

R (Bowen) v Kent County Council

Administrative Court: Constable J, 26 May 2023

[2023] EWHC 1261 (Admin)

Humanists – religious education

Russell Sandberg and Frank Cranmer

Stephen Bowen, a humanist, sought to join Group A of Kent County Council's Standing Advisory Council for Religious Education ('SACRE') as a full member: his predecessor as chair of Kent Humanists had had observer status. Under section 390(4)(a) of the Education Act 1996, Group A is required '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'. The Council refused to appoint him on the grounds that, as a humanist, he did not represent 'a religion or a denomination of a religion'. He challenged that refusal on the grounds that it was discriminatory and in breach of Article 9 ECHR and Article 2 of Protocol 1 when read with Article 14. His argument was that, pursuant to section 3 of the Human Rights Act 1998, the words 'other religions' should be construed in much the same way that Warby J construed the phrase 'religious education' in *R (Fox) v Secretary of State for Education* [2015] EWHC 3404 (Admin).

Constable J noted that 'it is plain from *Fox* that a religious education curriculum must, in order to be compliant with the HRA 1998, cover more than religious faith teaching. The content of religious education teaching must include, at least to some degree, the teaching of non-religious beliefs (such as humanism)'; and as Warby J had noted in *Fox*, 'the complete exclusion of any study of non-religious beliefs for the whole of Key Stage 4, for which the Subject Content would allow, would not ... be compatible' with the ECHR. Article 14 was engaged, and there was a link with the core values of Article 9. The system under which the RE syllabus was decentralised to local authorities was:

'a recognition of the importance of religious education being reflective of the makeup of that local community ... [and] fundamentally about tolerance and pluralism in society, the core value of Article 9. Therefore ... the ability to be a representative of a particular relevant belief on a SACRE is (at the very least) more than tenuously connected with that core value, so as to bring the alleged discrimination through the prevention of membership of SACRE within the ambit of Article 9.'

Kent County Council's construction of section 390(4)(a) of the Education Act 1996 therefore involved a breach of Article 14.

Constable J also rejected the argument that Group A and Group B (representing the Church of England) were designed to represent faith groups

while Group C (representing teachers) and Group D (representing the local authority) were designed to be secular. The distinction was rather between ‘the content of the syllabus and the implementation of the teaching of that syllabus. In other words, what is taught and how it is taught’: ‘It is clear, in my judgment, that the primary concern of Groups A and B is, broadly speaking, the content of religious education and the primary concern of Groups C and D is, broadly speaking, the implementation of religious education within the area’. The teachers sitting in Group C do not provide a ‘secular perspective’: ‘Their personal beliefs (be they religious or non-religious) are not relevant to their representative role in the SACRE’.

It followed that section 390(4) was to be read in a way that was compatible with Convention rights and that Kent County Council’s refusal to include Mr Bowen as a Humanist representative within Group A should be quashed on the basis that it was unlawful. Constable J was clear, however, that the judgment extended no further than determining that the basis of the Council’s decision was erroneous in law: ‘It does not follow that any and every non-religious belief would need to be treated similarly – for example, it may be legitimate to conclude that a particular belief (religious or non-religious) does not attain the requisite level of cogency, seriousness, cohesion and importance to attract protection. Similarly ... there remains considerable discretion for the local authority when determining who to appoint pursuant to section 390(6) to ensure consistency with the efficient discharge of the group’s functions’.

Comment: *Bowen* is an important milestone in the (regrettably) gradual recognition that freedom of religion or belief protects *non-religious* beliefs. The High Court judgment is particularly welcome for stating explicitly that the ECHR requires reading domestic legislation to recognise non-religious life-stances. The County Council subsequently announced that it did not propose to appeal.

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Re St Mary, Ingleton

Leeds Consistory Court: Hill Ch, 9 June 2023

[2023] ECC Lee 2

Procedure – objection received in time – faculty set aside

David Willink

A faculty had been granted for some modest works on this Grade II*-listed church, on the basis that the petition was unopposed. It transpired that a letter of objection had been received by the incumbent, within the time allowed for such letters to be received by the registry. The matter was not brought to the court’s attention until an unsuccessful attempt at resolution by the incumbent.