

Equality act occupational requirements

Under the Equality Act 2010 there are some exemptions that apply to the work environment which allow employers to require employees to have (or not to have) certain protected characteristics. These are called Occupational Requirements (OR) and the burden is on the employer to show that there is an occupational requirement attached to a particular job role.

The protected characteristics under the Equality Act 2010 are: sex, race, disability, age, religion and belief, marriage and civil partnership, gender reassignment and sexual orientation.

This briefing note concentrates particularly on religious ORs. Applying an OR to a role will mean that the parish will be potentially discriminating against non-Christian prospective candidates. Consequently, such individuals could bring claims of discrimination against the parish and, if so, the burden would be on the parish to persuade a tribunal that the use of the OR was justified and proportionate.

Employers would be required to demonstrate that:

- It has an ethos based on the Christian religion. It should be able to demonstrate that the ethos is reflected in how it conducts its functions and in the nature and context of the work it does; and
- That given the nature and context of the work of the employer and particularly the work the role in question will undertake, that it is an occupational requirement that the post holder is of the Christian religion; and
- That applying that OR is a proportionate means of achieving a legitimate aim. A legitimate aim could be any of the aims of the parish. Achieving that aim proportionately will require the application of the OR to be "reasonably necessary" in order to achieve it. The application of the OR will not be considered reasonably necessary if the employer could have used less discriminatory means to achieve the same objective.

The ACAS Guide on Religion and Belief and the Workplace states that an OR should be reassessed on each occasion a post becomes vacant to ensure it is still validly claimed.

Seven questions

Here are some questions which should be considered when looking at whether an OR is justified and proportionate.

1. What are the key duties, responsibilities and accountabilities (DRAs) of the role that requires the post holder to meet the OR?
2. Of the DRAs identified in response to question 1, are they crucial to the role or could they be delegated to another person, perhaps a Trustee, so that it was not a requirement of the Role?
3. Of the DRAs, have they always formed part of the Role and has the role ever been performed by someone who did not meet the OR? If so, what issues/concerns presented themselves in the past that have now led the parish to consider applying the OR?
4. In respect of the DRAs, do they require an in-depth understanding of the doctrine of the Christian [Anglican] religion or rather an appreciation of the values and culture of the Christian [Anglican] religion. If the latter would it be possible to recruit someone who would

be able to understand, appreciate and maintain the values, priorities and culture required of the parish's ethos when performing the DRAs, without the parish having to rely on the OR. The parish could apply a value based assessment as part of the recruitment process, as well as a competency based assessment to test this?

5. Will the Role require the post holder to carry out certain DRAs unsupervised and to exercise his/her own discretion and judgement over how certain DRAs are performed, and/or to directly manage and supervise other employees in the exercise of such discretion and judgement, that requires the post holder to meet the OR in order for such discretion and judgement to be applied consistently with, and in furtherance of, the ethos of the parish? If so to which DRAs would this apply?

6. In respect of the nature and context of the Role generally and particularly the DRAs, would it be possible for someone else who met the OR (for example the Vicar) to control and direct the post holder sufficiently in the performance of those DRAs that would ensure the post holder appreciated the values, priorities, culture of the parish ethos that needed to be applied when performing the DRAs?

7. Is there any other way of structuring the Role, in terms of its DRAs, how it is supervised/managed etc, that would avoid having to rely on the OR?

The advice in this document has been taken from the Diocese of London and this is acknowledged with thanks.