

Guidance on Equality of ‘Religion or Belief’



In recent years there has been increased interest in the equality strand known as ‘religion or belief.’ This is because of new legislation, a shift in the direction of the government equality and cohesion agenda, the establishment of the Equality and Human Rights Commission and the debates around the forthcoming Equality Bill. Several high profile legal challenges and allegations of discrimination within the context of this strand have heightened public consciousness in these areas and suggest a need for guidance about the current legal situation and good practice.

Written by the British Humanist Association (BHA) and funded by the Equality and Human Rights Commission, this document aims to clarify the law and practice of the ‘religion or belief’ equality strand and bring the relevant information together in one place. As most local authorities and other public bodies already have ways of working positively and constructively with the major religions, this guidance focuses particularly on non-religious issues within the ‘belief’ part of the strand which are often not covered in other guidance documents, and on the importance of including minority religions represented in the locality.

Terminology

'Religion or belief' is the term used in equality and human rights legislation and it should be used generally because it is the simplest fully inclusive term. It recognises that all individuals may potentially be discriminated against due to the religious or non-religious beliefs they hold or to the fact that they do not hold a particular religious or non-religious belief.

The 2006 Equality Act (which also amended the definition in the Employment Equality (Religion or Belief) Regulations 2003) gives these definitions:

- (a) "religion" means any religion,
- (b) "belief" means any religious or philosophical belief,
- (c) a reference to religion includes a reference to lack of religion, and
- (d) a reference to belief includes a reference to lack of belief¹

The term 'religion or belief' has been adopted by practitioners in the equality field and it is the correct term to use for this 'equality strand'. It is the term used by the Equality and Human Rights Commission and the Government Equalities Office; as well as being in the European Convention on Human Rights and the Human Rights Act 1998.

Using 'religion or belief' rather than 'faith' or a similar term not only conforms with the correct, legal, terminology: it has many practical implications too. One of the greatest problems with referring simply to 'faith' or 'religion' is that it automatically excludes the non-religious from consideration; a large part of the population – and in some areas the majority of the population.

Excluding non-religious people by using 'faith' or 'religion' rather than 'religion or belief' suggests that non-religious beliefs are not as important to individuals as religious beliefs. Using exclusive terms - for example, 'religious discrimination' instead of 'discrimination on grounds of "religion or belief"' - suggests that discrimination on grounds of non-religious beliefs is not relevant, not important or even not unlawful.

¹ *Equality Act Part II, 2006, Section 44*

Legislation

The main legislation concerning 'religion or belief' equality is:

(a) the **Human Rights Act 1998** which makes the European Convention on Human Rights justiciable in domestic courts. It also makes it unlawful for a public authority to act in a way which is incompatible with a Convention right;

(b) the **Employment Equality (Religion or Belief) Regulations 2003** which make it unlawful to discriminate on grounds of 'religion or belief' in all aspects of employment and vocational training. Discrimination includes indirect discrimination, harassment and victimisation;

(c) the **Equality Act 2006** which in Part 2 makes it unlawful to discriminate on grounds of 'religion or belief' in the provision of goods, facilities and services. It also provides that it is unlawful for a public authority to do any act which constitutes discrimination.

Both (b) and (c) specify a number of exceptions to the general prohibition of discrimination.

A more detailed summary of the legislation, including types of discrimination and the exceptions, is given at the Annex on page 12.

The Government is planning to consolidate and rationalise all equality legislation and will shortly be publishing its "Equality Bill": the basic principles are, however, most unlikely to change.

Good Practice

The legal framework is based on *anti-discrimination* provisions but there has been a major shift towards the creation of positive duties for public bodies, which require them to *promote* good equality practice, and this will probably be strengthened in the forthcoming Equality Bill.

Such instruments make it clear that all individuals are included within the equality remit of any local authority or other public body. However, sometimes the policies and structures supported by local authorities in the equality and diversity field may not be fully inclusive. For example, many local authorities turn to 'interfaith forums' or similar structures in order to engage with the 'religion or belief' strand of equalities. However, many of these structures do not include all the minority religions represented in the area, and only 10% of them include non-religious beliefs or have humanist representatives.² This means that local authorities may be taking equality advice from organisations that do not represent a large section of this equality strand.

Local authorities and other public bodies should carry out a three-fold check for good practice:

- Check your thinking:
 - Keep the whole community in mind.
 - Never assume that everyone has a religious belief.
 - Remember the religious minorities - pagans, Bahai's etc.
- Check your language:
 - Remember that people without a religious belief do not identify themselves with any 'faith communities' and can feel alienated by exclusive language.
 - Always use legally correct, inclusive terminology – in particular, use 'religion or belief.'
 - Ensure that everyone understands the implications and reasons for this.
- Check your actions:
 - Do an audit – are you including representatives of all the different 'religions or beliefs' in the equality strand?
 - Make sure your equality initiatives embrace the interests and concerns of the non-religious and smaller religious groups as well as the various mainstream religious communities.
 - In any survey you conduct about 'religion or belief', include a 'non-religious' answer space and an 'other' answer space.
 - Include humanist and smaller religious organisations when compiling or updating databases of community organisations, and information directories.
 - Include humanists and minority religious beliefs when giving information about the 'religion or belief' equality strand or when giving definitions or examples of beliefs.
 - Ensure all equal opportunities and anti-discriminatory policies and training deal with 'religion or belief.'

² *Inter Faith Organisations in the UK*, Inter Faith Network for the UK, 2007

Specific Good Practice for Equality and Diversity Schemes

Statistics and data monitoring

Often, equality and diversity schemes will include charts and statistics presenting demographic information from your own surveys or from other sources such as the Census.

Although statistics can be useful, 'religion or belief' is extremely difficult to measure. When people are asked about their beliefs, their answers vary enormously with the precise wording of the question and the context in which it is asked. Without very detailed questioning it is difficult, if not impossible, to determine whether answers indicate genuine belief, active involvement and practice, a sense of belonging, or just a vague cultural affinity.

Further, unlike the other protected equality characteristics, beliefs are not innate but changeable. They are also highly sensitive and personal to individuals. These difficulties mean that data on 'religion or belief' is often unreliable, inaccurate and misleadingly precise. This is especially problematic when figures are used for purposes such as positive action initiatives, targeting policy or services to specific groups, or operational imperatives such as impact assessments.

There are particular problems with the 2001 Census data on 'religion or belief' - the Office of National Statistics itself admits that the leading character of the 'religion' question ('What is your religion?') meant that many people with a loose (for example, merely cultural) affiliation to a religion identified themselves as religious (particularly as Christian) producing results that are seriously out of line with all other surveys and polls.³ A large proportion of people who identify themselves as affiliated in some sense to a religion do not have religious beliefs or active involvement in any religious group. Home Office research has shown that religion is named as an important factor in their identity by only 20% of people, ranking it tenth in a list of 15 factors.⁴

Therefore, any presentation of demographic information about 'religion or belief' should be accompanied by a written analysis, making clear the source and reliability of the information and, importantly, the limits on its usefulness.

³ For example, compare the Census with the 2006 British Social Attitudes survey*:

	Census (UK)	BSA (GB)
Christian	71.6	47.5
Total non-Christian religions	5.24	6.0
No religion	15.6	45.8
Not stated	7.6	0.6

* National Centre for Social Research - Social Trends no 38, 2008, Table 13.18,

⁴ Home Office Research Study 274: Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey (March 2004)

In any survey you conduct, there should always be an option where people with non-religious beliefs can express this and this should be included in any analysis of data and treated in the same way as religious beliefs. For example, organisations often create tables of ‘religions or beliefs’ in order of prevalence. Despite the fact that the ‘none’ or ‘no religion’ category is often larger than all the minority religions combined, it is often put at the bottom of the table as if it were irrelevant. This bad practice creates the impression that people without a religion are not covered by equality and diversity policy.

For Example:

Bad Practice		Good Practice																																					
What is your religion? <input checked="" type="checkbox"/> Christian <input checked="" type="checkbox"/> Muslim <input checked="" type="checkbox"/> Hindu <input checked="" type="checkbox"/> Jewish <input checked="" type="checkbox"/> Sikh <input checked="" type="checkbox"/> Other		Do you regard yourself as belonging to any particular religion? <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No, no religion If yes, which one? <input checked="" type="checkbox"/> Christian <input checked="" type="checkbox"/> Muslim <input checked="" type="checkbox"/> Hindu <input checked="" type="checkbox"/> Jewish <input checked="" type="checkbox"/> Sikh <input checked="" type="checkbox"/> Other																																					
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Consultation

Equality and diversity schemes may include sections on consultation, detailing, for example, how employees and/or service users are to be consulted. They may also detail who or which organisations have been consulted during the development of the scheme itself.

Sometimes, government and other public authorities consult with religious groups, individuals or ‘representative’ bodies, such as the Inter-Faith Network, but fail to consult with non-religious groups, individuals or representative bodies, such as the British Humanist Association. This means that non-religious perspectives and interests may not be known, considered or taken into account. They may also fail to consult the smaller religious minorities, who may not be represented on ‘inter-faith’ forums and whose views and interests may be very different to those

of the larger religions. Failure to include both these groups will have a detrimental effect on the equality scheme itself, on the organisation responsible and its functions, and will also damage the perceived legitimacy of its policies or the services provided.

Equality and diversity schemes must therefore make clear that, wherever religious groups and individuals are consulted, efforts must be made to include the smaller religious minorities and non-religious groups and individuals. They should also be included in any 'religion or belief' equality groups.

Procurement

If your equality and diversity scheme includes details of procurement processes it is good practice that the scheme makes explicit that contracts will include provisions to protect against discrimination in all equality strands, including 'religion or belief'. To make explicit the need for contractors to prevent discrimination in all equality strands is vital, as there are currently no legal requirements for contractors providing services on behalf of a public authority to abide by the obligations carried by the public authority itself in relation to equality or non-discrimination on grounds of 'religion or belief', as there are with gender, race and disability.

There are particular issues where public authorities contract services to religious organisations, since they have exemptions from equality legislation allowing them to discriminate on grounds of 'religion or belief' and of sexual orientation in employment, and on grounds of 'religion or belief' in the provision of goods, facilities and services. To help ensure employees and service users are treated equally when services are contracted out, contracts should stipulate non-discrimination on all equality strands, and that the exemptions from equality legislation do not apply to the contracted service.

Specific Good Practice for Employment

Organisations may wish to make provision to accommodate their employees' needs, such as time off for religious holidays. Practice in this area should be based on the principle and practice of 'reasonable accommodation', as long as it is fair, transparent, and equal, and accommodating actions and policies do not place others at a disadvantage.

Any assistance given to 'religion or belief' groups within the workforce should be open to all 'religion or belief' groups on an equal basis. Moreover, if assistance will incur costs to the public purse, this must be justified. Public money must be used only for clear and justifiable purposes, which do not include the advancement of a particular 'religion or belief'. For example, while it may be positive to celebrate diversity, it may be more suitable for those staff wishing to celebrate specific religious holidays to fund this themselves on a voluntary basis. In all cases, decisions in this area should be fair and proportionate between groups.

Examples

Prayer rooms

Rather than provide multi-faith prayer rooms, ensure that facilities are available to all regardless of their 'religion or belief.' It may be better to have rooms dedicated to personal reflection, meditation or prayer, which are open to staff and visitors of all faiths and none, rather than rooms specifically dedicated for prayer. Care should be taken to ensure that this is more than a nominal arrangement: for example, specific religious literature or artefacts can be put away when not in use to ensure that the space is genuinely open to all, and suitable secular uses which include all people can be made of the room at pre-arranged times.

Leave for religious holidays

When accommodating requests for leave for religious holidays, the impact on other staff should always be considered. Allowing some staff to leave early on Friday for religious reasons, for example, may impact adversely on other staff with caring responsibilities, and requests not to work a Sunday rota may mean that other staff have to work a disproportionate number of Sundays. Once again, decisions must be fair and proportionate. It is important that people should not simply be given extra time off or holidays due to their 'religion or belief' as this would discriminate against staff who practise a different 'religion or belief' or have non-religious beliefs.

Harassment of staff by proselytising

In some religions, it is considered acceptable for believers to evangelise or 'spread the word'. Attempting to convert people to the religion may be seen as a religious duty. But the right of others to freedom of 'religion or belief' must be respected and this is particularly important in a 'closed' setting such as the workplace.

Attempts by employees to convert people or to use the work environment to proselytise are highly likely to amount to harassment of their colleagues. The fact that this harassment is based on their own religious or non-religious beliefs does not make it acceptable. Similar

considerations would apply to attempts by non-believers to undermine colleagues' religious beliefs.

This does not require a blanket ban on discussing 'religion or belief'. Training and guidance on equality and harassment should allow employees to distinguish between reasonable discussion and behaviour that may be offensive.

Harassment of staff due to their sexual orientation or gender reassignment

Some religions have strong views about sexual orientation, in particular against homosexuality and bisexuality, and about gender reassignment. All people have the right to be treated with dignity and respect and repeated voicing of such views, especially in an intimidating or offensive manner, can amount to harassment, even if the person(s) responsible are unaware of the presence of anyone in the groups they are demeaning. It is important for equality policies to make clear that derogatory or offensive remarks will not be tolerated and will be dealt with robustly.

Equally, firm steps should be taken to ensure that people are not harassed on the basis that their 'religion or belief' is assumed to have a negative attitude to homosexuality.

Dress codes

There is a strong argument for dress codes to make reasonable accommodation for practices based on 'religion or belief'. Dress codes should be flexible enough to allow people to accommodate religious requirements where possible. A code which does not allow this without legitimate reasons could be seen as indirectly discriminating.

However, there are sometimes legitimate reasons for rules that may prevent such expression. For example, health and safety of employees, or the interference of some dress with the performing of certain functions, must always come first and any policy will be lawful if it can be proved that it achieves a "legitimate aim."⁵

⁵ *Employment Equality (Religion or Belief) Regulations 2003, Part I, Section 3b*

More Information

More information can be found here:

The Human Rights Act – <http://tinyurl.com/ca3cnu>

The Employment Equality (Religion or Belief) Regulations 2003 – <http://tinyurl.com/y8umzh>

The Equality Act 2006 - <http://tinyurl.com/5hx4ug>

ACAS guidance on the Employment Regulations⁶ - <http://tinyurl.com/chgbdd>

Equality and Human Rights Issues - www.equalityhumanrights.com

Humanism- www.humanism.org.uk

Individual Religions - www.bbc.co.uk/religion/religions/

Liberty guidance on the Human Rights Act - <http://tinyurl.com/bwrmtmp>

Government Equality Work - www.equalities.gov.uk

Government plans for the Single Equality Bill - <http://tinyurl.com/ceuz7>

⁶ NB: this antedates the amendments introduced by the Equality Act.

About Us

The British Humanist Association (BHA) is the national charity seeking to represent the interests of the large and growing population of ethically concerned non-religious people living in the UK. It exists to support and represent people who seek to live good and responsible lives without religious or superstitious beliefs.

The BHA is deeply committed to human rights, equality, democracy, and an end to irrelevant discrimination, and has a long history of active engagement in work for an open and inclusive society. In such a society people of all beliefs would have equal treatment in law, and the rights of those with all beliefs to hold and live by them would be reasonably accommodated within a legal framework setting minimum common legal standards.

The BHA has a Local Development Project, which was part-funded in its first year by the Department for Communities and Local Government, and seeks to build the capacity of humanists and the non-religious to contribute to local authorities' work around both 'religion or belief' equality issues and projects of inter-cultural dialogue and good relations. In addition, the BHA received funding from the Equality and Human Rights Commission in 2008 to run a project regarding the 'religion or belief' equality strand.

For more information, please see www.humanism.org.uk

ANNEX: SUMMARY OF LEGISLATION

The following is only a summary of the legislation and should not be taken as complete or authoritative.

The Human Rights Act

This makes the rights given to everyone by the European Convention on Human Rights justiciable in domestic courts.

It also provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. This applies to all public bodies including local authorities, government departments, the NHS and Police Authorities among others.

Article 9 of the Act reads:

“Freedom of thought, conscience and religion

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”⁷

Note that the right to manifest a ‘religion or belief’ is conditional, unlike the absolute right to hold beliefs.

Article 14 states that:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”⁸

This means that people cannot be discriminated against in their enjoyment of the Convention Rights on any of the grounds cited - ie, you cannot be treated differently from someone else in your enjoyment of your rights because of your ‘religion or belief’.

The Employment Equality (Religion or Belief) Regulations 2003⁹

The definitions of ‘religion or belief’ included in the original version of these Regulations has been replaced by those on page 2. The regulations apply to all aspects of employment – recruitment, terms and conditions, promotions, transfers, and dismissals – and also apply to vocational training. Under the regulations and subject to narrow exceptions it is unlawful on the grounds of ‘religion or belief’ to:

⁷ *Human Right Act*, Article 9

⁸ *Ibid*, Article 14

⁹ as amended by the Equality Act 2006

- Discriminate directly against someone
- Discriminate indirectly against someone
- Subject someone to harassment
- Victimise someone
- Discriminate against or harass someone in certain circumstances after the working relationship has ended

Employment tribunals require a comparator - a person who has a different 'religion or belief' from the person who is bringing the case - to be cited in order to demonstrate that the difference of treatment was due to 'religion or belief'.

Under the Regulations direct discrimination occurs when "a person ("A") discriminates against another person ("B") on grounds of religion or belief - A treats B less favourably than he treats or would treat other persons."¹⁰

Indirect discrimination is when "A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same religion or belief as B, but which puts or would put persons of the same religion or belief as B at a particular disadvantage when compared with other persons." This is unlawful indirect discrimination if it "puts B at that disadvantage, and A cannot show [it] to be a proportionate means of achieving a legitimate aim."¹¹

Discrimination by way of victimisation means "a person ("A") discriminates against another person ("B") if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has -

- brought proceedings against A or any other person under these Regulations;
 - given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations;
 - otherwise done anything under or by reference to these Regulations in relation to A or any other person; or
 - alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,
- or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them."¹²

However this does not apply to "treatment of B by reason of any allegation made by him, or evidence or information given by him, if the allegation, evidence or information was false and not made (or, as the case may be, given) in good faith."¹³

¹⁰ *Employment Equality (Religion or Belief) Regulations 2003, Part I, Section 3a*

¹¹ *Ibid*, Section 3b

¹² *Ibid*, Section 4

¹³ *Ibid*

Harassment on grounds of 'religion or belief' means "a person ("A") subjects another person ("B") to harassment where, on grounds of religion or belief, A engages in unwanted conduct which has the purpose or effect of violating B's dignity; or
(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

"Conduct shall be regarded as having this effect only if, having regard to all the circumstances, including in particular the perception of B, it should reasonably be considered as having that effect."¹⁴

Exemptions

There are several exemptions to the regulations.

Genuine and Determining Occupational Requirements

"This paragraph applies where, having regard to the nature of the employment or the context in which it is carried out -

- (a) being of a particular religion or belief is a genuine and determining occupational requirement;
- (b) it is proportionate to apply that requirement in the particular case; and
- (c) either -
 - (i) the person to whom that requirement is applied does not meet it, or
 - (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it,

and this paragraph applies whether or not the employer has an ethos based on religion or belief."¹⁵

This exception allows, for example, churches to restrict clergy positions to those of the appropriate religious beliefs but also applies where non-religious employers have a job that could not be performed by someone without a particular 'religion or belief', for example, when an NHS Trust employs a Chaplain.

Genuine Occupational Requirements

"This paragraph applies where an employer has an ethos based on religion or belief and, having regard to that ethos and to the nature of the employment or the context in which it is carried out -

- (a) being of a particular religion or belief is a genuine occupational requirement for the job;
- (b) it is proportionate to apply that requirement in the particular case."¹⁶

However, this does not allow an organisation to ask that all staff be of a particular 'religion or belief' – only those where this would be proportionate to achieving a legitimate aim. The job should be advertised as having a GOR and the requirement should appear in the contract of employment.

Positive Action

"Any act done in or in connection with the following is not unlawful:

¹⁴ *Ibid*, Section 5

¹⁵ *Ibid*, Part II, Section 7

¹⁶ *Ibid*, Part II, Section 7

(a) affording persons of a particular 'religion or belief' access to facilities for training which would help fit them for particular work; or
(b) encouraging persons of a particular 'religion or belief' to take advantage of opportunities for doing particular work,
where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to 'religion or belief' suffered by persons of that 'religion or belief' doing that work or likely to take up that work."¹⁷

Schools with a religious character

The regulations do apply to Schools with a religious character but the School Standards and Framework Act 1998 makes additional provisions.

Equality Act 2006

Part 2 of the Act relates to discrimination based on 'religion or belief' in the provision of goods, facilities and services. Its definitions of 'religion' and 'belief' are quoted on page 2. It includes definitions of discrimination very similar to those in the Employment Equality Regulations, covering direct discrimination, indirect discrimination and victimisation due to someone being involved in proceedings under the Act.

"It is unlawful for a person ("A") concerned with the provision to the public or a section of the public of goods, facilities or services to discriminate against a person ("B") who seeks to obtain or use those goods, facilities or services—

- (a) by refusing to provide B with goods, facilities or services,
- (b) by refusing to provide B with goods, facilities or services of a quality which is the same as or similar to the quality of goods, facilities or services that A normally provides.
- (c) by refusing to provide B with goods, facilities or services in a manner which is the same as or similar to that in which A normally provides goods, facilities or services.
- (d) by refusing to provide B with goods, facilities or services on terms which are the same as or similar to the terms on which A normally provides goods, facilities or services."¹⁸

This applies, in particular, to:

- (a) access to and use of a place which the public are permitted to enter,
- (b) accommodation in a hotel, boarding house or similar establishment,
- (c) facilities by way of banking or insurance or for grants, loans, credit or finance,
- (d) facilities for entertainment, recreation or refreshment,
- (e) facilities for transport or travel, and
- (f) the services of a profession or trade."¹⁹

It is immaterial whether or not a person charges for the provision of goods, facilities or services.

¹⁷ *Ibid*, Part IV, Section 5

¹⁸ *Equality Act Part II*, 2006, Section 46, Subsection 1

¹⁹ *Ibid*, Subsection 2

It is specifically provided that it is unlawful for a public authority exercising a function of a public nature to do any act which constitutes discrimination.²⁰

Exemptions

Unless their main purpose is commercial, organisations relating to 'religion or belief' (as defined in the Act) have various exemptions. For example they can legally,

- “(a) restrict membership of the organisation,
- (b) restrict participation in activities
- (c) restrict the provision of goods, facilities or services
- (d) restrict the use or disposal of premises owned or controlled by the organisation.”²¹

But such restrictions are legal only if “imposed by reason of or on the grounds of the purpose of the organisation, or in order to avoid causing offence, on grounds of the 'religion or belief' to which the organisation relates, to persons of that 'religion or belief'”²². Similar exemptions relate to schools with a religious character.

The Equality Bill

The Government is currently drafting a Bill to harmonise all the equality legislation on all equality strands. The Bill is likely to be published in April 2009. The law in this area may therefore change in detail although the basic principles, definitions and exemptions are unlikely to be altered significantly.

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²⁰ *Ibid*, section 52

²¹ *Ibid*, Section 57, Subsection 3

²² *Ibid*, Subsection 5