

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

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

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

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Re St Mary, Ingleton

Leeds Consistory Court: Hill Ch, 9 June 2023

[2023] ECC Lee 2

Procedure – objection received in time – faculty set aside

David Willink

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

The court directed that the faculty be set aside pursuant to rule 20.3(1)(a) of the Faculty Jurisdiction Rules 2015 in the interests of justice, and that the letter be treated as having been received by the registry in time. The correspondent did not respond to the invitation to become a party opponent, and upon considering the petition afresh, taking the letter into account, the court directed that a faculty should pass the seal as sought.

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Re All Saints, Scotby

Carlisle Consistory Court: Lander Dep Ch, 5 July 2023
[2023] ECC Car 3

Heating system – ‘due regard’ to net-zero guidance – mitigation conditions

Jack Stuart

The petitioners wished to replace its existing gas-fired heating with a modern gas boiler. The DAC did not consider that non-fossil fuel systems, particularly air source heat pumps, had been sufficiently considered, and declined to support the petition; but the petitioners nevertheless wished to proceed.

Rule 4.4(2)(b) of the Faculty Jurisdiction Rules 2015, in force from 1 July 2022, required petitioners in appropriate cases to submit an explanation of how they had had ‘due regard’ to the CBC’s net-zero guidance. The DAC must then state whether it regards that explanation as adequate. In interpreting the phrase ‘due regard’, the court applied the explanation given by the Church of England Legal Office in the context of the statutory requirement to have due regard to safeguarding guidance:

What does ‘due regard’ mean?

Where legislation – whether an Act of Parliament or a Church Measure – imposes a duty on a person to ‘have due regard’ to guidance of this sort, the law understands that duty in a particular way. The legal duty to have due regard means that the person to whom the guidance is directed is not free to follow the guidance or not as he or she chooses. As a matter of law, the guidance should be given great weight and must be followed unless there are ‘cogent reasons’ for not doing so [...].

The court considered the guidance, and extracted from it five common-sense principles. First, churches need to be properly heated. Second, the proposed and likely uses of the building must be considered in assessing its needs. Third, any