

Guideline Leaflet L09D: Equality law and goods, facilities and services

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 fourth 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.

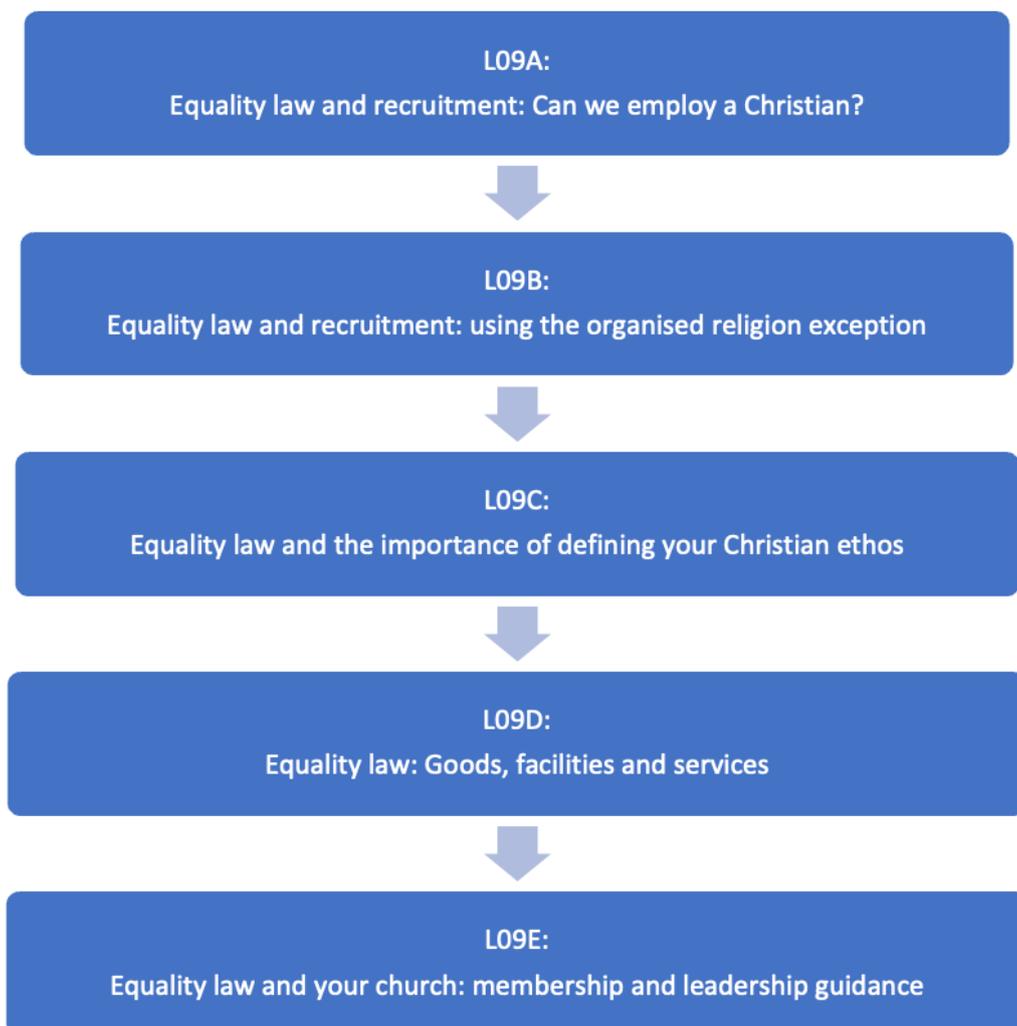
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These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.

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 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 **L09D: Equality Law: Goods, Facilities and Services.**



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 providing goods, facilities and services. For the purpose of this guidance, references to 'your church' shall include Christian missional projects and pioneering ministries and initiatives.

When your church is offering goods, facilities or a service to the general public, it needs to consider whether it will offer them to the general public at large or whether, having discerned where it stands on some of these issues, you will place restrictions on who you offer your goods and services too. A church may also impose restrictions on the hiring out of its premises in order to comply with its Constitution (or governing document) or its property trust deeds.

For example, can your church refuse to hire out its premises to people wanting to practise other faiths or wanting to hold a same-sex wedding reception in your hall? Or can your church refuse to hire out its premises to. For answers to these and other examples read on!

This guidance covers the issues that may arise when your church provides goods, facilities or services. It focuses on the religion or belief and sexual orientation exceptions that are available to a religion or belief organisation to use. The starting point is that the Equality Act makes discrimination because of religion or belief unlawful. However, if your church for example, places certain restrictions on either the activities that can be carried out on its premises or the people who may access its services or use its facilities, your church may find that it is discriminating because of religion or belief.

Thankfully, the Equality Act 2010 provides some flexibility to allow churches and other faiths to maintain their ethos based on their faith. When providing goods, facilities or services in the course of your activities, it is possible to lawfully discriminate and restrict who you provide those services to 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 providing goods, facilities or services;
- understand the importance of identifying and describing the distinctive ethos of your church and signpost you to another leaflet in this series to assist with doing this;
- apply your Christian ethos to operational processes – like your bookings policy and terms and conditions 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 - PROVISION OF GOODS, FACILITIES AND SERVICES

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 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 could choose not to provide services to persons under 18, or only to provide them with a limited range of services, without having to resort to a justification defence.

A service provider is a person concerned with the provision of a service (including goods or facilities) to the public or section of the public, whether or not for payment. A service provider can be an individual, business, voluntary organisation or a public body. Services include the provision of goods and facilities.

Your church will be a service provider because services include places of worship and includes your online provision.

Your church’s foundation deeds will set out that the use of your church’s premises is for Christian worship. It is likely that your Christian project will also be a service provider if it offers access to any place which members of the public or a section of the public are permitted to enter.

Providing accommodation, facilities for education (such as a privately run nursery school or creche) retail or facilities for entertainment, recreation or refreshment such as a cafe are a few examples of services that your church may offer.

The law protects a person requiring a service (which includes seeking to obtain or use the service) and during the course of being provided with a service. It also protects them after the service has been provided.³

Essentially, your church must not, in providing any goods or services, discriminate against a service user as to the terms on which it provides the goods or services; by terminating the provision of your goods or services or by subjecting the service user to any detriment unless it can rely on an exception.

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

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)

The law provides that it is unlawful for a service provider to discriminate directly or indirectly or victimise a service user because of their religion or belief (or lack of religion or belief).

Taking each of these in turn:

<i>Type</i>	<i>Example</i>
<p>Discriminate directly by treating a service user less favourably than others because of a protected characteristic, in this case religion or belief. Direct discrimination also includes treating someone less favourably because of a perception (whether or not mistaken) that they do or don't have a particular religion or belief or because of the religion or belief of someone associated with them.</p>	<p>If your church refuses to hire out their premises to a group of Sikhs because they are not Christian, it will not be providing this group wanting to hire your premises with the service in question and this will be direct religious discrimination. Direct discrimination cannot be justified but as a service provider you might be able to rely upon an exception.</p>
<p>Discriminate indirectly by applying a provision, criterion or practice (this is often referred to as a PCP) such as a rule or policy to everybody.</p> <p>On the face of it, it looks like you are treating everyone equally but it particularly disadvantages service users with a protected characteristic as well as a particular person in that group. This will be unlawful discrimination unless your church as the service provider is able to objectively justify this .</p>	<p>The concept of a PCP is broad and, in this context, it covers lettings criteria and policies, 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 service users of a particular religion or belief.</p> <p>One example might be a policy or decision not to hire out your premises to groups of other faiths for religious worship. A PCP may appear neutral, in other words, it applies to everyone regardless of religion or belief. However, it has the effect of disadvantaging service users of a particular religion or belief. A rule or policy that has an indirectly discriminatory effect is not unlawful if it is objectively justified by the service provider.</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.</p>

<p>Victimise a service user 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 Christian project running a café for discrimination on the basis that the café manager makes persistent derogatory remarks to other customers about his sexuality. Because of this, the café manager bars him from the cafe altogether. This would be victimisation and should be avoided.</p>
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The prohibition on harassment does not apply to the protected characteristic of religion or belief in goods and services whereas it does in employment. However, depending on the facts, a service user may instead be able to bring claims of direct discrimination because of religion and belief.

2. GOODS, FACILITIES AND SERVICES: 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 any of the following⁴:

- Membership;
- Participation in activities undertaken by or on behalf of the organisation, or under its auspices (umbrella, patronage or sponsorship);
- The provision of goods, facilities or services in the course of such activities undertaken by the organisation or on its behalf or under its auspices; or
- The use or disposal of premises owned or controlled by the organisation.

Membership is dealt with in a separate guidance leaflet. For more information, please refer to L09E Equality law and your church membership and leadership.

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

The exception applies to organisations whose sole or main purpose is not commercial⁵.

The organisation must have **one** of the following purposes⁶:

- Practice a religion or belief.

⁴ Paragraph 2(3), Schedule 23, Equality Act 2010

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

⁶ Paragraph 2(1), Schedule 23, Equality Act 2010

- 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.

All of these would apply to a Baptist church.

An example of the religious or belief exception in practice might be an interfaith group planning a local day of prayer bringing together Christians, Jews, Muslims, Sikhs and Hindus with an opportunity to discuss the role of prayer within different faiths. This exception would permit the interfaith group to exclude humanists and atheists.

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 the use of its premises, restrict its provision of goods, facilities or services in the course of the activities it carries out or place a restriction on participation in your church's activities if the restriction is imposed because providing those goods, facilities, services or allowing the use of your premises or participation in your activities 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.

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

What would you do if your church receives:

- a call regarding a Sikh wedding?
- an email from a group wanting to book a yoga weekend at your Christian retreat centre? or
- an enquiry from a group of ladies which you accept but you later discover is a group of priestesses who hold meetings of the Feminine Divine on the Equinox and you now want to cancel the booking?

It may be perfectly proper for the church to have a rule that only Christian worship is to be conducted on your church's premises, but this should not be used to prevent, for example, other religious or ethnic groups from using the premises for social occasions if the premises are normally available for these purposes.

For example, you are approached about the church hall being hired for a Sikh wedding and reception. The use of your hall for the Sikh wedding reception, a social occasion, is likely to be an acceptable use of your premises. The exception is more likely to apply if the hire is for the

wedding ceremony itself rather than the reception because the ceremony would include Sikh worship which would conflict with the purpose of your church to promote, practice and teach Christianity, for which the premises is held.

Your church may be approached about the church hall being hired for a same sex wedding and reception. The use of the hall for a same sex wedding reception, a social occasion is likely to be an acceptable use of your premises. It may be possible for the exception to apply if the hire of the church hall is for the wedding ceremony itself rather than the reception. However, this would only apply if to allow the ceremony onsite would conflict with the doctrines of your church's Baptist faith.

The sexual orientation religion or belief exception and how your church might rely on it is explained further in paragraph 3 below. Your church or minister would be more likely to receive a request from a same sex couple to be married in the church rather than in the church hall and that too is addressed further in paragraph 3.

Similarly, you would want to find out more about the yoga weekend to decide to what extent there was any spiritual element to it and churches may discern these issues differently. Would you want to promote activities of another religious faith on your premises?

Cancelling a booking can cause great difficulties and embarrassment if you don't fully understand the proposed use for the premises. In this case your church would be in breach of contract if it cancels the use of the premises by the Priestesses once it finds that the premises are to be used for an unsuitable purpose. Your church will also need to bear in mind the possibility of discrimination occurring as a result of terminating the hire of the premises.

Consequently, great care must be taken to avoid any question of unlawful discrimination as part of the hiring arrangements. For this reason, organisations and individuals making application for the use of your church's premises should be asked to clearly state the purposes for which the premises will be used.

Our Guideline leaflet *PC10: Hiring of Church Premises*, which is available on the BUGB website www.baptist.org.uk/resources/PC10 contains further information to complement this guidance including highlighting the need for your church to set guidelines as to the kind of use that it will permit in its premises. 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. For guidance on drafting your Christian ethos, please refer to L09C Equality law and the importance of defining your Christian ethos.

It would also be advisable to refer to this purpose and ethos in any booking documentation and terms and conditions and to reserve the right to terminate any booking or arrangement should the booking not be in keeping with the guidelines or purpose for which the premises are held or services are provided. For further advice and practical steps on how to do this, please read paragraph 4 below. We have also produced a flow chart outlining the process for relying on the religion and belief exemption when providing goods, facilities and services.

3. GOODS, FACILITIES AND SERVICES: CAN WE APPLY THE RELIGION AND BELIEF EXCEPTION IN RELATION TO SEXUAL ORIENTATION OR GENDER REASSIGNMENT?

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 provision of goods, facilities or services or 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 for which either the services are provided, or the premises are held.

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.

Please note that the exception in relation to sexual orientation is not available to organisations which do anything on behalf of a public authority or under the terms of a contract with a public body.

For example, if your church runs a parent and child group for the community on behalf of a local authority (regardless of whether it was held on your premises or not), it would not be able to discriminate against those who attend the group on the grounds of sexual orientation.⁷ The same would apply if your church ran a Foodbank for the community for which it receives grant funding from a public body such as, for example, the National Lottery Community Fund, which is an executive non-departmental government body responsible for distributing National Lottery Funding.

If in doubt, as to whether your grant is from a public body, we recommend that you read the terms of any grant funding received carefully and take legal advice if needed.

In contrast, Ministers can restrict participation in the activities they carry out as part of their duties, and access to any goods, facilities or services in carrying out those duties, where the

⁷ Paragraph 2(6), Schedule 23, Equality Act 2010.

restriction is on the grounds of religion and belief or sexual orientation⁸. For example, a Minister can refuse to marry a same sex couple.

3.2. When does the exception apply to gender reassignment?

It doesn't (under current legislation). The religion or belief exception set out in the law does not expressly cover gender reassignment. The definition of gender reassignment is wide. For more information about gender reassignment, please read paragraph [2.2] of L09B Equality law and recruitment: using the organised religion exception. This means that your church cannot lawfully discriminate against any members or service users with the protected characteristic of gender reassignment when providing goods, facilities or services in the course of its activities or when allowing the use of its premises.

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

3.3.1. Could our church refuse to hire out its hall for a Gay Pride celebration?

It could but this will amount to discrimination unless the reason for doing so is to comply with the doctrines of the Christian and Baptist faith (the compliance principle) or that it would conflict with the strongly held religious convictions of a significant number of Baptists in your church (the non-conflict principle). This would then not be unlawful sexual orientation discrimination.

3.3.2. Could our church refuse to allow a trans mum to book on a Mums and daughters weekend away?

If it did, this would amount to discrimination because of gender reassignment and neither the religion or belief or sexual orientation exceptions specifically relate to or cover gender reassignment. Therefore, it is not possible to lawfully discriminate on the grounds of gender re-assignment. The law provides general exceptions for services provided to a single-sex or provided separately to each sex. However, there is also a specific exception aimed at religious bodies. Ministers of religion can provide separate and single-sex services and lawfully discriminate because of sex if:

- the service is provided for the purposes of an organised religion;
- It is provided at a place which is (permanently or temporarily) occupied or used for the purposes of the organised religion;
- The limited provision of the service is necessary in order to comply with the doctrines of the religion or to avoid conflict with the strongly held religious convictions of a significant number of the religion's followers.

Therefore, it is possible that your church may be able to rely on this latter exception depending on the facts of the case and whether the narrow circumstances applied. Some thought would need to be given to what the purpose of the weekend was for, where it was being held and whether to allow participation in the activity would conflict with the strongly held religious convictions of a significant number of the

⁸ Paragraph 2(5), Schedule 23, Equality Act 2010.

religion's followers. However, we would recommend taking legal advice before doing so.

These examples are not a comprehensive list of when the exceptions in the provision of goods, facilities and services may be used and there is no guarantee that all of these examples could be successfully defended. **This is not legal advice.**

The validity of any religion or belief exception will depend entirely on the extent to which you can demonstrate, through the clarity of your Christian purpose and expression of your ethos, why it is necessary to rely on an exception.

3.3.3. Our Christian project has a contract with a local authority to provide meals to the elderly and other vulnerable people in the community – could it legally discriminate because of sexual orientation?

Our church receives grant funding from a public body to run a dads and toddlers breakfast group on a Saturday morning in a disadvantaged community and two dads in a same sex relationship have started attending with their young daughter – could it legally discriminate because of sexual orientation and ask them not to come?

No in both cases. The exception in relation to sexual orientation is not available to organisations which do anything on behalf of a public authority or under the terms of a contract with a public body.

4. GOODS, FACILITIES AND SERVICES: 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 of the documentation, 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.

Once you have established whether you can rely on either the religion and belief or sexual orientation exceptions to discriminate in goods and services, your church needs to take the steps set out below in relation to the hire of its premises.

We have produced a helpful flowchart that summarises the steps below that your church is required to think when providing facilities or services such as the hiring out of premises.

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.

Where is that documented? Look at your governing documents and constitution. 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.

4.1. *Step 2 – Can you demonstrate that, on the grounds of religion or belief, the booking:*

- 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, the booking:

- a) conflicts with the Christian doctrine of your church?
- b) conflicts with the strongly held religious convictions of a significant number of the members of your church as discerned in a church members’ meeting?

4.2. *Step 3 – Documentation*

Christian Ethos statement

Have a clear, ready to hand governing document that sets out your church’s religious ethos and beliefs. In order to support the use of the exception, your church should review its supporting documentation like your Ethos Statement to see if it currently provides a clear and definitive explanation of your Christian ethos and purpose.

Does your Ethos statement identify sufficiently what your church believes 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

Bookings Policy

Set a clear bookings policy and apply that bookings policy consistently.

It will not be possible to prepare for every possible scenario but by including some principles, it will help justify any subsequent decision you make to take advantage of the religion and belief or sexual orientation exception not to provide any goods, facilities, services, hire out your premises or restrict participation in any activities your church undertakes.

Our Guideline leaflet *PC10: Hiring of Church Premises*, which is available on the BUGB website at www.baptist.org.uk/resources/PC10 contains further information to compliment this guidance including highlighting the need for your church to set guidelines as to the kind of use that it will permit in its premises. In addition, it is recommended that your church has an ethos statement or statement of their faith, beliefs or doctrines within the terms and conditions of use for the hiring out of its premises or provision of goods, facilities or services. This is important because it will help in establishing the grounds for imposing any restrictions on use or provision.

The church can also make it clear that the premises cannot be used in such a way so as to cause offence to persons who hold to the church's statement of faith, beliefs or doctrines or in any way which conflicts with those beliefs. If it is relevant, it may be sensible for the church to detail any restrictions on use contained in its trust deed or governing document. All the above may help to show how certain uses of the church's premises are genuinely unsuitable in the particular context.

With a bookings policy, it may be useful to have a think about how you collect information from a prospective booker so that your church can find out whether the exemption applies. This will empower you to make a decision early on in the process (and preferably before the booking has been accepted) so as to avoid confusion, offence or the threat of litigation. An example hiring application form is included within *Guideline leaflet PC10*, which can be found at www.baptist.org.uk/resources/PC10. An example basic set of hiring terms and conditions for the use of church premises are also included within the *Guideline leaflet PC10*. Each church will need to adapt the form and conditions for their own use and they should be adapted to include the recommendations above.

Once you have decided upon a bookings policy, your church should document the doctrinal basis for that policy. Essentially this means ensuring that your bookings policy refers to your organisation's purpose 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, it would be prudent to have reached a clearly stated position.

It would also be advisable to provide training for staff taking bookings to ensure that the process is sensitive, documented and consistent. While this guidance is not about recruitment, our safer recruitment materials can be found on our website in the Guide to Safer Recruitment.

4.3. *Step 4 Be aware and double check*

The exception does not cover gender reassignment.

The exception does not apply when hiring out your premises or delivering a contract to a Local Authority.

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 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.

You can access all of the L09 leaflet series using this link: 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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