

## The Equality Act – Occupational Requirement

### Introduction

As Christians, we affirm the principle of equality as a good thing. We believe that everyone is made in the image and likeness of God and this is fundamental to our understanding of the dignity and worth of every individual in society. Accordingly, it is wrong to discriminate against anyone on the basis of their gender, age, race or any of the other characteristic protected by the [Equality Act](#).

One of the characteristics protected by the Equality Act relates to an individual's "religion or belief". This means that it is unlawful to discriminate against someone because they hold (or do not hold) a particular religious belief.

Very often, churches and other organisations with a Christian ethos will wish to appoint Christians to certain posts within the organisation. The law allows for this in certain circumstances but it is important to tread carefully. It would be wise to consider that, if an organisation wants to specify that a post must be undertaken by a Christian, it will be seeking to rely on an exemption from the normal rule. So there is an onus on the organisation asserting that a post-holder must be a Christian to be able to justify that assertion.

### **What are the circumstances where a church or mission agency can legitimately assert in a recruitment exercise that the post-holder must be a Christian?**

The Equality Act provides that an organisation with an ethos based on religion or belief does not contravene the legislation by requiring that the post-holder must be of that religion or belief, if, having regard to the ethos of the organisation and the nature or context of the work, it is an occupational requirement that the post-holder be of that religion or belief.

The first thing to establish is that the organisation has an ethos based on the Christian faith. The employer then needs to determine whether an occupational requirement can be attached to the role, by considering the nature of the role and the context in which it is carried out:

- It is important to draft a job description and to analyse the role within the context of the organisation as a whole. Having outlined what the job entails, employers should ask themselves the question "how much of this could only be undertaken by a Christian?" Unless a significant portion of the role could only be undertaken by a Christian, it will not be possible to assert that the post-holder must be a Christian. If the aspects of the role that require to be undertaken by a Christian could reasonably easily be distributed to other people in the organisation, it will not be possible to lawfully assert that the post-holder must be a Christian.
- Employers should note that the process of establishing whether an occupational requirement can be attached to a post must be undertaken for each post in the organisation. It is not sufficient to simply say that the organisation is based on the Christian faith. Each role should be analysed to see if it requires to be undertaken by a person of the Christian faith. If the nature of the particular role and the context in which it is carried out do not justify applying a requirement that the post-holder must be a Christian, it will be unlawful discrimination to attach this requirement to the post.
- Because each role must be analysed before it can be established whether the occupational requirement can be attached to it, it is important to always embark on a proper recruitment exercise, setting out the duties of the post in a job description and specifying the qualities and characteristics that the successful candidate will have in a person specification. Failure to undertake this exercise will lead to an increased possibility that, if challenged, the organisation will not be able to justify attaching an occupational requirement to a post.

- Finally, it is worth checking what the organisation's Equal Opportunities policy says in relation to this issue. Too often churches and mission agencies have Equal Opportunities policies that are silent on the ethos of the organisation and fail to assert the right to attach the occupational requirement to certain posts where appropriate. In fact, many Equal Opportunities policies that have been adopted by churches and mission agencies are borrowed from corporate HR handbooks and specifically state that the organisation does not make recruitment decisions based on applicants' religious beliefs. This is clearly inconsistent with the practice of an organisation that does in fact seek to specify that certain posts must be undertaken by Christians.

The opportunity to reflect the organisation's Christian ethos in its HR policies will be the subject of a future article but, for now, it would at least be worth checking whether your Equal Opportunities policy reflects the ethos of your organisation and specifies that your organisation reserves the right to specify that, for certain posts, it is an occupational requirement that the post-holder is a person professing and practising the Christian faith.

**Mark Mason 3.6.2015**

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For specific advice on a particular recruitment exercise or for anything else to do with employment law or HR in your organisation, please do not hesitate to get in touch.

*Mark Mason is an employment lawyer and network associate of Global Connections. Mark advises employers and employees on all aspects of employment law and human resources practice and represents Claimants and Respondents in Employment Tribunal proceedings. Mark is experienced in advising churches and mission agencies on employment law and HR in their particular context. Mark has agreed to write regular articles on some of the topics that he is most commonly asked to advise on by churches and mission agencies.*

*These articles are intended to provide general information and guidance and are not to be relied upon as legal advice. For specific advice on a particular situation, you can contact Mark on 028 9084 8899 or email him at [mark@markmasonlaw.co.uk](mailto:mark@markmasonlaw.co.uk). Please note that Global Connections members can benefit from an initial 30 minute no-cost telephone consultation.*