



How genuine are your GORs?

TN92 Training Notes series: Structures

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I see plenty of church staff jobs advertised that state that there is a 'Genuine Occupational Requirement' (GOR or OR*) for the post-holder to be a Christian. But some of these requirements seem far from genuine.

I suspect that some Ministers or other church leaders think that by adding this phrase to the advertisement they are covered in equality legislation and can insist on a Christian in the post. This is not the case.

If a discrimination claim is brought, the burden of proof is not placed on the employee but on the employer to *prove* there is a GOR. If you, as an employer, found yourself in this position, could you do that?

What follows can only be a general description for churches and mission agencies written by someone who is not himself a lawyer. Employers should obtain professional legal advice when considering any one post.

The legislation concerned is the Equality Act 2010, although the issues have been with us since the Employment Equality (Religion or Belief) Regulations 2003. The 2010 Act brought together a number of pieces of legislation relating to discrimination and made some small changes at the same time.

The Act states that it is unlawful to discriminate in employment on certain grounds which include age, disability, race and sexual orientation. One of these grounds is 'religion or belief'.

This means that workers or job applicants must not be treated less favourably than others because they follow, are perceived to follow, or do not follow a particular (or any) religion or belief.

But churches and missions will want to employ practising Christians in many of their posts. The legislation recognises this and allows for certain exemptions. The tricky issue is to determine when these exemptions apply. There is no definitive list for this so it is all a matter of interpretation.

**See page 3 on the specific use of the word 'Genuine'.*

The 2010 Act

The Act covers much more than just advertising a staff post. It is unlawful to:

- decide not to employ someone;
- dismiss them;
- refuse to provide them with training;
- deny them promotion;
- give them adverse terms and conditions;

because they follow, or do not follow, a particular religion or belief. The Act includes direct and indirect discrimination, harassment and victimisation.

But the subject of these notes relates to applicants for posts and here the Act states that the employer must not discriminate against an applicant in the arrangements made for deciding to whom to offer employment or by not offering the person employment.

The key part of the Act for these purposes is Part 1, Schedule 9. This allows exceptions in the following cases.

1 **Organised religion**

Don't get too excited – the phrase used seems only intended to cover Ministers of Religion and a few other posts concerned with promoting or representing religion. This wording is unlikely to help you with other church staff.

2 **Occupational requirement**

The regulations allow an employer, when recruiting for a post, to treat job applicants differently on the grounds of religion or belief, if possessing a particular religion or belief is a genuine and determining (ie. decisive) occupational requirement (GOR) for that post.

However it has to be shown that the application of the requirement is a 'proportionate' means of achieving a 'legitimate' aim, and that the person concerned (ie. the applicant who might otherwise claim discrimination) does not meet that requirement.

The exemptions

There are two main requirements.

1 **The church or mission's Christian ethos must be genuine**

You have to show that you have a Christian ethos (ideally in writing). You also need to have evidence to demonstrate its day-to-day reality in the life of your church or mission.

An ethos statement explains who you are rather than what you do. It's all about your inner life, your foundations on which you base your ministry, your beliefs, your identity, your values. It is the motivation of the people of the church or mission.

The existence of such a statement should not be a problem for a church. Quote any purpose and/or doctrinal statement you adhere to, and cite the founding documents of your denomination or stream.

A mission agency, however, will need to devise a thorough ethos statement to show that the Christian faith is at the heart of all its ministry. Clear purpose and values statements will be required.

2 The occupational requirement for the post must be genuine

The G for Genuine which was used in 2003 was left out of the 2010 Act although many people still refer to a GOR. OR is more correct (and will be used in these notes from this point on). But 'genuine' is the right word because an Explanatory Note to the Act states that "The requirement must be crucial to the post, and not merely one of several important factors. It must also not be a sham or a pretext".

It is that wording that gives churches a problem if they want a Christian in many administrative posts. Consider a church youth worker whose job description covers explaining the gospel to young people outside the faith, and discipling those within the church. Provided the papers for the post including such points this would seem on face value to be a crucial part of the role and, therefore, you would not be discriminating against someone of no or other faith if you did not offer them the job (provided you had stated clearly that an OR existed).

The issue for administrative posts

Now take an Office Administrator. Can the church demonstrate that a Christian believer has to do that particular job? On many job descriptions for such posts, the answer has to be 'No'. And just to slap on a statement saying that an OR exists for this post does not satisfy the requirements of the Act, especially the words 'crucial', 'sham' and 'pretext'.

What if you say that the Administrator must attend staff prayers each day? It is unlikely that an Employment Tribunal would regard that as 'crucial' to the job (but see below).

What if you therefore advertise the post only within your church membership and say that it is open to all church members? But that in itself is indirect discrimination because you are keeping the advertisement away from where other people could see it – and the statement about 'open to church members' could also be discriminatory.

This becomes even clearer when you read the Explanatory Note to the 2010 Act concerning senior staff. This states "Other posts that do not require this kind of in-depth understanding (of a CEO), such as administrative posts, should be open to all people regardless of their religion and belief." So the default position for an Administrator is that an OR will **not** apply!

The context of the post

However tribunals have held that an administrative post that in itself does not require the post-holder to be a Christian believer, may still have an OR if the 'context' of the post requires there to be a Christian.

So a daily act of worship to which all staff are required to attend as a staff team together and where the Christian faith is central to the work of the team together can give a Christian context to the employment. It would help if the team prayed together for each other on a daily basis. The Administrator would of course need to be a full member of the team.

But bear in mind this is a matter of interpretation in individual cases and does not mean that all administrative posts in churches qualify for an OR.

An OR will be slightly easier to justify for a more senior Operations post. Here it will help if the person employed is clearly in a leadership role within the church and the job includes Sunday working within church services.

Action to take in designing the post

If you definitely want to employ only a Christian believer in a post where the issue of an OR might be doubtful, you will have to include within the job description a *central* element that shows that an OR is justified.

For an Office Administrator this might mean making Christian witness to visitors a key component of the post. The Administrator is very much on the church's front line for visitors, those who are using the church plant for external activities, telephone callers, banns couples (for some churches) and so on. You make a stronger case if you add that the Administrator "represents the Minister and church" to everyone he or she deals with, and that the post holder will be expected to make an appropriate response to all questions asked, including those about the Christian faith. This shows that the central role is not just about administration but about representation on the front-line of direct contact with all those who contact the church.

You could then add something about "leading staff prayers and being part of the church staff team who, together, play a part in leading the church's life and witness" to pick up the point about context. But remember this needs to be genuine, it cannot be 'sham' or 'pretext' and it may not be strong enough on its own without the representation point above.

You might then want to reconsider the job title provided it remains an accurate one: Church Co-ordinator might be more likely to attract an OR than Admin Support.

If the post is just to help with administrative work in the office, then it will be very hard to justify an OR at all. And a growing number of Church Administrator posts are now held perfectly successfully by those of no Christian faith, provided they are happy to work within the general ethos of a church setting.

Action to take in general

In addition to the above, make sure you don't slip up in how you make the OR plain.

- Provide a clear ethos statement and demonstrate its reality in your church's daily life.
- Ensure the OR ties in tightly with the ethos you have given for the church or organisation.
- Identify the OR right at the start of the recruitment process and ensure it is stated in all advertisements and recruitment documentation for the post.
- Ensure that it is crucial for the job description to be carried out. You must show that for the duties in question it would be unreasonable for other staff to carry them out instead.
- Check in particular that it clearly applies to the person profile for the post (eg. by including an understanding of the church and its doctrine).
- Make it clear throughout the selection process.
- Do not rely on one post in the church or mission having an OR meaning a different post will also have one. Each job needs to demonstrate its own OR.
- Check the OR still applies every time the job becomes vacant as circumstances may change.
- If you have an Equal Opportunities Policy you *must* state that you reserve the right to recruit Christians where there is an Occupational Requirement to do so. You should then list the posts where an OR applies, and keep this list updated.
- The correct wording to use for an OR is: "An occupational requirement exists for the post-holder to be a practising Christian in accordance with the Equality Act 2010".

In all this only an Employment Tribunal or higher court can give an authoritative ruling as to whether or not an OR is valid, but take professional advice if there is any doubt. These notes must not be relied upon for any post and are written simply to give a general overview.

Further reading

Google the key words to find:

- The ACAS Guide, *Religion or belief and the workplace* (detailed advice – ensure you download the 2010 Act version not the 2003 version).
- Christian Legal Centre's *Guide to the Equality Act 2010* (an excellent, brief paper which includes tribunal findings).
- Baptist Union Guideline Leaflet LO9 for the 2010 Act based on the Faithworks pack (2003) *Christian Ethos Audit* (includes helpful detail about and examples of ethos statements and Equal Opportunities Employment Policies, plus details of separate ORs regarding sexual orientation).

These notes are available at www.john-truscott.co.uk/Resources/Training-Notes then TN92. See also Article A17, *Staff selection step-by-step*, and TN66, *A daily office for church staff*.

Contact John if you would like to enquire about the possibility of advice on staff, and especially Administrator, employment but note that he is not an HR professional nor qualified in employment law.

Cartoons are by Micki Hounslow for filing categories of Leadership, Management, Structures, Planning, Communication and Administration. File TN92 under Structures (with a link to Management).

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