

## FACTSHEET 1

### Faith matters

The Equality Act 2010 makes direct and indirect discrimination in employment unlawful on the grounds of nine 'protected characteristics'. These are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Churches should ensure that they have policies in place which are designed to prevent discrimination in recruitment and selection, pay, training and development, selection for promotion, grievances, discipline and dealing with bullying and harassment. It is advisable to include a statement in the main terms of employment or Employee Handbook which makes clear the equal opportunity policy that applies to employees and prospective employees.

As a church, it is important to understand how the provisions of the Equality Act apply in relation to religion being a 'protected characteristic'. As a general point of principle, religious discrimination is unlawful. However, an important exception is that if there is a 'genuine requirement' for an employee to be a Christian to carry out his/her role, then this is not deemed to be discriminatory. This is provided that in relation to the nature or context of the work it is an 'occupational requirement' ('O.R') and that in applying this requirement it is a 'proportionate means of achieving a legitimate aim'. It is not enough to decide to employ someone who has or does not have a particular protected characteristic. The requirement must be:

- crucial to the post, and not just one of several important factors
- relating to the nature of job in question, rather than the nature of the employing organisation.
- a proportionate means of achieving a legitimate aim. If there is any reasonable and less discriminatory way of achieving the aim, it is likely that an occupational requirement could not be claimed.

An occupational requirement must be reassessed on each occasion a post becomes vacant to ensure that it can still be validly claimed.

So, it is very important that when preparing a job description for the role that the tasks are clearly identified which may necessitate for the successful candidate to be a Christian; this needs to link to the person specification. For example, if the role is that of a cleaner or maintenance person in a church, it is unlikely that an

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occupational requirement for the person appointed to be a Christian could be successfully argued.

An occupational requirement should be made clear in the Persona Specification as well as in internal and external recruitment advertising.

Additional exemptions apply where employment is for the purpose of 'organised religion. Clearly, churches fall into this category and so a Minister or a Community Worker whose roles are 'promoting or representing the religion' are obvious examples.

Other matters involved may relate the other 'protected characteristics'. ACAS guidelines state that 'in such cases, some roles can be restricted to people of a particular sex or sexual orientation, non-transsexuals, people who are not married or in a civil partnership, or people who are not divorced or married to (or in a civil partnership with) someone who has been divorced. In addition, requirements 'related to' sexual orientation can be imposed on certain roles, e.g. a requirement to be celibate if gay or lesbian'. The exceptions only apply where either of the following is the case:

- appointing a person who meets the requirement in question is a proportionate way of complying with the doctrines of the religion; or
- because of the nature or context of the employment, employing a person who does not meet the requirement would conflict with a significant number of the religion's followers' strongly held religious convictions. The requirement must be a proportionate way of avoiding such a conflict

As with all occupational requirements, the requirement must be essential to the post, and not merely one of several important factors.

The ACAS Booklet 'Religion or Belief and the Workplace' provides useful additional guidance.[http://www.acas.org.uk/media/pdf/3/n/Acas\\_guide\\_Religion\\_or\\_Belief\\_and\\_the\\_workplace-accessible-version-July-2011.pdf](http://www.acas.org.uk/media/pdf/3/n/Acas_guide_Religion_or_Belief_and_the_workplace-accessible-version-July-2011.pdf)

Further information should be sought from the Congregation Federations Human Resources Consultant if in doubt.

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