

Muslims in the Workplace

A Good Practice Guide for Employers and Employees



The Muslim Council of Britain

In the name of Allah, the Most Gracious, the Most Merciful.

FOREWORD

The purpose of the Guide is to explain and provide guidance on the Employment Equality (Religion or Belief) Regulations, which came into force on 2nd December 2003. This law is a welcome development for religious communities in Britain, as it provides direct protection against religious discrimination in employment and vocational training. Such protection was previously lacking, making unfair discrimination a reality for many faith communities, especially Muslims.

The Guide has been produced with particular reference to Muslims. We hope this will not only assist employers in complying with the Regulations, but also increase an understanding of Islamic practices that are part of the daily life of Muslims. Accommodation of these practices is now required by law. A better understanding of the law as well as practices required of Muslims by Islam can greatly improve the workplace experience of Muslim employees. It will also ensure that employers attract and retain the best possible staff – regardless of religion or belief. This can only bring increased dividends for employers. We are confident that the practical guidance provided by this Guide will assist employers of all faiths to create a workplace that ensures that Muslims can work without discrimination, harassment or victimisation. Equally, this Guide is for Muslim employers and employees, who must also be equally accommodating of individuals of other religions and beliefs.

This Guide is part of a larger initiative. With financial support from the DTI, The Muslim Council of Britain, in partnership with The Muslim News, MDUK and the British Muslim Research Centre undertook a community awareness-raising and capacity building programme between November 2003 and March 2004. In addition to the distribution of 100,000 booklets and 10,000 posters in four languages, the programme included six regional briefing sessions and a one-day training workshop in London.

From September 2004, The Muslim Council of Britain, again with funding from the DTI built on the work undertaken the previous year by developing seven Muslim 'beacon centres' across the country to undertake an awareness raising role through disseminating information to local Muslims. Each centre also held a community capacity building training seminar and ran legal surgeries for individuals with particular queries and complaints. The MCB also arranged over 30 training seminars with advice giving agencies, intermediary organisations and large public sector employers, including Citizens Advice, the Law Centres Federation, HM Prison Service, the National Probation Service, the Employer's Organisation for Local Government, and the Federation of Small Businesses.

This 'Good Practice Guide' is based on this larger initiative of awareness-raising and capacity building work, advice, guidance and support work for individuals and multiple training programmes. We have also sought to incorporate the issues raised and views expressed by mosque Imams, Islamic scholars and Muslim lawyers in the course of both the larger initiative and consultations on earlier drafts of this Guide. We are particularly grateful to Khurshid Drabu, Maleiha Malik, Makbool Javaid, Dr Jamil Sherif and Khalid Sofi for their invaluable contributions to the production of this Guide.

Finally, our thanks to the project's Legal Officers, Muhammad Abdul Aziz, Nusrat Chagtai and Safia Tharoo; this Guide has taken shape mainly due to their unstinting dedication and hard work.

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1.

INTRODUCTION

1.1 There are approximately 1.6 million Muslims in Britain. They form the country's largest religious minority and come from diverse ethnic backgrounds. Although three quarters of British Muslims are of South Asian origin there are also significant numbers of Muslims from North Africa and the Middle East, Central and Eastern Africa, Eastern Europe, Turkey, Iran and Afghanistan. In addition, there are a significant number of British White and African-Caribbean converts to Islam.

1.2 Although the majority of first generation British Muslims arrived as economic migrants, Muslims now work in all trades, industries and professions and at all levels, making an invaluable contribution to the British economy. In making this contribution there is no reason why Muslims should not also be able to fulfil their religious obligations. All that is required is that employers are aware that Islam is a comprehensive way of life and that understanding, flexibility and reasonable accommodation at work will not only allow Muslim employees to observe their religious obligations but also improve their performance in the workplace.

1.3 However, a lack of understanding and accommodation, resulting in unfair discrimination in employment, is an unfortunate reality for many Muslims in Britain. Although equality laws have been in place to protect individuals from discrimination in employment for almost thirty years, these have not reflected the multi-faith character of British society. They have provided protection on the grounds of race, colour, nationality and national or ethnic origin – but not on the grounds of religion or belief. This has meant that the prejudice and discrimination against Muslims in the workplace, on the grounds of their religious identity, has never been directly addressed. The introduction of the Employment Equality (Religion or Belief) Regulations 2003 is therefore a welcome step forward. It recognises both that religion is often a central aspect of a person's identity and that discrimination based on religion is as unacceptable as discrimination based on any other aspect of identity – for example, race or gender. This should greatly assist to promote better understanding, accommodation and equality of opportunity for Muslims in employment and vocational training.

1.4 This guide has been produced to provide both employers and employees with an understanding of the main provisions of the Regulations. It also explains the specific needs of the Muslim community at work and how these can be best accommodated. The final section of the Guide seeks to provide some guidance on some frequently asked questions.

2.

THE CURRENT LEGAL FRAMEWORK

2.1 Based on Art. 13 of the Treaty of Amsterdam, the EU adopted the Framework Equality Directive in 2000. The directive outlawed discrimination in employment and vocational training on the grounds of religion or belief, sexual orientation, disability and age. In transposing the Directive into UK law, the Government introduced the Employment Equality (Sexual Orientation) Regulations 2003, which came into force on 1st December 2003 and the Employment Equality (Religion or Belief) Regulations 2003 which came into force on 2nd December 2003. Similar legislation outlawing discrimination on the ground of age is to be implemented by the end of 2006 and the legislation on disability discrimination was extended in October 2004.

What is the scope of the Religion or Belief Regulations?

2.2 The Regulations cover the areas of employment and vocational training only. However, these are defined quite widely. The protection begins before an employment relationship has been created, continues throughout the life of the employment contract, and may be effective even after the contractual relationship has come to an end. The following main areas are, therefore, covered:

- ❖ *Recruitment*
- ❖ *Pay*
- ❖ *Terms and Conditions*
- ❖ *Training*
- ❖ *Transfer*
- ❖ *Promotion*
- ❖ *Dismissal*
- ❖ *Reference*

2.3 The Regulations cover an extensive range of employment and training arrangements, including arrangements for contract workers and office-holders, arrangements in partnerships, trade organisations and barrister's chambers, and arrangements by institutions of further and higher education, providers of vocational training and employment agencies.

2.4 However, the Regulations do not cover the provision of goods, facilities and services - such as housing and education. Neither do they cover discriminatory practices arising from law enforcement, regulatory and control functions. It is anticipated that legislation in these areas will be introduced soon.

How is religion or belief defined?

2.5 Under the Regulations, 'religion or belief' means any religion, religious belief or similar philosophical belief. No other definition is given and it will be for the courts and tribunals to define religion or belief where there is a dispute. The likely factors to be considered by the courts will include, for example, collective worship, a clear belief system and profound beliefs affecting one's way of life or view of the world. Belief includes philosophical belief systems similar to religions, but not political belief systems.

Example

A Muslim manager refuses to promote an employee who is a Humanist on grounds of the employee's beliefs. Such a refusal by the Muslim manager would be unlawful under the Regulations.

2.6 The Regulations, therefore, clearly extend protection beyond the better known religion and belief traditions. It is important to note that the Regulations also extend protection to those without religious or similar beliefs. Care should also be taken with regards to how members of different denominations or schools of thought are treated by members of a particular section of that religion.

The main purpose of the Regulations

2.7 It is important to stress from the outset that the main aim of the Regulations is to strike a balance between the religious needs of individuals in employment and training and the needs of public bodies, businesses and organisations. It is important for all employers and employees to keep this principle in mind when considering any situation which arises under these Regulations.

3.

KEY PROVISIONS UNDER THE NEW LAW

What is unlawful under the Regulations?

Direct Discrimination

3.1 It is unlawful to treat a person less favourably than another, in like for like circumstances, because they:

- ❖ *follow or do not follow a particular religion or belief;*
- ❖ *are perceived to follow or not follow (even where that perception is incorrect) a particular religion or belief;*
- ❖ *are associated with someone who follows or does not follow a particular religion or belief; or*
- ❖ *refuse to follow an instruction to discriminate against an individual of a particular religion or belief.*

Treatment in this context may include the following:

- ❖ *not interviewing or employing*
- ❖ *offering adverse terms and conditions*
- ❖ *refusing training*
- ❖ *enforcing pay variations*
- ❖ *denying promotion*
- ❖ *dismissal*
- ❖ *refusing to provide a reference*
- ❖ *providing an adverse reference*

It is, therefore, not necessary for the applicant to have been employed by the organisation for a discrimination claim to be brought against them. Similarly, it may be possible to bring a claim even where an individual is no longer employed by the organisation.

Example

At an interview, it becomes apparent that the applicant is Muslim. Consequently, although the applicant has all the qualifications, skills and experience required for the job, the organisation decides not to offer it to him. This is direct discrimination if the job was not offered to the applicant because he is a Muslim.

Example

A Muslim employer refuses to promote a Muslim employee because he has a non-Muslim spouse. This would be direct discrimination on grounds of religion even though the discrimination is due to the employee's spouse and not his own religion.

3.2 Employer also need to be aware that special treatment can also amount to direct discrimination

Example

A Muslim employer gives a Muslim employee an extra day of paid leave for Eid-ul-Adha. However, when a Hindu employee asks for an extra day of paid leave to celebrate Diwali, the employer refuses. This would constitute direct discrimination against the Hindu employee, as he has been treated less favourably on the grounds of his religion in like-for-like circumstances.

3.3 In very limited circumstances, direct discrimination may be exempted if an employer can show that it is a 'genuine occupational requirement' to be of a particular religion or belief to do the job. This will be considered further in paragraphs 3.14 and 3.15.

Indirect Discrimination

3.4 It is unlawful to apply a policy, procedure, criterion or practice that disadvantages people of a particular religion or belief. In order to bring a successful claim under this provision, the individual must show actual experience of disadvantage.

Example

A company introduces a uniform which does not permit head coverings of any type and requires all female employees to wear knee-length skirts. This applies to all employees equally but disadvantages female Muslim employees who choose to wear the hijab or long skirts.

3.5 Indirect discrimination can be justified where employers can show that they are pursuing a legitimate aim and acting proportionately. A legitimate aim is where employers have a real business need. Action will be considered 'proportionate' where it is within the limits of what is necessary to achieve the business need in question.

Example

A small toy shop employs four staff. Two Muslim employees request time off for Eid-ul-Fitr in the busy pre-Christmas period. However, the toy shop requires all four staff to work during that period. It would be justifiable to refuse such a request if the shop could not cope without them.

Harassment

3.6 It is unlawful to subject a person to unwanted conduct on the grounds of their religion or belief, which has the purpose or effect of:

- ❖ *violating that person's dignity; or*
- ❖ *creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.*

Example

Following a particular incident, Islam features largely in the media. Consequently, stereotypical and hurtful comments in the workplace are routinely made about Muslims, upsetting certain Muslim employees. Such behaviour may amount to harassment, even if not specifically directed one or more individuals, but at Islam as a religion or Muslims as a group more generally.

3.7 Where an offence is committed without any intent to harass, the unwanted conduct will only be regarded as having the 'effect' of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment if that would be a reasonable conclusion, after taking into account all the circumstances of the case, including the perception of the person who has been harassed. This means that in circumstances where an over-sensitive person unreasonably takes offence at a perfectly innocent comment, that would probably not be considered as constituting harassment. However, it also means that harassment need not always be intentional and obvious, but may also be unintentional and subtle.

Example

A Muslim employee continually refers to some non-Muslim colleagues as "non-believers" and warns them that the consequences of their lack of belief will be that they will go to hell. This could amount to harassment.

3.8 It is also not necessary to have specific and clearly identifiable acts to constitute harassment – it can consist of a general culture within an organisation, which, for instance, appears to tolerate the telling of offensive religious jokes.

3.9 Harassment can include conduct which relates to someone associated with the employee, such as their spouse.

Example

An employee is continuously teased about his partner's religion. He finds the teasing offensive and distressing and complains to his manager. His manager tells him not to be silly, that the teasing is only harmless workplace banter and is nothing to do with the organisation. This is harassment on the grounds of religion even though it is not the victim's own religion that is the subject of the teasing.

3.10 Behaviour may be harassment even if the conduct results from a mistaken perception of another person's religion or belief.

3.11 Liability for acts of harassment may be placed as much on employers as individual perpetrators. Employers can be held responsible for the actions of their staff – in addition to the staff being individually responsible for their own actions – unless they can show that they took all reasonable steps to prevent the harassment from occurring. This might include:

- ❖ *implementing a harassment policy*
- ❖ *providing training to staff on harassment and its effects*
- ❖ *dealing fairly with harassment issues when they arise in the workplace*
- ❖ *disciplining those employees who breach the harassment policy*

3.12 Employers also have a duty to protect their employees from harassment by third parties such as service users and customers.

Example

At a supermarket, a non-Muslim employee faces unwanted attention and harassment from a customer on account of having blonde hair and the employer takes action. When a Muslim employee faces similar harassment from a customer on account of her hijab, the employer fails to take any action. The employer here may be held liable for the harassment by the third party, as well as guilty of direct discrimination against the Muslim employee since he has treated her less favourably than the non-Muslim employee in like-for-like circumstances.

Victimisation

3.13 It is unlawful to treat someone detrimentally because they have made or intend to make a complaint about discrimination or harassment, or have assisted or intend to assist another in such a complaint. This includes informal complaints made to management or information given in support of such complaints.

Example

After giving evidence at an Employment Tribunal to support a colleague who had brought a discrimination claim against her employers on the grounds of religion, an employee applies for promotion. Her manager says that she cannot be trusted to uphold the interests of the company, since she was prepared to give evidence at a Tribunal against the company. Her application is therefore rejected, even though she has all the necessary skills and experience.

3.14 As with harassment, employers may be held responsible for the actions of their staff, as well as the staff being held individually responsible for their own actions, unless they can show that they took all reasonable steps to prevent the victimisation from occurring.

3.15 Aiding Unlawful Acts: It is unlawful to knowingly aid another to commit an act of discrimination unless it can be shown that he or she reasonably relied on a statement from that other person that the act is not unlawful.

Is discrimination on grounds of religion or belief always unlawful?

3.16 It is not always unlawful for employers to discriminate or treat people differently on the grounds of religion or belief. The new law provides the following exceptions:

Genuine Occupational Requirements (GOR)

There are two types of GORs:

3.17 General GOR: It is lawful for an employer to treat people differently on the grounds of religion or belief where it is a genuine and determining occupational requirement for an employee to be of a particular religion or belief. This means that it must be essential for the person to be of a particular religion or belief to perform the functions of the job and the religion must be crucial to that job - not merely one of several important factors.

Example

A hospital, which wishes to appoint a chaplain to minister to the spiritual needs of patients and staff who are predominantly Muslim. The hospital may be able to show that, in the context in which the job is carried out, it is a GOR that the appointee be a minister of the Muslim faith.

3.18 Organisational Ethos GOR: This applies to organisations which have an ethos based on a religion or belief, such as faith schools. In order to come within this exception, an organisation must show that it is a genuine and proportionate requirement for a particular post, given its nature and context, that the person employed be of a particular religion or belief. This is slightly wider than the general GOR, as there is no requirement that the religion or belief be a determining factor. However, an organisation cannot impose a blanket GOR on a whole range of jobs. Each post must be scrutinised carefully every time a vacancy occurs to show that being of a particular religion or belief is a proportionate requirement of that job. Furthermore, the GOR must be identified at the beginning of the recruitment, training or promotion process, before the vacancy is advertised, and must be clearly stated in any advertisements and material sent to applicants.

Example

A Muslim school that maintains a strict Islamic ethos may require certain posts to be filled by Muslims where the role includes tasks or behaviour which uphold that ethos – for example, leading the pupils in prayer during the course of the day. However, it may not be proportionate to seek such a requirement for every post in that school – for example, the post of an accountant or caretaker.

3.19 Employers need to be aware that where an organisation is made up of individuals from one religion or belief, but is not directly based upon a religious ethos, it is unlikely that they would be able to rely upon the organisational ethos GOR exception if they refused to employ an individual who did not share their religion or belief.

Example

All the partners and solicitors in a particular law firm happen to be Muslim. The law firm advertises for a new Muslim solicitor. This would be direct discrimination and would be unlawful. The law firm would not be able to rely on the general GOR because it cannot be said that it is a genuine and determining occupational requirement to be a Muslim in order to work as a solicitor in that law firm. Nor would the law firm be able to rely on the organisational ethos GOR if it was unable to show that it was based on a religious ethos.

3.20 There is a further exception for those roles which are for the purposes of Organised Religion; these are posts which are associated with the rituals and the rites of passage within an organisation, for example those who lead prayer, or provide religious advice or counselling. An organisation may be able to discriminate against an individual not just on the grounds of their religion, but also on other grounds, such as their gender or their sexual orientation. In order to rely on this exception however, an organisation would have to show that the requirement was in accordance with a doctrine within that religion, or that it was necessary in order not to conflict with the strongly held convictions of a significant number of followers.

3.21 For more information on this area please refer to: 'Religious discrimination legislation for faith-based organisations – a guide for faith-based organisations to explore religious discrimination legislation and organisational ethos' published by The Muslim Council of Britain and Faithworks.

Positive Action

3.23 The Regulations allow employers to pro-actively encourage people of particular religions or beliefs to apply for certain jobs, or take up opportunities for training, as part of any initiative to redress the effects of previous inequality of opportunity. For example, employers may:

- ❖ *place advertisements in the ethnic press to encourage applications from a particular minority religion*
- ❖ *provide bridging courses to enable potential applicants from disadvantaged religious groups to compete from a more level playing field*
- ❖ *train existing employees for work which has historically been the preserve of individuals from a particular religious background*

3.24 Employers must state the reasons for the positive action in any advertisements and in the workplace because it may otherwise be viewed as discriminatory.

3.25 Ultimately, however, where positive action measures are put in place, selection for recruitment or promotion must be on merit alone, irrespective of religion or belief. Such action will otherwise amount to positive discrimination which is unlawful.

Example

An employer provides extra training for employees from minority faith communities so that they can apply for a particular post within the organisation which has traditionally been filled by a Christian employee. This would not be direct discrimination provided the employer makes it clear that the extra training is a form of positive action and that regardless of this training, all employees in the selection process will still be considered on the basis of merit.

National Security

3.26 The Regulations do not render unlawful any act which is done to safeguard national security, if it is justified for those purposes.

4.

GOOD PRACTICE FOR EMPLOYERS

4.1 Employers should bear in mind that the Regulations apply:

- ❖ *during the recruitment process*
- ❖ *throughout the employment relationship or vocational training*
- ❖ *after employment has ended, in the provision of references*

The Recruitment Process

4.2 Employers are advised to:

- ❖ *advertise in a way that is accessible to a diverse audience*
- ❖ *state clearly whether, and if so, why, a GOR applies to a particular post in the advertisement and the application pack*

Example

An organisation with an Islamic ethos requires that applicants for a particular post must be Muslim without explaining that there is a GOR. This will appear to be direct discrimination and, as such, the organisation could face a discrimination claim. By specifying that it is a GOR for applicants to be Muslim and explaining why, such a claim could be avoided.

- ❖ *allow flexibility around the dates and times of interviews to avoid disadvantaging individuals on grounds of religion or belief*

Example

A company sets interviews for recruitment on a Friday afternoon when it could just as easily arrange interviews for an alternative day. This may indirectly disadvantage Muslims who wish to attend Friday congregational prayers and who may not, therefore, be able attend the interview.

- ❖ *avoid disadvantaging individuals for whom alcohol is prohibited on the grounds of their religion or belief, by not holding interviews or events which are part of the recruitment process in places where alcohol is served*

Example

A company holds a selection day at a hotel where the only place to eat serves alcohol. This may pose particular difficulties for many Muslims and exclude them from attending. The company should consider whether it is absolutely necessary to hold the selection day at such a venue and what other alternatives are available to ensure that individuals from particular religions are not excluded.

- ❖ *make it clear that applicants with specific dietary requirements on grounds of religion or belief will not be disadvantaged by the selection process. Employers could ask applicants whether they have any special requirements. They do not have to provide specific food such as halal food if it is an undue burden on them to do so, but they should ensure that there is some appropriate alternative available, such as vegetarian food, that is distinctly marked and served separately*
- ❖ *ensure that the nature of the job is clear to the applicant*

Example

A job in a small sandwich shop may require handling pork products. The sandwich shop could make it clear to applicants that this is a necessary and unavoidable requirement of the job.

- ❖ *be aware that certain routine conduct at interviews may conflict with acceptable practice according to the applicant's religion or belief, such as shaking hands with the opposite sex*

Example

An employer at an interview puts his hand out to shake the interviewee's hand who is a Muslim lady. She refuses to do so. The employer does not understand why and considers her to be extremely rude, which affects her application. Employers could instead wait for the employee to initiate the handshake if they are unsure.

- ❖ *avoid asking unnecessary questions, such as questions about the candidate's religion or belief, or their place or frequency of worship, which may be perceived to be potentially used for discrimination, unless such questions are necessary for the job*
- ❖ *always recruit on the basis of the aptitude and skills required for the job*

Accommodating Employees in the Workplace

4.3 Content staff at work enhances performance and it is in the employers interest to retain well-trained staff. There is, therefore, a strong business case for having 'happy' employees. Accommodating the needs of staff on grounds of religion or belief in the workplace can therefore contribute to a successful business. In addition, where employers willing to consider alternatives, and willing to be imaginative, they will find that making changes to the workplace does not necessarily involve drastic or excessive costs.

4.4 As well as the strong business case for accommodating staff of all religions, including Muslims, in the workplace, where employers fail to make such accommodations, they may find themselves facing a claim of indirect discrimination under the Regulations. The onus will then be on the employer to prove that they were not discriminating, or show that they were pursuing a legitimate aim and that their actions were proportionate. Therefore, although the Regulations do not oblige employers to make alterations to accommodate the particular religions or beliefs of employees, employers should consider whether reasonable changes might be made.

4.5 Furthermore, employers need to be aware that they may be held liable for acts of discrimination, harassment or victimisation committed by any of their employees during the course of their employment, whether or not the employer knew or approved of those acts. The only defence that may be available to an employer in such cases is proof that they took all reasonably practicable steps to prevent such acts occurring or reoccurring. (See Paragraph 3.11)

4.6 The following provides some guidance and sets out minimum standards with regards to steps that employers can take to accommodate Muslim employees:

- ❖ *seek to better know staff make-up and levels of satisfaction through monitoring on the grounds of religion or belief, along with other grounds, and through staff attitude surveys. However, it is important to ensure that this information is appropriately used under data protection laws only to improve religious representation and accommodation, and that staff have confidence that it will not be used against them in any way*
- ❖ *make reasonable adjustments so as not to discriminate on the grounds of religion or belief to accommodate specific needs such as:*
 - *Appearance*
 - *Prayer*
 - *Fasting*
 - *Leave*
 - *Dietary Requirements*
 - *Social Interaction*
- ❖ *ensure that all staff are given fair treatment and equality of opportunity when decisions are made about training and promotion*
- ❖ *ensure the working environment is free from harassment and victimisation on the grounds of religion or belief*
- ❖ *ensure that employees are trained to appreciate that discrimination, harassment or victimisation on the grounds of religion or belief is not acceptable in the workplace. Training could also be given on particular religions within the workplace to remove stereotypical views that may result in discrimination or harassment. Regular training is important to ensure that employees are up to date and adequately trained for any changes in staff make-up*
- ❖ *develop grievance systems in which staff have confidence and with which they feel comfortable. As of October 2004, it is a legal requirement for all employers to have a grievance and disciplinary procedure which meets the minimum standards set out in the Employment Act (Dispute Resolution Regulations) 2004.*

4.7 Employers may also wish to develop and observe an Equal Opportunities Policy. Although this is not required by law, it is an effective means of demonstrating that they are taking reasonably practical steps to prevent discrimination, harassment and victimisation in their workplace. The policy can set out minimum standards and should be reviewed regularly through consultation with staff.

Example

Managers who receive complaints from workers about harassment, such as stereotypical comments about a particular religion following an incident in the media, could promptly arrange a training session to increase awareness about the religion and highlight the fact that certain employees were hurt and worried by the comments. A better understanding of the religion may help resolve the situation.

Religious Observance

4.8 Employers should consider whether their policies, procedures or practices disadvantage members of staff of a particular religion or belief, and if so, what reasonable changes can be made. In considering what would be reasonable, employers should take into account their specific circumstances. Employers do not have to make costly alterations or alterations that would be unduly burdensome.

4.9 With regards to Muslim employees, employers may need to consider reasonable accommodation of the following:

Appearance

4.10 The way that Muslims dress varies significantly. Whilst some Muslim women may not wear the hijab (headscarf), they may feel uncomfortable wearing tight clothing or short skirts which are also discouraged in Islam. Employers need to ensure that dress requirements allow:

- ❖ *for women, the covering of the whole body except the face and hands. Muslim women may be unwilling to wear clothing that reveals parts of their body or their figure*
- ❖ *for men, the covering of at least the part of the body from the naval to the knees. Muslim men may be unwilling to wear shorts. Many Muslim men also grow a beard, which is considered obligatory within some schools of thought and encouraged in others.*

4.11 If an organisation has a dress code which disadvantages employees of a particular religion but is in place for health and safety reasons, this may be lawful. However, organisations should try to be flexible where they can to allow staff to dress in accordance with their religion or belief and should ensure that they are pursuing a legitimate aim and acting proportionately when considering the accommodation of religious needs.

Example

A restaurant has a policy that kitchen staff must be clean shaven due to health and safety requirements. This may indirectly discriminate against Muslim men who wish to grow a beard. The restaurant could accommodate such staff by requiring them to wear something to cover their beard whilst in the kitchen.

Prayer

4.12 Muslim men and women are required to offer five daily prayers – salah – which are as follows:

- *Fajr (morning prayer) – starts at dawn and ends with sunrise*
- *Zuhr (early afternoon prayer) – starts just after midday when the sun begins to decline*
- *Asr (later afternoon prayer) – between mid-afternoon and sunset*
- *Maghrib (evening prayer) – just after sunset*
- *Isha (night prayer) – starts from the disappearance of twilight*

4.13 In some denominations, the two afternoon prayers and two evening prayers can be performed together. In other denominations, however, stipulations are more stringent on praying each individual prayer at its allocated time. This means that during winter, when the day is much shorter, two or three short prayer breaks at work may be requested by Muslim employees in quick succession. Where a prayer is preceded by an act of purification, the wudhu, each prayer break may require between 10-12 minutes. The wudhu itself will require access to a face and foot basin as it involves washing the face, arms (up to the elbows) and feet. During prayer, Muslims face Mecca. This direction is called qibla and in Britain, is in a south-easterly direction. Muslims can pray more or less anywhere, provided it is clean and quiet. The main congregational prayer, Jumu'ah, is held on Friday between 1 and 2 pm and in most denominations its observance in a mosque is mandatory.

4.14 Time off for prayers: Employers may expect Muslim employees to pray during their break entitlements. However it is still necessary for employers to consider how long an individual employee requires for their prayers. Some Muslim employees may only wish to take 5 minutes for each prayer, and simply pray alone in their room. Others may require longer and wish to pray in congregation. Employers should be flexible where they can and consult with employees about all possible alternatives.

Example

A Muslim employee working for a large company requests time off at specific times to observe her daily prayers. The company has the staff to cover for her if necessary during these times. The employer refuses this time off. This would amount to indirect discrimination which cannot be objectively justified as the employer will not suffer any adverse effects from allowing her time off for prayers and will therefore be acting unlawfully. Where an employer allows non-Muslim employees to take smoking or coffee breaks outside of their usual break entitlements but requires Muslim employees to pray during their break entitlements, this would amount to direct discrimination.

4.15 Jumu'ah (Friday) congregational prayers: Employees may request time off to observe their Jumu'ah prayers, which must be said in congregation and are usually held in a mosque. As mentioned previously, the Regulations do not require employers to provide time off for prayers. However, where employees request time off that they will make up later and their request is refused, an employer will be found to be discriminating indirectly if the fulfilment of such requests cannot be shown to adversely affect their business, and directly if other employees are allowed time off for other reasons – for example for doctors appointments.

Example

A small sandwich shop recruits two employees, one of whom is Muslim. The shop requires both employees to be present between 1 and 2pm as it is the busiest time of the day. The Muslim employee requests permission to attend Friday congregational prayers from 1 to 2pm. The shop's refusal to accommodate the Muslim employee disadvantages him in practising his religion and would be indirect discrimination. However, the shop would be able to justify the refusal on the basis that there is a real business need that both employees be present in order to manage the work at the busiest time of the day. The action is proportionate because it is a small business, and there is no other alternative due to limited staff and resources. If the employer was a large supermarket or there were simply more members of staff, it would be harder for the employer to show that this action was justified.

4.16 Provision of prayer facilities: Employers are not required to make costly adjustments for religious observance at work. However, employees may request access to a place to pray, and if it is possible to provide a room without an unacceptable adverse impact on business or other staff, then employers may be found to be indirectly discriminating if they refuse such a request. Furthermore, it is good practice for employers to provide a prayer room for their employees. Where only one room is available, it could be designated as a multi-faith prayer or contemplation room. Where employers are providing prayer facilities, they should be aware of the following:

- ❖ *The room should be clean and quiet. In particular, if a room is set aside for prayer, there could be a notice requesting people to remove their shoes before entering the room. The qibla (the direction in which Muslims pray) could also be pointed out on the wall or a compass can be placed in the room for use by those wishing to pray.*
- ❖ *Muslims will not generally pray in a room where there are photos, posters, images or statues of people or animals. If employers provide a multi-faith prayer room, employers should consult with employees about the display and storage of religious items such as statues or posters.*
- ❖ *As most individuals will require a quiet place when praying, employers should consult with employees in order to reach an amicable agreement as to the timings for use of the room. Employers will need to be aware that it is obligatory for Muslims to perform their prayers at certain times of the day as set out above.*

- ❖ *Where rooms are unavailable, space could be made in a corner of a room to place a prayer mat at prayer times.*
- ❖ *Due to the obligation to perform wudhu, a ritual wash before prayer, employers may wish to make some adjustments in relation to washing facilities. For example, toilets could include a low sink for washing feet, which in many circumstances would not entail excessive or disproportionate cost to the employer but would make it more practical for Muslim and non-Muslim employees using the toilets. Alternatively, employers can supply storage in the washroom areas for a plastic washing-up basin and a small jug that can be used by Muslim employees for washing their feet and left in a clean manner by them. However, in many cases, normal toilet facilities will be adequate.*

Example

It may not be practically possible to provide a prayer room for staff in a small garage employing 12 staff, where the only space available is a small communal kitchen/restroom. However, a larger organisation with several meeting/conference rooms that are often unused may be considered unreasonable if it is not willing to organise its operations in such a way as to make a room available for prayer at specific and known times each day.

Fasting

4.17 Muslims are required to fast from dawn to dusk for one month each year during the month of Ramadan. As Muslims follow a lunar calendar, which is approximately 11 days shorter than its solar equivalent, all the lunar months progress around the solar year. In practice this means that Ramadan will not occur at the same time every year, but will instead begin 11 days earlier than the previous year. Fasting is incumbent on all able bodied Muslim men and women on attaining the age of puberty. It includes complete abstinence from eating, drinking and smoking during the hours of fasting. It is not compulsory for pregnant women, those who are infirm and those who are travelling to fast. Employees who are fasting may ask to take their lunch break at a later time to break their fast. Employers may be justified in refusing such a request if this would conflict with legitimate business needs which they are unable to meet in any other ways. However, if they are unable to objectively justify such a refusal, this could amount to unlawful indirect discrimination.

Example

An employee working in a small corner shop asks to take a late lunch break around sunset to break his fast. There are only two employees and the time for breaking the fast coincides with the time when school children are coming out of school and the shop is particularly busy. It may be reasonable to refuse the request if the shop cannot cope without both staff. However, it may not be reasonable for a supermarket with a large number of staff to refuse such a request.

Dietary Requirements

4.18 Certain food and drinks are Haram (forbidden) in Islam. The following are forbidden for Muslims:

- *food which is derived from the pig*
- *the blood of any animal*
- *animals not slaughtered in the halal (permissible) way, that is, in the name of Allah and by cutting the inner part of the neck to ensure the blood is drained from the animal*
- *all alcoholic drinks or foods containing alcohol*

Any food that is not haram (forbidden) is halal (permissible).

4.19 Many Muslims who abstain from alcohol may also feel uncomfortable to be in places where alcohol is freely available, including pubs and bars. They may also prefer not to attend places or events where alcohol is served or which revolve around alcohol.

4.20 If staff bring food into the workplace they may need to store and heat their food separately from other food. It is good practice for employees to be consulted on such issues so that a mutually acceptable solution can be found.

Example

A Muslim worker feels unable to store her lunch in a refrigerator next to pork belonging to a colleague. Following consultation with the staff, the organisation introduces a policy by which all food is to be stored in sealed containers and shelves are separately designated 'vegetarian', 'meat' and 'pork'. The arrangement meets the needs of all staff and at no cost to the employer.

4.21 Dietary requirements will also need to be considered for interviews, meetings and work events or social gatherings.

Example

An organisation frequently has team breakfasts and lunch meetings where usually only meat products are available. A Muslim employee is unable to eat at the meetings because the food is not halal. Following consultation, the organisation ensures that there is at least vegetarian food available as an option.

4.22 It may be that certain events have the effect of excluding Muslims; employers should consider how such exclusions may be avoided.

Example

A company holds marketing events which are always in places where alcohol is served and most of the events revolve around drinking alcohol. Employees who do not drink alcohol due to their religion and refuse to be in places where it is served are unable to attend these events, affecting their promotion which is dependent upon getting new clients through marketing. The company could be more accommodating by ensuring that not all such events are held in this way. It could provide some alternative activities such as playing a particular sport or carrying out charity work with potential clients so that all employees have an equal opportunity to participate and progress within the company.

Leave for Hajj and Religious Occasions

4.23 All Muslims must undertake a pilgrimage to Mecca – the Hajj – at least once in their lifetime. However, employers need to be aware that many Muslims perform Hajj more than once in their lives, for example, Muslim men who are obliged to accompany a widowed mother or a sister for Hajj. Therefore, although the minimum requirement is to go for Hajj once in a lifetime, many Muslims may request leave for Hajj more than once. The timing of the Hajj is also determined by the lunar calendar and occurs approximately two months after the end of Ramadan. Pilgrims from Britain will typically seek between two-three weeks leave from their employers.

4.24 Leave may also be requested for religious festivals; however, whilst approximate dates may be known in advance, it may not always be possible to give definite dates until much nearer the time of the festival. The main religious festivals that employers need to be aware of are:

- ❖ *Eid-ul-Fitr, which commemorates the end of the month of Ramadhan. This starts on the first day after the month of Ramadan and lasts for three days – although Muslims will usually only seek leave for the first day. On this day, Muslims offer congregational prayers at a mosque in the morning and it is also customary to visit family, relatives and friends.*

- ❖ *Eid-ul-Adha, which comes at the end of the Hajj period. This begins on the tenth day of the month of Dhul Hijjah, the third month after the month of Ramadan and lasts for three days. However, as with Eid-ul-Fitr, Muslims will usually only request leave for the first of the three days, when they offer congregational prayers at a mosque in the morning and visit family, relatives and friends later in the day.*
- ❖ *Yawm Al-Ashura which is the commemoration of the martyrdom of the grandson of the Prophet Muhammed, Imam Hussein. This falls on the tenth day of Muharram, the first month of the Islamic calendar. Some Muslims may request leave on this day and on either (or both) of the two days, before and after it. Many Muslims also fast during these days.*

4.25 An employer should sympathetically consider requests for leave to observe Hajj and religious festivals where it is reasonable and practically possible for the employee to be allowed that leave, and they have sufficient holiday entitlement. Refusal to grant such leave may be discriminatory if it cannot be justified by a legitimate business need which cannot be met by other reasonable means.

Example

A small toy shop employing four staff may be unable to release an individual for a religious festival in the busy pre-Christmas period. It may be justifiable to refuse a request for such absence. However, a large department store employing 250 staff would probably be unable to justify refusing the same absence for one person where that absence would not substantially impact upon the business as other staff would be able to provide cover.

4.26 Some organisations may operate a holiday system whereby the organisation closes for specific periods when all staff must take their annual leave. They will need to consider whether such closures are justified as they may prevent employees taking annual leave at times of religious significance to them. Such closures may be justified, for example, to maintain machinery.

Social Interaction

4.27 Physical contact between the opposite sexes, unless married or closely related, is forbidden in Islam. Therefore, although many Muslims will be comfortable shaking hands or making physical contact, many may not. Some Muslims may refuse to shake hands and this should not be viewed negatively. It may also be the case that social gatherings are part of the recruitment process, or necessary for staff morale training and bonding. These may influence promotion prospects. Consideration will need to be given to the location of such gatherings, the food and drinks served, and the physical contact required, in order to avoid disadvantaging certain religious groups and discriminating indirectly.

Example

An organisation arranges for employees to attend a compulsory training course which includes group exercises. The team-building tasks involve physical contact between males and females. This may indirectly disadvantage Muslims or individuals of other religious groups, whose religions do not permit such physical contact.

4.28 In relation to social interaction, there may be times when religious or belief practises conflict with policies which are necessary to comply with laws protecting people of different sexual orientation. It should be stressed that the Regulations are intended to protect people from discrimination, harassment and victimisation, and not to facilitate such acts.

Example

A Muslim employee refuses to work with a gay employee on religious grounds. The employer would be acting reasonably in telling him that he should treat his colleagues professionally which includes working together. Failure by the employer to do this may result in a claim by the gay employee within the definition of harassment under the Regulations. The case would be the same if a lesbian/gay employee refused to work with a Muslim colleague because of their views on homosexuality.

The Post Employment Relationship

4.29 Employers must not discriminate, harass or victimise on the grounds of religion or belief even where the employment relationship has ended, for example, in providing references for an ex-employee. However, the discrimination, harassment or victimisation must be connected with or arise out of the previous employment relationship.

4.30 A manager approached by another organisation to supply a reference for a former employee says he cannot recommend the individual on the grounds that he did not 'fit in'. On further inquiry, the manager reveals that the employee refused to socialise in the pub with colleagues. The former employee may have a case of discrimination on the ground of religion even though his working relationship with the organisation has ended.

5.

ADVICE AND LEGAL REDRESS

Advice

5.1 Where an employee has suffered discrimination, harassment or victimisation, they should do the following:

- ❖ *If appropriate, speak to the perpetrator. It may be that there has been a misunderstanding which can be resolved through dialogue.*
- ❖ *If it is not possible to speak to the person responsible, their line manager or another appropriate person may be more suitable.*
- ❖ *Where appropriate and possible, approach personnel, the human resources department, an equalities advisor or a trade union representative.*
- ❖ *Where the above approaches fail, initiate and follow internal grievance procedures.*

5.2 If an employee does not exhaust all internal procedures, including grievance procedures, before bringing their claim to the Employment Tribunal, any awards they receive will be reduced. The Employment Act 2002 (Dispute Resolution) Regulations 2004 set out a minimum grievance procedure that all employees must follow, although many employers may have a more sophisticated process. The main points to note are:

- ❖ *The employee must write to their manager setting out a detailed statement of the grievance.*
- ❖ *The manager must then set a meeting which should be at a reasonable time and place. The employee must take reasonable steps to attend.*
- ❖ *The employee has the right to bring a work colleague or a trade union official with them. At the meeting, both sides will have the chance to explain their case.*
- ❖ *A decision will then be taken. If it is adverse to the employee, they have the right to appeal. Should they wish to do so, they must inform their employer.*
- ❖ *The appeal should be heard by someone else, usually a more senior manager, who will then reach a final decision.*
- ❖ *If the employee is still unhappy, they may initiate a claim in the Employment Tribunal.*

5.3 Should an employee require legal advice, the following external agencies may provide useful guidance:

ACAS for practical and impartial advice on employment relations issues:

Helpline 08457 47 47 47

Textphone 08456 06 16 00

Website www.acas.org.uk

The local Citizens Advice Bureau /Law Centre – for legal advice

Details of the nearest outlet can be obtained from the Community Legal Service

Helpline on 0845 608 1122

Websites: www.justask.org.uk and www.lawsoc.org.uk

5.4 Background on the Regulations can be found at www.dti.gov.uk/er/equality

Legal Redress

5.5 If after exhausting internal grievance procedures the matter is still not satisfactorily resolved and an employee wishes to initiate a claim in the Employment Tribunal, the following points should be noted:

- ❖ *Complaints to an Employment Tribunal must be brought within three months of the discrimination, harassment or victimisation. Cases can be brought after this period has elapsed where an individual can show that they had reasonable grounds for believing that an internal grievance procedure was ongoing at the three month point. However, this exception should not be invoked unless it is absolutely essential and all efforts should be made to meet the three month deadline.*
- ❖ *Actions against institutions of further or higher education, such as universities and sixth form colleges, must be brought in the County or Sheriffs Court, where the time limit for bringing a claim is six months.*
- ❖ *There is no restriction as to the length of service or age of the individual in bringing a claim.*
- ❖ *The employee can cite the name of the actual individual responsible for the discrimination, harassment or victimisation, as well as the employer and serve a questionnaire on them to obtain further information. The employer and – where relevant – any other individual, must respond within eight weeks. Failure to do so could lead to an Employment Tribunal inferring that discrimination, harassment or victimisation has occurred.*

5.6 The initial burden of proof is on the employee to prove facts from which a tribunal may conclude that an act of discrimination, harassment or victimisation has taken place; i.e. the employee must make out a prima facie case of discrimination, harassment or victimisation. Unless the employee can do this, the claim will fail. However, where an employee can establish such facts, the burden of proof then shifts to the employer. The tribunal will uphold the claim unless the employer produces evidence to show that they did not commit the acts complained of by the employee.

5.7 Employers, therefore, need to keep all records of decisions taken – including the reasons for them – which relate to their employees, and be aware that their records can be admitted as evidence and will be scrutinised by the Employment Tribunal.

5.8 If an Employment Tribunal finds that an employer has been responsible for discrimination, harassment or victimisation, they have the power to make:

- ❖ *a declaration that there has been unlawful discrimination*
- ❖ *an award of compensation (there is no limit on the amount)*
- ❖ *recommendations that the employer take particular steps to prevent repeat discrimination*

5.9 Employees should note that they can bring an action against an employer even where the discrimination, harassment or victimisation was carried out by a fellow employee. Employers will be liable for acts of employees, whether or not they knew or approved of those acts, unless they can show that they took reasonable steps to prevent such acts of discrimination, harassment or victimisation occurring or reoccurring.

6.

CONCLUSION

6.1 For the first time Muslims and other religious communities are offered direct protection from religious discrimination, harassment and victimisation in the workplace. This is certainly a welcome step, even if the protection is limited to employment and vocational training, and does not cover many other important areas, such as the provision of housing, health and education.

6.2 The Regulations are an important step forward in recognising the significance of religion to an individual's identity and the importance of this being respected in the workplace. Often, increased dialogue will lead to greater understanding, and employers will find that it is actually not difficult to accommodate religious observance. In the majority of cases, such accommodation is unlikely to have any sizeable impact on the business. Instead, it may significantly enhance employee performance. Employers are, therefore, encouraged to accept reasonable demands from Muslim employees.

6.3 However, Muslim employees are also urged to consider the legitimate needs of their employers and not to make unreasonable demands which may adversely affect more important cases in the future. Trivial demands and over-litigation may also lead to employer disaffection and relocation, exacerbating the unemployment problems already faced by the Muslim community.

6.4 Furthermore, Muslim institutions employing staff will need to exercise vigilance in their own recruitment and employment practices in order to avoid claims of unlawful discrimination against them.

6.5 Additionally, the Muslim community as a whole needs to be aware of how they can work with the business community to promote methods of positive action. There is also a need for coordination and good counsel in the type of issues that are raised with employers or pursued as grievances in industrial tribunals.

6.6 Critical to implementing the Regulations is respect for the dignity of all individuals and reasonable accommodation of their religious needs. It is also fundamental that Muslim employers and employees understand that they have an obligation to respect the rights of other minority groups protected by equality laws, such as women, people of different sexual orientations and people of other or no religious affiliations, as well as minorities within the Islamic faith.

7.

FREQUENTLY ASKED QUESTIONS

As a Muslim, am I now entitled to time off for my daily and Friday prayers, as well as time off to break my fast during Ramadan?

Your employers are not obliged to provide you with time off to perform your prayers or break your fast; however, under the Employment Equality (Religion or Belief) Regulations 2003, they may be acting unlawfully if they have a policy which prohibits you from taking such time off which cannot be reasonably justified. So if your employer has a policy which states that all employees must take their lunch break at a fixed time, this may disadvantage Muslim men who wish to take their lunch break a little later on Fridays to attend Jumu'ah prayers at the mosque. This policy will amount to indirect discrimination unless the employer can justify that the policy is a reasonable response to a legitimate business aim.

In general, staff are entitled to a rest break of not less than 20 minutes where working time is more than 6 hours. Some employees may be able to use their normal break entitlement to pray or break their fast. However, if extra time is required, you can request that your rest break coincide with your daily prayer times or, if necessary, request extra time off with the offer to make it up later.

Your employer has a duty to consider your request, and should try and be as flexible as possible, so long as it does not interfere with their business requirements. If they cannot meet your request, they should provide reasons for their refusal.

You should discuss a number of factors with your employer, such as the availability of other staff to cover for you if necessary, the possibility of making up the time later on, the resources available to your employer, the nature of your work and whether the business will be adversely affected by your absence at particular times of the day.

I have Muslim employees as well as employees of other faiths. My Muslim employees have requested a prayer room. Do I have to provide a prayer room and other prayer facilities?

There is no requirement under the Regulations for employers to provide prayer facilities; however, it is good practice to consider providing a suitable area for use by anyone wishing to use it for that purpose. Where an employer refuses to provide a prayer room, their decision will be unlawful if they cannot justify it. Factors which are likely to be considered will include: the availability of space, the costs involved, the resources available to the employer, and any other available alternatives.

Where it is possible to provide a room for prayer or private contemplation, it is good practice to provide a multi-faith prayer or contemplation room where there are employees of different faiths, as it may not be practical to provide a separate room for each faith. You should consult with your employees and come to an agreement on when the room can be used by people of different faiths. Additionally, there may also need to be discussions on the display and storage of religious objects.

In terms of other prayer facilities, Muslims will also require washing facilities to perform wudhu (ablutions) before prayers. There is no obligation to provide specific facilities, and normal toilet facilities will usually suffice. However, some Muslims may prefer to use a plastic wash basin to wash their feet, and it is good practice to provide facilities for their storage.

With regards to the considerations employers should bear in mind if they are providing a prayer room, please see paragraph 4.16.

Am I now entitled to leave to celebrate Eid and perform Hajj?

Whilst employers do not have to provide paid leave for religious holidays, employees are entitled to ask for time off from their annual leave to celebrate religious festivals. An employer has an obligation to consider the request, and should try and meet it where possible.

You should try and inform your employer of your request for time off as soon as you can. While you may not always be able to give an exact date, for example for Eid-ul-Fitr, you can give an approximate date.

Your employer will then have to consider the request and the effect that it will have on their business. If the effect on them is not significant, then they may be discriminating against you if they refuse. If, however, that particular day (or period, for example, during Hajj) falls during a time of particular importance for the employer, where your absence would have an adverse impact on them, or there are insufficient staff available to cover your absence, then they may be justified in refusing your request.

The decision will therefore be based on the circumstances of the organisation at that particular time, and the effect your absence will have on them. This may mean that on some occasions your requests will be granted, whilst on other occasions they may not. It is important to discuss this issue with your employer, and try and give as much notice as possible, to ensure that you can have the time off when you need it, whilst at the same time not adversely affecting their business.

We are a large and very well known PR company. One of our employees has started to wear the hijab and we feel that this is undermining our company image. What can we do?

If an employer has a dress code within their organisation, be it formal or informal, and it has the effect of disadvantaging people of a particular religion or belief, it will amount to indirect discrimination, unless it can be justified. To do so, an employer must show that the policy is in place to meet a legitimate aim, and that the response is a reasonable one.

Therefore, if you were to prevent your Muslim employee from wearing the hijab, you would have to justify this by showing that your business would be adversely affected by her actions, and that it was absolutely necessary that all your employees dressed in a certain way which excluded the wearing of the hijab. You would also have to show that your response was proportionate.

In the circumstances, it is unlikely that you would be able to justify such a policy with reference to your company's 'image'. It is also doubtful that your response would be seen as proportionate. On the contrary, your acceptance of your employee's religious requirements may well improve your company image, and thus have a positive impact on your business, since you would be seen to be an equal opportunities employer who accommodated the religious requirements of their employees.

How do I deal with a situation where one of my employees refuses to work with a colleague who is gay on the basis that it is against his religion to do so?

The Employment Equality (Religion or Belief) Regulations 2003 make it very clear that individuals cannot rely on these Regulations in order to discriminate, harass or victimise colleagues on any other grounds, be they on the basis of race, gender, disability or sexual orientation. Every individual has the right to be treated with dignity and respect in the workplace.

Whilst some religious communities, including Muslims, may have strong views concerning an individual's sexual orientation, this should not affect their working relationship with their colleagues.

As an employer, you also have a duty towards the employee who is gay under the Employment Equality (Sexual Orientation) Regulations 2003 which make it unlawful to discriminate, harass or victimise individuals on grounds of sexual orientation.

You should therefore make it clear to your employees that whilst they may not like one another, or agree with their respective views, they must treat each other in a professional and respectful manner. It may be helpful to draw up an Equality policy and provide training on this issue so all your employees are clear on their responsibilities to one another.

I am a Muslim and run my own IT consultancy. All my employees are Muslim, as are our clients. We need to recruit a new IT consultant; we would like that person to be a Muslim, since our employees and clients feel more comfortable in an Islamic environment. Can we place an advert for a Muslim IT consultant?

If an employer advertises for an individual of a particular religion, or recruits an individual based on a particular religion, this will amount to direct discrimination unless it falls into one of the exceptions.

It is not a requirement of an IT consultant to be a Muslim; the job can be performed by an individual of any religion. You will not therefore be able to rely on the general GOR. Further, there is nothing to suggest that your IT consultancy is based on a religious ethos, despite the fact that all your employees and clients are Muslim. The exception for jobs within an organisation based on a religious ethos is not therefore available to you.

In the circumstances, it is unlikely that placing an advert for an individual of a particular religion to perform the job of an IT consultant will be considered lawful.

I am a Muslim and work in a large supermarket. As part of my role, I will sometimes have to work in the meat section, where I will be required to handle pork. I am very unhappy about doing this since I do not feel that I can handle the pork. What can I do?

If you feel that you cannot handle pork as a Muslim, then you should discuss this with your manager. A policy that all staff must work in the meat section of the supermarket may amount to indirect discrimination since it disadvantages Muslims.

Your employer should try and accommodate your request where possible. The decision will depend on the size of the supermarket, the total number of employees, and the number of employees who are affected by the request. If there are sufficient staff to cover the period when you would be in the meat section while you can work somewhere else, and this would not cause an undue burden on your employer's business, then they may be discriminating against you if they refuse. In your case, since you work in a large supermarket, it should not be too difficult for your employer to accommodate you. (If, however, you worked for a small supermarket, and it would be very difficult to accommodate your request, then they may be justified in refusing.)

If you have discussed this with your employer and they refuse to accommodate you, without providing a reason for this, you may wish to seek further advice, as the refusal may amount to indirect discrimination.

I am Muslim and over the last few weeks, I have noticed my manager referring to Muslims as "terrorists" when talking to some of my colleagues in front of me. I find this hurtful and offensive, but am afraid that if I complain, everyone will think I am being oversensitive, as it is not directed at me. What can I do?

The treatment you have been experiencing may amount to harassment as their effect is to create an atmosphere where you feel offended and intimidated. It does not matter that the comments are not directed at you, nor that they are subtle – it is their effect that is important.

You should try and speak to your manager and explain that you find the comments he is making hurtful. He may not even realise that he is causing offence, and you pointing this out may be all that is required for him to stop.

Your employer may also wish to draw up a harassment policy, and consider providing their employees with training on what the policy means in practice. This may increase understanding and awareness of religious issues amongst staff.

If, however, the comments continue, or you do not want to speak to your manager personally, you may wish to talk to your personnel or HR department. If this is unsuccessful, you may want to begin your internal grievance procedure. It may also be necessary to seek further advice.

Are employers discriminating against their non-Christian employees by requiring them to use their annual holiday allowance to commemorate their religious festivals, when Christian employees are not required to do so, since these are covered under public holidays?

The Working Time Regulations (WTR) provide that Bank Holidays and Privilege days such as Christmas and Easter can form part of an employee's annual leave, which must be not less than four weeks, inclusive of such holidays. It is therefore unlikely that a claim can be made by non-Christian individuals in these circumstances, since an employer would be able to rely on the WTR. A claim would have to be made which challenged the WTR, perhaps under the Human Rights Act 1998 before this could be challenged.

Nonetheless, an employer may still be able to justify such a decision, on the basis that it is in pursuance of a legitimate aim. There are a number of economic arguments that could be put forward; since it is a widely recognised holiday in the UK, very few businesses may be open. Also, it may be very difficult to find sufficient employees to work on those days, since a significant number of people would require that time off. These reasons may be sufficient justification for requiring that all employees take the time off and for the business to shut down.

There may be circumstances where an employer can accommodate their non-Christian employee's desire to work on public holidays, and then have time off to commemorate their religious festivals – some organisations may be able to organise for some sections of their business to remain open over the holiday period. This will of course depend on the nature of the organisation, and whether the functions performed by those employees can continue, despite the fact that the majority of other businesses may be closed.

Ultimately, this is an area which may be tested before the courts.



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The Muslim Council of Britain (MCB), which was founded in 1997, is an inclusive umbrella body that aspires to represent the interests of Muslims in Britain and is pledged to working for the common good of society as a whole. It is made up of major Muslim national, regional and local organisations and institutions including Mosques, education and charitable bodies.

The MCB seeks to meet the growing needs and expectations of the Muslim community in areas such as policy research, strategic planning for the community, encouraging participation in local and national affairs, the media and outreach to the wider society. In the few years since its inception, the MCB has achieved much at many levels of society and government for the benefit of the Muslim community and for the wider society as a whole.

For more information about the MCB please visit our website: www.mcb.org.uk.