

# HCC Genuine Occupational Requirement Policy



## Best Practice Guidelines

1. It is unlawful to discriminate against workers on the basis of their religion unless there is a Genuine Occupational Requirement (GOR) for the worker to be of a particular religion or belief in order to do the job.
2. In line with our Equal Opportunities Policy and in order to promote best practice in this area, Huntingdonshire Community Church (HCC) have adopted the following standards:
  - a. GORs must be identified at the beginning of the recruitment process before a vacancy is advertised
  - b. When considering applying a GOR we must look at each post individually in terms of the duties of the job and the context within which it is carried out
  - c. Blanket requirements must NOT be applied
  - d. The aspects of a job to which a GOR is felt to apply must be shown to be central to the objectives of the role
  - e. Advertisements must clearly show that a GOR has been applied
  - f. The link between the requirements of the job and the need to maintain the organisation's ethos must be clear.
3. THE BURDEN OF PROOF IN AN EMPLOYMENT TRIBUNAL RESTS WITH US.

## Assessing Posts

4. When the job description for a new post is being drawn up the following elements have to be carefully considered. It will be necessary for the Line Manager to consider them in the first instance and then consult with the Senior Leader or Board of Trustees before the final job description is produced.
5. This process MUST be used so that any challenges can be answered clearly, effectively and to the satisfaction of applicants and any grant funders.
6. In considering the application of the Genuine Occupational Requirement (GOR) to any particular role, the following key questions need to be addressed:
  - a. what is the purpose of the role?
  - b. what are the key tasks necessary for fulfilling the role?
  - c. do the purpose and key tasks include a requirement for a Christian to fulfil the role?

- d. are the particular elements of the position that require a Christian essential?
  - e. could any person who is a Christian employed in another role within the organisation fulfil the particular duties that require a Christian?
  - f. is there any alternative to applying the GOR?
7. A post has a Genuine Occupational Requirement (GOR) if it has tasks or responsibilities that only a Christian could carry out. For example, requirements could include:
- a. The role has key spiritual elements or activities that only a person of the organisation's faith and beliefs could carry out
  - b. The role is significant in developing, maintaining or representing the ethos of the organisation.
  - c. The role is central to fulfilling the aims, purpose and mission of the organisation.
  - d. The role carries significant leadership responsibility for others.
8. The following eight tests might be also considered as to whether a GOR exists. Does the post:
- a. have responsibility for setting operational policy parameters?
  - b. involve significant management or guidance of others?
  - c. involve situations of providing significant discretionary life-style guidance and support?
  - d. act as an organisational exemplar to internal or external contacts?
  - e. involve significant influence on the mission of the organisation?
  - f. involve significant spiritual activities?
  - g. involve significant influence on the reputation of the organisation?
  - h. involve contact with others where a Christian viewpoint will be expected or necessary?

## **Equality Act 2010**

9. With effect from 1 October 2010, the Equality Act 2010 replaced the Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660). The position following the implementation of the Equality Act 2010 is explained below.

### **Occupational requirements under the Equality Act 2010**

10. Paragraph 1 of Schedule 9 to the Equality Act 2010 contains an exception from unlawful discrimination in recruitment; opportunities for promotion, transfer or training; or dismissal where a requirement to have a particular protected characteristic applies. An occupational requirement will apply where, having regard to the nature or context of the work, the employer applying the requirement shows that:

- being of a particular religion or belief is an occupational requirement;
- the application of the requirement is a proportionate means of achieving a legitimate aim; and

- either the person to whom the requirement is applied is not of the required religion or belief or the employer has reasonable grounds for not being satisfied that the person is of the required religion or belief.

11. While this provision replicates previous exceptions, it differs in that "it makes clear that the requirement must pursue a legitimate aim and that the burden of showing that the exception applies rests on those seeking to rely on it".

12. The requirement that it must be proportionate to apply the requirement to be of a particular religion or belief in a particular case may mean that, even if an occupational requirement applies to some of the duties of a job, the exception could not be relied on if there were others of the required religion or belief who could do these duties, if the work were redistributed or reorganised.

13. An employer seeking to rely on this general exception is not required to have a particular ethos based on religion or belief.

### **Other Requirements Relating to Religion or Belief**

14. Paragraph 3 of Schedule 9 to the Equality Act 2010 contains a special wider exception that can be relied on by an employer with an ethos based on religion or belief. This provides that a person (A) with an ethos based on religion or belief does not contravene the provisions of the Act relating to unlawful discrimination in recruitment; opportunities for promotion, transfer or training; or dismissal by applying a requirement to be of a particular religion or belief if A shows that, having regard to that ethos and the nature or context of the work:

- it is an occupational requirement;
- the application of the requirement is a proportionate means of achieving a legitimate aim; and
- the person to whom A applies the requirement either does not meet it, or A has reasonable grounds for not being satisfied that the person meets it.

15. The requirement that it must be proportionate to apply the requirement to be of a particular religion or belief in a particular case may mean that, even if an occupational requirement applies to some of the duties of a job, the exception could not be relied on if there were others of the required religion or belief who could do these duties, if the work were redistributed or reorganised.

16. The burden of proof will be on the employer to show that a genuine occupational requirement applies to a particular job and, in the case of the religious organisation's genuine occupational requirement, that the organisation has an ethos based on religion or belief. Exceptions tend to be interpreted narrowly since they are exceptions to the general principle of equality of treatment. The genuine occupational requirement provisions provide a defence to what would otherwise be unlawful discrimination if the employer chose to limit that particular job to people of the required religion or belief. An employer is not required by the Act, however, to limit any job to people of a particular religion or belief.