

Christian
Legal Centre

Guide to the Equality Act 2010

Religious Organisations and
the 'Provision of Services'



Introduction

Since 2006, the law has prohibited discrimination on the basis of a number of 'protected characteristics' or 'grounds' when providing goods, facilities, services or premises to the public or a section of the public.

However, religious organisations can rely on an exemption to the general prohibition, enabling them to lawfully discriminate in certain circumstances on the basis of religion or belief or sexual orientation.

Unfortunately, the exemption provided for religious organisations is limited and crucially, the law does not provide an exemption for an organisation whose sole or main purpose is commercial.

Undoubtedly, the legislation is being used to limit the freedom of Christian organisations and therefore a correct understanding of the law and how it affects Christians is vital.

The widely reported and tragic closure of Catholic adoption agencies,¹ as well as the successful legal action taken against Christian guest house owners who applied a 'married only' policy to their double rooms, have both come about as a result of legislation which prohibits discrimination in the provision of goods and services.²

The purpose of this booklet is to give the reader an outline understanding of the current state of the law as it affects Christian organisations. The booklet will focus on the exemptions provided for Christian organisations and give practical tips as to how organisations can stay within the law.

Legal Overview

In 2006, the government passed its first Equality Act and soon after passed the highly controversial Equality Act (Sexual Orientation) Regulations 2007.³ These pieces of legislation have now been incorporated into the Equality Act 2010. Amongst other things, the law states that it is unlawful to discriminate in the provision of **goods, facilities or services**; in the disposal or management of **premises**⁴ and when making decisions over the **membership** of an association.⁵ The law is civil not criminal and the penalty for breaking the law will normally be damages.

The concept of providing goods, facilities or services is extremely broad and could apply to any number of activities, such as accommodation in a hotel, facilities for entertainment, transport or travel or the services of a profession or trade.⁶ Furthermore, the law even applies if these services are offered for free. Actions considered to be discriminatory include **refusing to provide the service** to a potential service user, **altering the terms** on which the service is provided, **terminating the provision** of the service or subjecting the service user to **any other detriment**.⁷

Discrimination in law is defined as being either direct or indirect. **Direct discrimination** occurs when a service provider treats a person less favourably than he treats or would treat others because of a protected characteristic.⁸

Indirect discrimination occurs when a service provider applies an apparently neutral provision equally to everyone, but the provision puts people of a certain protected characteristic at a particular disadvantage when compared to others who do not share the characteristic.

Unlike direct discrimination, indirect discrimination can sometimes be lawful, if the person applying the neutral provision can prove that it was objectively justifiable.⁹ Whether or not the discrimination is justifiable (and therefore lawful) involves a balancing exercise to be undertaken- weighing the position of the service provider against the position of the person claiming discrimination.

Exemptions for Religious Organisations

Regrettably, there are no exemptions for Christian **individuals** to guarantee their freedom of conscience.¹⁰ However, there is an exemption to the general prohibition against discrimination for religious **organisations**, but Christians will only be able to rely on it in certain circumstances, the details of which are outlined below.¹¹

Additionally, there are exemptions for religious **charities**¹² and **ministers** and other persons associated with the church¹³ which are limited in scope and not discussed here.

a. Meaning of a religious organisation

First, the organisation must qualify under the definition of a 'religious

organisation'. For the purpose of the Equality Act 2010, a religious organisation must have one or more of the following purposes:

- a) to **practise** a religion or belief;
- b) to **advance** a religion or belief;
- c) to **teach** the practice or principles of a religion or belief;
- d) to enable persons of a religion or belief to **receive any benefit**, or to engage in any activity, within the framework of that religion or belief;
- e) to **foster or maintain good relations** between persons of different religions or beliefs.^{14 15}

This is a reasonably broad provision and clearly allows for the term 'religious organisation' to cover a range of different activities. Therefore, it is hoped that many Christian organisations will fall within at least one of the limbs listed above. It is clear from the definition above that **churches** would be amply covered by one (and hopefully all) of the limbs.

b. Lawful restrictions

Organisations that do fit the criteria above can, so far as relating to religion or belief or sexual orientation, restrict:

- f) **membership** of the organisation;
- g) **participation in activities** undertaken by the organisation or on its behalf or under its auspices;
- h) the provision of **goods, facilities or services** in the course of activities undertaken by the organisation or on its behalf or under its auspices;
- i) the use or disposal of **premises** owned or controlled by the organisation.¹⁶

However, it is important to note that in relation to religion or belief, the restriction is only permitted if it is imposed because of the **purpose** of the organisation, or to **avoid causing offence**, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.¹⁷

In relation to sexual orientation, the restriction is permitted in slightly narrower circumstances—that is, if it is imposed because it is necessary to **comply with the doctrine** of the organisation, or to **avoid conflict with strongly held convictions** of a significant number of the religion's followers.¹⁸

c. Solely or mainly commercial

Crucially, the exemption 'does not apply where the sole or main purpose of the organisation is commercial.'¹⁹ The meaning of this provision has not yet been considered in case law, although it has been predicted that determining whether or not an organisation is solely or mainly commercial 'may lead to a great deal of litigation.'²⁰ Indeed, when this issue was first debated the government admitted that 'there will be a number of areas where the court ends up having to determine whether [the commercial purpose] is the main or subsidiary purpose.'²¹

Of course, the lack of an exemption for commercial organisations will not cause a problem for most businesses, which, as the government pointed out, 'will want to sell as many things to as many people as possible.'²²

Nevertheless, there are examples where, in certain circumstances, organisations that operate commercially may wish to discriminate on the grounds of religion or belief. Baroness O'Cathain, who attempted to pass an amendment which would remove the word 'mainly' from the provision, listed several examples of where there may be difficulties, noting:

*...there is a company which supplies, on a commercial basis, the organising of **Christian ceremonies** for weddings, funerals and baby-namings, as they are now called. Would that be regarded as solely or mainly commercial?*

*There are **Christian book distributors**, which are very large organisations. They exist primarily for religious reasons, but are they safe under Clause 59 [now sch. 23, s.2]? There is an organisation called Autosave, which supplies **cheap cars to ministers and missionaries**, and one called MasterSun, which organises **Christian holidays**. They can doubtless prove, under subsection (1)(d) [now sch. 23, s.2(1)(d)], that they exist to, "enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief".*

*But, if a court decides that their main purpose is "commercial" their work would be deemed unlawful.*²³

Additionally, one could add to Baroness O'Cathain's list; Christian **wedding photographers** that do not wish to photograph same-sex civil partnerships²⁴ and Christian **printing businesses** that do not wish to print materials contrary to their core beliefs.²⁵ The government responded to Baroness O'Cathain by saying:

*...where an organisation is offering a commercial service open to the general public, that should be done without discrimination...Under our current proposals, if the main purpose of the organisation is to support a particular religious community and the commercial purpose is ancillary to that, it will be covered by our exception.*²⁶

Hence, charging for certain services does not automatically make an organisation commercial. However, if an organisation is involved in a commercial enterprise, it will be for the courts to decide whether the commercial aspect of the organisation is ancillary to its purposes, or of such an importance that the organisation's sole or main purpose would be considered commercial.

Christian organisations that wish to come within the scope of the exemption must therefore do all they can to demonstrate that their sole or main purpose is not commercial. For example, the organisation should have clear documentation which outlines the purposes of the organisation (such as a mission statement, doctrinal statement, ethos etc) as well as making their purposes clear wherever else possible, such as on the organisation's website.

Ultimately, however, it will be for the court to decide and just because an organisation says that its sole or main purpose is not commercial, does not automatically make it so.

d. On behalf of a public authority

As well as the 'solely or mainly commercial' limitation, there is an additional limitation relating to sexual orientation. An organisation cannot lawfully discriminate in the provision of goods and services on the grounds of sexual orientation, where it is done on behalf of a public authority, and under the terms of a contract between the organisation and the public authority. It is this provision which has led to the closure of the Catholic adoption agencies.

When the issue was first discussed in 2007, the government explained, that:

*...where religious organisations choose to step into the public realm and provide services to the community, either on a commercial basis or on behalf of and under contract with a public authority, that surely brings with it a wider social responsibility to provide those services for the public as they are, in all their diversity, and not to pick and choose who will benefit or who will be served.*²⁷

Likewise, the Prime Minister at the time stated: 'There is no place in our society for discrimination...there can be no exemptions for faith-based adoption agencies offering public-funded services from regulations that prevent discrimination.'²⁸

Hence, religious organisations cannot lawfully discriminate on the basis of sexual orientation, if the services they provide are done with public money.²⁹ The organisation would have to either lose its funding or accept the money but with strings attached.

However, it is probable that the organisation would be covered by the 'religious organisation' exemption for the activities which are not funded by public money. For example, if a church received public money to help run a soup kitchen, the church should still be able to take advantage of the 'religious organisation' exemption in other areas, such as the hiring of the church hall.

Summary

To qualify under the exemption, an organisation must:

1. Qualify as a religious organisation;
2. Apply a valid restriction;
3. Have a valid purpose for applying the restriction;
4. Not be considered solely or mainly commercial; and
5. Not be acting on behalf of a public body, if applying a restriction based on sexual orientation.

Providing that the organisation meets these requirements, it should be protected under the Equality Act 2010. Conversely, if the organisation does not meet the requirements above, it could be open to a claim for discrimination, and if found guilty, sued for damages.

The Christian Legal Centre maintains that, whilst the protections for Christian organisations are to be welcomed, the law as a whole strikes an incorrect balance between protecting those that wish to be free from discrimination and the need to allow Christians (and others) to act according to their religious beliefs, conscience and ethos. For that reason, the law as it currently stands is deeply unsatisfactory.

Can the Christian Legal Centre help?

Yes. Please contact us if you would like more information on this topic. We can be contacted on 020 7935 1488 or at info@christianlegalcentre.com.

The Christian Legal Centre takes up cases affecting Christian values and freedoms in the UK and also supports individuals who have been persecuted for their faith.

Support our work

If you want to help us promote Christian values in the public sphere, then you can do so by joining more than 65,000 people who support the work of the Christian Legal Centre and its sister organisation, Christian Concern.

Christian Concern is a campaign group and a policy resource centre that seeks to promote Christian truth in the public sphere.

The team at Christian Concern conduct research into, and campaign on, legislation and policy changes that may affect Christian freedoms or the moral values of the UK.

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Please visit our website at www.christianconcern.com to join our mailing list and to find out how you can join in with our campaigns.

Important Note

If you have any specific queries arising from this booklet, please contact the Christian Legal Centre or seek the advice of a solicitor. This booklet is designed to give you a clearer understanding of the law in this area. Please note, however, that it is not legal advice and we will not be held liable for any inaccuracies or for anything said or done in response to its contents. This is a specialist field of law and each case is dependent upon its own facts.

References

- 1 For example, see <http://www.christianconcern.com/our-concerns/adoption/stop-adoptions-or-stop-being-catholic> .
- 2 See <http://christianconcern.com/our-concerns/sexual-orientation/christian-guesthouse-owners-ordered-to-pay-compensation> .
- 3 Objectors included the Church of England, the Catholic Bishops Conference, the Evangelical Alliance, CARE, Anglican Mainstream, Affinity, Christian Institute, Christian Concern, the LCF, the Archbishops of Canterbury and York and the head of the Roman Catholic Church in England, as well as much of the wider public according to independent polls taken at the time and the consultation responses.
- 4 Part 4, EA 2010.
- 5 Part 7, EA 2010.
- 6 These were examples given in the previous legislation.
- 7 S.29 EA 2010
- 8 S.13 EA 2010.
- 9 S.19 EA 2010.
- 10 For example, a Christian individual within an organisation that was not considered to be a 'religious organisation' for the purposes of the Act, could not refuse to provide a service.
- 11 There are some additional protections for charities and ministers of religion which are not discussed here. For further information, please contact the Christian Legal Centre.
- 12 For example, a charity does not contravene the Act only by restricting the provision of benefits to persons who share a protected characteristic, if the person acts in pursuance of a charitable instrument and it is a proportionate means of achieving a legitimate aim. See S.193 EA 2010.
- 13 Sch 23, S.5 EA 2010.
- 14 Sch 23, S. 2 (1) EA 2010.
- 15 The law states that, for obvious reasons, s.2(1)(e) must be ignored in relation to sexual orientation. See Sch 23, S.2(11) EA 2010.
- 16 Sch 23, S. 2 (3) EA 2010.
- 17 Sch 23, S. 2 (6) EA 2010.
- 18 Sch 23, S. 2 (7) and s.2(9) EA 2010.
- 19 Sch 23, S.2(2) of EA 2010.
- 20 Addison N, Religious Hatred and Discrimination Law, (Routledge Cavendish: 2007), p.53.
- 21 Baroness Scotland of Asthal, House of Lords, Hansard, Col. 1164, 13 July 2005.
- 22 Baroness Scotland of Asthal, House of Lords, Hansard, Col. 1164, 13 July 2005.
- 23 Baroness O'Cathain, House of Lords, Hansard, Col. 1163, 13 July 2005. Neil Addison also mentions religious booksellers and religious holiday organisers as other possible targets of this section. See Religious Hatred and Discrimination Law, (Routledge Cavendish: 2007), p.53.
- 24 For example, see the American case of Wilcock v Elane Photography (2008) HRD No. 06-12-20-0685. See the final order of the Human Rights Commission of the State of New Mexico at <http://www.telladf.org/UserDocs/ElaneRuling.pdf>.
- 25 For example, see the Canadian case of Ontario Human Rights Commission v Brockie [2002] 22 DLR (4th) 174.
- 26 Baroness Scotland of Asthal, House of Lords, Hansard, Col. 1164, 13 July 2005.
- 27 Baroness Andrews, House of Lords, Hansard, Col. 1291, 21 March 2007.
- 28 Tony Blair, The Times, 30 January 2007.
- 29 There were many objections to the government's position. For example, Lord Pilkington argued: 'It is absolutely wrong for a democratic state to assert that the churches and their voluntary societies cannot follow their doctrine merely because the state pays them money. In this I say, they break 200 years of tradition.' See House of Lords, Hansard, Col. 1303-4, 21 March 2007.

