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**Subject:** Re: BHA Press Release: High Court agrees to hear first ever legal challenge to new 'faith' schools because of religious discrimination

**Importance:** High

A High Court judge has this week approved an application for judicial review of a decision to approve for opening two Voluntary Aided (VA) Catholic schools in the London Borough of Richmond-upon-Thames. The case was filed jointly by the British Humanist Association (BHA) and Richmond Inclusive Schools Campaign (RISC), and will now be heard at the High Court, assuming that a reasonable cost cap can be negotiated. The case represents the first time a decision to approve a 'faith' school has been legally challenged because of religious discrimination.

[A new law](#) that came into force on 1 February states that 'If a local authority in England think a new school needs to be established in their area, they must seek proposals for the establishment of an Academy' (which in this context, means a Free School). Proposals then compete against each other in a form of competition adjudicated by the Department for Education (DfE).

However, on 24 May, Richmond Council approved the two Voluntary Aided Catholic schools to open outside of competition, arguing that the two schools (upon which it has spent in the region of £10 million) are not 'needed' – only 'wanted' or 'desired'. This was despite the Council having previously been repeatedly clear that the schools are needed.

On 9 February, the Council informed RISC that it believed it was within its rights to approve the VA schools without first seeking proposals for Academies. On this basis, on 29 March, solicitors acting on behalf of the BHA and RISC [sent a pre-action letter before claim](#) challenging the legitimacy of the Council's position taken on 9 February.

In their reply, the Council argued that this was premature, as the decision had not yet been made on what to do with the site or whether to approve the proposed Catholic VA schools. The BHA and RISC decided to accept this.

On the 24 May, the Council formally decided to approve both schools and give them the site. As a result, and after reviewing the decision, the BHA and RISC sent another letter before challenge in early June. However, this time the challenge was on two grounds: firstly, that the Council had failed to comply with the new legal requirement to seek bids for a Free School when a school is needed; and secondly, if the Council is correct in arguing that the schools are not needed, it failed to consult properly on the matter. This second ground is because the Council's consultation [sets out that](#) the schools are, indeed, needed, and it was in part on the basis of the results of the consultation that the Council approved the schools.

In accepting the BHA and RISC's application for judicial review, Judge Ockleton of the High Court argued that 'Despite what the defendant [the Council] says it seems to me that it is arguable that [the consultation](#) was based on a decision that provision was necessary: see in particular the bullet points "Number of School Places" under both "Key Issues" and "The Council's position to date". If that is right section 6A [the new law] was engaged.'

The judge also rejected the Council's argument that the BHA and RISC were too late to challenge the consultation because it was launched over three months ago, and so the time limit for bringing a judicial review had run out: 'A claim based on the legality of a decision taken on 24 May 2012 does

not appear to be out of time given the steps taken since; if section 6A applied, or if the consultation mis-stated the Council's position, [then the] decision was arguably unlawful.'

The judge also granted the BHA and RISC's request that the case be expedited, so that the case can be concluded before the deadline for applications to schools in Richmond for pupils starting in September 2013. This means the case should be heard before 31 October. However, the BHA and RISC are first seeking to establish a reasonable cost limit, in line with what their solicitors believe the case will cost, to prevent the Council from attempting to charge an unreasonable amount and price the BHA and RISC out of the case.

BHA Chief Executive Andrew Copson commented, 'When proposing to establish new state-funded schools, religious groups largely avoid competition with other proposals and instead usually arrange directly with councils to open schools "by the back door", leaving the public with no other choices. When such an arrangement has been reached, proposed "faith" schools have had a 100% success rate in subsequently opening.

'It is time to challenge this practice and attempt to redress the imbalance in the routes through which "faith" schools and other schools can open. Otherwise, the number of discriminatory state-funded religious schools will continue to increase disproportionately to parental demand for such schools, which surveys consistently show is actually much lower than religious groups would have us believe.'

RISC spokesman Jeremy Rodell said, 'The Court agreed with us that the Council's decision to give the Clifden Road site to the church for exclusive Voluntary Aided Catholic schools may be unlawful under the Education Act 2011. Assuming we can secure a reasonable limit on costs, it will now be decided by a Judicial Review. That's good news for the thousands of people in the borough who think that it's wrong to use the only currently-available site for a state-funded school that can turn away local children simply because of their parents' beliefs, especially when there's so much competition for high quality secondary school places.'

## Notes

For further comment or information contact BHA Chief Executive Andrew Copson on 07534 248596 or at [andrew@humanism.org.uk](mailto:andrew@humanism.org.uk).

Read the Consultation with Richmond upon Thames residents on use of the Clifden Road site, Twickenham, which is the basis of the BHA and RISC's second grounds of challenge:  
[http://www.richmond.gov.uk/consultation\\_on\\_use\\_of\\_clifden\\_road\\_site\\_january-march\\_2012.pdf](http://www.richmond.gov.uk/consultation_on_use_of_clifden_road_site_january-march_2012.pdf)

Read the new rules on school organisation, introduced by the Education Act 2011:  
<http://www.legislation.gov.uk/ukpga/2011/21/schedule/11/enacted>

Surveys consistently show that the public do not want state-funded religious schools, and that religion is not a factor for many parents in choosing which school to send their children to:

- A 2010 survey by ICM for Channel 4 found 59% of the public stating that 'Schools should be for everyone regardless of religion and the government should not be funding faith schools of any kind':  
[http://www.icmresearch.co.uk/pdfs/2010\\_august\\_c4\\_FaithSchools.pdf](http://www.icmresearch.co.uk/pdfs/2010_august_c4_FaithSchools.pdf)
- A 2011 survey by YouGov for ITV asked parents to pick their top three factors from a list of twelve when choosing which school to send their children to. Only 9% picked religion:  
<http://today.yougov.co.uk/sites/today.yougov.co.uk/files/YG-Archives-Life-YouGov-DaybreakReligion-130910.pdf>

- A 2011 survey for the Children’s Commissioner of young people aged nine to 16 found that 64% did not think schools should choose pupils because of their religion, versus just 20% who did: [http://www.childrenscommissioner.gov.uk/force\\_download.php?fp=%2Fclient\\_assets%2Fcp%2Fpublication%2F483%2Fchildrens\\_and\\_young\\_peoples\\_views\\_of\\_education\\_policy.pdf](http://www.childrenscommissioner.gov.uk/force_download.php?fp=%2Fclient_assets%2Fcp%2Fpublication%2F483%2Fchildrens_and_young_peoples_views_of_education_policy.pdf)
- A 2006 ICM survey for *The Guardian* found that 45% of head teachers believe ‘faith’ schools actively contribute to less religious tolerance in society, versus 25% who believe they create more tolerance: <http://www.guardian.co.uk/education/2006/dec/05/newschools.schools>
- A 2005 ICM survey for *The Guardian* found that 64% of the public believe that ‘the Government should not be funding “faith” schools of any kind’: <http://www.guardian.co.uk/uk/2005/aug/23/schools.faithschools>

Read more about the British Humanist Association’s work on ‘faith’ schools: <http://www.humanism.org.uk/campaigns/religion-and-schools/faith-schools>

Read the BHA’s table of types of school with a religious character: <http://www.humanism.org.uk/uploads/documents/schools-with-a-religious-character.pdf>

Visit Richmond Inclusive Schools Campaign’s website: <http://www.richmondinclusiveschools.org.uk/>

The British Humanist Association is the national charity working on behalf of non-religious people who seek to live ethical and fulfilling lives on the basis of reason and humanity. It promotes a secular state and equal treatment in law and policy of everyone, regardless of religion or belief.

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