Harries (Humanists UK 2015a) – the DfE further argued that a focus on humanism in particular, ‘would detract from an in-depth treatment of religion and the comparative study of two religions, and thus on the overall rigour and standard of the qualification’. (Department for Education 2015b, 23).

However, although the DfE’s claims about rigour and academic standards are clearly debatable, they were not at issue in Fox. Examination syllabuses may legitimately, from a legal standpoint if not perhaps a pedagogically sound one, be as narrow as an awarding organisation prefers. Indeed, the judgment explicitly stated that ‘it is not of itself unlawful to permit an RS GCSE to be created which is wholly devoted to the study of religion’. (Fox 2015, para. 75). What was at issue was whether the provision of a curriculum narrowly focused on religion in the way set out in the DfE’s Subject Content would necessarily also meet a school’s statutory duty to provide RE (Education Act 2002, S.80(1)(a)) as part of a ‘balanced and broadly based curriculum’ (Education Act 2002, S. 78(1)) in a manner that could be ‘interpreted and applied compatibly with the “Convention rights” of school children and their parents’. (Fox 2015, para. 22).

In this respect, the Judge, Mr Justice Warby, concluded that, although ‘an RS GCSE specification consistent with the Subject Content *could* satisfy such obligations (para. 68, emphasis added), it was ‘false and misleading’ to claim it ‘*will* fulfil the state’s legal obligations as to RE’ (para. 81).

The primary reason for this ruling was the fact that, under Article 2 of Protocol No. 1 (A2P1) of the European Convention on Human Rights – commonly known as the right to education – ‘the state owes parents a positive duty to respect their religious and philosophical convictions’ which includes ‘a duty to take care that information or knowledge included in the curriculum is conveyed in a pluralistic manner’ (European Court of Human Rights 2021, para. 118). As set out in the judgment, this means:

... the state must accord equal respect to different religious convictions, and to non-religious beliefs; it is not entitled to discriminate between religions and beliefs on a qualitative basis; its duties must be performed from a standpoint of neutrality and impartiality as regards the quality and validity of parents’ convictions. (Fox 2015, para. 39).

In other words, although the state has ‘considerable latitude’ in deciding how its ‘positive duty to respect [the] religious and philosophical convictions’ of parents (and their children) is discharged – and here it is worth noting that this ‘margin of appreciation’ includes a right to take account of ‘the

preponderance in its society of particular religious views, and their place in the tradition of the country' (para. 39) – it is not entitled to give undue priority to the teaching some religions over others or to all religious perspectives over non-religious perspectives. In other words, it must make sure that it treats these different worldviews with equal respect.

It is a long-established principle in human rights law that the freedom of thought, conscience, and religion enshrined in Article 9 of the European Convention on Human Rights protects those holding non-religious beliefs to the same extent as those with religious ones. Indeed, the Court at Strasbourg has explicitly highlighted that the right to freedom of religion or belief is 'a precious asset for atheists, agnostics, sceptics and the unconcerned' (*Kokkinakis v Greece*, 1993, S.31), a point that was reiterated by counsel for the claimants during the case (Fox 2015, para. 38).

With this in mind, and drawing on four key decisions taken by the European Court of Human Rights which focused on A2P1 and the realisation of Article 9 rights,<sup>13</sup> Fox established that a curriculum teaching solely about religious perspectives and giving little to no 'air-time' to non-religious beliefs would be unfairly skewed towards religion and, therefore, insufficiently pluralistic.

Because provision based solely on the GCSE Subject Content might generate a similarly deficient curriculum and any school providing this as the entirety of its RE offering would not be satisfying the duty to deliver an education that is 'objective, critical and pluralistic' according to human rights law, the UK Government's assertion that provision of the RS syllabus would necessarily exhaust a school's responsibilities with respect to statutory RE was erroneous.

Of course, under the Subject Content, examination bodies (or 'awarding organisations' (AOs)) do have scope to include teaching about NRWVs like humanism in the 50% of the RS course allowing for thematic study. However, as Judge Warby highlighted in his judgment, there is also 'considerable scope' for syllabuses developed according to this Subject Content to 'include no study of any non-religious beliefs, or very limited study of such beliefs' (para. 72.). In the event that such a syllabus was devised and used as the entire subject content for RE at KS4, this would mean the pupils following this syllabus would not receive any teaching on NRWVs during this 'vitaly important' stage of their education which could not 'be made up for by instruction given at earlier stages' (Fox 2015, para. 78) and, thus, the provision would not be compatible with A2P1.

On this basis, the Court concluded that the DfE's guidance contained 'a false and misleading statement of law' which would '[encourage] others to act unlawfully' as schools which had complied with the Subject Content but did not include coverage of NRWV's would need to add this content in order to comply with their statutory duties under human rights law.

## Legal implications and aftermath

Given the unequivocal nature of the judgment, readers who are unfamiliar with the RE landscape in England would be forgiven for concluding that the question of the legal standing of humanism as an appropriate and necessary topic for inclusion in the subject had been fully resolved by Fox. Nevertheless, the DfE was unpersuaded. Indeed, in a statement to the BBC, a spokesperson for the Department merely stated that the judgment '[did] not challenge the content or structure of [the] new GCSE' and would 'not affect the current teaching of the RS GCSE in classrooms'. (Richardson 2015).

Of course, in one sense, the DfE was correct about this. As we have already seen, the error of law was not the exclusion of NRWVs from the RS GCSE specifications *per se*, but in the assertion that any and all provision that complied with these specifications would exhaust a school's statutory duty to provide RE at KS4.

However, by treating the ruling as ‘a narrow technical point’ with little wider import to RE teaching as a whole, the DfE managed in effect to ignore the judgment. Instead, it proceeded in a way which meant that, contrary to the expectations of Humanists UK at the time, NRWVs are still not treated on an equal footing with religions, and humanism and humanists are still widely excluded from the subject and the bodies that regulate and oversee it.

## New guidance

In December 2015 the Department issued a press release repeating the claim it made to the BBC in the wake of the ruling; namely that the teaching of RS GCSE in classrooms would be unaffected by the outcome of Fox (Department for Education 2015c). At the same time, it published new guidance for schools and AOs (DfE 2015d) which, although it corrected the key legal error of claiming compliance with the RS Subject Content was sufficient to meet the demands of statutory RE, did not seek to tackle the broader legal issue highlighted by the judgment; namely, that any RE syllabus which did not accord equal respect to NRWVs by teaching them on an equal footing with religious perspectives would be unlawful in exactly the same way the High Court had ruled a narrow RS GCSE syllabus would be if it was taught as statutory RE in the absence of additional provision covering NRWVs. If it was true that KS4 RE teaching must be pluralistic, it was true that teaching across all key stages should be similarly pluralistic.

By contrast the DfE argued that it considered:

... the judgment to have no broader impact on any aspect of [Government] policy in relation to the RE curriculum or the RS GCSE subject content for schools with or without a religious character, nor on the current inspection arrangements. (DfE 2015d, 1)

And, at this point, rather than looking to ensure that pupils in state schools actually received the inclusive provision to which the ruling had made it abundantly clear they were entitled, it chose to devote much of its attention to rubbishing the strawman claim that the ruling required ‘equal air time’ (DfE, 2015d, 1) to be given to religious and non-religious views in RE.

Of course, there had never been a demand or expectation of such ‘equal air time’ before, during or after the case. Indeed, Judge Warby’s judgment explicitly notes that it was ‘common ground’ (between the claimants and the defendants) that ‘it would be compatible not only with UK legislation but also with human rights law for an agreed syllabus produced by an ASC in England to give a greater priority to Christianity than to all other religions, and all other non-religious world views’. (Fox 2015, para. 69). This is not only because, at the domestic level, S 375(3) of the 1996 Education Act requires that locally RE syllabuses reflect ‘the fact that the religious traditions in Great Britain are in the main Christian while taking account of the teaching and practices of the other principal religions represented in Great Britain’,<sup>14</sup> but also – as previously noted – because human rights jurisprudence makes it clear that states are permitted to give this kind of (quantitative) priority to the study of religious beliefs which have a particularly high preponderance or play an important role in the traditions of the country over those that don’t (Fox 2015, para. 39; Folgerø v Norway 2007, para 89; Zengin v Turkey 2008, para 63).

What the claimants and Humanists UK had demanded was that NRWVs like humanism be included on ‘an equal footing’ with religious perspectives on the RE curriculum (see e.g. Humanists UK 2015b, 2015c), a phrase which means, concomitant with the judgment and the wider law on the issue, that the content and delivery of that curriculum must afford NRWVs ‘equal respect’ when compared with religious perspectives.<sup>15</sup>

## The meaning of equal respect

As pointed out in a 2016 legal opinion (commissioned by Humanists UK) on the implications of the case authored by legal scholar Satvinder Juss, in practice, the need to treat religious and non-religious beliefs with equal respect certainly does have ramifications for all RE curriculum content, not least that curriculum coverage should be proportionate:

For example, an RE course which provides for the study of religions of a small size or little relevance without giving comparable attention to non-religious worldviews of the same or a greater size or relevance will be unlawful. The judgment states that a syllabus that 'give[s] priority to the study of religions (including some with a relatively very small following and no significant role in the tradition of the country) over all non-religious world views (which have a significant following and role in the tradition of the country)' (Fox 2015, para. 77) would be unlawful. Such a syllabus would not afford 'equal respect', would not be pluralistic, and would therefore be unlawful. (Juss 2016, para. 7c.)

With the exception of Christianity then, Juss argued that if one or more of the other principal religions are studied systematically or via a standalone module, the principle of equal respect would require there to be an opportunity to study a non-religious worldview of corresponding importance or standing in the same manner (Juss 2016, para. 8a-b). In practice, and for the reasons of prevalence, comprehensiveness and coherence already outlined above, the only viable candidate for such a study, at least for the time being, would be humanism. Similarly, in the event that an RE syllabus adopted a thematic approach and considered worldviews other than Christianity via a module looking at how each relates to different themes, the requisite module 'should include or allow for the study of principal non-religious worldviews to the same extent as any of the non-Christian principal religions'. (Juss 2016, para. 8c).

## Curriculum coverage

In addition to the technically accurate but largely misdirected pronouncements on the share of 'air time' that should be devoted to NRWVs, the DfE's guidance also maintained that:

Curriculum balance (and, therefore, compliance with statutory requirements) can be achieved across the key stages. There is no obligation on any school to cover the teaching of non-religious world views (or any other particular aspect of the RE curriculum) in key stage 4 specifically. (Department for Education 2015c, 1)

As noted by at least two commentators (see Harris 2020, 401; Pollock 2016), this directly contradicts the Fox judgment which explicitly stated that:

... the complete exclusion of any study of nonreligious beliefs for the whole of Key Stage 4, for which the Subject Content would allow, would not in my judgment be compatible with A2P1. (Fox 2015, para. 74)

However, despite the clearly inaccurate nature of the claim, the decision to couch it in the language of government policy rather than statutory guidance meant that further attempts to challenge the position through the courts would be unlikely to succeed. As David Pollock who, as a longstanding trustee of Humanists UK, was directly involved with the case puts it:

... our lawyers advised that the new guidance was misleading but bombproof: almost all the legally dubious claims in it were when examined closely cast as statements of government policy, not as legal guidance – a deceptive trick, they said, that was increasingly common in contentious guidance documents. (Pollock 2016)

Further, the guidance was firmly predicated on the view that both the content and the approach taken to the teaching of RE was in the ambit of schools and ASCs rather than the Government. For example, the erroneous statement about the balance of coverage between key stages is followed by a rider pointing out 'it is for schools and ASCs to determine how they meet their wider obligations across the key stages'. (Department for Education 2015c, 1). And similarly, the guidance begins with the statement 'The Department for Education's view has always been that schools should be free to determine their own approach to the teaching of RE, in line with the statutory requirements'(ibid.). With this in mind –



and more than likely by design – further legal challenges relating to a failure to respect pluralism by not providing adequate coverage of NRWVs are likely to be directed towards the individual schools and the local authorities responsible for the syllabuses that give rise to them rather than the Government itself.

### Passing the buck?

Following Fox, this form of strategic buck-passing appears to have become very much a guiding principle of the Government's stance with respect to decisions about the inclusion of humanism and humanists in RE. It is, for instance, strongly evident in the responses of successive Secretaries of State for Education and of departmental officials to correspondence from Humanists UK requesting clarity on the issue of whether it is legally permitted for humanist representatives to participate as full voting members on Standing Advisory Councils for Religious Education (SACREs) and Agreed Syllabus Conferences (ASCs) (see e.g. Hinds 2019).

The first such letter was sent after a humanist representative in Wales successfully challenged the decision of her local council, the Vale of Glamorgan, to block her admission to Group A of the SACRE on the grounds that this group is for representatives of religious denominations and humanism is not a religion. At present – though not for much longer – the law on RE in Wales and England is identical. However, while the Government in England has continually refused to be drawn on the issue of whether humanists may legitimately participate in SACREs and ASCs, saying only it is for local authorities to decide on the composition of these committees in their areas, the judgment in Fox was central to the success of the Vale of Glamorgan challenge. Furthermore, unlike in England, in the context of Wales the case acted as a catalyst to a monumental, human rights informed change of approach to the inclusion of NRWVs in RE, one which I will suggest ought to be replicated in England.

### SACREs, ASCs and the impact of the Fox case in Wales

In schools other than those with a religious character, the statutory duty to provide RE requires that the subject is taught in accordance with an 'agreed syllabus' (s 375(2) and Schedule 31 of 1996 Act and Schedule 19 of the 1998 Act). As the Fox judgment notes, 'the agreed syllabus is, therefore, the key document in determining what is taught in RE in such a school' (Fox 2015 para. 14).

The content of the agreed syllabus is determined by the Agreed Syllabus Conference (ASC), an occasional body which the local authority (LA) is required to establish in order to develop the agreed syllabus at least once every five years. In addition, the LA is required to establish a Standing Advisory Council on RE (SACRE) which, as the name suggests, oversees and advises on the subject at a local level. In England, both SACREs and ASCs are made up of four key groups: LA representatives, teacher associations, representatives from the Church of England and a final group representing 'Christian denominations and such other religions and religious denominations as, in the opinion of the [LA] will appropriately reflect the principal religious traditions of the area'. (s.390 Education Act 1996). In Wales, where the Church has been disestablished for the past 100 years, all religious representatives (including those from the Church in Wales) sit on the same denominational group (Group A), with additional groups for teacher and local authority representatives.

While the SACRE/ASC system is ripe for reform, with the CoRE report recommending that these committees be replaced with Local Advisory Networks for Religion and Worldviews,<sup>16</sup> at present it provides the most straightforward way for a broad range of religion and belief groups to feed into the RE syllabus taught in their local schools and ensure the RE provision relating to their own worldview is balanced, authentic, and accurate. However, while there are many LAs in England and Wales where humanists are represented<sup>17</sup> and, as a result, non-religious worldviews are included on the locally agreed syllabus, the reference to 'religious denominations' in the wording of the law

means that the stipulation that ‘Group A’ of the SACRE is for other *religious* denominations is often taken literally; that is, it is taken to mean that those representing non-religious belief groups, such as humanists, are explicitly excluded.<sup>18</sup>

This was precisely what happened when, in 2017, the Vale of Glamorgan Council refused to admit humanist representative Kathy Riddick to the SACRE on the grounds that only religious representatives were permitted to join (Humanists UK 2017). Later that year, Ms Riddick, supported by Humanists UK, won permission to have the case heard at the High Court – a decision which in and of itself demonstrates the legally arguable nature of the claim. However, the case was never heard because, after permission was granted, the Vale of Glamorgan withdrew its decision, reviewed the policy, and decided that it was after all permissible for humanists to participate in SACREs as members of Group A. As a result, Ms Riddick was eventually appointed.

Although it dealt with curriculum content rather than the composition of SACREs/ASCs, Fox was pivotal in both the Vale of Glamorgan case and subsequent policy decisions in Wales. One reason for this was the judgment in Fox had made it clear that domestic legislation relating to RE must be read in a way that is compatible with Convention rights (Fox 2015, para. 22). With this in mind, the reference to ‘religious denominations’ in the composition of SACREs must also be read in a way that is compatible with the Human Rights Act 1998 and hence with Article 9 of the ECHR which refers to ‘freedom of thought, conscience and religion’. This was a key plank in Ms Riddick’s submissions to the Court and one the Vale of Glamorgan clearly found persuasive enough to motivate a second decision.

Indeed, the Vale of Glamorgan Council were not alone in being convinced by the legal arguments for the inclusion of the non-religious in RE and its structures. As a result of the case, in 2018 Welsh Education Minister Kirsty Williams wrote to all the Local Authority Directors of Education stating that it was the Welsh Government’s view that:

... to ensure compatibility with the Human Rights Act 1998 the provisions relating to the constitution of SACRES and ASCs in the 1996 Act are to be interpreted as permitting the appointment of persons who represent holders of non-religious beliefs in the same way as they permit the appointment of persons who represent holders of religious beliefs. (Williams 2018)

Williams emphasised that the non-religious beliefs in question should be ‘analogous to religious belief’ in the sense that (using terms from established human rights case law) they ‘attain the necessary level of cogency, seriousness, cohesion and importance to attract protection under the Convention Rights’ and singled out humanism as a key example.

## The Curriculum and Assessment (Wales) Act

However, this was only the beginning. In April 2021, after a lengthy development and consultation process the Curriculum and Assessment (Wales) Act received royal assent and will come into force from September 2022. While this landmark piece of legislation will lead to substantive changes across the Welsh education system, of most relevance here is that it will make the RE curriculum in the country explicitly inclusive of NRWVs and clarify that it is legally permissible for non-religious representatives to participate in SACREs and ASCs.

In the Explanatory Memorandum pertaining to the Bill, the Welsh Government set out the rationale for the reforms to RE – which is to be renamed ‘Religion, Values, and Ethics’ or ‘RVE’ to reflect its broader scope – explicitly acknowledging, as in Williams’ letter, that the changes to the provisions relating to the constitution of SACREs (or SACs as they will be known under this new settlement) and ASCs have been undertaken ‘to ensure compatibility with the rights protected by the Human Rights Act 1998 (Welsh Government 2021, para. 3.100). Further, in the section of the document dealing with the impact of the changes on children’s rights,<sup>19</sup> it is formally acknowledged that, ‘The effect of the Human Rights Act 1998 and case law [i.e. Fox] is that currently, in an education law context, RE also encompasses non-religious views’ and that the requirement to teach in

a manner that is objective, critical, and pluralistic ‘does not just apply to the content of the curriculum (in particular, the requirement that it include teaching about non-religious convictions), [but] also applies to the way in which education and instruction is delivered’. (para. 9.58)

Contrary to a campaign spearheaded by the Christian Institute claiming that the non-religious would have a ‘veto power over all religious teaching’ (The Christian Institute 2020)<sup>20</sup> if they were allowed to participate fully in the governance structures of the subject when it is introduced in 2022, the Welsh RVE curriculum will still be required to ‘reflect the fact that the religious traditions in Wales are mainly Christian, while taking account of the teaching and practices of the other principal religions represented in Wales’. It will, nevertheless, also have to ‘reflect the fact that a range of non-religious philosophical convictions are held in Wales’ (Welsh Government 2021), a requirement for pluralism that is missing from the face of the law in England.

### Counting the non-religious: SACs and the census

In light of the aforementioned developments, it is clear the Welsh Government has taken the view, consistent with the judgment in Fox and broader human rights jurisprudence, that NRWVs should play an equal role in education about religion and belief. However, this is not to say the legislation is perfect. The decision to add non-religious representatives to Group A rather than to a separate non-religious group on the SAC and to make their membership subject to the same local proportionality requirements as religious groups may mean that, in the absence of a stipulation that all such committees include both religious and non-religious representatives, humanists are still refused membership. This could happen if (as often already happens) local authorities try to establish whether there are ‘enough’ members of any religion or belief group to warrant membership by appeal to Census data. This is problematic for two reasons. First, the Census only records as humanist those who explicitly wrote ‘humanist’ in the ‘other religion’ section of the form, not those who ticked ‘no religion’. Since humanism is a non-religious worldview, humanists are far more likely to tick ‘no religion’ than to describe themselves as being of ‘other religion’. Indeed, both this year and in 2011, Humanists UK explicitly ran a campaign to encourage humanists to tick ‘no religion’ to ensure the non-religious were properly counted (Sherwood 2021). For this reason, the Census gives no indication of the number of humanists in each area and cannot be used to judge proportionality.

Second, the Census also greatly underestimates the number of people who belong to no religion while overestimating the number of Christians. In 2011, the Census recorded that 59.3% of people in England and Wales were Christian and 25.1% non-religious. This contrasts strongly with the British Social Attitudes survey, which, in the same year recorded 46.3% as Christian and 46.2% as non religious (British Social Attitudes Information System 2011).<sup>21</sup> This difference likely happens because the wording of the Census question, ‘What is your religion?’, in the words of the Office of National Statistics, captures only loose ‘religious affiliation’ (ONS 2021) rather than a stronger sense of belonging, believing, or practice (for example, the ONS is happy to record as Christian those who have merely been christened or who got married in church). While such data may have important applications in some contexts,<sup>22</sup> trivial connections with religion are not a reasonable basis upon which to exclude the non-religious from membership of bodies responsible for RE or RVE and certainly shouldn’t be used to downplay the relevance of including on the syllabus the non-religious beliefs that belong to a high proportion of the British population.

Moreover, measuring the number of humanists based on explicit self-identification alone fundamentally fails to appreciate some key differences that often arise between humanists and religious people. Put simply, humanism is frequently used as a descriptive label for a set of beliefs that have existed throughout history and across the world rather than an adopted signifier of group membership. By no means will every person who meets the definition of being a humanist refer to themselves as such, and some will even be unfamiliar with the term. This reflects the fact that non-religious people are not compelled or expected (*qua* non-religious person) to engage in any sort of

formal practice or observance, join any organisation (including Humanists UK) or even identify with any particular creed at all.<sup>23</sup> Of course, there are still plenty of humanists who do consciously identify as such (see endnote 6), but often when individuals do come to self-identify as a humanist they highlight having ‘discovered’ a term that has long applied to them (see Copson 2021). While clearly not impossible, this is less likely to happen with religions.<sup>24</sup> The phenomenon is more akin to finding out you are a ‘homo sapiens’ or, to use an established example, ‘speaking prose’.

## The inclusion of humanism in England

Setting aside the concerns mentioned above, it is nevertheless clear the inclusive policy approach taken in Wales is far more consistent with Fox and the related human rights jurisprudence than the hands-off approach taken by the DfE in England.

There, by leaving LAs to determine not only which traditions ‘appropriately reflect’ those held in the local area, but also the basic human rights question of whether those traditions may legitimately be non-religious in nature, the Government effectively (if not explicitly) permits those authorities to discriminate against the non-religious at will. When this permissive attitude is considered together with the lingering effect of the now withdrawn of the 1994 RE guidance (see also endnote 18), the guidance the DfE issued in response to the Fox ruling and the accompanying press release maintaining ‘there is no need to give non-religious world views equal parity with religious world views in education’ (Department for Education 2015d), it is easy to see why LAs repeatedly come to the conclusion that, at best, they are not expected, and, at worst, not permitted, to include humanism and humanists in RE and its governance structures. As a result, prospective humanist representatives are forced to take legal proceedings to achieve inclusive membership of ASCs and SACREs, with similar cases to the Vale of Glamorgan being taken in Greenwich (Humanists UK 2019) and, more recently, Southampton (Hazell 2021; Humanists UK 2021a).

While, in recent years, there has been no systematic analysis of the extent to which humanism (and linked non-religious concepts such as atheism, agnosticism, and secularism) are adequately covered in locally RE syllabuses in England (or Wales), a survey looking at 80 of the 152 local authority areas in England that had some kind of humanist representation in 2007 found that ‘there was no meaningful reference to secular philosophies’ in 15 (19%) of the relevant locally agreed syllabuses. Humanism was only a compulsory topic of study in four syllabuses (5%), and in just one syllabus (1%) at all key stages (Watson 2007, 13). Although it seems likely that, in light of the various developments in RE policy and practice highlighted in this paper, this situation will have improved in the intervening years, anecdotal evidence from Humanists UK’s work with current SACRE/ASC representatives, teachers, and parents suggests that provision for the teaching of NRWVs is still uneven (despite demand for teaching resources about humanism growing year on year).<sup>25</sup>

The view that ‘keeping the status quo’ with respect to whether or how much to include NRWVs ‘leaves the onus on schools [and LAs] to ensure their syllabus is balanced and leads to inconsistencies and variations in the quality of delivery of RE’ (Bacquet 2016, 16) is echoed by the CoRE report, which argued that ‘the process of local determination leads to patchy provision and a “postcode lottery” which makes this set up increasingly ‘untenable’ (Commission on Religious Education 2018, para. 57). And, although the Commission was referring to RE provision as a whole, it seems reasonable to assert that the gaps in expertise and funding that its critique of the hyper-localised system highlights are also likely to have an increasingly negative impact on the ability of schools and LAs to adequately understand their duties under human rights law. This will likely include how best to provide pedagogically coherent and authentic content on NRWVs in a way that affords those perspectives (and those who hold them) the ‘equal respect’ to which Fox made it clear they are entitled.

## Conclusion

The Fox judgment was unequivocal: an RE curriculum that gives ‘priority to the study of religions (including some with a relatively very small following and no significant role in the tradition of the country) over all non-religious world views (which have a significant following and role in the tradition of the country)’ (Fox 2015, para. 39) is incompatible with the principle of pluralism dictated by human rights law, in particular A2P1. On this basis, any school without a religious character offering a curriculum that fails to cover humanism on an equal footing with religions is similarly incompatible with A2P1 and, therefore, unlawful.<sup>26</sup>

While the Government in England has failed to fully appreciate the legal ramifications of Fox or make policy decisions which take proper account of its responsibilities in this regard, the Welsh Government has taken explicit steps to rectify the position in Wales.

Human rights arguments do not exhaust the positive reasons to include NRWVs on the RE curriculum – the teaching of humanism can be adequately justified by appeal to all the reasons commonly used to defend the existence of RE in the first place, from the contribution it makes to social cohesion and mutual understanding between religion and belief groups, to the presentation of a range of different answers to questions of meaning and purpose it offers to pupils exploring and developing their own worldviews (see e.g. OSCE/ODIHR 2007, 19). Nevertheless, human rights law does set the basic standard below which curriculum provision should not fall if it is to afford equal respect to all members of society. At present, the privileged position afforded to faith groups and their representatives illustrates that this standard is not being met in England. Given the increasing numbers of those identifying as non-religious, this approach also risks rendering the subject difficult to sell to an ever-growing proportion of pupils who fail to see its relevance to their own lived experiences. It is already the case that, despite its statutory status, RE is regularly deprioritised (or even ignored entirely) by school leaders. For example, a 2019 survey by the National Association of Teachers of RE (NATRE) found ‘at Key Stage 4 almost 40% community and 50% of Academy schools without a religious character do not meet their legal or contractual requirements for RE’ (National Association of Teachers of Religious Education (NATRE) 2019, 2). The subject also frequently polls poorly in terms of perceived importance with parents (Bloom 2017).

This need not be a counsel of despair: the path taken by the Government in Wales demonstrates that R(V)E can quite easily be opened up in a way that makes it more (if not perfectly)<sup>27</sup> inclusive, allowing the non-religious to see beliefs like theirs reflected alongside those of the religious. Moreover, this approach seems likely to enjoy public support. According to a recent poll conducted on behalf of Culham St Gabriel’s, 71% of the UK population think RE ‘should reflect the diversity of backgrounds and beliefs in the UK today’ (Culham St Gabriel’s Trust 2021).

But unless the Government in England learns lessons from the landmark reforms in Wales and takes steps to formally recognise the positive role NRWVs can play in teaching about religion and belief, it does not seem too alarmist to suggest that, quite apart from putting the human rights of the non-religious in jeopardy, it is at risk of pushing the subject further along the road towards irrelevancy.

## Notes

1. See for example Aldridge (2015), Chater and Donnellan (2020), Clarke and Woodhead (2015) & Clarke and Woodhead (2018), Clayton et al. (2018), Commission on Religion and Belief in Public Life (CoRaB) (2015), Easton et al. (2019), Jackson (2014), and OSCE/ODIHR (2007).
2. This is evidenced in part by the adoption of the Commission’s recommendations by the RE Council of England and Wales, a broad coalition of professional associations, religion and belief groups and other RE stakeholders established to strengthen and enhance provision of the subject in schools (see <https://www.religiouseducationcouncil.org.uk/>).
3. Here it is worth highlighting that recent debates about the inclusion of NRWVs in RE are nothing new. In 2004, the QCA’s non-statutory national framework for the subject recommended the study of ‘secular philosophies such as humanism’ (QCA 2004, p.12). Moreover, it was far from the first set of guidance to suggest a place for the

teaching of non-religious perspectives. As Terence Copley notes in his comprehensive history of RE, 'Teaching Religion', the City of Bath LEA included humanism (along with communism) in its locally agreed syllabus as 'exemplars of beliefs other than Christian' in 1970. This despite a public 'row' on the matter. (Copley 2015, pp. 99–100). Similarly, in 1973, a draft version of the Birmingham agreed syllabus proposed that children be expected to 'study at least one non-religious stance for living' and, when it was eventually published in 1975, the advisory handbook referred to humanism and communism (*ibid.* pp.107–110). I am indebted to an anonymous reviewer for pointing me in the direction of this fascinating episode in the history of the subject.

4. For example, the report suggests that 'the presentation of religious worldviews in schools has not always placed enough emphasis on their diverse and plural nature and the ways that they have changed over time.' (CoRE 2018, para. 9). It goes on to argue that it is important that 'Religion and Worldviews' challenges such stereotypes, moving beyond 'an essentialised presentation of six "major world faiths" ... towards a deeper understanding of the complex, diverse and plural nature of worldviews at both institutional and personal levels.' (para. 12).
5. Indeed, in a recent contribution to the debate regarding the implications of the worldview approach endorsed by the Commission, Trevor Cooling argues that the CoRE report 'is not primarily concerned with adding non-religious content' to the RE curriculum but instead takes this for granted as already part of a good RE programme' (Cooling, Bowie, and Panjwani 2020, 34).
6. In 2019, Humanists UK commissioned a YouGov poll asking British adults a series of questions about their beliefs about religion, ethics, morality, and reason. It established that 51% of British adults say they belong to no religion (in line with British Social Attitudes Survey polling), 7% primarily identify as humanists, while 29% have humanist beliefs/values – here defined as: 1) trust in the scientific method when it comes to understanding how the universe works and rejecting the idea of the supernatural (meaning the individual is therefore an atheist or agnostic); 2) a preference for making ethical decisions based on reason, empathy, and a concern for human beings and other sentient animals; and 3) the belief that, in the absence of an afterlife and any discernible purpose to the universe, human beings can act to give their own lives meaning by seeking happiness in this life and helping others to do the same. The research found that around three-quarters of the 29% holding such beliefs/values would self-define as humanist when the correspondence between their own outlook and humanism was pointed out to them. (You Gov 2019).
7. The CoRE report draws a distinction between 'institutional worldviews,' which it uses 'to describe organised worldviews shared among particular groups and sometimes embedded in institutions,' and 'personal worldviews,' a term denoting 'an individual's own way of understanding and living in the world, which may or may not draw from one, or many, institutional worldviews.' (CoRE 2018, 4) The report calls humanism an institutional worldview. However, given that patterns of affiliation are much looser in humanism than in many (if not most) of the key world religions commonly studied on the curriculum, with a complete absence of hierarchy and no requirement to express or practice belief in any way in particular, it seems clear that, while it may be useful for grouping worldviews in a general sense, the personal/institutional distinction fails to accurately capture the way those who hold non-religious perspectives believe, behave, or identify.
8. As David Voas put it in his witness statement for the Fox case: 'Religious scepticism is also an important and longstanding part of British culture and tradition. The beliefs and worldviews that are characteristic of this country can only be understood with reference to non-believers such as Aphra Behn in the 17th century, David Hume, Mary Wollstonecraft and Thomas Paine in the 18th, Percy Shelley, Jeremy Bentham, John Stuart Mill, George Eliot, Charles Darwin, T. H. Huxley, Charles Bradlaugh and Thomas Hardy in the 19th, Bertrand Russell and E. M. Forster in the early 20th, or the majority of leading philosophers and public intellectuals in the post-war period ... It is impossible to understand the changing role of religion in society without grasping the significance of the age of enlightenment, movements such as rationalism and freethought, and belief systems based on atheism or humanism. The erosion of religious privilege and the spread of equality over the past two centuries is bound up with the rise of secularism. One cannot make sense of religion without some study of the alternatives.' (Voas 2015). See also Copson and Grayling (2015).
9. This included those who were less than happy about the inclusion of humanism who, according to Trevor Cooling, thought that, '[non-religious] worldviews like humanism, the main contender for inclusion, can be studied elsewhere in the curriculum, but that RE should be reserved for the study of religions.' (Cooling, Bowie, and Panjwani 2020, 33–34).
10. A possible exception is a recent research review by schools inspectorate Ofsted. This draws heavily on many of the ideas featured in the Commission's final report to 'identify factors that contribute to high-quality school RE curriculums, the teaching of the curriculum, assessment and systems.' As might be expected, the review is fully inclusive of NRWVs, arguing that high quality RE should consist of teaching about a 'range of religious and non-religious ways of living' (Ofsted 2021).
11. In a letter to the Chair of the Commission on RE, the Very Reverend John Hall, Hinds also referred to stakeholder fears that 'making statutory the inclusion of "worldviews" risks diluting the teaching of RE'. The primary such stakeholder was the Catholic Education Service (CES) which, in its response to CoRE, argued that 'the proposed name change to include "worldviews" means that the scope of the subject is now so wide and nondescript that it would potentially lose all academic value and integrity. As we have always maintained, the quality of Religious

Education is not improved by teaching less religion.’ (Catholic Education Service 2018). This suggests that, in the view of the CES, it is the inclusion of non-religious worldviews like humanism that is the primary problem with the Commission’s recommendations.

12. And the Human Rights Act 1998, which enshrines Convention rights into domestic law.
13. Kjeldsen, Busk Madsen and Pedersen v Denmark (1976), Folgerø v Norway (2007), Zengin v Turkey (2008), Lautsi v Italy (2011). A more recent case, Papageorgiou v Greece (2019) also emphasises the duty of states to convey the curriculum in an objective, critical, and pluralistic manner.
14. This provision was carried over from the Education Reform Act 1988.
15. Perversely, when the DfE put out a press release covering their revised RS GCSE guidance they replaced the statement that there was ‘no obligation for any school or ASC to give equal air time to the teaching of religious and non-religious views’ (DfE 2015d, emphasis added) with the claim ‘there is no need to give non-religious world views *equal parity* with religious world views in education’ (Department for Education 2015c, emphasis added). Given that the term ‘parity’ is primarily used to describe equivalence in status or respect, this way of putting things suggests it is unnecessary to treat NRWVs with the same level of esteem as religious perspectives and is therefore at odds with the legal position set out in the judgment.
16. These would retain the advisory role of SACREs but facilitate the implementation of a ‘National Entitlement’ for Religion and Worldviews which would replace the locally agreed syllabus.
17. According to Humanists UK’s records, at the time of writing, 126 SACREs in England and Wales currently have some kind of humanist involvement, and 67 have a humanist as a full member (a member of Group A). A map of SACRE/ASC representative coverage can be found at <https://humanism.org.uk/education/sacres-and-ascs/sacre-reps-map/>.
18. Indeed, this was the express Government position in guidance issued in 1994, Circular 1/94 (Department for Education 1994, para. 104). In 2010, this guidance was replaced with a document suggesting that humanists may be co-opted to SACREs, but the view that humanists may not join Group A was never disowned (Department for Education 2010, 21).
19. Via the Rights of Children and Young Persons (Wales) Measure 2011, the Welsh Government is legally required to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols. The UK ratified the UNCRC in 1991 and the treaty is given further effect through the Human Rights Act 1998. However, unlike Scotland, which recently passed a Bill on the matter (Scottish Government 2021), neither England nor Wales have fully incorporated the UNCRC into domestic law, meaning that children’s rights are still not directly enforceable.
20. This claim ostensibly originated from the fact that, in the first iteration laid before the Senedd, the Bill (Curriculum and Assessment (Wales) Bill (as laid) 2020) provided for a separate non-religious group (Group AA) on the SACRE, rather than merely adding non-religious representatives to Group A. However, such a group would never have had a ‘veto’ over religious content, just as existing members of Group A do not have such a power.
21. In 2019, the same survey recorded 38% of respondents as Christian and, as previously mentioned, 53% as non-religious (BSA 2019)
22. As Francis and McKenna explain, prior to 2001, the Census only recorded ethnicity and thus failed to properly account for groups – particularly, although not exclusively, Muslims – who ‘wanted to be recognised less in terms of their ethnic roots and more in terms of their current religious identity’ (Francis and McKenna 2017, 551).
23. For an informative discussion of diversity in the beliefs and practices of non-religious people, see Lee (2015) and Bullivant et al. (2019).
24. One notable exception may be those who have converted to a religion in later life; Muslim ‘reverts’, for example.
25. For example, Humanists UK’s records show that unique visits to humanist resources website *Understanding Humanism* steadily increased from 13,839 in 2016 to 56,534 in 2020 (Humanists UK 2021b). Demand for humanist school speakers has also grown, with 170 visits to schools in 2016 compared to 448 in 2019 (Humanists UK 2021c).
26. In a paper highlighting teacher perspectives on NRWVs in RE, Judith Everington argues that more work is needed to ‘identify which worldviews could be studied in addition to [humanism]’ (Everington 2019, 24). It should nevertheless be noted that it is more than possible to narrow this field. First, as the CoRE report points out, the worldviews in question should only be those ‘which make ontological and epistemological claims (claims about the nature of reality and how we know things) *as well as* political and moral ones.’ (CoRE 2018, 75, emphasis added) This means that, although communism, nationalism, and global capitalism might be considered worldviews for some purposes, they would not be appropriate in the context of RE; they are not examples of what Lee calls ‘existential cultures’ (Lee 2015, 159). Second, the perspectives in question will actually need to be *worldviews* rather than positions that largely focus on a single issue. At one point CoRE report identifies ‘Secularism and Atheism’ as non-religious worldviews (CoRE 2018, 26). In a paper looking at teaching ‘secular worldviews’ in Sweden, Thalén and Carlsson do the same (Thalén and Carlsson 2020). This is erroneous. Not only because secularism is not a necessarily non-religious perspective – when conceived of as a view on how religion should be recognised in and affect public life and institutions, the term can describe the views of many religious and

non-religious people equally – but because neither secularism nor atheism constitute comprehensive theories of the meaning of life that take a stance on both epistemological and ontological questions. Atheism, like agnosticism, is merely a position on the possible (non) existence of a god or gods, it may form part of a worldview, and will be an important concept to study in RE, but it should not be covered as a worldview in its own right (any more than ‘theism’ should).

In addition to humanism, the CoRE report cites Confucianism as an example of a non-religious worldview. One could argue that existentialism or nihilism might also meet the two conditions cited above. However, if one further takes into account the fact that curriculum coverage of any worldview other than Christianity must be proportionate to its representation in the wider population (see p. 5), in the current UK context there is no legal reason to systematically cover any non-religious worldviews other than humanism. Whether there are broader pedagogical reasons to do so remains an open question.

27. Along with the potential problems humanists may still face when attempting to join SACs and ASCs, at the time of writing, the Welsh Government has just published some rather confusing new legal guidance which teachers may very well find unhelpful in terms of deciding what belongs on the RVE curriculum. This guidance appears to conceptualise NRWVs, or ‘non-religious philosophical convictions’ as they are called in the Curriculum and Assessment Act, as all convictions that aren’t expressly religious in nature. It then lists a number of Strasbourg and domestic legal judgments where beliefs have been determined to be philosophical convictions ‘within the meaning of the ECHR’ (Welsh Government 2022). This is problematic for two key reasons. First, many of the convictions listed (e.g. pacifism, veganism, or principled opposition to military service) are not specifically non-religious – they may be held by religious and non-religious people alike. Second, as legal scholar Russell Sandberg has pointed out, although we should certainly teach about convictions such as those listed in schools, they are ‘not equivalent [to] and should not replace the teaching of systems of non-religious worldviews.’ (Sandberg, 2022).

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