


High Court dismisses Welsh RSE right to withdraw claim

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In late December, the High Court handed down judgement in *Isherwood v Welsh Ministers*. This was a judicial review claim about the new relationships and sex education (RSE) law that came into force in September 2022 in Wales.

This new law made it a requirement of the curriculum that all secondary pupils studied RSE, with primary pupils studying relationships education, both without any right of withdrawal for parents. The statute was underpinned by a new Code that gives broad detail about what should be taught and when, as well as guidance that gives further details to schools on the curriculum. In this way, it is different to England, where there remains a parental right to request their child is opted out of statutory sex education as part of RSE and a right to withdraw from non-statutory sex education.

A breach of human rights?

Five parents brought the joint claim, arguing two main broad points: firstly, that parents had a constitutional right to excuse their children from RSE given they can control their child's boundaries and religious, philosophical, and ethical education; and secondly, that the teaching itself would breach their human rights, specifically the right to education.

The High Court dismissed all the claims. The Court held that whilst the caselaw did not support the parents' contention, there was a constitutional right to withdraw, but that in any event constitutional rights could be overwritten by express legislation. In this case, the approval by the Senedd of the legislation had come after a great deal of discussion, consultation and debate and the 2021 law, Code and Guidance represented a new framework that provided a basis for the curriculum that was wider than just RSE.

On human rights, the Court held that the Convention did not guarantee the right not to be confronted with views that were different to your own and the aim of the teaching was to seek to increase tolerance. Whilst the state could not indoctrinate pupils as part of the teaching, there was nothing in the Code and guidance that encouraged pupils to self-identify in a particular way (as the parents alleged).

LGBTQ+ as “inconvertible fact”

Teaching had to be neutral from a religious perspective, but did not have to be value neutral. It was an “inconvertible fact” that people who identify as LGBTQ+ exist, and it could not be a breach of the right to education to teach that they do exist.

As the Judge put it, there was a disjunct between the contents of the Code and Guidance and what the parents alleged they contained, which they said included teaching that would encourage the sexualisation of children.

So, what does the case mean for schools? Well, it highlights that bringing a claim about the contents of the curriculum, and specifically RSE, is difficult in both Wales and England. The parents however, have vowed to appeal the judgement to the Court of Appeal, which reiterates the strength of feeling on this topic that is unlikely to dissipate.

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