

# ‘Religion or Belief’ Training Toolkit

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## Introduction

This toolkit has been developed by the British Humanist Association as part of a project funded by the Equalities and Human Rights Commission. The project was set up as a direct result of the BHA’s experience of working with local authority and public sector staff. We discovered that many of the people responsible for equality at local and regional level do not feel that they have enough information to tackle the issues that arise in this equality ‘strand.’

This toolkit is designed to support equality practitioners in their work by giving guidance and information about the ‘strand’ via exercises and presentations. It can be used by anyone who is comfortable giving presentations and can be delivered to colleagues in the equality sector, ‘religion or belief’ groups and other community groups. In small groups, the exercises can be done as a whole group; larger groups should be split up for easier discussion.

## How to use this toolkit

### **'Religion or belief' quiz**

This exercise should take approximately 5-10 minutes. Hand out the enclosed quiz to all participants. Ask them to discuss the questions and fill in the answers. This is a good exercise to start with as it gets participants talking to each other.

### **PowerPoint Presentation 1**

This should take approximately 15-20 minutes. Read out the questions in the quiz one by one and ask people for their answers, then show the correct answer on the slide.

### **Case study discussion sheet**

This should take approximately 15 minutes - 5 minutes for each case study. Hand out the sheet to all participants and ask them to discuss the cases in groups. For each one they should think about:

- What are the issues?
- Is this a case of discrimination on the grounds of 'religion or belief?'
- What does the law say?
- How is the situation affecting
  - a) the individual?
  - b) the organisation?
- What would be some options for solving this situation?

### **PowerPoint Presentation 2**

This should take approximately 20-25 minutes. Read out the case studies one by one and discuss the issues as a whole group. After each case study put the suggested answer on screen and discuss as a group.

### **Legislation summary handout and full guidance document**

These should be given to participants at the end of the session.

# ‘Religion or Belief’ – Quiz

**1 The Human Rights Act prohibits discrimination but there are exemptions for religious organisations.**

True                      False

**2 ‘Religion or belief’ organisations can legally discriminate against people in employment if they are of a different ‘religion or belief.’**

Always                      Never                      In certain circumstances

**3 ‘Religion or belief’ organisations can legally discriminate against people in employment if they are not heterosexual.**

Always                      Never                      In certain circumstances

**4 The Equality Act Part II outlaws inter faith groups if they don’t admit non-religious people.**

True                      False

**5 This strand of equality and human rights legislation only protects people with religious beliefs.**

True                      False

**6 Humanism is a ‘faith.’**

True                      False

**7 Community Cohesion is only about race and faith.**

True                      False

**8 There are successful networks which include both religious belief and non-religious belief representatives.**

True

False

**9 The Equality Act Part II prohibits discrimination by public bodies on the grounds of 'religion or belief'.**

True

False

**10 It is a human right to express your 'religion or belief.'**

True

False

# Case study discussion sheet



## Case study 1

You are a Local Authority Equalities Officer. A member of staff comes to you because she feels that she is being harassed due to her 'religion or belief.' She is Muslim and wears a hijab (headscarf). She has overheard colleagues in her team making comments about her and referring to her as 'mad' and 'intolerant' due to her faith. She has emailed her boss twice about this but no action has been taken. She is thinking of leaving the council because she doesn't feel that her complaint is being taken seriously.

## Case study 2

You are part of a planning group for the council's community cohesion activities. A colleague in the group suggests that the planned 'Community Week' should be based on 'celebrating faith' and run by the 'inter faith' forum. This forum is supported by the council and chaired by a council official. There is no humanist representative on the forum and an application from a local humanist group to be involved was denied last year.

## Case study 3

You are the member of staff in an organisation responsible for equalities. The organisation is small and has a limited amount of space. One of your colleagues is adamant that a new law has come in saying that the organisation must provide a prayer room for religious staff. Although non-religious themselves, they feel that not providing a prayer room could put the organisation at risk of prosecution under equality legislation. They have worked out a plan where one of the offices could be converted to a prayer room by moving the current occupant into another office with someone else.

Please note that there is not necessarily a right answer to these - each organisation is different and there is not a long history of case law on this subject to clarify all points of the law.

# Legislation summary handout



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.”<sup>1</sup>

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.”<sup>2</sup>

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<sup>1</sup> *Human Right Act*, Article 9

<sup>2</sup> *Ibid*, Article 14

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 2003<sup>3</sup>**

The definitions of 'religion or belief' included in the original version of these Regulations has been replaced by those quoted below. 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:

- Discriminate directly against someone
- Discriminate indirectly against someone
- Subject someone to harassment
- Victimise someone for being involved in a complaint under the Regulations (see below) 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.”<sup>4</sup>

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.”<sup>5</sup>

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<sup>3</sup> as amended by the Equality Act 2006

<sup>4</sup> *Employment Equality (Religion or Belief) Regulations 2003*, Part I, Section 3a

<sup>5</sup> *Ibid*, Section 3b

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 -

(a) brought proceedings against A or any other person under these Regulations;

(b) given evidence or information in connection with proceedings brought by any person against A or any other person under these Regulations;

(c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or

(d) 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.”<sup>6</sup>

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.”<sup>7</sup>

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.”<sup>8</sup>

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<sup>6</sup> *Ibid*, Section 4

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*, Section 5

## 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.”<sup>9</sup>

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.”<sup>10</sup>

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.

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<sup>9</sup> *Ibid*, Part II, Section 7

<sup>10</sup> *Ibid*, Part II, Section 7

## Positive Action

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

- (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.”<sup>11</sup>

## Schools with a religious character

The regulations apply to schools with a religious character but the School Standards and Framework Act 1998 makes additional provisions which exempt certain posts from equality laws.

## **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 below. 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.

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<sup>11</sup> *Ibid*, Part IV, Section 5

(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.”<sup>12</sup>

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.”<sup>13</sup>

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

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.<sup>14</sup>

## **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.”<sup>15</sup>

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<sup>12</sup> *Equality Act Part II*, 2006, Section 46, Subsection 1

<sup>13</sup> *Ibid*, Subsection 2

<sup>14</sup> *Ibid*, section 52

<sup>15</sup> *Ibid*, Section 57, Subsection 3

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’”<sup>16</sup>. Similar exemptions relate to schools with a religious character.

### **Definitions in the Equality Act**

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 belief<sup>17</sup>

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.

### **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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<sup>16</sup> *Ibid*, Subsection 5

<sup>17</sup> *Equality Act Part II*, 2006, Section 44