

## The problem with faith-based carve-outs

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## ORIGINAL ARTICLE

# The problem with faith-based carve-outs: RSE policy, religion and educational goods

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**Abstract**

In September 2020, relationships and sex education (RSE) became compulsory in all English secondary schools, and relationships education became compulsory in all English primary schools, marking a significant step forward in the fight to establish children's rights. Although the new RSE regime will help to ensure that many English schools provide pupils with a far more comprehensive RSE curriculum than ever before, the statutory guidance underpinning it includes a number of caveats that mean, although the subject is compulsory, not all children will receive the same content. Arguably, along with the right to withdraw (which is often exercised on religious grounds), the most insidious of these 'carve-outs' allows faith schools to teach RSE according to their 'distinctive religious character'. This exemption has been used to defend the use of religious RSE resources that critics maintain are misogynistic, homophobic and often draw heavily on pseudoscience, as well as to justify leaving certain topics (such as same-sex relationships or trans rights) out of classroom discussion altogether. Drawing on empirically informed normative case studies and recent reforms to the curriculum in Wales, I argue that faith-based carve-outs to RSE policy imperil children's access to a distinct package of educational goods. Using a recent framework for educational decision-making based on these goods developed by Brighouse et al. I go on to conclude that such policies are politically and morally unjustifiable (at least if one agrees that

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the relevant package of goods is desirable). I further maintain that, even when considered from the perspective of human rights law—which is often given as a pragmatic reason to allow more permissive policies with respect to teaching topics that may impinge upon parents' deeply held convictions—there are no necessary grounds for governments to legislate for the subject to be circumscribed by the religious beliefs of parents or the faith ethos of the schools children attend.

#### KEYWORDS

children's rights, educational goods, parents' rights, relationships and sex education, religion

## INTRODUCTION

In September 2020, relationships and sex education (RSE) became compulsory in all English secondary schools and relationships education became compulsory in all English primary schools. For many advocates of the subject—who argue that inclusive, comprehensive lessons about relationships and sex are vital to equip children and young people with the knowledge, understanding, skills and dispositions they need to grow up 'healthy, happy, and safe'—the introduction of this policy marked a significant step forward in the fight to establish children's rights.

Although this new regime will help to ensure that many English schools provide pupils with a far more comprehensive relationships and sex education (RSE) curriculum than ever before, the statutory guidance underpinning it includes a number of caveats that mean that, although the subject is compulsory, not all children will receive the same content.

Along with the parental right to withdraw (which may be exercised on a religious basis), arguably the most insidious of these 'carve-outs' allows faith schools to teach RSE according to their 'distinctive religious character'. This exemption has been used to defend the use of religious RSE resources that critics maintain are misogynistic, homophobic and often draw heavily on pseudoscience (Hazell, 2021a; Humanists UK, 2021a), as well as to justify leaving certain topics (such as same-sex relationships or trans rights) out of classroom discussion altogether (Rocker, 2021).

Drawing on empirically informed normative case studies and recent reforms to the curriculum in Wales, I argue that faith-based carve-outs to RSE policy imperil children's access to a distinct package of educational goods. Using a recent framework for educational decision-making based on these goods developed by Brighouse et al. (2018), I go on to conclude that such policies are politically and morally unjustifiable (at least if one agrees that the relevant package of goods is desirable). I further maintain that, even when considered from the perspective of human rights law—which is often given as a pragmatic reason to allow more permissive policies with respect to teaching topics that may impinge upon parents' deeply held convictions—there are no necessary grounds for governments to legislate for the subject to be circumscribed by the religious beliefs of parents or the faith ethos of the schools children attend. Instead, schools should be required to adopt a student-sensitive model of RSE (Sell & Reiss, 2021) that considers not only all of the protected characteristics children might have (including religion or belief) but also other relevant factors that may contribute to or interfere with their ability to engage with the subject.

## RSE POLICY IN ENGLAND

The new requirements for RSE in England are enshrined in law by the Children and Social Work Act, 2017. In addition to RSE, this Act also introduced compulsory health education for all schools except independent schools.<sup>1</sup> In

primary schools, only relationships education and health education are mandated. In secondaries, this extends to sex education. Primaries may also carry out sex education at the head teacher's discretion, but they are not legally required to provide these lessons.<sup>2</sup>

In common with previous legislation, parents are legally permitted to withdraw their children from sex education. However, this right does not extend to relationships or health education. What is more, schools may refuse to grant parental requests to remove children from sex education in 'exceptional circumstances' and the statutory guidance stipulates that such requests should only be honoured 'up to and until three terms before the child turns 16' (DfE, 2019, p. 18). After this point, the right to decide whether to attend such lessons transfers to the child.

Ostensibly, this transfer of the power stems from an acknowledgement of the need to recognise the child's 'evolving capacity' (UNCRC, 1989) for independent thought and action under international human rights law. It is also somewhat in line with domestic law on 'Gillick Competence' (Gillick v West Norfolk & Wisbech Area Health Authority, 1986), which permits children and young people who are considered 'sufficiently mature' to legally make self-regarding decisions, for example, about health advice and treatment.<sup>3</sup>

RSE must be taught in accordance with the provisions of the Equality Act, 2010, which prohibits schools from unlawfully discriminating against pupils on the basis of 'protected characteristics'. These characteristics include sex, race, religion or belief, sexual orientation and gender reassignment.<sup>4</sup> But, while the Act explicitly includes the *manner* in which the curriculum is delivered, it does not cover curriculum content (DfE, 2013, p. 14).

According to the statutory guidance, the Department for Education (DfE) 'expects all pupils to have been taught LGBT content at a timely point as a part of [the RSE] curriculum' (DfE, 2019, p. 15). However, schools are given a great deal of leeway to decide when precisely this should occur and primary schools are not required to carry out such teaching if the headteacher deems it would not be 'age appropriate' (p. 15).

The guidance further stipulates that 'the religious background of all pupils must be taken into account when planning teaching, so that the topics that are included ... are appropriately handled' (p. 12). All schools 'may teach about faith perspectives' but 'schools with a religious character'—also known as 'faith schools'—are permitted to 'teach the distinctive faith perspective on relationships' (p. 12). This section goes on to say that, in such schools, 'balanced debate *may* take place about issues that are seen as contentious' (emphasis added), but this form of discussion is not mandated.<sup>5</sup>

## RSE AND HUMAN RIGHTS LAW

Slight differences notwithstanding, at the time of writing, most nations of the UK permit some form of parental withdrawal and significant faith-based differentiation to the content of RSE. The only exception is Wales, which has recently passed legislation that will effectively abolish faith-based carve-outs to the subject from September 2022 onwards (Curriculum and Assessment (Wales) Act 2021). Ostensibly, these carve-outs serve a range of purposes. They may be conceived of as meeting the demands of inclusion for individual pupils (or groups thereof) or of enabling schools with religious character to actively advance their own worldview via RSE. These provisions are also strongly predicated on the idea that, perhaps especially in the context of lessons about sex and relationships, it is important to honour the rights of parents; more specifically, the right to bring up one's children in line with one's own values.<sup>6</sup> This is not only often articulated as a moral right, but has a basis in human rights law, with Article 2 of Protocol No. 1 (A2P1) to the European Convention on Human Rights stating that:

In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. (European Court of Human Rights, 2021, p. 5)

Nevertheless, this deference to parents is overlaid in England's RSE policies. The right of parents to ensure education in conformity with their philosophical convictions is a negative right and it is a 'weak one ... principally aimed at ensuring fair and non-discriminatory access to the state education system' (see *Birmingham CC v Afsar* (2019, para. 61); *Appel-Irrgang and Others v Germany* (2009)). As such, it 'does not prevent the State from imparting unwelcome information or knowledge' (*ibid.*), with international jurisprudence illustrating that this explicitly includes a wide range of information about sex and relationships (*Dojan and Others v Germany* (2011); *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976)).

What is more, England's stance on this matter is increasingly out of kilter with other developed nations. According to a 2010 report by the World Health Organization (WHO) Regional Office for Europe and BZgA, 'the trend in Europe as a whole over recent decades has been to make sexuality education mandatory without "opting-out" clauses that allow parents to withdraw their children from classes if they have serious objections to the curriculum content' (WHO/BZgA, 2010, p. 14). A more recent report found that, in a representative survey of 25 of the 53 nations in the European Region of the WHO,<sup>7</sup> only six additional Council of Europe<sup>8</sup> member nations that teach sexuality education had failed to fully mandate it (Ketting & Ivanova, 2018, p. 25).<sup>9</sup> These are Bulgaria, Bosnia and Herzegovina, Cyprus, Ireland, Spain and Switzerland. However, in some of these countries, the situation is changing rapidly. In 2017, the Attorney General in Cyprus ruled that parents were not able to withdraw their children from the subject (Andreou, 2017), and parents in some regions of Switzerland have also been denied the opportunity to opt out.<sup>10</sup> Even in Ireland, where 90% of primary schools have a Catholic ethos (Griffin, 2019, p.58), a private members' bill that seeks to replace a legal requirement to conduct health education in a manner that has 'regard for the characteristic spirit of the school' and replace it with a requirement to provide 'evidence informed health education (being evidence of an objective nature), including cognitive, emotional, physical and social aspects of relationships and sex education' (Education (Health, Relationships and Sex Education) Bill 2021) is under consideration by the Dáil Éireann (Assembly of Ireland).

Under A2P1, the key requirement is for the state to avoid 'indoctrination' (European Court of Human Rights, 2021, p. 18). In the legal context, this term does not have the same pejorative connotations it has acquired philosophically (see, e.g., Callan & Arena, 2009, p. 104; Gatchel, 1972, p. 14). Instead, it simply means teaching that is designed to impart or is biased towards a particular worldview in a way that may undermine the ability of citizens to hold different positions.<sup>11</sup> To avoid indoctrination, a state must therefore restrict any compulsory teaching in its publicly-funded schools to instruction that is 'objective, critical and pluralistic' (*Dojan and Others v Germany* (2011); *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976)<sup>12</sup>). In other words, it must not direct pupils towards adopting a particular comprehensive worldview or position on controversial issues (see, e.g., Hand, 2007, 2008) and must cover a range of different perspectives on those issues.<sup>13</sup> In cases where states provide teaching that does not meet this standard (e.g., confessional religious education), they must grant parents (and, as they mature, children themselves) the right to withdraw from these lessons. These exemptions are therefore considered an important safety valve to protect the legal right to freedom of religion or belief enshrined in the Convention and, by extension, the Human Rights Act 1998.

Until very recently, Wales followed England in adopting the exemption route as a means to guarantee respect for the legal right to freedom of religion or belief in the context of sexuality education. However, as noted above, it will soon join countries such as Denmark and Germany in offering 'objective, critical, and pluralistic' RSE lessons with a standard RSE Code for all schools (including denominational schools) and no parental right to withdraw (Welsh Government, 2022a, 2022b, 2022c). Nevertheless, since the human rights framework does permit some faith-based adaptations to the curriculum—they fall within each state's 'margin of appreciation'—a more philosophical argument is required to explain why governments *ought* to favour the more objective approach taken in Wales. To make this case, I draw on three 'normative case studies' that illustrate the real-world moral problems caused by faith-based carve-outs to RSE policy in England and how they undermine the aims of the subject, including those the Government appears to have already accepted. Levinson (2016) has emphasised the role such case studies can play in action guiding theory, asserting that this 'problem driven' (as opposed to 'theory driven') approach to policy issues can bridge the gap between 'real world needs' and 'real world wrongs' (see also Levinson & Fay, 2016), helping us to move from better to

worse in non-ideal circumstances. Each of the real-life case studies set out below is drawn from the English context. However, it would be possible to find related cases in any nation that permits religious caveats to RSE.

## NORMATIVE CASE STUDY 1: ST MARY'S HEREFORD AND 'A FERTILE HEART'

In common with all Catholic schools in the Archdiocese of Cardiff, St Mary's Roman Catholic High School, a state-funded Catholic school in Hereford, teaches RSE using a programme called *A Fertile Heart* (2019).<sup>14</sup>

Amongst other things, this programme teaches that 'men were created to be initiators' and women 'receiver-responders' in sexual relationships (p. 25), that the pill is 'morally dangerous' and prevents young women from 'understanding their fertility and femininity' (p. 22), and that gay people may not legitimately marry and must abstain from sex<sup>15</sup> (p. 17).

The Archdiocese, which was part-responsible for producing the resource, has argued that it 'is shaped by the Catholic understanding of the human person and human relationships and sexuality, and authentically reflects Catholic teaching' (Garcia, 2021a). After a media exposé of the contents of the resource in early 2021 (Hazell, 2021b; Humanists UK, 2021a), the headteacher said the school's teaching was in accordance with the DfE's guidance, maintaining it was, 'committed to providing ... pupils with opportunities for broad and balanced debate on a range of issues whilst teaching distinctive faith perspectives on relationships' (Garcia, 2021b).

However, when the school was subject to a snap Ofsted inspection in May 2021, leaders told inspectors they had 'changed some of the language' used in the materials 'because of concerns about how the roles and responsibilities of men and women within relationships were described' (Ofsted, 2021a, p. 2). They also maintained that this alteration had occurred 'early on', with the school taking 'swift action' (although the resource was introduced in 2019 and the headteacher did not appear to mention these changes in any of his public statements about the resource prior to the inspection).

Despite early refusals by the Government to condemn the resource, a senior minister did eventually raise 'serious concerns' about *A Fertile Heart*, stating that it 'would be hard for a school to present [it] in a way that is consistent with the ... statutory guidance' and highlighting that it included 'gender stereotypes [that] could normalise non-consensual behaviour or encourage prejudice' (Humanists UK, 2021b).

## NORMATIVE CASE STUDY 2: CHAREDI JEWISH SCHOOLS

In 2019, parents at Lubavitch Senior Girls' School, a state-funded Charedi Jewish school in London, said they were pressured to remove their children from sex education, with the school reportedly contacting families and emphasising the religious perspective to prevent these lessons being taught (Nye, 2019). A parent interviewed by the BBC said she believed the school did not want to 'expose children to the concept of sex' or of 'people with different sexualities existing in the world' and described being 'too scared to complain' about her concerns (ibid.). Similar sentiments were voiced by a parent with a child at another Charedi school in London, Yesodey Hatorah Senior Girls' High School, which called parents asking them to 'formally say "I do not want you to teach my child about single-gender relationships or sex education within the school"' (ibid.) Despite thinking that sex education was 'imperative' for children in her insular community because they would be unable to get information from other sources, the parent nevertheless withdrew her child on the basis she did not wish to be 'alienated' or 'ostracised' from the orthodox Jewish community (ibid.).

According to the BBC, staff at Yesodey Hatorah did not deny making the calls but argued for the importance of parents being made aware that their children would receive sex education lessons if they did not exercise their right to withdraw. Representatives for both schools said that they had not received any complaints about their opt-out processes or RSE (ibid.). However, given what the parents who reported their concerns to the media said regarding their fears about making such complaints, perhaps this is unsurprising.

## NORMATIVE CASE STUDY 3: ANDERTON PARK PRIMARY SCHOOL

Anderton Park is a community ethos primary school in inner-city Birmingham. It does not teach sex education. However, it does provide LGBTQ+ inclusive teaching on equality to pupils, the majority of whom are from Muslim backgrounds. In 2019, following similar demonstrations at another primary school in the area,<sup>16</sup> the school was subject to protests by parents (and others) who objected to these lessons on a religious basis (BBC, 2019). A letter to the school signed 'for and on behalf of parents'<sup>17</sup> said it was promoting homosexuality and suggested that this was not culturally or age appropriate (Birmingham CC v Afsar (2019), para. 79). Some parents argued homosexuality was a sin and their children were being indoctrinated into the belief 'that being gay is normal and being straight is not normal' (para. 74).

The protests were eventually ended by a High Court injunction. The final judgement found that the organisers of the protests had distributed misinformation about what the school was teaching (para. 117) and even allowed a visiting speaker to publicly accuse staff at the school of promoting 'a paedophile agenda' (paras. 83 and 86). The judge also ruled that the claim that 'the School's teaching policy—described by the defendants as "the teaching of LGBT issues (i.e. teaching equalities)"—represents or involves unlawful discrimination against British Pakistani Muslim children at the School, and those with parental responsibility for them ... on grounds of race and/or religion' (para. 37) was unfounded. Perhaps more interestingly, the judge also stated that he found it 'hard to detect any real conflict between what the school was teaching and ... [Islamic] beliefs identified [by an expert witness for the defendants, Imam Masroor]' (para. 63).<sup>18</sup>

## UNPACKING THE NORMATIVE CASE STUDIES

There are obviously relevant differences between these case studies. Each involves a different religious group (Catholic, Jewish and Muslim) with a different historical background and relationship with the state (see, e.g., Hämäläinen, 2021). Two of the cases turn on religious schools advocating for a faith-based approach to RSE, while the other features religious parents as the main protagonists arguing that a purportedly inclusive approach by a school without a religious character is insufficiently attentive to their faith-based needs and entitlements. Even though the parents in the Anderton Park case perceived LGBTQ+ inclusivity to be sexually loaded and therefore inappropriate, the school was teaching only about a range of different family relationships rather than attempting to teach about sex. In the cases of St Mary's and the Charedi schools, sex education (or the desire to avoid it) was specifically at issue. And, while some parents did voice their concerns about *A Fertile Heart* (Evans & Dresch, 2021), the complaints largely originated from external sources (Hazel, 2021a), whereas the other two cases were predicated on disputes between schools and (some) parents.

Despite these differences, some closely connected themes are also evident. Although various incidents acted as the catalyst for each dispute, the content that generally aroused the most controversy concerned inclusion and equality (particularly LGBTQ+ inclusion): the question of how best to accommodate a diversity of identities and perspectives in the classroom. Further, to a greater or lesser extent, all three cases involved the idea, advanced by at least one stakeholder (or group of stakeholders), that religious background constitutes good reason to deny, restrict or otherwise amend the information pupils receive about sex or relationships, sometimes quite markedly. As we have already seen, policies that concede at least some ground to religious conviction in the practice of RSE are well-established in the UK. However, even in this context, there are some who would like those concessions to be extended (e.g., the Anderton Park protesters) and others who think they should be more constrained (e.g., the anonymous Charedi parents).

Of course, the fact that there are problems pertaining to RSE in the context of religious schools or schools with a high proportion of religious pupils shouldn't be taken as a claim that such schools are the sole locus of difficulties with the subject. Following the 'Everyone's Invited' scandal in 2021—when an anti-rape culture website received thousands



of testimonies recounting sexual harassment in schools (Criddle, 2021)—Ofsted launched a rapid review of sexual abuse in schools and colleges which also considered RS(H)E. It found that across the school system:

Children and young people were rarely positive about the RSHE they had received. They felt that it was too little, too late and that the curriculum was not equipping them with the information and advice they needed to navigate the reality of their lives. Because of these gaps, they told us they turned to social media or their peers to educate each other, which understandably made some feel resentful. As one girl put it, 'It shouldn't be our responsibility to educate boys.' (Ofsted, 2021b)

The review further noted that:

In a few schools, teaching about sexual relationships was covered in science or, in faith schools, religious education lessons, but this did not commonly address same-sex relationships. Some children and young people noted that RSHE lessons were not inclusive enough and only focused on heterosexual relationships. (Ofsted, 2021b)

So, although RSE is clearly not yet good enough in many (perhaps the majority) of schools, faith-based carve-outs to RSE offer special privileges that, particularly given the prevalence of sexual harassment and online sexual abuse outlined in the Ofsted review, require strong justification.

On this basis, the case studies generate two key questions. First, to the extent that any faith-based differences to the content or delivery of RSE are justified, how broad ought they be permitted to be? And second, who ought to get the final word on the location of those boundaries in the context of public education? To begin to answer these questions, I believe we need to consider a more basic one—why teach RSE in the first place?

## AIMS AND PURPOSE: WHY TEACH RSE?

Via a survey of sex education materials conducted in the mid 1990s, Michael J. Reiss identified five distinct philosophies pertaining to the subject: that school sex education should (1) not occur, (2) promote physical health, (3) promote personal autonomy, (4) promote responsible sexual behaviour or (5) take place within a religious framework (Reiss, 1995).

Despite the quarter of a century that has passed since Reiss's research, all these philosophies continue to be apparent in the public discourse surrounding RSE policy. Nevertheless, while (1) is afforded a degree of legitimacy via the parental right to withdraw, the view that schools should not teach anything about sex and relationships to any of their pupils is no longer widely held<sup>19</sup> and, arguably, plays a much less important role in policy than ever before. Another recent development worth noting is that, perhaps as an upshot of increasing public recognition of the positive impact of the subject, policymakers have gradually sought to change the nature of the compulsory elements of RSE. This has involved moving away from a mechanical (physical health-centred) approach focused on biological processes (Blair & Monk, 2009, p. 39; Harris, 2020, p. 369)<sup>20</sup> towards one that is far more multi-layered. This approach seeks to incorporate the promotion of health and wellbeing, responsible behaviour and the mitigation of risk or harm via the development of the knowledge, skills and dispositions that facilitate informed, autonomous decision-making. This attempt to combine philosophies (2), (3) and (4) is not only evidenced by the move to rename the subject 'relationships and sex education'—seemingly to clarify that RSE is about all kinds of relationships rather than just sexual intercourse—but in the manner in which the Government's aims for the subject are now articulated.

For example, the introduction to the DfE's 2019 guidance for England says:



To embrace the challenges of creating a happy and successful adult life, pupils need knowledge that will enable them to make informed decisions about their wellbeing, health and relationships and to build their self-efficacy. Pupils can also put this knowledge into practice as they develop the capacity to make sound decisions when facing risks, challenges and complex contexts. Everyone faces difficult situations in their lives. These subjects can support young people to develop resilience, to know how and when to ask for help, and to know where to access support. (DfE, 2019, p. 8)

In a section dealing with RSE in secondary schools, the guidance also states:

The aim of RSE is to give young people the information they need to help them develop healthy, nurturing relationships of all kinds, not just intimate relationships. It should enable them to know what a healthy relationship looks like and what makes a good friend, a good colleague and a successful marriage or other type of committed relationship. It should also cover contraception, developing intimate relationships and resisting pressure to have sex (and not applying pressure). It should teach what is acceptable and unacceptable behaviour in relationships. This will help pupils understand the positive effects that good relationships have on their mental wellbeing, identify when relationships are not right and understand how such situations can be managed. (DfE, 2019, para. 69, p. 25)

Reiss appears to endorse a similar position to that of the DfE, suggesting that 'valid sex education in schools promotes personal autonomy [and] requires pupils to consider the needs and wishes of others...' (Reiss, 1995, p. 381). Because relationships and sex are intimately tied to questions about how we should treat one another, he also maintains—correctly, I think—that such education should '[take] place within a moral framework' (Reiss, 1995, p. 381; see also Halstead & Reiss, 2003). Nevertheless, as Reiss points out, this is where 'genuine disputes' regarding the 'desired nature' of such a framework (like the ones set out in the case studies) arise. Some will argue that, at least in the case of children from religious backgrounds, this ought to be a comprehensive religious framework (that is, they will argue for philosophy (5)). Others will maintain we should restrict directive moral content in RSE to questions that are politically settled; in other words, those that are the subject of consensus amongst reasonable citizens (e.g., that rape and other forms of sexual violence are morally impermissible). Where there is reasonable disagreement about a moral question (such as sex outside of marriage or same-sex relationships) schools will need to teach pupils about a diversity of views (Reiss, 1995, p. 381).

As has already been established, the view that RSE may be taught within a religious framework is explicitly accommodated in the statutory guidance for England. There are, nevertheless, points within the document that appear to signify this is of secondary importance to the DfE than some of the subject's other aims. For instance, having a 'good understanding of pupil's faith backgrounds and positive relationships between the school and local faith communities' is described as a worthwhile goal because it will 'create a constructive context for the teaching of these subjects' (DfE, 2019, p. 12). This suggests that the expected understanding of faith is not necessarily regarded as a good in itself, but because it will enable religious communities to 'buy-in' to the benefits RSE has to offer. Similarly, if one sets aside the provisions that allow faith schools to 'teach the distinctive faith perspective on relationships', which for many religious groups will include the directive teaching of moral prohibitions on same-sex relationships,<sup>21</sup> the expectation that 'all pupils will have been taught LGBT content at a timely point' and that schools comply with the Equality Act by '[ensuring] the needs of all pupils are appropriately met, and that all pupils understand the importance of equality and respect' (DfE, 2019, para. 36, p. 15) appears to prioritise treating LGBTQ+ people as equals over any claim (religious or otherwise) that such individuals are less deserving of basic respect than others.<sup>22</sup>

## AIMS AND PURPOSE: EDUCATIONAL GOODS

From the brief consideration of policy documents above, it is clear that RSE is expected to produce a package of knowledge, skills, attitudes and dispositions that policymakers, educators and wider society deem valuable. To put it another way, the subject is designed to produce a distinctive set of what Brighouse et al. call *educational goods* (see Brighouse et al., 2018). These are 'goods in the abstract philosophical sense that they contribute to wellbeing or are things to which children are entitled' (Clayton et al., 2018, p. 12).

In their work theorising educational goods, Brighouse et al. stipulate six independent, but interlinked categories of capacity that are developed through education and are necessary to human flourishing: (1) economic productivity, (2) personal autonomy, (3) democratic competence, (4) healthy personal relationships, (5) treating one another as equals and (6) personal fulfilment. Although not entirely uncontroversial,<sup>23</sup> in the context of liberal democracies, this set of six categories provides a powerful framework by which to understand and structure decisions about the educational policies states should adopt; decisions such as what to include in lessons on sex and relationships, as well as how best to balance such teaching with the values of parents and the rights and interests of children.

Of course, not everyone will be convinced that we ought to accept a broadly liberal framework for education and, even amongst those who do, there is still considerable room for (reasonable) disagreement about the precise purposes of education, as well as how best to achieve them (for an example of this kind of dispute in the context of RSE, see Heyes, 2019; Steutel & Spiecker, 2004; Steutel & de Ruyter, 2011). Nevertheless, it does seem plausible to maintain that, however one thinks the educational goods highlighted by Brighouse et al. ought to be balanced, most will agree that they are goods; that is to say, they will generally support the idea that such capacities will, to a greater or lesser extent, play a positive role in an individual's life and are, therefore, worthy of pursuit in the educational sphere. What is more, as we have already seen, many of Brighouse et al.'s educational goods are already immanent in the Government's avowed aims for RSE. Since this paper deals with normative theory in non-ideal circumstances, this should not be overlooked. While it is clearly possible for policymakers to adopt bad or erroneous aims that are necessarily worthy of criticism, we should also be sensitive to circumstances where the right aims are undermined by the wrong policy.

From the discussion so far, it will be apparent that the primary goods produced by RSE are personal autonomy (the capacity to make my own decisions about how to live my life); healthy personal relationships (the capacity to form and sustain meaningful bonds with others); and the capacity to treat one another as equals (being able to 'respect the basic dignity of persons' (Brighouse et al., 2018, p. 26)).<sup>24</sup>

Here it is worth noting that, even if paying attention to a narrower set of goods is entirely appropriate in some educational contexts, a strong focus on one type of good (e.g., produced by RSE) may lead to deficits with respect to others. Educational goods may conflict, so policymakers must make context-sensitive decisions about which good to prioritise and on what basis. Furthermore, such decisions will have to be sensitive not only to the type and amount of each good that is produced, but also how that good is distributed. Here there will be questions about whether we should aim for equality with respect to the share of goods each child receives or if it is simply enough to ensure that everyone has an adequate basic minimum.<sup>25</sup> It will also be important to consider how that distribution will take account of 'positive externalities or "spillovers"' (Clayton et al., 2018, p. 15)—that is, goods that don't merely make the lives of those who have them go well, but which also bestow benefits on others, including wider society.

For example, in the context of an intimate relationship, I am benefitted from my partner's capacity to treat me as an equal; to afford me respect and basic dignity and vice versa. An individual who recognises that his sexual partner is of equal moral worth is far more likely to view enthusiastic consent to sexual activity as important than one who determines that, perhaps because that partner is female or a member of a marginalised or otherwise disadvantaged group, her rights and interests matter less than his own. Similarly, knowledge of sexual health (allied with the disposition to attend to that aspect of one's wellbeing) will not only benefit the individual, by contributing to her ability to make autonomous, well-informed choices about sex, but will also have good (educational and non-educational) consequences for others (e.g., through reducing rates of sexually transmitted infections (STIs)). Indeed, Ann Blair

and Daniel Monk argue that a focus on mitigating the risks posed to the health of society by unsafe sexual practices (maximising the good of public health) may license policies where 'the individual child is not necessarily of primary concern'. Here they argue that it could be 'acceptable to concede to parents the right to opt their child out of sex education if this would help to achieve acceptance of a compulsory framework of sex education that would benefit the many' (Blair & Monk, 2009 p. 42).<sup>26</sup>

Of course, as Brighouse et al. highlight, the kind of broadly consequentialist educational goods (so called because they produce positive outcomes) set out in the six categories are not the only considerations that can (or should) frame our deliberations about the best RSE policies to adopt. It may be the case that, quite apart from the good consequences generated by adopting a particular policy, individuals have entitlements that tell in favour of some policies and against others. Indeed, perhaps such entitlements mean that, even when an educational intervention might lead to the greater production of some educational good or other, we should choose a sub-optimal option to better respect those entitlements.

In RSE policymaking, this way of thinking is evident in the way parents' rights are conceptualised. For example, the DfE guidance refers to parents as 'the prime educators for children' on issues to do with sex and relationships (DfE, 2019, p. 4)<sup>27</sup> and, while the parameters have shifted over time, the continued existence of parental opt-outs to sex education up until age 15 suggests that policymakers are inclined to tolerate sub-par provision for some children in order to respect their parents' purported right to choose at least some of the content they are exposed to.<sup>28</sup> Those who oppose compulsory RSE often claim parents have an intrinsic right to dictate the kind of instruction their children receive regarding sex and relationships, with 'my child, my choice' the mantra of many such groups.<sup>29</sup> In a similar vein, responding to the BBC story on Charedi schools cited above, Rabbi Eli Spitzer, the head teacher of another Charedi school, argued, 'Insulating children from sexuality is not just one feature of Charedi culture, it's a fundamental part of our way of life... The demand for sex education is nothing less than a demand that Charedim abandon their entire approach to child rearing' (Spitzer, 2019). This suggests it is not simply the individual rights of the parents he believes are at stake, but those of an entire community.

Despite the policy focus on parents, children are also the bearers of rights. Indeed, I am of the view that, as in the context of Religious Education, the English approach to RSE acquiesces rather too readily to the (often ill-informed) views of parents and pays too little attention to the developing rights of children. Some of these rights, such as the 'right to an open future' (Feinberg, 2007)—which, in the context of sex and relationships, would require being provided with the knowledge and information necessary to make informed decisions, for example, about contraception and fertility—will obviously be advanced concomitantly with the production of autonomy as a consequentialist educational good. However, others might pull against the adoption of a policy that seeks to maximise the production of educational goods. For example, some argue that, despite the positive benefits for future autonomy, learning about certain aspects of human sexuality is corrosive to childhood innocence (see Brighouse et al., 2018, pp. 37–38); that learning about such things strips children of a kind of carefree ignorance which is not only beneficial to them solely *qua* children<sup>30</sup> but is a benefit they actually have a right to accrue.

From the foregoing discussion, the core aims of RSE are now beginning to crystallise. The subject is intended to develop the ability of children and young people to make suitably informed (autonomous) choices about sex, sexual relationships and the other kinds of relationships they have and will have as they grow older, as well as to navigate such relationships in a responsible way that respects the rights and interests of others. It is designed to facilitate good physical and mental health, to mitigate risks (including from sexual abuse and exploitation), and to provide clear pathways to access help, advice and support. All this being said, the two questions raised by the normative case studies remain unanswered. While we have identified the key educational goods that RSE produces, we have yet to establish the best way to balance those goods or address the purported entitlements of all stakeholders. We must further recognise that, even once all the relevant goods are adequately accommodated within a policy framework, the decisions policymakers can realistically take will still be bounded by a variety of other factors that may have very little to do with the educational impact of those decisions, including the law and public support for change (see Clayton et al., 2018).

In the final section, I will draw these factors together to demonstrate why, at least to the extent one accepts that the educational goods model provides an adequate framework by which to weigh competing concerns in a liberal democracy, the UK Government should abandon its current policy and prohibit faith-based carve-outs to RSE in England.

## THE PROBLEM WITH FAITH-BASED CARVE-OUTS

In England, RSE is part of the 'basic curriculum' (Education Act, 2002, s. 80(1)) and is compulsory for all schools including private schools. Given the latitude English private schools are usually given to set their own curricula, this illustrates that the Government now regards RSE to be a fundamental component of an adequate education; a school that fails to offer these lessons falls below basic minimum educational standards.<sup>31</sup> This provides us with some insight into the Government's thinking on the distribution question; specifically, it appears to signify that it considers there are at least some circumstances under which access to the goods offered by RSE should not be restricted by the type of school a child attends. The fact relationships (rather than sex) education is compulsory, not just for schools but also for pupils (with no parental right to withdraw in any context), is similarly indicative of the view that some of the benefits offered by these lessons (e.g., the prevention of abuse and exploitation or the cultivation of respect for those with different protected characteristics) are so vital to the education and wellbeing of pupils that they ought to trump other considerations (like parents' wishes).<sup>32</sup>

In the absence of strong confounding factors,<sup>33</sup> this seems to be the correct approach. If one's goal is to maximise the proportion of children receiving a particular package of educational goods—here, the capacities for autonomy, healthy relationships and treating one another as equals—at the very least one needs to issue a basic set of standards that apply to all children in all schools irrespective of how they are governed or funded. Nevertheless, as the normative case studies above aptly demonstrate, various caveats to the law on RSE in the English context mean those supposedly basic standards can and do differ quite considerably according to the religious affiliation of schools and the views of parents. How might this be justified within the educational goods framework?

One approach might involve drawing on the complex range of information pupils need in order to develop the various capacities targeted by RSE. Much of this will be of a factual nature—including issues to do with biology, health and the law (which are, in large part, what is already mandated in England). However, some of it will not. Although it may be possible to deliver a form of sex education that sticks strictly to content that is empirically verifiable, this is plainly not the most desirable approach. As David Archard puts it, 'one does not have to be a moralist to recognise that young people need to appreciate the import of sex and that this consists in things like the nature of any relationship in which it occurs, the responsibilities and realities of making choices in regard to it [and] the significance of its consequences such as parenthood' (Archard, 2000, p. 28). Halstead and Reiss add that 'if children are not given direct guidance and help in school but are left to pick up their values as and when they can, this may leave them open to manipulation at the hands of those less concerned for their wellbeing than the school is' (Halstead & Reiss, 2003, p. 24). Moreover, it seems unlikely that one will be able to adequately explain why it is necessary to treat one another as equals without recourse to at least some basic moral principles.

If RSE is inescapably value-laden, then it must involve some form of moral education. However, given the (possibly ineliminable) pluralism of attitudes to sex and relationships in societies such as the UK (see Archard, 2000), it is easy to wonder if the insertion of morality into RSE will condemn us to endless disputes such as those seen at Anderton Park. On this basis, faith-based carve-outs might appear to offer us a means by which to ensure that children receive important factual information, while avoiding the imposition of a comprehensive moral framework with which they or their families might disagree. There are, nevertheless, good reasons to resist faith-based carve-outs as a way of accommodating moral perspectives in the subject.

First, as the case of St Mary's illustrates, when faith ideologies are permitted to drive the content of RSE lessons, the moral perspectives they recommend often lead to the inaccurate depiction of empirical matters. For example, in a

section of *A Fertile Heart* on the issue of 'complementarity'—the view that men and women have distinct but complementary roles in marriage and family life—an article in *The Scientist* on differences between male and female brains is given as evidence for the 'common experience' that 'there are differences between the sexes, above and beyond the external biological ones' (*A Fertile Heart*, 2019, p. 16) and which, therefore, recommend traditional marriage roles. The opposing position, that studies on sex-based differences using neuroimaging data are often based on 'untested stereotype-based speculation' and 'not scientifically justified' (Fine cited in Grant, 2013), is not mentioned. There is similar cherry-picking of scientific data in a section on sexual bonding, which states that oxytocin bonds women 'more securely to [a] sexual partner than happens with a boy or a man', meaning they find it 'more difficult to enter uncommitted sexual relationships' and are 'prone to suffer mentally and emotionally if sexual relationships fail' (*A Fertile Heart*, 2019, p. 25). The fact that both the school and the Archdiocese defended the resource by appeal to its authentically Catholic nature rather than its scientific accuracy suggests it was the former rather than the latter they considered to be of most importance.

None of this is to suggest that religious faith is the only factor that may distort or otherwise negatively affect the transmission of empirical evidence in the classroom, simply that faith-based carve-outs leave considerable room for such distortions to occur and risk condoning empirically dubious teaching in areas where this is likely to assist the promotion of doctrine.

Second, in addition to factual distortions, the normative case studies illustrate that faith-based carve-outs can lead to the unbalanced promotion of controversial (and sometimes harmfully disrespectful) moral perspectives or the omission of content that contributes to the ability of pupils to treat others as equals. Not only could omissions of this kind mean that pupils later fail in their duties to treat others well, but they could have personal repercussions for the well-being of the pupils themselves. For example, in both the cases of Anderton Park and the Charedi schools, the disputes turned on whether LGBTQ+ content should feature in the curriculum. According to the Office for National Statistics (ONS), 2.7% of the UK population aged 16 and over now identifies as lesbian, gay or bisexual. Amongst those aged 16–24, this figure rises to 6.6% (ONS, 2021). Many religious people, including those from hard-line or insular religious groups, will grow up to be LGBTQ+,<sup>34</sup> and there is evidence to suggest that the way these pupils are treated by teachers and peers in school is a key factor in problems such as poor rates of mental health (Bradlow et al., 2017). For this reason, an RSE curriculum that surrenders too much ground to faith demands risks harm both to those within and outside of religious groups.

Again, this is not to say that LGBTQ+ people do not experience harm or disadvantage in non-religious settings. However, it would be disingenuous to pretend that there are not specific issues pertaining to LGBTQ+ acceptance that arise within the context of faith, particularly those that traditionally conceive of same-sex relationships as sinful.

Here one might argue that the need to tackle factually inaccurate or discriminatory teaching does not, in itself, provide an adequate reason to strip all religious schools of permission to teach RSE in line with their faith. After all, many states (past and current) have mandated curricula that have been challenged on the basis they are factually dubious and/or exclusionary, often appearing to do so in order to advance a particular ideology or political worldview. Recent disputes over the English history curriculum are a case in point (see, e.g., Leach et al., 2020).<sup>35</sup> Nevertheless, curricula exhibiting such problems do not, on the face of it, give us sufficient grounds to argue that all states should be stripped of their power to set the curriculum. It is likely the relevant difference lies in the strong countervailing reasons we have to favour state-controlled education for most children; that is, the expansive package of educational and other goods a state system of education confers (even in circumstances where some aspects of the curriculum are sub-par), as well as how this compares to alternatives (e.g., a fully privatised system or one where the curriculum is set by teaching professionals with no government oversight). Unfortunately, I am unable to fully explore this issue within the confines of this paper. However, there is a further reason which, in my view, tells strongly against granting religious schools the special privilege to adapt RSE teaching in a manner that is denied to other schools—namely, that we can better respect freedom of religion or belief *and* ensure children receive the educational goods to which they are entitled without such exemptions.

As I alluded to in the earlier discussion of the aims of RSE, it is possible to integrate the moral perspectives that reasonable people share and allow for suitable debate on questions that are, as yet, unsettled<sup>36</sup> by teaching only the former directly whilst providing pupils with a variety of perspectives on the latter. In the context of an educational goods approach, this does not constitute a mere 'retreat to basics' (Archard, 2000, p. 28). This is because it will involve the promotion of the knowledge, skills and dispositions an individual needs to fulfil her obligations to others, as well as autonomy and the other important capacities that contribute to a flourishing life (without dictating the precise shape that life ought to take).

It will take somewhat more philosophical work to distinguish precisely which RSE content we should teach directly and which we should be more circumspect about. For example, some argue that we may teach that homosexual acts are morally permissible on the basis that this is presupposed by a commitment to basic liberal democratic principles which are reflected in the educational goods paradigm (Archard, 1998; Petrovic, 1999), whereas others maintain we should teach homosexuality only as a controversial issue (Halstead & Reiss, 2003). Although important, I will not provide a comprehensive analysis of such details here. For the time being, one need only accept the rather more general point that, in light of the necessity to cultivate the relevant basic goods, respect the rights of children and comply with the overarching legal framework, there is nothing to justify unfettered religious (or parental) influence over the RSE curriculum.

As the compulsory legal provisions for relationships (as opposed to sex) education illustrate, to some extent, the Government already acknowledges this. It has drawn the boundaries between legitimate and illegitimate practice where it has in an attempt to balance the various entitlements of children (and wider society) to the educational goods generated by RSE with the right to freedom of religion or belief of parents (see Gibb, 2019; Hinds, 2019).<sup>37</sup>

However, this balance has been seriously misjudged, and not only because some of the boundaries (e.g., between sex education and relationships education) are practically unclear.<sup>38</sup> Although legal rights legitimately constrain the policies governments may implement, as already noted, the legal right to have one's children educated in accordance with one's philosophical convictions is a relatively weak one requiring only that the state abstains from indoctrination (i.e., partisan teaching). This is why Wales has been able to remove its right to withdraw from RSE in tandem with the introduction of lessons that are 'objective, critical, and pluralistic'.<sup>39</sup> In new guidance, the Welsh Government elucidates the impact this will have on teaching as follows:

... where questions of values are concerned, schools and settings must provide a range of views on a given subject commonly held in society. This also means providing a range of factual information on RSE issues. In all schools, where they explore specific beliefs or views, this must include a range of other faith and non-religious views on the issue. (Welsh Government, 2022c)

If one recognises that parents' moral rights to educate their children are legitimately 'constrained by a concern for children's interests' (Clayton et al., 2018), as the UK Government obviously does, the policies one enacts should only deliberately restrict those interests for some children and not others if there is a compelling reason to do so. Preventing children and young people from learning about sex (in all but the most basic biological terms) until they are nearly 16 clearly threatens those interests, as does allowing them to receive a biased RSE curriculum that may involve a skewed approach to empirical issues to serve an ideology. It means those children will be denied the full range of information they require to make informed decisions about key aspects of their lives. The outcomes of these decisions have the potential to jeopardise not only their autonomy, but their health, safety and capacity to treat others as equals (as well as the rights of others to benefit from those goods).

Here it is also worth highlighting that, although older pupils may theoretically be able to opt-in to sex education in the latter stages of secondary school, this will be practically and emotionally difficult to do in defiance of parental wishes. In the context of a school with a strong religious character, such as Lubavitch or Yesodey Hatorah, where even parents find expressing their desire for their children to receive these lessons problematic,<sup>40</sup> it may even be impossible.<sup>41</sup>



To be sure, some may argue that the rights protected by exemptions and carve-outs are not those of adults but those of children; that we should 'let kids be kids'.<sup>42</sup> But, there is a difference between preserving innocence and deliberately cultivating ignorance.<sup>43</sup> As Halstead and Reiss note, 'the sexual abuse of children is more likely to thrive where they are kept in ignorance of sexual matters' (Halstead & Reiss, 2003, p. 23).<sup>44</sup> Furthermore, sex education can offer a corrective for some of the problems arising from children's naive interactions with an increasingly sexualised world 'by developing their ability to reflect critically on the sexual values to which they are exposed in the broader society and to deconstruct [e.g.] the sexual messages of television and advertising' (p. 23). If the preservation of innocence risks putting children in the way of greater harms, then there is a justifiable trade-off to be made between that innocence and the right to protection afforded by knowledge.<sup>45</sup>

## CONCLUSION

If one is persuaded by the idea that RSE should cultivate a particular package of important educational goods—particularly the capacity for autonomy, healthy personal relationships and treating others as equals—a policy restricting children's access to pluralistic information about sex and relationships on the basis of a parental right to freedom of religion or belief must be rejected. My freedom of belief cannot be legitimately advanced by curtailing the very capacities that make that freedom possible for others, whether or not those others are my own offspring. Even if parents are entitled to pass on or otherwise initiate their children into their faith in the home,<sup>46</sup> the educational goods produced by RSE are so valuable that it is imperative policymakers protect children's interests in receiving them. The best way to do this is to ensure that all schools provide comprehensive lessons in the subject that can be accessed by all children irrespective of religious background.

This kind of RSE need not ignore or set itself up in opposition to faith or belief. In fact, it is predicated on the idea that the relevant package of educational goods will only be generated if the subject is provided in a way that is sufficiently attentive to the plurality of views that exist on matters of sexual ethics. To put it another way, good RSE must be *faith-sensitive* (Sell & Reiss, 2021). This draws on an idea that is already evident in the DfE guidance—that having a 'good understanding of pupil's faith backgrounds and positive relationships between the school and local faith communities' will 'create a constructive context for the teaching of these subjects' (DfE, 2019, p. 12). Of course, good teachers of RSE won't just limit themselves to a good understanding of faith or belief, they will have a nuanced grasp of all the characteristics (those protected by the Equality Act and otherwise) of the children they teach and will be skilled in applying them appropriately; they will practice what Sell and Reiss call *student-sensitive* RSE (Sell & Reiss, 2021, p. 65, emphasis added). It is this kind of 'objective, critical, pluralistic' approach that underpins the new Welsh curriculum and, if the Government is genuine in its desire to 'suitably [balance] the rights of parents with the rights of young people', should also be adopted England and in the other nations of the UK.

## ENDNOTES

<sup>1</sup> Here Personal, Social, Health and Economic Education (PSHE) continues to be compulsory.

<sup>2</sup> The national curriculum for science also includes relevant content, for example, on puberty, human reproduction and naming body parts. There is no right to withdraw from these basic elements of the curriculum, including in primary schools (DfE, 2019, p. 23).

<sup>3</sup> In Gillick, the Court ruled that a child or young person who could demonstrate such maturity could be offered confidential advice on contraceptives without the need to inform a parent or guardian. The ruling has also formed the backbone of a number of important cases relating to informed consent for medical procedures.

<sup>4</sup> The full list of protected characteristics covered by the Equality Act is age, sex, race, disability, religion or belief, gender reassignment, pregnancy or maternity, marriage or civil partnership, and sexual orientation (Equality Act, 2010).

<sup>5</sup> This stands in stark contrast to the teaching of politically controversial issues, where the law requires schools to offer 'a balanced presentation of opposing views' (Education Act, 1996, s. 407(1)).

<sup>6</sup> These rationales can be seen in the (former) Secretary of State's foreword to the 2019 Government guidance on teaching RSE in England (DfE, 2019, p. 4; see also p. 22).



- <sup>7</sup> This includes Western Europe, Eastern Europe and Central Asia.
- <sup>8</sup> An international human rights organisation made up of member states who have signed the European Convention on Human Rights. It has 46 member states, including 27 members of the European Union (see <https://www.coe.int/en/web/portal>).
- <sup>9</sup> In this context, 'fully mandate' means the subject is compulsory in all areas and all schools with no parental right to withdraw.
- <sup>10</sup> Switzerland is divided into cantons, each of which has a high degree of autonomy with respect to education. In some areas, opt-outs are possible but 'are only used sporadically' (WHO/BZgA, 2018, p. 159). In 2018, a parent whose request to withdraw her daughter from sex education was refused by her school in Basel took her case to the European Court of Human Rights (*AR and LR v Switzerland* (2018)). She argued that the decision amounted to a violation of her (and her daughter's) right of respect to family life as well as her freedom of religion or belief. However, because the curriculum did not constitute 'indoctrination', and sexuality education pursued 'legitimate aims' (such as the prevention of sexual abuse and exploitation and preparation for 'social realities'), her application was rejected.
- <sup>11</sup> As previously noted, parents do have the legal right to impart this kind of information and so cannot ordinarily be classed as indoctrinators according to the legal definition of the term.
- <sup>12</sup> Both of these cases dealt with the refusal to grant parents a right to withdraw their children from sex education lessons. In both instances, the parents' claims were rejected on the basis that the information was conveyed in an 'objective, critical, and pluralistic manner'.
- <sup>13</sup> For a discussion of these criteria in the context of Religious Education, see Wareham (2022).
- <sup>14</sup> When the resource was first introduced, the Archdiocese of Cardiff directed all of its schools (which are located in both England and Wales) to use *A Fertile Heart*. However, a letter from the then Schools Minister, Nick Gibb, to MP for Hereford and South Herefordshire, Jesse Norman, suggests that this is no longer the case (Gibb, 2021).
- <sup>15</sup> This is taught via the recommendation of a YouTube video presented by American Catholic chastity campaigner, Jason Evert. In his 2007 book *Pure Manhood*, 'Evert argues that "the homosexual act" is disordered and goes against God's natural purpose for sex, which is for "babies and bonding"' (MacDonald, 2020).
- <sup>16</sup> The other school, Parkfield Community School, had a similar pupil intake and was teaching an equality programme called 'No Outsiders' written by its own assistant head teacher, Andrew Moffat. The programme was designed to 'provide teachers with a curriculum that promotes equality for all sections of the community' (Moffat, 2017) and was explicitly LGBTQ+ inclusive.
- <sup>17</sup> The letter was written by Shakeel Afsar who did not have a child at the school. However, his sister, Rosina Afsar, is a parent.
- <sup>18</sup> Imam Masroor stated that there is 'no room for ... kinds of sexual relationship' other than the heterosexual, which is 'the moral absolute in Islam'. But that 'everyone is born with inalienable right to dignity, honour and respect regardless of their background' (Birmingham CC v Afsar (2019), [2019 para. 38]).
- <sup>19</sup> Recent polling suggests that most UK adults (82%) think that sex education is a 'very important' or 'quite important' subject to teach at secondary level (YouGov, 2021).
- <sup>20</sup> An approach which David Archard argues 'rightly merits the disparaging epithet "plumbing"' (Archard, 2000, p. 28).
- <sup>21</sup> For example, the Catechism of the Catholic Church condemns homosexual acts as 'acts of grave depravity' and calls same-sex orientation 'objectively disordered' (Persona Humana, 1976, s. VIII). And, although there are a diversity of views within faith groups, with many religious people adopting attitudes of acceptance and others identifying as LGBTQ+ themselves, many consider there to be similar prohibitions in Judaism and Islam.
- <sup>22</sup> This reading is further supported by former Education Secretary Damian Hinds' responses during a parliamentary debate on the new RSE regulations and guidance that took place in February 2019. Here, he argued that, although 'there is a balance to be struck' (Hinds, 2019, Column 46) between the rights and opinions of different stakeholders (including members of religious groups), and '[LGBTQ+] issues should be taken on in an age-appropriate way... by the time a person reaches the end of their schooling, they should have covered them' (Column 48). He added that the Government '[trusts] teachers and headteachers to make the decision about when to do that but not whether to do it' (ibid.).
- <sup>23</sup> For instance, Michael Hand has argued that the failure to explicitly include the capacity for 'rationality or responsiveness to reason' is a serious omission given this is 'arguably the most fundamental capacity with which educators should be concerned' (Hand, 2020, p. 1371).
- <sup>24</sup> This is not to say that pupils' capacities for economic productivity, democratic competence or personal fulfilment (which Brighouse et al. conceive of as having 'complex and satisfying labour and projects that engage one's physical aesthetic, intellectual, and spiritual faculties' (Brighouse et al., 2018, p. 26)) will not be cultivated by the subject. It seems entirely plausible to say that the production of these goods will be enhanced by good RSE. Nevertheless, I would argue that such capacities are secondary to the production of personal autonomy, healthy personal relationships and treating one another as equals in this context.
- <sup>25</sup> For a more detailed discussion of the distribution of educational goods see Clayton et al. (2021).
- <sup>26</sup> Although they do acknowledge that public health objectives can only be achieved if the number of parents who chose to exercise this right is relatively low (Blair & Monk, 2009, p. 42).

- <sup>27</sup> Interestingly, this phrase echoes the wording of Second Vatican Council's Declaration on Christian Education (*Gravissimum Educationis*), which states that 'Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore must be recognized as the primary and principal educators' (Vatican Council II, 1965, s.3). In a statement pertaining to RSE in 2019, Paul Barber, Director of the Catholic Education Service (CES) emphasised the Church's support for the phrasing of the DfE guidance, saying, 'The Catholic Church teaches that parents are the prime educators of their children and we are pleased to see the Government sharing this fundamental principle' (Catholic Education Service, 2019).
- <sup>28</sup> As Halstead and Reiss, point out there is little empirical evidence to suggest that parents are particularly well equipped to teach their children about sex and relationships (Halstead and Reiss, 2003, p. 23). Polling by the Sex Education Forum further suggests that a significant minority of parents are incapable of such teaching, with 12% of the 16- and 17-year-olds surveyed describing the sex education that they received from their parents as 'bad' or 'very bad'. A further 23% reported getting no sex education from their parents at all (Sex Education Forum (SEF), 2022, p. 9).
- <sup>29</sup> This slogan featured regularly on the signs held by parents protesting the use of LGBT inclusive children's books outside Anderton Park (BBC, 2019).
- <sup>30</sup> In that it enables them to flourish in a particular way during this time-limited period of their lives (a type of flourishing that won't be available once they reach adulthood).
- <sup>31</sup> For reference, the Independent School Standards set out the other subjects private schools must offer. These include, lessons 'which [give] pupils experience in linguistic, mathematical, scientific, technological, human and social, physical and aesthetic and creative education' (The Education (Independent School Standards) Regulations 2014, Schedule, Part 1, 2.2(a)). However, there is considerable freedom for individual institutions to determine how these are taught.
- <sup>32</sup> In a Westminster Hall debate on the right to withdraw in 2019, then Schools Minister Nick Gibb said the Government's 'guiding principle ... is that these subjects should help keep children safe, which includes knowing the law on relationships, sex and health' (Gibb, 2019, col 42WH). Later in the same debate he explicitly stated that the Government had 'sought to deliver a sensible new position that suitably balances the rights of parents with the rights of young people' (ibid. col 45WH).
- <sup>33</sup> Mass flight into home education, for example, see Clayton et al. (2018).
- <sup>34</sup> For some personal accounts of LGBTQ+ people of faith, see Richardson (2019).
- <sup>35</sup> I am indebted to an anonymous reviewer for making this point.
- <sup>36</sup> These are akin to what, in their work on the political classroom, Hess and McAvoy call 'settled political issues', which may, on account of their largely uncontroversial nature in the political sphere, be taught directly. They are to be contrasted with 'open political issues', which are still subject to debate (Hess & McAvoy, 2015, pp. 161–163).
- <sup>37</sup> It is also possible that the Government deemed this to be the best way to keep in step with public opinion (for a discussion of the role of public opinion as a constraint on policymaking see Clayton et al. (2018)). However, since public support for RSE is very high (see Endnote 19), this seems unnecessary in England, especially as support in Wales is somewhat lower, with 77% of the population stating that sex education is very or quite important (YouGov, 2021).
- <sup>38</sup> Especially given the additional requirements of the science curriculum.
- <sup>39</sup> The move has not been uncontroversial. At the time of writing, a group of parents have won the right to have a legal challenge against the removal of the right to withdraw heard at the High Court, with the case due to be heard in autumn 2022 (BBC, 2022).
- <sup>40</sup> The cases of Lubavitch and Yesodey Hatorah actually illustrate that, sometimes, policies designed to do one thing (in this instance, preserve parental rights) may do precisely the opposite. For this reason, policymakers must be sensitive to the unintended consequences of the policies they enact (see Clayton et al., 2018).
- <sup>41</sup> It seems likely this will also act as a barrier to head teachers using their veto over right to withdraw requests in all but the most extreme cases.
- <sup>42</sup> This is actually the name of an anti-RSE campaign group that is made up of a number of religious organisations.
- <sup>43</sup> This kind of ignorance is illustrated in a position paper on forced marriage in the Charedi community by Jewish charity Nahamu. It notes that, due to a lack of RSE, 'Chassidic young people are unlikely to have any meaningful awareness of what it means to consent, both to the marriage itself and later to sexual intercourse' (Nahamu, 2021, p. 5).
- <sup>44</sup> The recent Independent Inquiry into Child Sexual Abuse report on child protection in religious organisations and settings notes that 'the absence of open discussion on matters related to sex can make those subject to abuse feel unable to report it' (Independent Inquiry Child Sexual Abuse (IICSA), 2021, p. 24).
- <sup>45</sup> This right is also evident in Article 19 of the UN Convention on the Rights of the Child which requires states to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'. It goes on to say that 'Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of

prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement' (UNCRC, 1989).

<sup>46</sup> Along with Tillson (2019), I would argue that, while parents do not enjoy the *moral* right to initiate their children into comprehensive doctrines, it would be indefensible for governments to enforce this via policy.

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