

Submission to NCCA consultation on Junior Cycle Religious Education

This is a joint submission made to the NCCA consultation process on Junior Cycle Religious Education from:

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1. Introduction

The second level Religious Education course under the Curriculum has contributed to the undermining of the human rights of parents and their children. Any review of this State Religious Education Course must begin by acknowledging the fact that this State RE course disrespects minorities and undermines their human rights.

The Religious Education course claims that it is suitable for all religions and none. But it is not delivered in an objective, critical and pluralistic manner in any school, and it is delivered through the ethos of the schools. This disrespects the religious or philosophical beliefs of minority faith or atheist families. The course does not meet human rights standards, and therefore is not inclusive and open to all.

1.1 The course should be renamed ‘Education about Religions and Beliefs’

By describing the course as a ‘Religious Education’ course, the content is not framed in an inclusive way in accordance with human rights principles. The State curriculum should teach about religions and beliefs, in an objective, critical and pluralistic manner, but it should not teach that any religious or atheistic belief is true.

The European Court of Human Rights Guide to Article 9, on Freedom of thought, conscience and religion states:

“The importance of Article 9 of the Convention in a democratic society

10. Freedom of thought, conscience and religion as enshrined in Article 9 of the Convention represents one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (Kokkinakis v. Greece, § 31; Buscarini and Others v. San Marino [GC], § 34).

Convictions protected under Article 9

14. The word “religion” is defined neither by the text of Article 9 nor in the Court’s case-law. This omission is quite logical, because such a definition would have to be both flexible enough to embrace the whole range of religions worldwide (major and minor, old and new, theistic and non-theistic) and specific enough to be applicable to individual cases – an extremely difficult, indeed impossible undertaking. On the one hand, the scope of Article 9 is very wide, as it protects both religious and non-religious opinions and convictions. On the other hand, not all opinions or convictions necessarily fall within the scope of the provision, and the term “practice” as employed in Article 9 § 1 does not cover each act which is motivated or influenced by a religion or belief (Pretty v. the United Kingdom, § 82).

15. If a personal or collective conviction is to benefit from the right to “freedom of thought, conscience and religion” it must attain a certain level of cogency, seriousness, cohesion and importance. Provided this condition is satisfied, the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (Eweida and Others v. the United Kingdom, § 81). Therefore, it is not the Court’s task to determine what principles and beliefs are to be considered central to any given religion or to enter into any other sort of interpretation of religious questions (Kovaļkovs v. Latvia (dec.), § 60).”

The curriculum for the revised course should recognise the nuances of paragraphs 10 and 14 above of the European Court of Human Rights Guide to Article 9, in particular that:

“Freedom of thought, conscience and religion... is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned...”

On the one hand, the scope of Article 9 is very wide, as it protects both religious and non-religious opinions and convictions. On the other hand, not all opinions or convictions necessarily fall within the scope of the provision...”

Religious and moral education

One of the main aims of the course is to contribute to the moral and spiritual development of students through religious education. The State curriculum should teach about ethics separately from teaching about religions or beliefs. The Irish Constitution makes clear that it is the family who has the duty to provide a religious and moral education, and that the State has a duty to ensure the provision of a moral education, but not a religious education.

“Article 42.1 The State acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

2° The state shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.”

Therefore, if the State curriculum delivers moral education through Religious Education, and if minority faith or atheist parents exercise their constitutional right to opt their children out of that Religious Education, then the State is failing in its duty to ensure that such children receive a minimum level of moral education.

Religious and non-religious convictions

Another aim is “appreciating the richness” of religious traditions but merely “acknowledging” the non-religious interpretation of life. This phrasing applies a broad brush simplicity to both “the richness of religious traditions” (as some religious traditions are richer than others, and they can each have positive and negative impacts), and “the non-religious interpretation of life” (as there are many non-religious interpretations of life, and again some of them are richer than others, and again they can each have positive and negative impacts).

1.2 The course does not respect parents’ philosophical convictions

The European Court has already defined what respecting parents’ religious and philosophical convictions means. It is from the Folgero case:

“(c) Article 2 of Protocol No. 1 does not permit a distinction to be drawn between Religious Instruction and other subjects. It enjoins the State to respect parents’ convictions, be they religious or philosophical, throughout the entire Education State education programme (see Kjeldsen, Busk Madsen and Pedersen, cited above, p. 25, §51). That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the “functions” assumed by the State. The verb “respect” means more than “acknowledge” or “take into account”. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State. The term “conviction”, taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see Valsamis, cited above, pp. 2323-24, §§ 25 and 27, and Campbell and Cosans, cited above, pp. 16-17, §§ 36-37).”

1.3 The course does not respect the right to privacy

The NCCA is also not taking into account the right to privacy under the European Convention. In order to take the course, families must reveal their religious or philosophical convictions.

The European Court stated in the Grzelak case that:

“86. In democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on freedom of thought, conscience and religion in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected (see Kokkinakis, cited above, § 33). The Court has frequently emphasised the State’s role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and stated that this role is conducive to public order, religious harmony and tolerance in a democratic society (see Leyla Şahin v. Turkey [GC], no. 44774/98, § 107, ECHR 2005 XI).

87. The Court reiterates that freedom to manifest one’s religious beliefs comprises also a negative aspect, namely the right of individuals not to be required to reveal their faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not they have such beliefs (see, Alexandridis v. Greece, no. 19516/06, § 38, ECHR 2008 ..., and, mutatis mutandis, Hasan and Eylem Zengin v. Turkey, no. 1448/04, § 76 in fine, ECHR 2007 XI). The Court has accepted, as noted above, that Article 9 is also a precious asset for non-believers like the third applicant in the present case. It necessarily follows that there will be an interference with the negative aspect of this provision when the State brings about a situation in which individuals are obliged – directly or indirectly – to reveal that they are non-believers. This is all the more important when such obligation occurs in the context of the provision of an important public service such as education.”

“92. The Court takes the view that the provisions of the Ordinance which provide for a mark to be given for “religion/ethics” on school reports cannot, as such, be considered to infringe Article 14 taken in conjunction with Article 9 of the Convention as long as the mark constitutes neutral information on the fact that a pupil followed one of the optional courses offered at a school. However, a regulation of this kind must also respect the right of pupils not to be compelled, even indirectly, to reveal their religious beliefs or lack thereof.

93. The Court reiterates that religious beliefs do not constitute information that can be used to distinguish an individual citizen in his relations with the State. Not only are they a matter of individual conscience, they may also, like other information, change over a person’s lifetime.”

It is clear from the above that the State Religious Education course leaves a lot to be desired in relation to respecting the rights of minorities.

1.4 The State course is combined with Catholic Religious Instruction and Worship

When developing this course the NCCA were aware that nearly all schools would combine the State course with Catholic Religious Instruction and Worship. In many schools this course is compulsory, and it is hard for us to believe that the NCCA did not realise that this would happen. This is especially so given the obligation under Section 41–3 (d) of the Education Act 1998. The practical result of the introduction of this course is that many schools have made religion compulsory.

This is happening not only in schools under the Patronage of the Catholic Church, but also in State ETB schools. The Minister for Education has recently said that all ETB Schools and Colleges are multi-denominational. Despite this claim, all ETB schools have Catholic Religious Instruction and Worship, and combine this with the State Religious Education course. At the time that this State RE course was developed, the NCCA were aware that would not be enough time in the curriculum for Catholic Religious Instruction and the State Course.

To illustrate this, we attach two sample Religious Education policies, one from a designated community college, and the other from a non-designated community college.

The European Court has already found that differentiated teaching could hardly be considered consonant with the parents' right to respect for their convictions.

From the Folgero case:

“100. In light of the above, the Court finds that the system of partial exemption was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life and that the potential for conflict was likely to deter them from making such requests. In certain instances, notably with regard to activities of a religious character, the scope of a partial exemption might even be substantially reduced by differentiated teaching. This could hardly be considered consonant with the parents' right to respect for their convictions for the purposes of Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9 of the Convention. In this respect, it must be remembered that the Convention is designed to “guarantee not rights that are theoretical or illusory but rights that are practical and effective” (see *Öcalan v. Turkey* [GC], no. 46221/99, § 135, ECHR 2005-).”

Given the legal framework in Ireland, and the fact that we have direct experience of the existing Religious Education course, we reiterate our request that our right to exempt our children from this course is recognised and guaranteed.

From the Toledo Guiding Principles:

“The state may satisfy this duty of neutrality either by designing a curriculum that is itself sufficiently impartial and balanced, or, in those instances in which the state provides instruction in a particular religion or belief, by granting rights to opt out on the ground of conscientious objection. This right must be realisable in practice, and not a mere theoretical possibility. Moreover, the requisite neutrality would be compromised if pupils were subjected to any disadvantage, discrimination or stigma on account of the exercise of this right to be exempted from such classes, or elements of classes”.

We cannot see how this review will promote respect for our human rights, given the fact that the NCCA has no power to ensure that schools deliver this course in an objective, critical and pluralistic manner and in accordance with the Toledo Guiding Principles and human rights law.

The Catholic Church has rejected the Toledo Guiding Principles and they have control over the ethos (Characteristic Spirit) of the vast majority of schools in the country.

2. The NCCA has a legal obligation to promote human rights

The NCCA is an ‘organ of the state’ and as such under the European Convention on Human Rights Act 2003 is obliged to do the following:

Section 3.—(1) Subject to any statutory provision (other than this Act) or rule of law, every organ of the State shall perform its functions in a manner compatible with the State’s obligations under the Convention provisions.

In the Action Plan submitted by Ireland to the Council of Europe in the Louise O’Keeffe case, it stated that:

“Section 3(1) of the European Convention on Human Rights Act 2003 requires an organ of State (defined as a body established by law or through which any of the legislative, executive or judicial powers of the State are exercised) to perform its functions in a manner compatible with the State’s obligation under the Convention provisions.

Organs of the State include Government Departments such as the Department of Education and Skills, the Health Service Executive, the Child and Family Agency and the police force, An Garda Síochána. Therefore, by way of further protection for such a litigant, Section 3(2) of the 2003 Act provides that a person who has suffered injury, loss or damage as a result of a contravention of subsection (1), may, if no other remedy in damages is available, institute proceedings to recover damages in respect of the contravention.

This specific right of action relates to any State failing from 31st December 2003 when the Act came into operation. Section 2 of the Act requires courts when interpreting and applying any statutory provision or rule of law, in so far as is possible, subject to the rules of law relating to such interpretation and application, to do so in a manner compatible with the State’s obligations under the Convention.”

It is clear that as an ‘organ of the state’, the NCCA must uphold the State’s obligations under the European Convention. The NCCA has no option but to recommend the revised Religious Education course be delivered in an objective, critical and pluralistic manner as per Article II of Protocol 1 of the European Convention.

The NCCA has no legal power to oblige schools to deliver the revised Religious Education course in a manner compatible with the European Convention. However, the NCCA does have a legal obligation to recognise, acknowledge and make Recommendations on the changes needed to ensure human rights are respected and protected in all our schools.

2.1 The Irish Human Rights and Equality Commission has a statutory function in relation to public bodies such as the NCCA

The Irish Human Rights & Equality Commission has made the following recommendations in relation to the delivery of the state curriculum. In their Report on Religion & Education; A Human Rights Perspective they recommended that:

“Section 15 of the Education Act should be amended to provide for modifications to the integrated curriculum to ensure that the rights of minority faith or non faith children are also recognised therein. In this regard, the State must take sufficient care that information and knowledge included in the curriculum is conveyed in an objective, critical and pluralistic

manner with the aim of enabling pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism.”

They also stated that:-

“The key phrase here is the requirement on the State to take “sufficient care that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No 1. The meaning of the term “objective, critical and pluralistic” is repeated throughout the Court’s case law. As stated, its purpose is to enable pupils to develop a critical mind with regard to religion in a calm atmosphere which is free of any misplaced proselytism.”(para 256, p 83)

The IHREC recommended in their submission on the Education (Admissions) to Schools Bill that:

“The Commission recommends that the new section 62(6) to be inserted into the Education Act should be amended to the effect that, in setting out the characteristic spirit and general objectives of the school, outside the specific context of faith formation and Religious Instruction which parents wish to avail of and where exemptions apply, regard shall be had to providing information in relation to religion in an objective, critical and pluralistic manner that avoids indoctrination.”

The Irish Human Rights & Equality Commission is a statutory body set up under the Irish Human Rights and Equality Act 2014. The statutory purpose of the Commission is to:

“(a) to protect and promote human rights and equality,
 (b) to encourage the development of a culture of respect for human rights, equality, and intercultural understanding in the State,
 (c) to promote understanding and awareness of the importance of human rights and equality in the State.”

The Irish Human Rights and Equality Commission has a statutory function in relation to public bodies such as the NCCA (see Section 42 – 3,4 Human Rights & Equality Commission Act 2014). The NCCA are obliged under the Act to set out in their strategic plan an assessment of the human rights and equality issues it believes are relevant to the functions and purpose of the body. The NCCA are also obliged to show policies, plans and actions that are to be put in place to address those issues.

We have been unable to locate any policies or plans in relation to how the NCCA will, as an organ of the state address its obligation to uphold human rights.

2.2 The NCCA has legal obligations under the Education Act 1998

Section 41 – 3 (d) of the Education Act 1998 obliges the NCCA in carrying out its functions to:

“have regard to the practicalities of implementation of any advice which it proposes to give to the Minister.”

The practicalities of giving advice to the Minister in relation to the revised new Religious Education course means that the NCCA must ensure that any advice highlights the difficulties in relation to protecting the human rights of all in the education system. The NCCA cannot just ignore the human rights issues in relation to the implementation of the course.

The NCCA must recognise the fact that the statutory body established to uphold human rights in the country, IHREC, has made recommendations in relation to the delivery of the curriculum in an objective, critical and pluralistic manner in order to uphold human rights.

Those recommendations are about amending the Section 15 of the Education Act 1998 and they do not refer to the Inspectorate (Section 13 (1) of the Education Act 1998).

The School Inspectorate cannot ensure that the delivery of the revised Religious Education is delivered in an objective, critical and pluralistic manner.

This issue also arose with the proposed ERB and Ethics course. Why would IHREC have made recommendations to amend the Education Act 1998 to ensure that the ERB and Ethics curriculum was delivered in an objective, critical and pluralistic manner if the School Inspectorate could have guaranteed that this would happen?

This is a fundamental issue that the NCCA must deal with as it relates to human rights and the obligations of the NCCA under the European Convention on Human Rights Act 2003 and the Irish Human Rights & Equality Commission Act 2014.

The only way of ensuring compliance with human rights obligations and the European Convention is to amend the Education Act 1998 as per the Recommendations from the Irish Human Rights and Equality Commission.

3. Some observations on the NCCA background paper

3.1 The NCCA background paper and Human Rights

The NCCA background paper for this consultation acknowledges the importance of the human rights dimension. For example, it states:

“The Education Act of 1998 paved the way for the State’s involvement in religious education. This amendment marks the beginning of the shift from understanding the teaching and learning of religion as a solely ecclesial task to appreciating its role in educating for diversity, human rights, active citizenship and democracy and therefore a legitimate activity of the State.” (Page 8)

“The Council of Europe situates its policies on teaching about religions and non-religious convictions within its work on intercultural education, human rights education and education for democratic citizenship.” (Page 27)

“Work undertaken by the Office for Security and Cooperation in Europe (OSCE) with the ODIHR in producing the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools (2007) is also noteworthy. These Guidelines, which are for public schools without a denominational ethos, situate teaching about religion in the context of a human

rights framework and a commitment to religious freedom and are most usefully seen as providing minimum criteria for the provision of teaching religion in order to promote democratic citizenship, mutual understanding and the common good. The two core principles underpinning the document are: (i) there is positive value in teaching that emphasises respect for everyone's right to freedom of religion and belief, (ii) teaching about religions and beliefs is important for understanding literature, culture, one's own particular religion, and therefore should be part of the school curriculum." (Page 27/28)

"The REDCo Project identified a number of key priorities for the R.E. classroom: facilitating respectful dialogue in the classroom, establishing classrooms as 'safe spaces' for dialogue, engaging with competing truth claims, and helping young people to analyse media representations of religions. The project concluded that R.E. can make an important contribution to personal development, intercultural understanding, democracy and human rights." (Page 29)

"Since 2002, the debate in Europe about the place of religious education within the curriculum has been spearheaded by the Council of Europe which situates its policies on teaching about religions and non-religious convictions within its work on intercultural education, human rights education, and education for democratic citizenship." (Page 31)

"Some recent publications that both reflect and influence the public debate surrounding religious education in a more diverse Ireland are the Irish Human Rights Commission's Religion and Education: A Human Rights Perspective (2011)" (Page 34)

The background paper simply refers to these human rights issues, but it does not address how the revised Religious Education course will comply with human rights requirements.

3.2 The NCCA background paper and Morality and Spirituality

The NCCA background paper for this consultation typically refers to morality by linking it to spirituality.

While religious families may link these two concepts on a personal faith basis, the State should not do so in a universal way for all students. Doing this does not respect the philosophical convictions of atheist or minority faith secular families, particularly when delivered through a Roman Catholic ethos.

Also, the aims of Junior Certificate Religious Education include "appreciating the richness" of religious traditions but merely "acknowledging" the non-religious interpretation of life.

Here are some examples:

"The State assumes that religious education has something to contribute to the development of the student and the State is committed to ensure that 'all students, in accordance with their abilities' should have 'formative experiences in moral, religious and spiritual education'" (Page 6)

"The aims of Junior Certificate Religious Education include: To appreciate the richness of religious traditions and to acknowledge the non-religious interpretation of life; To contribute to the spiritual and moral development of the student. (Syllabus p.5)" (Page 10/11)

“The Introduction to the Primary School Curriculum offers the following rationale for inclusion of RE in the primary curriculum: The spiritual dimension is a fundamental aspect of individual experience, and its religious and cultural expression is an inextricable part of Irish culture and history. Religious education specifically enables the child to develop spiritual and moral values and to come to a knowledge of God.” (Page 13)

“The views of students and teachers in Ireland, outlined in section 3.2 and 3.3 above, suggests that students value the opportunities for space to reflect on their own spiritual and moral development. This is mirrored in international research which suggests that ‘spiritual development is an active process among the majority of youth across diverse religious and cultural backgrounds, with most having spiritual development unfold without particularly strong engagement in explicitly religious or spiritual practices’.” (Page 30)

“Religious Education is well placed to make a specific contribution to the spiritual and ethical wellbeing of students as it provides explicit opportunities for space to engage with as well as reflect on their own spiritual and moral development.” (Page 32)

3.3 The NCCA background paper and School Patronage

Section 6 of the background paper has some very mixed messages. On the one hand it says that the development of the new specification will consider various issues including:

“That the student:

Has an awareness of personal values and an understanding of the process of moral decision making (SoL 5)

Appreciates and respects how diverse values, beliefs and traditions have contributed to the communities and culture in which she/he lives (SoL 6)

Values what it means to be an active citizen, with rights and responsibilities in local and wider contexts (SoL 7) (Page 40)

“How the specification can be relevant to students, allowing students to bring their own interests and questions to the academic study of religion and reflect on its meaning for their lives.”

“The role of Religious Education in building understanding about and respect for the diverse nature of religion and beliefs in contemporary Ireland and in the wider world.”

“How Religious Education can equally recognise, value and contribute to the experience of students from a plurality of religious traditions and cultures as well as those students who hold a non-religious worldview.” (Page 41)

On the other hand, the same section says that the development of the new specification will consider:

“How the specification can be flexible and sensitive to accommodate a range of school contexts and forms of patronage.”

“How the specification can enable students and teachers to adopt an enquiring, thoughtful, critical and reflective approach to the study of Religious Education leading to education about religion and from religion.” (Page 41)

In practical terms, if the specification is going to accommodate the ethos of the Roman Catholic Church, none of the positive universal aspirations will actually happen. If Patron bodies are allowed to teach the curriculum 'from religion' with a Roman Catholic ethos accommodated, then the human rights of minority faith and atheist families will continue to be undermined.

4. Attachments

We attach two sample RE policies, one from a designated community college, and the other from a non-designated community college.