Judiciary of England and Wales

27 February 2026

BYL and others v. The Chancellor of the Exchequer and others
Appeal Nos: CA-2025-001851 and CA-2025-001686
Neutral Citation Number: [2026] EWCA Civ 170

JUDGMENT SUMMARY

Important note for media and public: this summary forms no part of the court's decision. It is provided so as to assist the media and the public to understand what the court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, https://caselaw.nationalarchives.gov.uk

Introduction

1. This appeal concerned the imposition of value added tax (VAT) on private school fees.

2. Two claimant groups appealed to the Court of the Appeal (Sir Geoffrey Vos, Master of the Rolls, Lord Justice Singh and Lady Justice Falk). They contended that the Divisional Court (Dame Victoria Sharp, President of the King's Bench Division, Lord Justice Newey and Mr Justice Chamberlain) ought to have held that the legislation applying VAT to school fees was discriminatory and in violation of three essential provisions of the European Convention on Human Rights (the Convention).

3. The two claimant groups in question are: (i) children and parents of children at private schools operated by and for the disadvantaged Charedi Orthodox Jewish Community (Group One Claimants), and (ii) children and parents of children at private schools following a strictly Evangelical Christian curriculum and the schools themselves (Group Two Claimants).

4. Both claimant groups contended that the type of religious education sought by the parents for their children was not available in the state system. The imposition of VAT on their school fees would, they said, make the schools unaffordable, cause some children to leave, and ultimately cause some schools to collapse. The schools in question mostly charged low fees and were, in some cases, funded by community or other donations. They said that the new VAT charges would deprive many children of the specialist religious education that their parents desired for them. That state of affairs, they submitted, violated article 14 of the Convention (article 14) read with article 2 of Protocol 1 to the Convention (A2P1). The Group Two Claimants also submitted that it violated both article 1 of Protocol 1 to the Convention (A1P1) and A2P1, or alternatively that it breached article 14 read with either of those articles. (The Claimants' grounds of appeal are summarised at [44]-[48] of the judgment).

5. A2P1 provides for the right to education as follows:

> No person shall be denied the right to education. 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.

6. A1P1 provides for the right to property as follows:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

7. Article 14, which prohibits discrimination in the enjoyment of the other Convention rights, provides as follows:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

8. The Divisional Court, in broad terms, rejected all the claims of the Group One and Two Claimants, holding that any interference with their Convention rights was justified and proportionate.

9. The Group One Claimants contended that the Divisional Court's primary error was at [156] where it gave "considerable weight" to the Government's general policy that non-denominational state schools should be, and are, capable of providing a broad, pluralistic curriculum suitable for children from families of all religions and none (the Pluralism Policy). The Pluralism Policy was, the Group One Claimants contended, irrelevant to the correct proportionality question of whether the Government had provided an objective and reasonable justification for its failure to exempt low-cost private Charedi schools from VAT. The Divisional Court had already found at [149] that there were "almost no state schools which offer [a Charedi education], so [the Group One Claimants] did not have state alternatives which were religiously acceptable

to them". Accordingly, they submitted that the Pluralism Policy did not objectively justify the discrimination against them which the imposition of VAT had caused. The Group One Claimants "had a strong religious and cultural preference" for a specialist education, and the Group Two Claimants were unlikely to regard state education as acceptable "because of their belief that education must be 'infused' with Christian principles" (see the Divisional Court at [149] and [174]). Allowing those children to enter the state system, where such religious education was not available, was not a justification for that discrimination, whatever the Government's Pluralism Policy might be.

10. The Group Two Claimants' grounds of appeal challenged the Divisional Court's rejection of their contention that the imposition of VAT interfered with: (a) their possessions contrary to the public interest under A1P1, and (b) the very essence of their right to education under A2P1. That right had, they argued, to be understood in the light of international conventions and the European consensus on not taxing education, as currently reflected in the VAT Directive. They submitted that the Government had imposed a fiscal obstacle to access to Evangelical Christian education, which was not available from the state. It had thereby failed to respect the parents' religious and philosophical convictions.

The Court of Appeal's decision in outline

11. In essence the Court of Appeal decided that Divisional Court was right to say that the A1P1 rights of the Group Two Claimants were not engaged. The schools' complaint was about a loss of anticipated future income, which was not a "possession" for A1P1 purposes. (See [98]-[107] of the judgment). The parents could not argue that the

imposition of VAT had interfered with the peaceful enjoyment of their possessions, because they were not obliged to continue sending their children to such schools. They could lawfully educate them at home. ([108]-[109]).

12. In relation to the Group Two Claimants' argument that the failure to exempt them from VAT interfered with the very essence of their right to education under A2P1, the Divisional Court accurately summarised the relevant case-law at [30]-[53]. The Divisional Court was right at [54]-[58] and [60]-[65] to reject this argument. Lord Bingham summed the matter up in *A v. Head Teacher and Governors of the Lord Grey School* [2006] UKHL 14, [2006] 2 AC 363 (*The Lord Grey School*) at [24] where he said that: "[t]here is no right to education of a particular kind or quality, other than that prevailing in the state".

13. The Court of Appeal undertook its own proportionality analysis (at [75]-[97] of the judgment). It concluded that the Government had provided an objective and reasonable justification for its failure to exempt low-cost schools from VAT. The alleged discrimination in this case had demanded very careful scrutiny of what the Government has put forward as its objective and reasonable justification. Having given full weight to the fact that the case concerned decisions by Parliament and the Executive as to a matter of social and economic policy, the Court of Appeal applied the four-stage test adumbrated by Lord Reed in *Bank Mellat v. HM Treasury (No 2)* [2013] UKSC 38, [2014] AC 700 (*Bank Mellat*) at [74] as follows:

> (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies

against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

14. In summary, the Court of Appeal found that the Government's reasons for rejecting the suggested carve-out for schools with fees set below a certain threshold to be compelling. (See [97] of the judgment). They were encapsulated in [90] of a statement from Ms Scarlett Graham, filed on behalf of HM Treasury (HMT), which could be summarised briefly as follows. A carveout for low-cost schools:

i) would lead to significantly different treatment of schools with fees just above the threshold compared to those just below, which would not be fair to schools just above the threshold and could be open to legal challenge;

ii) could distort the market and undermine competition by creating perverse incentives for schools to suppress fees just below the threshold;

iii) could create incentives for schools: (a) to suppress fees legitimately (e.g. through cost-cutting), or (b) to seek to avoid VAT by (for example) notionally reducing fees but supplementing income via value shifting or via supposed donations which would not in reality be optional, and therefore not truly donations, which would be difficult and resource intensive for His Majesty's Revenue and Customs to police;

iv) would increase administrative burdens for compliant, non-avoidant schools and HMRC, and make legislative implementation more complex;

v) would reduce revenue from the measure by an estimated sum of £30 million (if the fee threshold for exempt schools was set at £7,690 per annum); and

vi) would be inconsistent with the Government's policies that state education is suitable for children of all faiths and none, and all schools are required to follow the Equality Act 2010. (See [94]-[96] of the judgment).

Conclusion

15. For the reasons explained in detail in its judgment, the Court of Appeal dismissed the appeals by both the Group One Claimants and the Group Two Claimants on all grounds.