

Guideline Leaflet L09E: Equality law and your church - membership and leadership

This leaflet is designed to help churches to understand the provisions of the Equality Act 2010, particularly in relation to using the organised religion exceptions to confirm and support the Christian ethos of your church. This is the fifth in a series of five leaflets addressing different aspects of these provisions.

This Guideline Leaflet is regularly reviewed and updated. To ensure that you are using the most up to date version, please download the leaflet from the BUGB website at www.baptist.org.uk/resources

The date on which the leaflet was last updated can be found on the download page.

These notes are offered as guidelines by the Legal and Operations Team to provide information for Baptist churches.

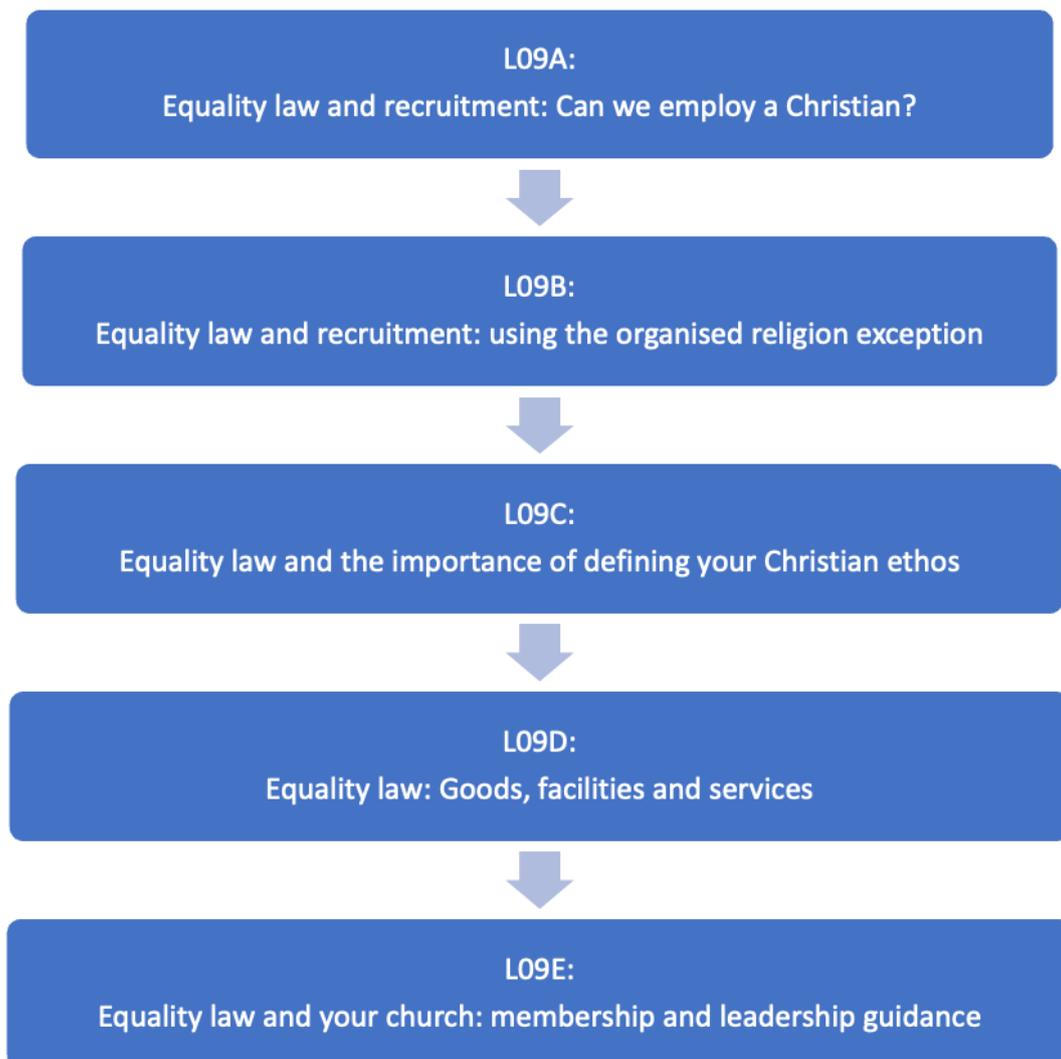
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These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.

THE L09 LEAFLET SERIES

This series of leaflets provide guidance to churches on how to consider and make use of the religious exception provisions laid out in the Equality Act 2010. We recognise that there are circumstances where a church will want to specifically employ a Christian, to clearly state the church's position in relation to some issues of ethics and values, and to make sure that it acts fairly and legally in relation to employment of staff and the provision of services. All of these issues are dealt with in this series of guideline leaflets.

The diagram below shows the full set of leaflets in this series. This leaflet is **L09E: Equality Law and Your Church - Membership and Leadership**



INTRODUCTION – PURPOSE OF THIS GUIDANCE

We have created this guidance to help your church understand and apply the provisions of the Equality Act 2010 relating to discrimination because of religion or belief when granting membership and appointing leaders like trustees, elders and deacons from within the membership. For the purpose of this guidance, references to 'your church' shall include Christian missional projects and pioneering ministries and initiatives.

This guidance covers the issues that may arise when your church grants membership or appoints leaders from within its membership such as trustees, elders and deacons. Whatever titles are used it is important to note that for the purposes of charity law the group in your church who are identified as 'leaders' are the Charity Trustees; this is usually confirmed in the church's Constitution.

It focuses on the religion or belief and sexual orientation exceptions that are available to a religion or belief organisation to use.

This guidance does not cover recruitment for employment purposes. For guidance on those issues, please refer to *L09A Equality law and recruitment: can we justify employing a Christian* and *L09B Equality law and recruitment: the organised religion exception*.

The starting point is that the Equality Act makes discrimination because of religion or belief unlawful. When granting membership of your church or appointing unpaid leaders from its membership that are not employees, such as trustees, deacons and elders, it is possible to lawfully discriminate and restrict who you accept as members and who you appoint as leaders if to do so, would conflict with the purpose of your church or would cause offence to others of the Christian faith. This guidance explains the conditions that must apply for your church to rely on either the religion and belief or sexual orientation exceptions and explains what your church needs to evidence in the event of a challenge.

This guidance will help you to:

- understand what the law says;
- justify a decision to rely on the religion or belief or sexual orientation exceptions when granting membership and appointing leaders within the church;
- understand the importance of identifying and describing the distinctive ethos of your church and its beliefs and signpost you to another leaflet in this series to assist with doing this;
- apply your Christian ethos to operational processes – like your membership pack or processes for making appointments etc.; and
- work through the practical steps you need to take so that you can operate correctly within the law and put your organisation in the best place to withstand legal challenge.

1 OVERVIEW OF THE LAW: EQUALITY FRAMEWORK – GRANTING MEMBERSHIP AND APPOINTING LEADERS

1.1 *What do we need to know?*

Religion or Belief is one of “9 protected characteristics” set out in law, the others being age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sex and sexual orientation. “Religion” means any religion and a reference to religion includes a reference to a lack of religion. The law defines “Belief” as any religious or philosophical belief and a reference to a belief includes a reference to lack of belief. This would include people with no belief in the Christian faith ¹

The law prohibits associations, service providers and anyone exercising public functions from doing anything that amounts to discrimination, harassment or victimisation in certain circumstances². This applies to all protected characteristics except for marriage and civil partnership. It also does not apply to age where the person is under 18. For example, a service provider or association could choose not to grant membership to persons under 18, or only to provide them with a limited range of services or membership, without having to resort to a justification defence.

Your church must not unlawfully discriminate against a member, associate member or guest (including a prospective member or guest, or a former member, associate member or guest). The law protects members, associate members and former members.³ A guest can include any visitor to the church premises including a person attending a church service and a person attending an activity at the church or on church premises offered and run by the church. However, a guest would be more like a service user. This guidance covers the religion and belief exceptions that apply to membership. Goods, facilities and services are dealt with in a separate guidance leaflet. For more information, please read L09D Equality law and goods, facilities and services: can we apply any exemptions on the grounds of religion or belief?.

Essentially, your church must not when granting membership discriminate against a member, associate member or former member on the terms on which it grants membership; by terminating the membership or by subjecting the member to any detriment unless it can rely on an exception.

1.2 *What types of religion or belief discrimination are there?*

The law provides that it is unlawful for a service provider or association to discriminate directly or indirectly or victimise a member, associate member or guest (including a prospective member or guest, or a former member, associate member or guest) because of their religion or belief (or lack of religion or belief). Taking each of these in turn:

¹ Section 10 of the Equality Act 2010

² S.29 Equality Act 2010

³ Part 3 Equality Act 2010 sections 29 and 31(6)

Type	Example
<p>Direct discrimination is when you treat someone worse than another person because they either have a protected characteristic, you think they have that protected characteristic or they are connected to someone with that protected characteristic.</p>	<p>If your church refuses to admit someone to membership because they are not a Christian, this will be direct religious discrimination. Direct discrimination cannot be justified but as a membership organisation it is likely that you would be able to rely upon an exception.</p>
<p>Indirect discrimination happens when there is a policy, criterion or practice (a PCP) that applies in the same way for everyone but disadvantages a group of people who share a protected characteristic and specifically a person within that group. This will be unlawful discrimination unless your church is able to objectively justify it and show that there is a good reason for the policy.</p>	<p>The concept of a PCP is broad and, in this context, it covers policies or requirements for membership, informal practices and even one off decisions. A PCP may appear neutral, in other words, it applies to everyone regardless of religion or belief. However, it has the effect of disadvantaging members of a particular religion or belief.</p> <p>One example might be a policy or decision not to grant membership or leadership positions from within the membership to persons who have remarried after being divorced. A PCP may appear neutral, in other words, it applies to everyone regardless of religion or belief. However, it has the effect of disadvantaging members of a particular religion or belief or marital status. A rule or policy that has an indirectly discriminatory effect is not unlawful if it is objectively justified your church.</p> <p>To establish objective justification, your church would need to show that it has a legitimate aim (a real business or organisational need) and it will need to be able to show that the PCP is a proportionate means of achieving that aim. This means that it is reasonably necessary in order to achieve that aim and there are no less discriminatory means available. A religion or belief exception would be of assistance in justifying such a claim.</p>
<p>Victimise a member because they have made or intend to make a religion or belief discrimination complaint. Victimisation occurs when someone suffers a detriment as a result of having complained about discrimination or of having helped someone else with a discrimination claim.</p>	<p>For example, a gay man sues a church for discrimination on the basis that one of the elders makes persistent personal derogatory remarks to other church members about his sexuality. Because of this, the elder removes him from church membership altogether. This would be victimisation and should be avoided.</p>

It is unlawful for your church to discriminate or victimise its members, associates and guests, also its prospective members, associates or guests because of various protected characteristics, including religion or belief.

2 MEMBERSHIP: CAN WE APPLY ANY EXCEPTIONS ON GROUNDS OF RELIGION OR BELIEF?

2.1 *What exceptions to the rule are there?*

The law provides an exception for religion or belief organisations such as churches (religious or belief exception) who, if certain conditions are met, will not discriminate against a person on grounds of religion or belief or sexual orientation where they restrict membership.

2.2 *When does the religion or belief exception apply?*

The exception applies to organisations whose sole or main purpose is not commercial⁴.

The organisation must have **one** of the following purposes⁵:

- Practice a religion or belief.
- Advance a religion or belief.
- Teach the practice or principles of a religion or belief.
- Allow people of a religion or belief to participate in any activity or receive any benefit within the framework of that religion or belief.
- Foster or maintain good relations between people of different religions or beliefs.

For example, a church could impose a policy that only members of the Baptist church can attend a housegroup where the members of that group meet to discuss their faith. If you are not able to attend the house group because you are not a member of that particular Baptist church/faith, you would not be able to successfully complain about unlawful discrimination here. However, since most churches are focussed on reaching out to and welcoming their local community, it is hard to envisage such a restriction being put in place.

The religion or belief exception would only apply if it was imposed:

- 1) because of the purpose of your church; or
- 2) to avoid causing offence to others of the same Christian faith.

This means your church may be permitted to restrict membership in the course of the activities it carries out or place a restriction on who can be appointed to a leadership position such as a trustee, elder or deacon from within the membership if the restriction is imposed because to do

⁴ Paragraph 2(2), Schedule 23, Equality Act 2010

⁵ Paragraph 2(1), Schedule 23, Equality Act 2010

otherwise would conflict with the purpose of your church or would cause offence to others of the same Christian faith.

2.3 Practical examples of when your church may choose to rely on the religion or belief exception.

When your church is offering the general public the opportunity to become members or is considering appointing members to leadership within the church, it needs to consider whether it will offer membership to the general public at large, whether it will allow any member to become a leader or whether, having discerned where it stands on certain issues, you will place restrictions on who can become a member and who can be appointed to leadership as a trustee, elder or deacon by way of examples.

For each type of potential discrimination, the grounds for imposing restrictions on either membership or leadership may be slightly different. It is important, therefore, that these restrictions are exercised with care, grace, integrity and consistency.

For example, it is entirely legitimate for your church to restrict membership only to those persons who profess to be Christians.

All Baptist churches are charities and all should have a governing document which is usually a constitution. BUGB has worked with the Charity Commission to produce a model constitution, an Approved Governing Document, for unincorporated Baptist churches to adopt and this is available in our *Guideline leaflet C04* – www.baptist.org.uk/resources/C04.

Alternatively, a CIO Approved Governing Document is available under licence from our solicitors for churches that wish to incorporate as a Charitable Incorporated Organisation and further information is available in the *C11 Guideline leaflet* – www.baptist.org.uk/resources/C11.

In our C04 leaflet, paragraph 6 of the Approved Governing Document sets out the responsibilities of being a member, including a reference to upholding Christian values and paragraph 7 sets out the requirements for joining and becoming a church member including the fact that church membership is open to those who accept the beliefs of the church, which are set out at paragraph 3 of the Approved Governing Document. Paragraph 15.4 stipulates that Charity Trustees shall be chosen from among Church Members. There are similar provisions in the Approved Governing Document for CIOs.

2.4 What if we want to refuse membership or refuse appointment to leadership positions from within the membership to avoid causing offence to others of the same Christian faith.

Your success in relying on the religion and belief exception will depend on whether your church meets the criteria for the exception to apply and the extent to which you can demonstrate in your organisation's documentation the clarity of your Christian purpose and expression of your ethos. Your church will meet the criteria for the exception to apply and it is worth noting that the 'Purpose' clause in both of the Baptist Approved Governing Documents clearly state that the '*principal purpose of the Church is the advancement of the Christian faith according to the principles of the Baptist denomination. The Church may also advance education and carry out other charitable purposes in the United Kingdom and/or parts of the world.*'

It would also be advisable to refer to your church's purpose, its governing document, any statement of faith or Christian ethos in any membership pack or written process your church may have.

For guidance on drafting your Christian ethos or a statement of faith, please refer to *L09C Equality law and the importance of defining your Christian ethos*.

3 MEMBERSHIP: CAN WE APPLY THE RELIGION AND BELIEF EXCEPTION IN RELATION TO SEXUAL ORIENTATION?

3.1 When does the exception apply to sexual orientation?

Non-commercial organisations, including churches and some Christian projects, whose purposes are to promote, practice and teach Christianity are in certain circumstances permitted to impose restrictions on its membership and participation in your church's activities that may otherwise amount to unlawful discrimination on the grounds of sexual orientation.

The religion or belief exception only applies in relation to sexual orientation where it is necessary to comply with the doctrine of the organisation or to avoid conflict with the strongly held convictions of a significant numbers of the followers of the religion or belief that the organisation represents.

To summarise, your church must be able to show that the exception is required in order:

- 3.1.1 to comply with the doctrines of the religion (compliance principle); or
- 3.1.2 to avoid conflicting with the strongly held religious convictions of a significant number of the followers of the religion or belief that your organisation represents (non-conflict principle) and to which membership is granted.

Your church must also have one of the purposes set out in paragraph 2.2, i.e. it must practice, advance or teach the principles of the Christian faith, allow Christians (or people of another religion or belief) to participate in any activity or receive any benefit within the framework of the Christian faith or foster or maintain good relations between people of different religions or beliefs.

3.2 Practical examples of when your church may choose to rely on the sexual orientation exception.

If your church believes in upholding the sanctity of marriage and has discerned its position on this and other related matters, it may require members and/or leaders such as trustees, elders and deacons who are appointed from within the membership to live a lifestyle that is consistent with what it has discerned the Bible says about Christian living. For example, it may consider that any leaders regardless of their sexual orientation should be celibate outside marriage.

In order to do so your church would need to be confident that in the event of a challenge, it could show that the exception is required in order to comply with the doctrines of the religion (the compliance principle) or it is required to avoid conflicting with the strongly held religious convictions of a significant number of the followers of the religion or belief that your church represents (non-conflict principle).

In order to rely on either exception, it would be helpful if your church has reached a clearly stated position on this. Both Baptist Approved Governing Documents set out in the paragraph

headed 'Beliefs' that as a member of the Baptist Union, the Church subscribes to the Union's Declaration of Principle and refers to '*each church having the liberty, under the guidance of the Holy Spirit, to interpret and administer his laws*'. Therefore, it would be helpful if your church has reached a clearly stated position on such matters and documented it.

There is no guarantee that this example could be successfully defended. **This is not legal advice.** The validity of any exception will depend entirely on the extent to which you can demonstrate, through the clarity of your Christian purpose in your governing document, any statement of faith and expression of your Christian ethos, why it is necessary to rely on an exception.

4 MEMBERSHIP: CAN WE APPLY THE RELIGION AND BELIEF EXCEPTION IN RELATION TO GENDER REASSIGNMENT?

4.1 *Who is protected?*

The law provides that a person has the protected characteristic of gender reassignment if the person has undergone, is undergoing or is proposing to undergo a process (or part of a process) to reassign their sex by changing physiological or other attributes traditionally assigned to a particular gender.

A person with this protected characteristic is protected against discrimination and is afforded protection from the point when a person is proposing to undergo a process of gender reassignment.

There does not have to be a medical process and includes someone telling you that they have now decided to permanently present as a different gender to their birth gender.

4.2 *Does that include persons who identify as non-binary?*

The gender binary is the assumption that all people are one of two genders, female or male, or woman or man. People who identify as a man or a woman identify as a binary gender, since they identify with a gender within the system of the gender binary. A non-binary person identifies with a gender that is not male or female. The term "non-binary" is used to describe someone who does not subscribe to the customary binary approach to gender, and who may regard themselves as neither male nor female, or both male and female, or take another approach to gender entirely.

As we write this in 2023, the law is rapidly evolving in this area. Currently, someone who identifies as gender fluid/non-binary is likely to be protected against discrimination under the law. Expect further developments in the area of gender reassignment, which your church will need to keep under review.

4.3 *Members and gender re-assignment?*

Under current legislation, your church would not be able to lawfully discriminate against any members with the protected characteristic of gender reassignment when offering access to membership.

4.4 *Leaders and gender re-assignment?*

As for trustees, elders and deacons, whatever titles are used in your church for leaders, their roles mean that they are likely in law to be the charity trustees of the church but check your church's constitution. Charity trustees are office holders so if any of these roles/titles exist to promote and represent the Baptist faith in a clearly stated way, for example, they are also expected to teach and preach from the Bible, disciple and have pastoral responsibility for the church members, provided that you have checked that they are also trustees of your church, your church may be able to rely on the narrow set of circumstances in which your church could use the organised religion exception as is used in recruitment. If so, this would mean that your church could lawfully discriminate against any charity trustees with the protected characteristic of gender reassignment when appointing them to leadership and during their period of office.

Why? The Equality Act explains that a reference to employment includes a reference to an appointment to a personal or public office. The same narrow organised religion exception used in employment applies to ministers of Baptist churches as office holders. Provided the narrow circumstances apply, the organised religion exception could also be used to justify a requirement that a Trustee not have a civil partner, not be of a particular sexual orientation, not be of a particular sex or relating to circumstances in which a marriage or civil partnership came to an end for example. The organised religion exception used in employment is explained further in *L09B Equality law and recruitment: the organised religion exception*.

Please note though that the paragraphs in this guidance below on practical steps your church would need to take would apply if your church seeks to use that exception for appointments to trustee leadership positions rather than the paragraphs on practical steps applicable to recruitment set out in L09B.

Regardless of whether your church is able to rely on the religion and belief exception for members or the narrow organised religion exception for leadership positions, it will help matters if your church has discerned its doctrinal position on gender reassignment and transsexual persons and documented this somewhere. While your church, if challenged, would struggle to justify not granting membership to a transsexual person or person of other gender identity (and may not want to) it will put itself in a better position to justify not appointing to leadership/trustee positions from within the membership if it is clear where it stands on such issues. This will be required in order to rely on the narrow organised religion exception. Even if your church is not able to rely on the narrow organised religion exception for all or any of its leadership positions, people may self-select in not putting themselves forward for membership or trustee/leadership roles if they know where your church stands on such issues.

There is no guarantee that this example could be successfully defended. **This is not legal advice.** The validity of any exception will depend entirely on the extent to which you can demonstrate, through the clarity of your Christian purpose in your governing document, any statement of faith and expression of your Christian ethos, why it is necessary to rely on an exception.

The religion or belief exception set out in the law that applies to membership does not expressly cover gender reassignment in the same way that the organised religion exception does for the purposes of employment. The issue of whether your church can rely on the narrow organised religion exception permitted requirements noted above, may not always be clear and, if handled wrongly, could cause upset and controversy for your church. We would

advise seeking more specific legal advice where any questions arise as to the relevance and suitability of an occupational requirement for this role.

5 MEMBERSHIP AND LEADERSHIP: WHAT PRACTICAL STEPS DO WE NEED TO TAKE TO USE THE EXCEPTION?

The key to taking advantage of the religion or belief exception is to ensure you have worked through the requirements step by step and documented every step.

It may also require your church to discern where it stands on doctrinal issues relating to sexual orientation and gender reassignment.

5.1 Once you have established whether you can rely on either the religion and belief or sexual orientation exceptions to discriminate when offering access to membership and/or appointment to leadership positions from within the membership, your church needs to take the steps set out below.

5.2 *Step 1 – Decide whether the exception applies?*

- a) Can your organisation demonstrate that its sole purpose is not commercial?
- b) Can your organisation demonstrate that its purpose is one of those listed at paragraph 2.22.2 above.

Where is that documented? Look at your governing documents and constitution. Your church should meet these criteria with ease. However, if your church has a Christian project that has been set up as a separate entity, you may need to look at other governing documents relating to that project. If you are considering setting up a Christian project as a separate entity, you will not be able to rely on the exceptions if the Christian project has a commercial purpose. This guidance recommends taking legal advice on the best structure to adopt and ensuring that the advancement of the Christian faith is included as the purpose of any project you set up separately.

5.3 *Step 2 – Can you demonstrate that, on the grounds of religion or belief, the application for membership, if granted:*

- a) conflicts with your church's purpose? or
- b) could cause offence to others of the same belief?

Or can you demonstrate that, on the grounds of sexual orientation, granting membership:

- a) conflicts with the Christian doctrine? or
- b) conflicts with the strongly held religious convictions of a significant number of the followers of the Christian faith?

5.4 *Step 3 – Documentation*

Statement of faith or Christian Ethos statement

Have a clear, ready to hand governing document that sets out your church's beliefs and religious ethos. In order to support the use of the exception, your church should review its

supporting documentation like its statement of faith and any ethos statement to see if it currently provides a clear and definitive explanation of your Christian ethos and purpose.

Does your statement of faith and/or any ethos statement identify sufficiently what your church believes, as discerned in a church members' meeting, and, in turn what difference that belief makes both internally within the organisation and externally? For more information on how to draft a Christian ethos statement please refer to L09C Equality law and the importance of defining your Christian ethos, which contains some sample ethos/value statements.

Membership and leadership criteria

Once your church has decided upon its membership process and discerned in a church members' meeting where it stands on certain issues, your church should document the doctrinal basis for that process. Essentially, this means ensuring that your membership pack or process refers to your organisation's purpose, governing documents and sets out or refers to any particular beliefs and signposting the relevant document. For instance, if your church would like to rely on the sexual orientation exception for its membership or apply of the permitted requirements under the organised religion exception for its leaders (provided they are also trustees of your church and the narrow conditions apply), it would be prudent to have reached a clearly stated position on these issues.

Justification Statement

If your church seeks to rely on any of the requirements permitted under the organised religion exception for leaders (deacons, elders who are trustees) relating to sexual orientation or gender reassignment for example, it would also help to document those requirements in a justification statement or other document within your membership pack or information on Trustee leadership appointments. Such a statement would make it clear that having regard to the nature of the role and the context in which it is carried out the role of deacons and elders (or any other appropriate leadership role appointed from within the membership (if trustees) carry a requirement for the role to be carried out by a member, a Christian and then referring to any particular requirement relating to gender reassignment or sexual orientation. We have produced an example of a justification statement for use in employment, which contains a section entitled 'Drafting Note only include if relevant'. This section could be adapted to produce a statement related to trustees for these purposes. It can be found in our Guideline leaflet L08 – www.baptist.org.uk/resources/L08.

5.5 *Step 4 - Be aware and double check*

The religion and belief exception does not cover gender reassignment. Therefore, it will not be possible to lawfully exclude someone from membership on the grounds that they are a transexual/transgender person or apply a re. However, if your church has discerned and reached a position on this issue, it should still document this because potential members may be more likely to self-select in either deciding to put themselves forward for membership or not.

How we can help

The Baptist Union of Great Britain is available to help churches in membership of the Union with issues raised in these guidelines through the relevant departments at Baptist House on 01235 517700. Legal and financial questions should be directed to the Legal & Operations Team or HR Team either by referring to the website, www.baptist.org.uk, where a comprehensive range of leaflets is available or contact the offices on 01235 517700, fax 01235 517715 or email L09@baptist.org.uk. For formal legal advice the Union's solicitors are ready to offer their professional services. Please contact Anthony Collins Solicitors, 134 Edmund Street, Birmingham, B3 2ES on katherine.sinclair@anthonycollins.com.

This is one of a series of Guideline Leaflets that are offered as a resource for Baptist ministers and churches. They have been prepared by Anthony Collins Solicitors on behalf of the Legal and Operations Team and are, of necessity, intended only to give very general advice in relation to the topics covered. These guidelines should not be relied upon as a substitute for obtaining specific and more detailed advice in relation to a particular matter.

All of the leaflets in this series can be found on our website at www.baptist.org.uk/resources/L09

The staff in the Legal and Operations Team at Baptist House will be very pleased to answer your queries and help in any way possible. HR advice is also available for churches. It helps us to respond as efficiently as possible to the many churches in trust with us if you write to us and set out your enquiry as simply as possible.

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