

Religion and Belief in Provision of Services and Employment: What the Law Requires

The Equality Act 2010 prohibits discrimination in the provision of services and in employment on the grounds of religion and belief. In effect this encompasses anyone who uses services and anyone who has or provides a job.

The Act defines religion or belief as “any religious belief, provided the religion has a clear structure or belief system...or a philosophical belief”.

Within that, a philosophical belief 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”.

This means that the definition of religion or belief is very broadly interpretable. It certainly means that employers and service providers must take seriously the world religions. But it also requires engagement with non-traditional forms (like paganism and pantheism), non-religious forms (like humanism and secularism), and non-religion (such as may be expressed in worldviews and values, such as environmentalism). Some of this has been subject to actions intended to provoke debate about what counts, as in the case of the Jedi Knights (<https://www.gov.uk/government/news/commission-publishes-decision-on-jedi-registration-application>) and the Pastafarians (<https://www.spaghettimonster.org/>) In these cases, the Charity Commission has adopted a more specific definition in practice, which has been used to decide the outcomes of high-profile legal questions as to whether certain groups (such as Scientologists) should be afforded the protections and benefits of being considered a ‘religion’ for charitable purposes. For example, when the Charity Commission rejected an application from The Temple of the Jedi Order in 2016, they did so on the basis that it did not ‘promote moral or ethical improvement’ in society, highlighting that this was considered to be key indicator of ‘religion’ in the contemporary British context (<https://www.gov.uk/government/news/commission-publishes-decision-on-jedi-registration-application>).

Where an organisation has an ethos based on religion or belief, it may be able to apply an exemption in its employment practices from the requirements of the Equality Act 2010 on the grounds of a ‘genuine occupational reason’ (GOR). This means that it would demonstrate that commitment to a particular religion or belief is a requirement to carry out a particular job. Examples include being a Christian Priest or a Muslim Outreach Worker. In social care this applies to hospital and prison chap-

laincies but for the rest of the social care workforce, there are no obvious exceptions.

The 2010 Act also adds a new ‘Public Sector Equality Duty’ which requires that statutory social care services must have ‘due regard’ to three elements in employment and the provision of services:

- To eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- To advance equality of opportunity between people who share a protected characteristic and those who do not.
- To foster good relations between people who share a protected characteristic and those who do not.

The Act explains that having ‘due regard’ involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

As employers and service providers, social work and social care professionals should be aware that discrimination may be direct or indirect. Both are prohibited.

Direct discrimination is when someone is treated differently and not as well as other people because of their religion or belief. It breaks down into three different sorts of direct discrimination or treating someone ‘less favourably’ because of:

- their own religion or belief (direct discrimination)
- their perceived religion or belief (direct discrimination by perception)
- their association with someone who has a particular religion or belief (direct discrimination by association).

Indirect discrimination can occur where a workplace rule, practice or procedure is applied to all workers, but disadvantages people who hold a particular religion or belief. In some limited circumstances, indirect discrimination may be justified if it is necessary for the business to work. For example, an employer may not employ someone who insists on having certain times off for religious observance, when the time they want off is the employer’s busiest time, and all staff are needed to ensure customers’ orders are met.

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Accommodating religious beliefs

Social work and social care employers do not have to give workers time off or facilities for religious observance, but they must try to accommodate them whenever possible. For example, if a worker needs a prayer room and there is a suitable room available then a worker should be allowed to use it, providing it does not disrupt others or affect their ability to carry out their work properly.

Many employers find that being sensitive to the cultural and religious needs of their employees and service users makes good 'business' sense. This can mean making provisions for:

- flexible working
- religious holidays and time off to observe festivals and ceremonies
- prayer rooms with appropriate hygiene facilities
- dietary requirements in staff canteens and restaurants
- dress requirements.

Proportionality

Employers and providers of services are required to exercise 'proportionality' in their actions in relation to religion and belief. The principle of proportionality is at the heart of many human rights claims as any restrictions must be a "proportionate means of achieving a legitimate aim". Proportionality is often most clearly explained through the expression "*don't use a sledgehammer to crack a nut*". Social work and social care settings should consider the aim to be achieved, and whether or not it is a legitimate aim. Then consider the means which are used to achieve that aim. Are they appropriate and necessary? When considering actions in relation to religion or belief, settings might ask:

- Why is person's request being accommodated or restricted?
- What is the problem being addressed by the accommodation or restriction?
- Will the accommodation or restriction lead to a reduction in the problem?
- Does that accommodation or restriction involve a blanket policy, or does it allow for different cases to be treated differently?
- Does a more accommodating or less restrictive alternative exist?
- Has sufficient regard been paid to the rights and interests of those affected?
- Do safeguards exist against error or abuse?

Summary

- It is illegal to discriminate on the grounds of religion or belief in the provision of services or in employment.
- Exemptions apply where an organization can demonstrate that there is a 'genuine occupational reason' (GOR).
- Discrimination may be direct (when someone is treated differently and not as well as other people because of their religion or belief) or indirect (where a workplace rule, practice or procedure is applied to all workers, but disadvantages people who hold a particular religion or belief). All social care settings should avoid both.
- All statutory public services are subject to a Public Sector Equality Duty, requiring them to take proactive steps to avoid discrimination and promote equality.
- Social work and social care settings should accommodate the religion and belief needs of employees and service users where they can and where it is proportionate to do so.