

# THE PLACE OF RELIGION UNDER EDUCATION LAW IN ENGLAND

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## ***1. Religious instruction organised during the school hours (in lower and in secondary education) in state funded schools***

**I.1 Question: Religious instruction organised during the school hours (in lower and in secondary education) in state funded schools. Is – and if affirmative please refer to the provisions in the law (add the text separately) – the teaching of religion in your country organised during school time in public educational institutions: in primary education, in secondary education.**

**Answer:**

Religious education is compulsory as part of the ‘basic curriculum’ that all state maintained schools in England and Wales must ensure is provided to pupils up to the age of 16. Another part of the statutory basic curriculum is the ‘National Curriculum’, which is separate from religious education.<sup>2</sup> The content of religious education is determined locally, unlike the National Curriculum which is mostly imposed by central government. Schools must also organise a daily act of collective worship for pupils which (unless the school has applied for exemption) must, most of the time, be ‘wholly or mainly of a broadly Christian character’. Parents have a right to withdraw their children from both religious education and collective worship.<sup>3</sup> Since 2006, pupils in years 12 and 13 (known as ‘sixth form’, basically ages 16-18) enjoy the right to withdraw themselves from religious worship at school.<sup>4</sup>

**I.2 Question: What choices amongst the religious education possibilities are offered in public educational institutions, e.g. catholic religion, Islamic teaching, ....**

**Answer:**

The opportunity to receive religious instruction in Islam at school will depend upon a number of factors.<sup>5</sup> Generally religious syllabuses (‘agreed syllabuses’) used in community (ie non-denominational) schools will cover a range of different religions, on the basis that it is considered desirable for pupils to learn about other faiths or belief systems to those of their own families or community groups. Guidance on this has been published in the form of *The Non-statutory Framework for Religious Education* (2004). The same approach is also often applied in voluntary controlled (Church of England) schools as well, some of which will follow the same locally agreed syllabus as the community schools.

In 2007 the inspection agency ‘Ofsted’ (the Office for Standards in Education, Children’s Services and Skills) published a review of religious education (RE) in schools other than voluntary aided schools. (Many of the Roman Catholic schools are voluntary aided.) It found the standard of RE to be generally good, but made the following rather critical comment:

“The curriculum and teaching in RE do not place sufficient emphasis on exploring the changing political and social significance of religion in the modern world. As a result, the subject’s potential to contribute to community cohesion, education for diversity and citizenship is not being fully realized.”<sup>6</sup>

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<sup>2</sup> Education Act 2002, s.80.

<sup>3</sup> School Standards and Framework Act 1998, s.71.

<sup>4</sup> Ibid.

<sup>5</sup> School Standards and Framework Act 1998, schedule 19.

<sup>6</sup> Ofsted, *Making Sense of Religion* Ref 070045 (London: Ofsted, 2007), p.7.

The report says that as a result of the broader religious education syllabuses now used, “many pupils had acquired have a new view of RE’s importance in helping them to understand religious diversity and develop respect and tolerance”. However, it also notes that “[o]n occasion... some parents have made requests to withdraw their child from visits to particular places of worship or from learning about specific religions”,<sup>7</sup> suggesting that some parents are not sympathetic to multicultural religious education.

The religious education curriculum in Roman Catholic voluntary aided schools may also cover other religions such as Islam, but this is not a legal requirement. Religious education in these schools is usually based on the trust deed for the school. A small number of voluntary aided schools are Islamic or Jewish schools, which will have their own approved religious education syllabus usually based on the school’s trust deed and will clearly focus on their own religion.

In relation to all state schools, parents also have the right to make arrangements for their children to receive religious education away from school, during school hours, if they cannot reasonably conveniently attend another school where religious education of the kind the parent prefers would be provided.<sup>8</sup> Although, in some non-Islamic schools which are voluntary aided, Muslim pupils may be given the opportunity to receive Islamic education as an alternative to Christian education, it will often be the case that they are more likely to receive most of their Islamic religious education in the local community.

## ***II. State funded denominational schools and state supervision***

**II.1. Question: Are there state funded denominational schools in your country? If affirmative, what is the numeric importance of state funded schools. If affirmative, what is the numeric importance of Islamic state funded schools. Please refer to statistical information on-line**

**Answer:**

Of 20,303 state-funded primary and secondary schools (including academies) in England in 2010, 13,471 (66 per cent) were non-religious in the sense that they had no religious affiliation.<sup>9</sup> There were 6,832 schools which were affiliated to a religion. The latter schools fall into different legal categories which reflect and influence their arrangements for governance and the degree of autonomy that their governing bodies enjoy. Among these schools there is a preponderance of Church of England and Roman Catholic schools: see the table below.

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<sup>7</sup> Ibid

<sup>8</sup> School Standards and Framework Act 1998, s.71(3).

<sup>9</sup> Department for Education, *Statistical First Release, Schools, Pupils and their Characteristics, January 2010 (Provisional)*, SFR 09/2010 (Department for Education, 2010): <http://www.education.gov.uk/rsgateway/DB/SFR/s000925/sfr09-2010.pdf> [accessed 21 April 2011].

Table: *Voluntary schools and religiously affiliated foundation primary and secondary schools in the state sector in England (2005 and 2010)*<sup>10</sup>

Religious affiliation	Total number of schools	
	2005	2010
Church of England		4,669
Roman Catholic	2,064	2,012
Methodist	26	26
Other Christian	81	121
Jewish	36	38
Muslim	5	11
Sikh	2	1
Other	2	2

**II.2. Question: Are there non-state funded denominational schools in your country (private)? If affirmative, what is the numeric importance of private schools. If affirmative, what is the numeric importance of Islamic private schools. Please refer to statistical information on-line**

**Answer:**

There were 2,375 independent (non-state funded, private) schools in England in 2010.<sup>11</sup> They educate approximately 7% of the school population. Among them are over 100 schools described as following Christian traditions, approximately 60 Jewish independent schools and approximately 150 Islamic schools, varying widely in the number of pupils.<sup>12</sup> There are two Sikh schools in the independent sector and a small number of Hindu schools.

All independent schools, including Muslim schools, must be registered in a register kept by the Secretary of State for Education and must ensure that they meet the prescribed standards.<sup>13</sup> Although independent schools are not as fully regulated as those in the state sector, those not operating to appropriate standards can ultimately be de-registered and forced to close. (State schools are also subject to a range of sanctions if the quality of their education is below standard, ranging from warnings to loss of budgetary autonomy and even closure, although this is rare.)

Individual inspection reports on all schools, including Muslim schools, whether private or state schools, are published by Ofsted (see I.2 above). A review by this writer of a selection of these reports has found that most of the schools have been praised by inspectors for the quality of their education and the way that pupils are offered a broad social and cultural perspective. One of the few criticisms, in a report on one school, is that “[w]hilst tolerance and harmony between different cultures are promoted not all pupils are provided with the opportunity to fully appreciate different cultures and traditions because current

<sup>10</sup> Ibid table 2B and Department for Education and Skills, *National Statistics, First release, Schools and Pupils in England, January 2005 (Final)*, SFR 42/2005 (London: DfES, 2005), table 8.

<sup>11</sup> See note 6, table 2A.

<sup>12</sup> Ofsted, *Types of Independent Schools* (Ofsted, 2011), at [http://www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Other/General/Types-of-independent-schools/\(language\)/eng-GB](http://www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Other/General/Types-of-independent-schools/(language)/eng-GB) [accessed 21 April 2011].

<sup>13</sup> Education Act 2002, Part 10; Education (Independent School Standards) (England) Regulations 2003, SI 2003/1910, Schedule. This framework remains in force, as the new framework in place of this one that has been created by the Education and Skills Act 2008 is not yet in force.

arrangements are inconsistent”.<sup>14</sup> However, a general report by Ofsted in 2009 found that within the independent faith schools which were surveyed –

“There was general agreement that young people should know about the city in which they lived, the country and its institutions, and the wider world. Christian, Jewish and Muslim schools, to different degrees, were striving to protect their young people from the perceived negative influences of the wider secular society. All accepted and taught about diversity and saw the promotion of community cohesion as requiring respect and acceptance of other faiths while remaining distinct in their own faith, rather than being a homogeneous cultural mix.”<sup>15</sup>

Nevertheless, in relation to the above one of the requirements under the 2003 regulations on independent school standards, stating that independent schools must “encourage pupils to accept responsibility for their behaviour, show initiative and understand how they can contribute to community life” (above), Ofsted found that “Each faith tradition had a range of views about the extent to which pupils should participate in the wider secular community and their understanding about ‘community life’ (Regulation 2c) was different.”<sup>16</sup>

### **II.3. Question: How do the authorities control the teaching in state funded denominational schools and are there any special questions about the control of the content of teaching in state-funded denominational schools? Please refer to the provisions in the law.**

#### **Answer:**

Teaching in state-funded denominational schools in England is covered by the same legal requirements as those applicable to state-funded non-denominational schools, with the exception of religious education (discussed in I.2 above).

Local authorities have no control over the content of teaching. Head teachers have a duty to formulate a policy on the secular curriculum at the school, but this is subject to the policy agreed by the governing body.<sup>17</sup> (Every state school must have a governing body, comprising a board of around 12-20 people with representatives of various prescribed groups, such as teachers, parents, representatives of the local authority, members of local community/business and, if the school is denominational, religious foundation members.) There is a separate duty on the school’s governing body to have a policy on sex education at the school, and in primary schools the governing body must decide whether sex education should form part of the curriculum.<sup>18</sup>

Despite the existence of these individual school policies, all state schools are bound by a statutory framework. The framework establishes a basic principle that the curriculum at a school must be “balanced and broadly based” and promote the spiritual, moral, cultural, mental and physical development of pupils and of society as well as preparing pupils for the opportunities, responsibilities and experiences of later life.<sup>19</sup> It also requires every state-maintained school (whether denominational or not) to have a “basic curriculum”, including religious education,<sup>20</sup> sex education (at the secondary education stage) and the

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<sup>14</sup> Ofsted, Inspection Report, Abu Bakr Independent School, December 2007, p.5

<sup>15</sup> para.14.

<sup>16</sup> Ibid, para.16.

<sup>17</sup> School Standards and Framework Act 1998 Act s.38(3) and the Education (School Government) (Terms of Reference) (England) Regulations 2000 (SI 2000/2122) reg.8.

<sup>18</sup> Education Act 1996, ss.371 and 404.

<sup>19</sup> Education Act 2002, ss 78 and 79 (as amended).

<sup>20</sup> Note that arrangements must be made so that so far as practicable every pupil attending a maintained special school receives religious education unless withdrawn by their parent: Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 (SI 2001/3455) reg.5A.

National Curriculum.<sup>21</sup> In Wales the basic curriculum also includes (i) personal and social education for pupils aged five or over; and (ii) work-related education for pupils aged 11-16.<sup>22</sup> The National Curriculum in England and Wales comprises core subjects and other foundation subjects. For each subject there are prescribed “attainment targets” for pupils of different abilities and maturities, related to what pupils would be expected to achieve by the end of the four key stages in their education (that is, by the age of 7, 11, 14 and 16 respectively). Also prescribed by law are the associated “programmes of study” and “assessment arrangements”.<sup>23</sup>

Separate arrangements apply to the education of children below compulsory school age (that is, the age of five). In England, this stage is termed that ‘Early Years Foundation Stage’.

### **III. Refusal or limitations on the number of pupils of another conviction/belief by the governing board of a confessional (catholic) school**

#### **III.1. Question: Does the head of a state funded denominational (e.g. Catholic) school have the right to refuse pupils from other religious beliefs? Please refer to the provisions in the law.**

**Answer:**

The head teacher does not have responsibility for admissions to the school. The school’s governing body will generally have this function, as the school’s ‘admissions authority’. Pupils from other religious faiths (or none) can be refused admission, but only if the school is oversubscribed and its admissions policy permits it to give preference on the basis of religion.<sup>24</sup> Decisions on admission to denominational schools with such policies are exempt from the provisions of the Equality Act 2010 prohibiting religious discrimination.<sup>25</sup>

#### **III.2. Question: Does the head of a state funded denominational (e.g. Catholic) school the authority to limit the number of pupils from other religious beliefs (e.g. Muslim pupils) in order to support the specificity of the project?**

**Answer:**

It is very doubtful that it would be lawful to single out one particular religious group in this way unless there was a specific justification based on, for example, the constituents of the local population (see below). Normally, while it would be lawful to restrict the number of non-Catholics to a prescribed percentage, in order to preserve the character of the school,<sup>26</sup> it may be of very dubious legality to restrict the number of members of one minority faith only.

However, the case of one school whose admission arrangements has imposed restrictions is interesting in this respect. The school is the Archbishop Blanch School in Liverpool. It is a Church of England

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<sup>21</sup> Education Act 2002, s.80 as amended.

<sup>22</sup> Education Act 2002, s.101, as amended.

<sup>23</sup> Education Act 2002, ss 87 and 108.

<sup>24</sup> *Choudhury and Another v Governors of Bishop Challoner Roman Catholic Comprehensive School* [1992] 3 All ER 277.

<sup>25</sup> This exemption is in the Equality Act 2010, s.89 and schedule 11.

<sup>26</sup> It seemed to be sanctioned by the DfES, *School Admissions Code* (2007) and implicitly falls within the exception to the non-discrimination duty under the Equality Act 2010 (above). See also the Department for Education, *School Admissions Code* (2010), which currently applies: “Where a faith school gives priority for a proportion of places to those of other or no faith in their admission arrangements they *must* be clear how this will work and what oversubscription criteria will be used in their published admission arrangements for each group of places. If the number of applications for one group is less than the number of places available for that group, those places *must* be offered to other children” (para 2.54, original emphasis).

School, not a Catholic school, but like most Catholic Schools it is a voluntary aided school and therefore in the same legal category. Its published admission arrangements for 2009-10 stated that it would admit any number of children in public care (regardless of religion) as the first priority; the law in fact requires such children to be given first priority in all schools' admissions policies. The school's policy then restricted the number of children admitted in other different categories, as follows:

- 104 Christians
- 10 Muslims
- 2 Other World Faith applicants
- 10 with Aptitude in Music
- 4 with Aptitude in Art
- 10 with special medical or social reasons.

This school therefore reserved more places for Muslim pupils than those of other non-Christian faiths. That continued for admissions scheduled for September 2011; this policy scheme has the same numbers in each category as for 2009 although states that of places for Muslim children 8 are reserved for Shia Muslims and 2 for Sunni Muslims.<sup>27</sup> According to the school, the policy's preference for Muslim applicants over those of other world faiths has reflected the make-up of and level of demand from the local community. Although that preference might appear nevertheless to be discriminatory, the Schools Adjudicator ruled in one case that denominational schools' exemption from the non-discrimination duty (applicable to religion) under the Equality Act 2006 (now in the Equality Act 2010) meant that "such a school [is] not prevented from giving priority to pupils of a faith other than the school's before pupils of no faith at all". He also implied that a school is not confined to giving priority only to those of the faith that is the designated faith of the school.<sup>28</sup> That certainly seems to be the effect of the Equality Act exemption, which simply dis-applies the non-discrimination duty in relation to admission decisions. Moreover, if the situation in this school were judged with reference to Article 14 of the European Convention on Human Rights (ECHR), the reasons behind the policy may enable the school to rely on the justification argument in any event.

***IV. Point of views of the authorities concerning the teaching of Islam in denominational (Catholic) education, Islam instruction or instruction on other convictions/beliefs in denominational (catholic) schools for (a number of pupils requesting it) and alternative ethical course***

**IV.1. Question. Is there a legal obligation to organise, if parents ask for, classes of Islamic religion in denominational (Catholic) education funded by public authorities? a. for any pupil for whom a request has been made? b. from a minimum number of pupils for whom a request has been made?**

**Answer:**

There is otherwise no specific obligation on Roman Catholic schools to make such arrangements for teaching specifically in Islam. As was stated above, most Roman Catholic schools are in the category 'voluntary aided' schools. In these schools, if the parents of any pupils wish that these pupils receive religious education based on the local 'agreed syllabus' (that is the syllabus, generally multi-faith, adopted for non-denominational (community) schools in the area), and cannot with reasonable convenience cause those pupils to attend another school which uses that syllabus, the governing body (or, in default, the local authority) must (unless special circumstances make it unreasonable for them to do so) make arrangements for this to happen.<sup>29</sup> As the 'agreed syllabus' for the local area will almost certainly be very broad and non-denominational, it may cover aspects of the Muslim faith but will also cover other faiths.

<sup>27</sup> <http://www.abblanch.com/Policies> [accessed 27 April 2011].

<sup>28</sup> Determination ADA/001396, 12 September 2008.

<sup>29</sup> School Standards and Framework Act 1998, schedule 19 para.4.

**IV.2. Question. Does the same obligation exist for the offer of (a) other religions and/or philosophical convictions, (b) an alternative class of conception of life, philosophy, ethics**

**Answer:**

As noted above (see IV.1), in the case of any children attending a Roman Catholic voluntary aided school whose parents want them follow, instead of the syllabus applied by the school, the agreed syllabus for the area, the governing body of the school must normally make arrangements for them to receive it.<sup>30</sup> There is no right to receive religious education pertaining to their own (as opposed to the school's) faith, other than the right of withdrawal of the child by the parents to receive such education during school hours elsewhere.<sup>31</sup>

However, in some cases voluntary arrangements are made for religious teachers to visit schools to teach pupils of minority faiths. Nevertheless, it has been suggested that the lack of a *duty* to make alternative arrangements could amount to unjustifiable discrimination for the purposes of the ECHR Article 2 of Protocol 1 read with Article 14, but that the additional cost involved in making such arrangements might provide legal justification. In practice, it is common for alternative moral education or the study of religions or ethics to be provided for pupils of minority faiths.

**IV.3. Question. Can you shortly mention the pro and contra standpoints that have been expressed concerning the respect of fundamental rights (among others, freedom of education and right to education) in relation with this obligation?**

**Answer:**

The main debates in this area have concerned the place of religion in state funded schools. Some favour an approach of secularity, as in the United States, on the grounds that it better reflects the less prominent place of religion in much of society today and also prevents the privileging of one particular faith or belief system. Others believe that the inclusion of religion is important in order to reflect its underpinning of many cultural traditions and aspects of morality. Government in the UK has on the whole favoured the latter perspective. There is also a wider debate about multi-cultural or inter-cultural education which extends to religious education and also to the question of how far the education system can and should cater for minority faiths or wishes. This is discussed in detail in N. Harris, *Educaiton, Law and Diversity* (2007), chapter 7.

**IV.4. Question. Reference to the legal basis, with Website address, and also if possible to the parliamentary preparation of texts.**

**Answer:**

Relevant legal and other references have be made in footnotes. Acts of Parliament can be accessed via <http://www.statutelaw.gov.uk/>

***V. Teaching of Islam in denominational (e.g. Catholic) schools at their own initiative***

**V.1. Question: Is there in your country a general guideline for teaching of Islam in denominational (e.g. Catholic) schools at their own initiative defined by (a) the Bishops' Conference, (b) another body, namely. . .**

**Answer:**

See below.

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<sup>30</sup>School Standards and Framework Act 1998, schedule 19 para 4.

<sup>31</sup> Ibid, s.71.

**V.2. Question: If affirmative, does the guideline implies that (a) the teaching of other religions is organised when: one parent asks for, or a sufficient number of parents ask for (how many?), (b) only teaching of Islam is offered as alternative religion when one parent asks for or a sufficient number of parents ask for (how many?)**

**Answer:**

See below.

**V.3. Question: There is no guideline and: (a) in fact, teaching of Islam is never proposed in Catholic schools, or (b) the teaching of Islam is organised in some schools, which have taken themselves the initiative. If possible, explain the importance of this option**

**Answer:**

The *Religious Education Curriculum Directory for Roman Catholic Schools*,<sup>32</sup> published in 1996, set out a framework for religious education across Catholic schools. It did not make mention of arrangements for pupils of other faiths. It nevertheless had been the case for some time that pupils in Roman Catholic schools in some areas, such as some parts of London, included pupils from other faith backgrounds such as the Muslim faith. In 1997, however, the Bishop's Conference published *Catholic Schools and Other Faiths*, which contained guidance but placed a strong emphasis on the maintenance of a Catholic ethos and made no requirement that religious education in Islam be provided. Nevertheless, many Roman Catholic schools have covered Islam and other faiths within their religious education syllabus in accordance with local Diocesan guidance.

Since 2007, governing bodies of all state-maintained schools in England have held a general duty, in conducting the school, to "promote community cohesion".<sup>33</sup> The introduction of this duty prompted, in 2008, guidance for Roman Catholic schools published by the Catholic Bishops' Conference and the Catholic Education Service of England and Wales.<sup>34</sup> The guidance emphasises and promotes the idea that Catholic institutions need to have "dialogue with other faiths" and it addressed "questions which are arising from the increasing numbers of children of other faiths present in our Catholic schools".<sup>35</sup> Rather than enabling pupils from minority faiths to advance their religious knowledge and faith commitment through separate arrangements, the guidance seeks to identify ways in which religious practices and ideals can be used to further knowledge and understanding among the entire school community. For example, it refers to "[g]iving pupils knowledge and opportunity to be aware of one another's religious festivals and celebrations" and "inviting pupils and parents from other faiths to share their beliefs with various members of the school community in an age-appropriate way, along with gatherings where pupils and parents could be addressed by, and meet informally, faith leaders from the local community (e.g. a 'bring and share' supper)".

## **VI. Religious symbols in public schools**

**VI.1. Question: Are religious symbols (e.g. crucifix) in public schools compulsory, allowed, or forbidden?**

**Answer:**

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<sup>32</sup> Bishop's Conference for England and Wales (Catholic Education Service, 1996).

<sup>33</sup> Education Act 2002, s.21(5), inserted by the Education and Inspections Act 2006 s.38(1).

<sup>34</sup> Catholic Education Service, *Catholic Schools and Community Cohesion* (Catholic Education Service for England and Wales, 2008); and *Catholic Schools, Children of Other Faiths and Community Cohesion: Cherishing Education for Human Growth* (Catholic Education Service for England and Wales, 2008).

<sup>35</sup> *Ibid* (*Children of Other Faiths*), p.4.



Religious symbols are not expressly forbidden, but see the discussion of the case law in VI.8 below.

**VI.2. Question: Is a teacher allowed to wear the Islamic headscarf and manifest her religion? Please explain if not allowed on which grounds.**

**Answer:**

The question of employment and employers' policies on the wearing of religious dress would require a very long discussion for proper analysis, but for a teacher the basic position can be stated as this: he or she would normally have a right to wear the headscarf as a manifestation of her belief or cultural background. The position might be different in relation to the niqab (veil covering much of the face). In *Azmi v Kirklees Metropolitan Borough Council*<sup>36</sup> the complainant was employed as a Bilingual Support Worker assisting in helping with teaching support. This meant that she was working in the classroom supporting the main class teacher. She was a devout Muslim. She did not wear a face covering at her job interview, nor was any mention made of her wish to wear it. After she was appointed to the post she asked the school to be allowed to wear the veil when in the presence of a male member of the school staff. However, the school formed the view that wearing the veil reduced her effectiveness in her work. The Employment Appeal Tribunal held, among other things, that the school's requirement that she removed the veil when teaching the children was proportionate, especially since the school would enable her to wear the veil at other times, such as generally when on the school premises.

**VI.3. Question: Is a pupil allowed to wear the Islamic headscarf and manifest her religion? Please explain if not allowed on which grounds.**

**Answer:**

Yes, in relation to the headscarf, since such a restriction could amount to religious or racial discrimination and it would be very difficult for a school to succeed with an argument that such a restriction is in pursuit of a justifiable policy such as to downplay religious differences between pupils in the interests of a harmonious environment. Such an argument was unsuccessful in a case which reached the highest court in the UK in 1993, *Mandla v Dowell Lee*, when a school had sought to ban a Sikh pupil from wearing a turban to school.<sup>37</sup> With regard to other forms of dress, such as the niqab and jilbab, see the case law below.

**VI.4. Question: Who decides on the dress code in schools. Please refer to the law.**

**Answer:**

The school's policy and rules on school uniform will be drawn up by the head teacher in consultation with the school's governing body. Ultimately, the policy falls within the remit of the school governing body with regard to the conduct of the school, its ethos and its disciplinary environment.

**VI.5. Question: Can a pupil and/or a teacher be exempted from the dress code when she considers it her religious duty to wear the Islamic headscarf?**

**Answer:**

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<sup>36</sup> [2007] ELR 339.

<sup>37</sup> [1983] 1 All ER 1062.

As the wearing of the headscarf is not able to be prevented this question does not apply. With regard to other forms of religious dress, see VI.8 below.

**VI.6. Question: Who is the regulatory authority in this sphere?**

**Answer:**

Questions concerning the wearing of school uniform in school, where the governing body is unwilling to accommodate the wearing of a particular form of apparel, would have to be resolved either (i) via complaint to the Secretary of State, who has a power to issue directions to a governing body that is acting in default of its duty or unreasonably (in the sense of acting beyond its powers – *ultra vires*); (ii) through a complaint of religious or racial discrimination in the county court; or (iii) via an application for judicial review in the Queen’s Bench Division (Administrative Court) of the High Court.

**VI.7. Question: What kind of disciplinary measures and proceedings are taken if the pupil or teacher fails to comply with the rules on dress codes?**

**Answer:**

With regard to a teacher, it would fall under the standard disciplinary procedure for employees. In the *Azmi* case (see VI.2 above), the assistant was disciplined for breach of her employer’s instructions.

So far as a pupil is concerned, it would be dealt with under the individual school’s disciplinary policy or rules. However, schools are also required to have regard to the government’s official guidance on behaviour and discipline.<sup>38</sup> This states, among other things, that pupils should not be excluded from school for “breaches of school uniform rules or rules on appearance... except where these are persistent and in open defiance of such rules”.<sup>39</sup>

**VI.8. Question: Please describe the case-law in your country.**

**Answer:**

The case-law on the rights of pupils in respect of school uniform has mostly centred on the Human Rights Act 1998 and European Convention on Human Rights (ECHR), typically involving not only the right to education under Article 2 of Protocol 1 – in particular the recognition of individual religious or philosophical preferences under its second sentence – and Article 9, on religious freedom. The 1998 Act in effect prohibits public authorities (which term includes a state school<sup>40</sup>) in the UK from acting in a way that is incompatible with the Convention rights. It also requires the courts to have regard to Strasbourg case law when interpreting any question before it that concerns a Convention right; and it also requires UK primary and subordinate law to be read and given effect to in a way that is consistent with the Convention and the Strasbourg case law.<sup>41</sup>

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<sup>38</sup> The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 (SI 2002/3178), reg 7(2) (duty on governing bodies and LEAs to have regard to official guidance).

<sup>39</sup> Department for Education and Skills, *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units*, DfES/02017/2006 (DfES, 2006), amended 2007 and updated 2008: <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/>

<sup>40</sup> *Ali v Headteacher and Governors of Lord Grey School* [[2006] UKHL 14, [2006] ELR 223, at 79 (per Baroness Hale).

<sup>41</sup> Human Rights Act 1998, ss 2, 3 and 6.

The most important case to date concerning school uniform in the UK is *R (Begum) v Headteacher and Governors of Denbigh High School* in 2006.<sup>42</sup> Shabina Begum, a Muslim, was aged 15. The pupils at the school she attended came from 21 different ethnic groups and nearly four out of every five classed themselves as Muslim. The school's governing body drew up its school uniform policy in consultation with the local community. It decided to permit the wearing of the shalwar kameeze but not to permit the wearing of the jilbab, which is a full length garment also covering the legs and arms. The school was concerned to prevent pupils from being placed under pressure from others into wearing more extreme forms of religious dress. Miss Begum wore the shalwar kameeze during her first two years at the school but by the age 14 she had formed a commitment to wear the jilbab. When permission to wear the jilbab was not granted by the school she refused to attend school. She contended that by virtue of the school's decision she had been unlawfully excluded contrary to the ECHR Article 2 of Protocol 1 and that her right to manifest her religion under Article 9 had also been violated. Her claim failed in the High Court but she won an appeal to the Court of Appeal, whose decision that was considered to have significant implications for schools. It in effect meant that a number were at risk of being in breach of the 1998 Act and the Court of Appeal had signified that they would need more guidance on their duties under the Act from central government.<sup>43</sup>

The headteacher and governing body appealed to the House of Lords. The House of Lords decided by a majority that there had been no interference with Miss Begum's Article 9 right, since she was free to transfer to a different school in the area which permitted the wearing of the jilbab. (The two minority judges considered that such a transfer would be problematic on social and other grounds and that she did not therefore have complete liberty to move school.) Nevertheless, their lordships were unanimous in agreeing that the school's rules on pupil uniform gave rise to an interference that was justifiable for the purposes of Article 9(2). The House of Lords did not consider that Miss Begum had been excluded from school, since it was her choice to wear the jilbab in contravention of the school's rules and she had the right to return to the school provided wore the approved form of dress.

Crucial to the outcome in *Begum* was the way in which the school had approached the drawing up of its policy on uniform and had applied it. As Lord Bingham said, it "did not reject the respondent's request out of hand: it took advice, and was told that the existing policy conformed with the requirements of mainstream Muslim opinion"; and it "had taken immense pains to devise a uniform policy which respected Muslim beliefs, but did so in an inclusive, unthreatening and uncompetitive way..."<sup>44</sup>

Eleven months after *Begum* came another case concerned with the wearing of Muslim dress at school by a pupil in the pursuit of religious faith: *R (X) v Y School*.<sup>45</sup> This time the pupil in question, X, a Muslim aged 12 years, wanted to wear the niqab (veil) to school. Her two older sisters had previously been pupils at the school and had been permitted to wear the niqab. X contended that as a result she had had a legitimate expectation that she would be able to wear it. This argument was rejected in the High Court by Silber J, in part on the ground that there was a justifiable interference with this expectation. So far as her right under Article 9 of the ECHR was concerned, the court held that there had been no interference since she could attend another local school which permitted the wearing of the jilbab, indeed she had been offered a place there. The court also accepted that there was a justification under Article 9(2) for the restriction. In particular, there was an educational element, since teachers needed to see her face; there was also a social element, as the uniform policy promoted "uniformity and an ethos of equality and cohesion"; and there was a security-related factor, in enabling the school to identify a pupil. The policy

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<sup>42</sup> [2006] UKHL 15, [2006] ELR 273.

<sup>43</sup> *R(SB) v Headteacher and Governors of Denbigh High School* [2005] ELR 198, per Brooke LJ at [82].

<sup>44</sup> Note 42 above, at [33]-[34].

<sup>45</sup> *R (X) v Y School* [2007] EWHC 298 (Admin), [2007] ELR 278.

also aimed to avoid pressure on girls to wear the niqab. The school uniform restriction was considered proportionate.<sup>46</sup>

As in *Begum*, therefore, the court in *X* considered that where the pupil has an ‘exit’ option, in the sense that he or she may receive education elsewhere without being prevented from wearing clothing that was consistent with their religious beliefs, it is unlikely that they will be able to claim an interference with their right to manifest their beliefs for the purposes of Article 9. Moreover, even if there *is* considered to be such an interference, it can be justified within the terms of Article 9(2) with reference to legitimate aims that serve wider social purposes, where the school has adopted a proportional approach.

Two other cases decided subsequently have concerned the wearing of a religious symbol. In the first, *Playfoot*,<sup>47</sup> a 16 year old girl wanted to wear a ring known as the ‘Silver Ring Purity Thing’, as a symbol of her Christian belief in abstinence from sexual intercourse before marriage. The school’s policy on jewellery prohibited all forms of it apart from plain ear studs. The claimant argued that the school’s refusal to permit her to wear it violated her right to manifest her beliefs under Article 9 of the ECHR. She also contended that the school was discriminating against her as a Christian (contrary to Article 9 read with Article 14) because, whilst she could not wear her purity ring, the school permitted Muslim girls to wear head scarves. The first question was whether the wearing of the ring was an expression or manifestation of a religious belief. The court did not consider that it was. Judge Supperstone QC considered that for the purposes of Article 9 the practice, in this case the wearing of the ring, needed to be “intimately linked” to the belief. He did not consider that to be the case here, since she was under no obligation, by virtue of holding the belief, to wear the ring. The court did not accept that the ring was a religious artifact rather than an item of jewellery per se. As in the earlier cases (above), the court also considered that there were alternative means open to the pupil to manifest her belief, so that for the purposes of Article 9 there had been no interference with it. She could, for example, display the purity ring on a key ring or by attaching it to her bag.

There is also a consistency with the earlier cases in how the court identified, for the purposes of Article 9(2), a justification for the interference. The school’s policy aimed to foster “the school identity and an atmosphere of allegiance, discipline, equality and cohesion”; children were to “learn in an environment which minimises the pressures which result from marking differences on grounds of wealth and status”; the policy “reduces the risks from bullying at school, which may arise where social pressures develop around clothes and jewellery through peer expectations”; it also “assists in promoting the highest standards of achievement in all aspects of a young girl’s life”; and there were health and safety reasons for not allowing jewelry to be worn.<sup>48</sup> The court also rejected the argument that there had been religious discrimination, concluding that the school did not practise blanket discrimination against Christians, since it had permitted a member of the Plymouth Brethren to wear a scarf. The judge found that the school had considered individual circumstances carefully and had been sensitive to individual religious needs where human rights were at issue, for example by permitting a Muslim girl to wear a headscarf and two Sikh girls to wear a Kara bangle.

The wearing of the Kara was in fact the subject of the second case concerned with a pupil wishing to wear a religious symbol, *Watkins Singh* in 2008.<sup>49</sup> This case was mostly argued under UK statute law, although Article 8 of the ECHR (the right to respect for privacy and family life) was also invoked. The claimant was a 14 year old girl. She followed the Sikh religion and in pursuit of it wished to wear the Kara to

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<sup>46</sup> Ibid, at [78].

<sup>47</sup> *R (Playfoot) v Governing Body of Millais School* [2007] EWHC 1698 (Admin), [2007] ELR 484.

<sup>48</sup> Ibid, at [36].

<sup>49</sup> *R (Watkins-Singh) v Governing Body of Aberdare Girls’ High School and Rhondda Cynon Taf Unitary Authority* [2008] ELR 561.

school. The school had a similar policy to the school in *Playfoot* (above), banning all jewellery apart from plain ear studs but permitting the wearing of a wrist watch. The school's view was that if the claimant would be permitted to wear the Kara it would give rise to discrimination against other, Christian, pupils who were not permitted to wear a cross. The school contended that wearing the Kara was "roughly similar" to wearing the Welsh flag: "something which engenders emotion, perhaps strong emotion but is not something which either her religion or culture requires her to wear". The claimant was told that she could attend school wearing the Kara but only if she was segregated from the other pupils and taught separately. This, she later claimed, had upset her and violated her right to private and family life for the purposes of Article 8 (a facet of her claim that the court subsequently rejected due to evidence that she was reasonably content at school notwithstanding the segregation, although she may have been unhappy at home<sup>50</sup>). Meanwhile, a school panel refused her request for exemption from the no-jewellery policy, on the grounds that it did not consider that it was a religious requirement for her to wear the Kara on her wrist; that if she was singled out for exemption she might be bullied by some of her peers; and there were health and safety reasons for the ban. After a further attempt to secure an exemption and after further fixed term exclusions, the pupil was informed that she could not attend school if she wore the Kara.

The girl pursued an application for judicial review in the High Court. Although part of her claim concerned the exclusion processes followed by the school, the critical issues surrounded the claim that the girl had been subjected to indirect unlawful racial and religious discrimination and that the school had failed in its duty under the Race Relations Act 1976 to promote racial harmony. In order for there to be discrimination there had to be "a particular disadvantage" or a "detriment" suffered through being prevented from wearing the Kara. Silber J said that it was not necessary, in order to establish that there was such a disadvantage or detriment, for the wearing of the Kara to be *required* by the religion in question. It would be sufficient if –

"(a) [the] person genuinely believed that wearing it was of *exceptional* importance to his or her racial identity or his or her religious belief; and (b) the wearing of this item can be shown objectively to be of *exceptional* importance to his or *her religion or race*." <sup>51</sup>

The court considered that on the facts of the case both (a) and (b) were satisfied in relation to the wearing of the Kara by the claimant.

The court also differentiated between the Kara in this case and the apparel in question in *Begum, X* and *Playfoot*. In contrast to the niqab and the jilbab, the Kara was, according to Silber J, very small and unostentatious – 50mm wide and not visible if the claimant had long sleeves. Therefore many of justifications for the restrictions on dress which the courts had accepted in the earlier cases were inapplicable where the Kara was concerned. Even the health and safety argument did not hold sway, since the pupil was willing to remove the bangle or cover it over securely in circumstances where health and safety might an issue. The court also refused to accept the argument that permitting the girl to wear the Kara would prevent bullying or avoid the difficulty in trying explain such a exception to pupils. Bodies such as schools had an obligation to remove tensions not by seeking to downplay pluralism but by promoting tolerance. They were under a duty under UK law, when carrying their functions, to have "due regard to the need... to promote equality of opportunity and good relations between people of different racial groups". <sup>52</sup>

Silber J also offered some interesting comments about the role of a school in a pluralistic society:

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<sup>50</sup> Ibid at [131]-[137].

<sup>51</sup> Ibid at [56B], judge's emphasis.

<sup>52</sup> Ibid at [81] and [82], referring to the Race Relations Act 1976, s.71.

“[T]here is a very important obligation imposed on the school to ensure that its pupils are first tolerant as to the religious rites and beliefs of other races and other religions and second to respect other people’s religious wishes. Without those principles being adopted in a school, it is difficult to see how a cohesive and tolerant multicultural society can be built in this country. In any event, insofar as the intention of the uniform policy is to eliminate bullying, there is no rational connection between this objective and eliminating signs of difference.

“This shows clearly first that the defendant and the school should not have sought to remove the potential cause of tension by refusing to allow the claimant to wear the Kara, but second that instead it should have taken steps to ensure that the other pupils understood the importance of wearing the Kara to the claimant and to other Sikhs so that they would then tolerate and accept the claimant when wearing the Kara”.<sup>53</sup>

The above cases have demonstrated the issues that schools need to weigh up when determining their school uniform policies. An outright ban on all religious dress is unlikely to be upheld by the courts in the UK, and while restrictions may be considered lawful where there are cogent justifications based on the pursuit of aims which are legitimate and serve wider social interests, the courts will expect schools to have considered the matter carefully and consulted appropriately among the communities they serve. Schools are also likely to be expected to have had regard to the government’s guidance on school uniform policies, whose publication seems, at least in part, to have been prompted by the above cases. It recommends wide consultation by schools in drawing up their school uniform policies and that schools document the consultation process that they have carried out.<sup>54</sup> The guidance also emphasizes that schools must have regard to the Human Rights Act and anti-discrimination legislation. With regard to the factors that might outweigh the needs of individual pupils, the guidance identifies: health and safety; security (capacity to identify pupils easily); teaching and learning (face covering hinders teacher’s capacity to judge pupil’s engagement with learning etc); protection from external pressure to wear particular form of clothing; the desirability of promoting a strong, cohesive, school identity and also a sense of identity among pupils; the need to “promote harmony” between different groups. These are factors that were variously accepted as legitimate by the courts across the above cases.

## **VII. After-school education in private religious institutions. Islamic instruction organised after the school hours (age 6-18)**

### **VII.1. Question: Is there any form of Islamic teaching (for children and youngsters of age 6-18) in your country organised after school time in private religious institutions:**

#### **Answer:**

Religious institutions commonly organize religious classes for children. There are three forms of what are described as ‘supplementary schools’ known as ‘madrassas’ operating in the UK: the largest group comprises classes run by local mosques; secondly, there are madrassas run by local volunteers in hired community centres or school halls; and thirdly there are informal classes which are held in people’s private homes.<sup>55</sup>

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<sup>53</sup> At [84] and [85].

<sup>54</sup> Department for Education, *Guidance for schools on school uniform and related policies* (2011 edition) <http://www.education.gov.uk/schools/leadership/school ethos/a0014144/guidance-for-schools-on-school-uniform-and-related-policies> [accessed 27 April 2011].

<sup>55</sup> Reported in M. Cherti, A. Glennie and L. Bradley, “Madrassas” in *the British media* (IPPR, 2011) <http://www.ippr.org.uk/publicationsandreports/publication.asp?id=805> [accessed 27 April 2011].

**VII.2. Question: Is there any form of Islamic teaching in your country organised in primary education age (6-12)**

**Answer:**

See II above.

**VII.3. Question: Is there any form of Islamic teaching in your country organised in secondary education age (12-18)**

**Answer:**

See II above.

**VII.4. Question: How many such institutions are there in your country providing Islamic instruction organised after the school hours?**

**Answer:**

One report, by the Muslim Parliament of Great Britain, indicates that there were approximately 700 madrassas, some with as many as 500 pupils.<sup>56</sup> Another report states that according to the Mosques and Imams' National Advisory Board there are approximately 2,000 madrassas in the UK which are known to local authorities.<sup>57</sup> Unofficial madrassas operated in people's homes are additional to this number.

**VII.5. Question: How many children take part in the activities of Islamic instruction organised after the school hours?**

**Answer:**

There are no official data on the overall numbers of children who receive such instruction. According to a report in *The Times*, at the end of 2008, there were an estimated 200,000 children in Great Britain attending madrassas on weekday evenings.<sup>58</sup> It is reported that in one city with a substantial Muslim population, Leicester, 80-90 per cent of local Muslim pupils or students attend a local madrassa.<sup>59</sup>

**VII.6. Question: How is the pedagogical quality of Islamic instruction organised after the school hours safeguarded?**

**Answer:**

The pedagogic quality of the education provided in madrassas is not subject to external regulation. Child protection legislation applies, however, and the Independent Safeguarding Authority is to maintain a list of people who are barred from working with children.<sup>60</sup> Health and safety laws also apply. However, these safeguards are not guaranteed in arrangements in private homes. According to a recent report by the independent Institute for Public Policy Research (IPPR): "Since so many madrassas in the UK operate

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<sup>56</sup> [http://www.muslimparliament.org.uk/Childprotect\\_MuslimWeekly.html](http://www.muslimparliament.org.uk/Childprotect_MuslimWeekly.html) [accessed 8 October 2008].

<sup>57</sup> 'Call for more checks on madrassas' <http://news.bbc.co.uk/1/hi/education/8305318.stm> [accessed 27 April 2011].

<sup>58</sup> R. Kerbaj, 'Teachers "beat and abuse" Muslim children in British Koran class', *The Times Online*, 10 December 2008: <http://www.timesonline.co.uk/tol/comment/faith/article5315021.ece> [accessed 27 April 2011].

<sup>59</sup> M. Cherti, A. Glennie and L. Bradley, "Madrassas" in *the British media* (IPPR, 2011) <http://www.ippr.org.uk/publicationsandreports/publication.asp?id=805> [accessed 27 April 2011], p.2.

<sup>60</sup> See the Safeguarding Vulnerable Groups Act 2006 as amended by the Police and Crime Act 2009.

privately and are not subject to public oversight, the government has a fairly limited ability to regulate the way in which they are run”.<sup>61</sup>

**VII.7. Question: How would you characterize the public debate about this form of Islamic instruction organised after the school hours?**

**Answer:**

The public debate about Islamic instruction outside the framework of state or regulated private education has focussed on the need for greater regulation to ensure suitable standards of provision and to prevent extremist views being promoted to children and young people. It has also encompassed the issue of whether participation in madrassas has a negative impact on community cohesion. In the case of unofficial madrassas operated in private homes there is an additional concern about child welfare, such as the risk of physical punishment.<sup>62</sup> The British media have generally presented a negative view of madrassas and this seems to have influenced the tenor of public debate. A report by the IPPR has, however, commented that media coverage may not be presenting a wholly accurate picture and that there is a lack of objective evidence on madrassas and their local impact, including on the radicalisation of young people.<sup>63</sup> The IPPR is currently conducting an independent study of madrassas which is due to report in September 2011. The IPPR says that “In general, government initiatives to engage with or support madrassas remain fragmented and often reactive to either child protection or security concerns.”<sup>64</sup>

**VIII. Additional comments**

**XI. Bibliography**

*Literature on this topic*

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<sup>61</sup> M. Cherti, A. Glennie and L. Bradley, “Madrassas” in *the British media* (IPPR, 2011)

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<sup>62</sup> See note 57 above. See also R. Kerbaj, ‘Teachers “beat and abuse” Muslim children in British Koran class’, *The Times Online*, 10 December 2008: <http://www.timesonline.co.uk/tol/comment/faith/article5315021.ece> [accessed 27 April 2011].

<sup>63</sup> M. Cherti, A. Glennie and L. Bradley, “Madrassas” in *the British media* (IPPR, 2011)

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<sup>64</sup> *Ibid*, p.3.