

Sue Langlands
Curriculum Unit
Scottish Government
Commercial Street
Victoria Quay
Edinburgh
EH6 6QQ

10 March 2016

Dear Sue,

Scottish Government response to a recent decision by Mr Justice Warby

As discussed at our meeting on 2 March 2016, I would like to seek a response from the Scottish Government about a recent judgement of the High Court.

J. Fox & ors Vs Secretary of State for Education

In a recent judgement from the High Court¹, Mr Justice Warby reaffirmed the following points of human rights jurisprudence:

“39. In carrying out its educational functions the state owes parents a positive duty to respect their religious and philosophical convictions; the state has considerable latitude in deciding exactly how that duty should be performed, having regard among other things to available resources, local conditions and, in particular, the preponderance in its society of particular religious views, and their place in the tradition of the country; thus, the state may legitimately give priority to imparting knowledge of one religion above all others, where that religion is practised or adhered to by a majority in society; but the state has a duty to take care information or knowledge included in the curriculum is conveyed in a pluralistic manner; subject to certain threshold requirements, immaterial here, 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.”

The judgement also addressed the issue of a statutory right to withdraw/opt-out, which exists in England and Wales, and in Scotland:

“79. ...an opt-out is not an adequate substitute for the provision of an educational programme which accords the Parents their right to respect for their convictions. The need to withdraw a Child would be a manifestation of the lack of pluralism in question.”

¹J Fox and others vs Secretary of State for Education, CO/2167/2015

As you will be aware, as this case deals with the Human Rights Act 1988, the jurisprudence is applicable to Scotland².

Current Scottish Government policy on Religious Observance

In the Scottish Government's 2011 circular³, s7 makes reference to the 'parental right to withdraw'. However it does not make reference to any rights that pupils may themselves have to make a decision to opt-out.

Under the United Nations Convention on the Rights of the Child⁴, children have a right to have their voice heard in decisions which may affect them.

At our meeting on 2 March 2016 you suggested that if children had asked to opt-out themselves, that this should be accommodated by teachers.

Specific questions

1. Does the Scottish Government believe that the human rights jurisprudence advanced by Mr Justice Warby in his judgement (CO/2167/2015) have any effect on its current policy on Religious Observance (as set out in the 2011 circular)?
 - a. If so, will the Scottish Government undertake to published revised guidance in the form of a new circular for Head Teachers?
2. Bearing in mind Mr Justice Warby's judgement, and the Scottish Government's obligations under Art.12 of the UNCRC, does the Scottish Government consider all or some young people to have the right to opt-out from Religious Observance or Religious and Moral Education (or RERC)?
 - a. If so, does this right apply to all young people, or young people of a certain age and maturity?
 - b. If so, will the Scottish Government undertake to published revised guidance in the form of a new circular for Head Teachers?

We would be happy to discuss this with you further.

I look forward to hearing from you.

Thanks,

Gary McLelland
Head of Communications and Public Affairs
Humanist Society Scotland

² Also applicable through the Scotland Act 1998, as amended.

³ http://www.educationscotland.gov.uk/Images/rmererclletter_tcm4-650439.pdf

⁴ http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf