

Birmingham City Council Equality Act 2010 Fact sheet

RELIGION OR BELIEF EQUALITY

The Equality Act (2010) consolidates all previous equality legislation and extends some protections to groups that were not previously covered. Although there are similarities, there are also significant differences concerning the types of protection afforded the different protected groups. The protected characteristics include: **age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.**

This Fact Sheet discusses the provisions with regard to the characteristic, **RELIGION OR BELIEF**. It forms part of a series of fact sheets that highlight the relevant points pertaining to the Act for each of the nine protected characteristics. For more detailed guidance and information about the provisions can be found in the [Equality Act 2010 Statutory Code of Practice Employment, Services, Public functions and Associations](#), and Explanatory notes.

WHAT IS THE PROTECTED CHARACTERISTIC OF RELIGION OR BELIEF?

The Act defines religion or belief by reference to a person's religion/belief or no religion/belief group. The act replaces similar provisions in the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2006. Furthermore, the [Equality Act 2010 Explanatory Notes](#), Section 10 – article 51 explains that:

“The protected characteristic of religion or religious or philosophical belief, which is stated to include for this purpose a lack of religion or belief. It is a broad definition in line with the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights. The main limitation for the purposes of Article 9 is that the religion must have a clear structure and belief system. Denominations or sects within a religion can be considered to be a religion or belief, such as Protestants and Catholics within Christianity”.¹

EXAMPLES

- The Baha'i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism are all religions for the purposes of this provision.
- Beliefs such as humanism and atheism would be beliefs for the purposes of this provision but adherence to a particular football team would not be.¹

¹EQUALITY ACT 2010, EXPLANATORY NOTES Revised Edition August 2010 (p17)

What is a “philosophical belief?” - Article 52 determines the criteria that it must be genuinely held; be a belief and not an opinion or viewpoint based on the present state of information available; be a belief as to a weighty and substantial aspect of human life and behaviour; attain a certain level of cogency, seriousness, cohesion and importance; and be worthy of respect in a democratic society, compatible with human dignity and not conflict with the fundamental rights of others.

EXAMPLES: Humanism, pacifism and atheism.¹

Any cult involved in illegal activities would not satisfy these criteria.

What are the Prohibitions - The act prohibits unfair treatment in the workplace, when providing goods, facilities and services, when exercising public functions, in the disposal and management of premises, in education and by associations (such as private clubs).

However, section 29 (9) explains that the prohibition on harassment when providing services or exercising public functions does not cover religion or belief.² The prohibitions in this section apply, in relation to religion or belief, to any actions taken in connection with the grant of entry clearance to enter the United Kingdom, even if the act in question takes place outside the United Kingdom.

WHAT FORM OF PROTECTION DOES THE ACT PROVIDE?

The Equality Act sets out the different ways in which it is unlawful to treat someone, such as direct and indirect discrimination, harassment and victimisation. Those who share the protected characteristic of religion or belief are protected from direct and indirect discrimination, harassment and victimisation. Such protection applies in a range of areas including **employment**; the **provision of services**; the **exercise of public functions** and **membership associations**³.

Direct discrimination is where someone is unfairly treated in comparison with another.

EXAMPLE:

- At interview it becomes apparent that a job applicant is Hindu. Although the applicant has all the skills and competences required of the job, the organisation decides not to offer him the job because he is a Hindu. They do this because they believe that the applicant would not fit in with the rest of the workforce, who are predominantly Christian.

² **EQUALITY ACT 2010, EXPLANATORY NOTES** Revised Edition August 2010 (p8)

³ Membership associations generally provide services or other benefits to their members, associates or guests. Under the Act, associations include those bodies which have membership criteria such as private clubs and political parties. Only associations with at least 25 members have obligations under the Act. (Cited in the Equality Act 2010 Code of Practice (Services, public functions and associations)).

- A gentlemen's club refuses to accept a man's application for membership or charges him a higher subscription rate because he is Muslim.⁴
- A school or employer refuses to give a reference to an ex-pupil or ex employee because of his or her religion or belief.⁵

There are two supplementary provisions that protect people from direct discrimination or harassment. These include:

- Discrimination by **Perception** – e.g. where a person is discriminated against or harassed because s/he is mistakenly thought to share a protected characteristic such as religion or belief.
- Discrimination by **Association** – e.g. where a person is discriminated against or harassed because s/he is associated with a person who has a protected characteristic such as religion or belief.

Religious discrimination refers to a disadvantageous consideration or distinction of people on the basis of their religious affiliation, their personal belief (or non-belief), their faith-based appearance or behaviour or their assumed religious affiliation. A Home Office report on religious discrimination finds that cultural discrimination is reported by many religious groups and organisations, particularly minority ones.⁶

EXAMPLES

- An employer decides not to employ a job applicant because, although he has the skills required for the job, during an interview it becomes apparent that he is a Muslim. This is discrimination on grounds of religion or belief.
- Students in a school are ridiculed or even physically attacked by reason of their faith. This constitutes religious harassment.
- An organisation that represents religious minorities organises a meeting, to which all members are invited, on a Jewish holiday. If there are Jewish participants who are prevented from coming solely by the date of the meeting, then this is a failure to accommodate their religious needs.⁷

Indirect discrimination is where a rule or practice applies to everyone, but puts a particular group of people at a disadvantage.

EXAMPLES:

- A company which organises outdoor activity breaks requires protective headwear to be worn for certain activities, such as white water rafting and rock climbing. This requirement could be indirectly discriminatory against Sikhs unless it can be justified, for example on health and safety grounds.⁸

⁴ **EQUALITY ACT 2010, EXPLANATORY NOTES** Revised Edition August 2010, section 101:Members and association, page 76

⁵ **EQUALITY ACT 2010, EXPLANATORY NOTES** Revised Edition August 2010, section 108:Relationships that have ended, page 81

⁶ **'Religion or belief'**: Identifying issues and priorities - Linda Woodhead with the assistance of Rebecca Catto; AHRC/ESRC Religion and Society Programme, Lancaster University. Page iv, sec 4

⁷ Fact Sheet N°34 - Religious Discrimination and Legal Protection in the European Union by European network Against Racism, page 2

⁸ **EQUALITY ACT 2010, EXPLANATORY NOTES** Revised Edition August 2010, section 29: Provision of services , page 32

- An observant Jewish engineer who is seeking an advanced diploma decides not to apply to a specialist training company because it invariably undertakes the selection exercises for the relevant course on Saturdays (Sabbath - Saturday, observed as a day of religious worship and rest from work in Judaism and some Christian denominations). The company will have indirectly discriminated against the engineer unless the practice can be justified.⁴

Harassment is unwanted conduct related to religion or belief has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

EXAMPLES

- Jenny is a humanist and is claiming harassment against her line manager after he frequently teased and humiliated her about her beliefs. Caroline shares an office with Jenny and she too is claiming harassment, even though she does not share Jenny's beliefs, as the manager's behaviour has also created an offensive environment for her.
- Muslim women who wear a headscarf can be particularly vulnerable to harassment and discrimination in schools and employment.⁹

- **Victimisation** is where an individual is treated less favourably than another individual whose circumstances are the same because s/he has taken action to assert their statutory rights or assisted a colleague with information in that regard under the Regulations and that individual suffers a detriment.

EXAMPLE: After giving evidence for a colleague who had brought an Employment Tribunal claim against the organisation because of religion or belief discrimination, a worker applies for promotion. Her application is rejected even though she shows that she has all the necessary skills and experience. Her manager says she is a 'troublemaker' because she has given evidence at the tribunal and as a result should not be promoted. This would be victimisation.

DOES THE PROTECTED CHARACTERISTIC OF RELIGION OR BELIEF APPLY UNIVERSALLY TO ALL AGE GROUPS?

Different circumstances determine whether a particular age group is protected from religion or belief discrimination. In relation to the provision of services and the exercise of public functions the protected characteristic of age applies to persons aged 18 and over, exclusively. However, in relation to Members' associations (such as a private members' club), religion or belief is a protected characteristic irrespective of the person's religion or belief"¹⁰

⁹ Fact Sheet N°34 - Religious Discrimination and Legal Protection in the European Union by European network Against Racism, page 6

¹⁰ The Equality Act 2010 Code of Practice (Services, public functions and associations), par 1.11

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/servicescode.pdf

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ARE THERE ANY EXEMPTIONS?

In limited circumstances it is also lawful for an employer to treat people differently if it is a genuine occupational requirement (GOR) that the holder of a job must be of a particular religion or belief. GORs are always open to challenge, with the burden of proof lying with the employer to establish its validity. Only an Employment Tribunal or a higher court can give a final ruling on a GOR.

What are the requirements?

Dietary requirements - Some religions or beliefs have specific dietary requirements

EXAMPLE: A worker who, for religious reasons, is vegetarian felt unable to store her lunch in a refrigerator next to the meat sandwiches belonging to a co-worker. Following consultation with the staff and their representatives, the organisation introduced a policy by which all food must be stored in sealed containers and shelves were separately designated 'meat' and 'vegetarian'. This arrangement met the needs of all staff at no cost to the employer.

Be aware that providing Halal or Kosher meat without offering any alternative food may disadvantage employees who cannot eat Halal or Kosher meat for reasons related to their religion or belief.

Prayer - Some religions require their followers to pray at specific times during the day so your employees may request to take breaks at these times. They may need:

- access to an appropriate quiet place (or prayer room) to undertake their religious observance.
- Washing area before prayer

Modesty - Some religions or beliefs require individuals to behave with modesty. Different religious groups and individuals interpret this requirement in different ways but some activities which may be considered immodest include:

- shaking hands with a member of the opposite sex
- being alone in a room with a member of the opposite sex
- undergoing a security search, even if it is conducted by a member of the same sex
- showering or change clothing in the company of others
- having their photograph taken
- dressing in a particular way (see section 2.8)

Fasting - Some religions require extended periods of fasting. You may wish to consider how you can support staff through such a period.

Dress - Some may wish to dress in a particular way for reasons related to religion or belief. Unjustifiable policies and rules may constitute indirect discrimination, so you should ensure that your policies on dress and appearance are a proportionate means of achieving a legitimate aim. Legitimate aims in imposing rules on dress or appearance could include health and safety, security or the necessity for staff to project a professional image. The guiding principle in assisting decision-making around employee dress should always be based around the “impact of dress upon the employee’s ability to do their job”. If you consider this, decisions will, by definition, tend to be objective, fair and consistent.¹¹

EXAMPLES

- Some women may wish to dress modestly for reasons related to religion or belief. A dress code which requires a blouse to be tucked inside a skirt may conflict with that requirement as it accentuates body shape. However, if the individual is allowed to wear the blouse over the outside of the skirt it may be quite acceptable.
- Sukhvinder works in a hardware store, where a uniform is to be worn by all staff so that customers can easily identify a staff member to ask for assistance. Sukhvinder asks permission to wear a turban for religious reasons. The management consider his request and conclude that wearing a turban will not impact on Sukhvinder’s ability to do his job, provided that his turban colours match the colours of his uniform.

Occupational Requirements

In certain circumstances, it will be lawful for employers to specify that job applicants must have, or must not have, a particular protected characteristic under the Equality Act 2010. For example, an employer might specify that job applicants must be Hindu or must be female. This is known as an ‘occupational requirement’.

In the area of religion and belief, occupational requirements most commonly apply in circumstances where:

- organisations with an ethos based on religion or belief have a requirement to limit some roles to people who share the organisation’s belief
- organisations providing services targeted at particular religion or belief groups have a requirement to employ people who have a particular protected characteristic, in order to ensure that the target group can avail of the service¹²

¹¹ Acas – a guide for employers and employee “Religion or belief and the workplace”, Page 19

¹² Acas – a guide for employers and employee “Religion or belief and the workplace”, Page 22

EXAMPLES

- A Christian charity with a religious ethos may be able to demonstrate that it is an occupational requirement for some roles in the organisation to be restricted to Christians.
- For religious reasons, unemployed Muslim women might not take advantage of the services of an outreach worker to help them find employment if these services were provided by a man. If the outreach organisation is able to demonstrate that being female is an occupational requirement, it would be lawful for them to advertise a position for women only.

What is now outlawed? - It is now an offence to 'stir up hatred' against any persons on religious grounds. The legislation is intended to ensure that protection against harm is provided to people because of their religious beliefs (or lack of).

In addition, there are now a number of new offences intended to prevent recruitment and training of potential terrorists, including: acts preparatory to terrorism; encouragement to terrorism (including the 'glorification' of terrorism); dissemination of terrorist publications; and terrorist training offences. The potential for Universities to be used as sites for some of these activities receives particular attention in the Home Office Prevent Strategy (2011).

DO PUBLIC BODIES HAVE A DUTY TO PROMOTE RELIGION OR BELIEF EQUALITY?

The Equality Act includes a public sector Equality Duty (also known as the General Duty), which requires public bodies, when exercising their functions, to have due regard to the need to eliminate religion or belief discrimination, harassment, victimisation; advance equality of opportunity for people of different religion or belief groups, and foster good relations between people who share the protected religion or belief characteristic and those who do not.

Accordingly, local authorities need to be proactive in tackling religion or belief discrimination, inequalities, in identifying and responding to the needs of people who share the protected characteristic of religion/belief when designing and delivering services.

Resources and Contacts:

1. Equality Act 2010 Statutory Code of Practice Employment
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employmentcode.pdf
2. Equality Act 2010 Statutory Code of Practice Services, public functions and associations
http://www.equalityhumanrights.com/uploaded_files/EqualityAct/servicecode.pdf
3. Government Equality Office - <http://homeoffice.gov.uk/equalities/>
4. EHRC (Equality & Human Rights Commission), the statutory body with responsibility to enforce and promote equality across the protected characteristics www.equalityhumanrights.com
5. West Midlands Faiths Forum (WMFF) -
<http://www.wmfaithsforum.org.uk>; The Warehouse, 54-57 Allison Street, Digbeth, Birmingham, B5 5TH
Telephone: 0121 633 5536 Email: info@wmfaithsforum.org.uk
6. Inter Faith Network for the UK <http://www.interfaith.org.uk>;
2 Grosvenor Gardens, London SW1W 0DH
Telephone: 020 7730 0410 Fax: 020 7730 0414
Email: ifnet@interfaith.org.uk
7. ENAR, European Network against Racism - www.enar-eu.org
Rue de la Charité 43, 1210 Brussels - Belgium
E-mail: info@enar-eu.org
8. Religious Literacy Leadership Project - www.religiousliteracyHE.org
Faiths & Civil Society Unit, Goldsmiths, University of London, London SE14 6NW
Telephone: 0207 717 2535
Email: info@religiousliteracyHE.org