



**Applying Equality Law in Practice:
Guidance for Catholics
and
Catholic Organisations**

Prepared by the Department for Christian Responsibility and Citizenship and approved for publication by the Catholic Bishops' Conference of England and Wales.

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This Document provides general guidance based on the Law as it exists in November 2014. It is for general information only and specific legal advice should be taken on its contents. Persons or Organisations faced with specific issues or legal challenges are advised to take independent legal advice as soon as possible. No responsibility is accepted for any action taken or not taken as a result of advice in this document.

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We are grateful to all of them and also to the individuals and organisations who commented on an earlier consultation draft of this guide.

This guide is intended to help Catholics understand the implications of new and sometimes complex laws, and the legal rights and obligations to which they give rise.

We have done our best to ensure that the guide is up to date legally at the time of publication, and it is envisaged that it will be revised from time to time to take account of legal developments.

We hope it will be useful as general guidance, but it is no more than that, and in particular it is not a substitute for taking immediate specialist legal advice where the situation demands it.

Bishop John Arnold

Chairman, working group

Department for Christian Responsibility and Citizenship

INTRODUCTION

This guidance has been created in response to the Equality Act 2010, a piece of legislation that not only brings together existing equality legislation into a single act, but which also introduces several new provisions. As the Equality Act was only passed relatively recently it is still unclear in what way some of its provisions will be interpreted by the courts. The Marriage (Same Sex Couples) Act 2013 also has implications for how equality law is interpreted, and this guide also takes this new law into account.

This guide seeks to provide an accurate overview of equality law as it stands in November 2014 with a focus on religious issues. This is intended to be general guidance only, which should allow Catholic individuals and organisations to identify areas that may lead to legal complications. Any person or organisation faced with specific issues or legal challenges identified in this guide is advised to take independent legal advice.

We share a common humanity. Every human person, created and loved by God, is a member of one human family. Each of us, created in his image and likeness, is of equal worth in His sight, and each has an intrinsic dignity which can never be taken away. This belief, and the respect due to each person that flows from this belief, should especially be reflected and lived out in the practice of Catholic organisations and institutions.

In England and Wales the Catholic Church has for a number of years actively striven to overcome the difficulties faced by many groups in society. The Church has had a consistent stance, for example, on the inclusion of disabled people within the life of the Church itself,¹ and has made great efforts to overcome racism in all its forms both within the church and in society in general.²

The framework of the Equality Act 2010, although much of the detail has yet to be fully developed by the courts, also has at its core this profound moral intuition: the desire to uphold the inherent dignity of every person, and to ensure the vulnerable are protected. Such an aim is, of course, in accordance with Catholic teaching. But although the framework of the 2010 Act may have this foundation, the working out of this framework in practice is not straightforward. There have been well publicised cases in recent years - notably the sad problem of the adoption agencies which was before the 2010 Equality Act- where the rights of Catholic agencies were seen to come into conflict with discrimination law.

¹ *“Valuing difference”* (Catholic Bishops Conference of England and Wales, 1998)

This publication is now out of print but it is available at: <http://www.cbcew.org.uk/document.doc?id=70>

² *“The changing face of Britain”* (CARJ, 2008)

Available at: http://www.carj.org.uk/CARJ_publications.html

The 2010 Equality Act framework contains a set of “protected characteristics” and this entails that some clarification is necessary when what is needed to protect one characteristic comes into conflict with what is needed to protect another one. The Act itself does not set out a hierarchy of importance, but it does sometimes inevitably demand a balancing of competing rights.

It is envisaged that in the vast majority of cases there will be no dispute arising from the Equality Act 2010. However if it becomes apparent that such a dispute may arise it is advised that expert legal advice should be taken straight away.

The Equality Act makes clear that the protection of religious rights are an important part of that framework and we should all participate in the dialogue to shape what equality law will look like in the future. There is both scope and sometimes a need for Catholics to make use of the new law’s provisions which can protect religious freedom.

In the face of such complex challenges we, as individual Catholics and as Catholic organisations, must always be mindful of several key points:

- Catholics should always remember that our primary obligation is to the gospel and the teachings of the Church.
- A fundamental aspect of this teaching is that every person matters; therefore all Catholic bodies should acknowledge their commitment to justice and respecting the dignity of all.
- Each Catholic organisation and institution has a responsibility to safeguard and uphold its Catholic ethos and identity, and to promote those goods which the law exists to protect.

As Catholics we are called to be a neighbour and friend to all women and men, as we struggle together to create a more just society. We must continue the recent and valuable work of Catholic organisations and institutions in applying legislative changes in the areas of human rights and equality, and we must do so in recognition of our moral obligation to respect the human dignity of every person in all that we do.

As we take up the challenges to come, we must remain true to our faith, and we expect society and government to provide the freedom to enable us to do so.

I am grateful to Bishop John Arnold and the working group who have produced this document which has been approved for publication by the Department for Christian Responsibility and Citizenship.

Archbishop Peter Smith

Chairman, Department for Christian Responsibility and Citizenship

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1. HOW TO USE THIS DOCUMENT

Look at the description of the protected characteristics

The meaning of the protected characteristics is often different to what their title might initially suggest. As such it is worth looking through the descriptions provided in Chapter 6 to get a fuller understanding of their legal meaning.

Look at the definitions of the prohibited behaviour

There are four main types of prohibited behaviour within the Equality Act 2010; direct discrimination, indirect discrimination, harassment and victimisation.

These are discussed in Chapter 4, “Key Terms” and it is important to fully understand the meaning and ambit of these behaviours.

Consider the religious exceptions and whether they might apply to you or your organisation

These are contained in Chapter 7, “Specific Guidance”.

This guide is not a comprehensive examination of the exceptions for religious organisations, and the exceptions outlined in “Specific Guidance” are intended to give an overview of the provisions for religious organisations. As such it would be wise to seek independent legal advice to be clear as to whether you are or are not covered by these provisions.

Consider your own policies, or how you have been affected by the policies of others

If you are concerned that there is a chance that you are in breach of the provisions of the Equality Act 2010, or that the way that you are treated by someone else is a breach of those provisions seek legal advice.

There is a list of sources of advice contained in the appendix to this document.

You may also find your questions answered in the frequently asked questions section.

This can be found on the next page.

2. FREQUENTLY ASKED QUESTIONS

If there appears to be a conflict between the two, should we conform to the laws of the land or to Church teaching?

As Catholics we are obliged to conform to the laws of the land, in so far as they do not contradict Catholic teaching. In areas where there is potential for conflict between the two it is sensible to try and arrive at solutions that conform to both legal requirements and Catholic teaching.

Can I refuse to let the Church Hall to some groups?

The short answer is yes but there are several caveats to that statement. This is discussed in detail in section 7.11.

If the restriction is not based upon protected characteristics (see chapter 6) then it may not be prevented under the Equality Act. However care must be taken not to inadvertently indirectly discriminate (see section 4.6) against a protected group.

Can I advertise for a Catholic organist or cleaner?

It is highly unlikely that it will be lawful to advertise for a specific religious persuasion for this type of post, unless there is a specific reason why the cleaner or organist must be Catholic. There are, however, some exceptions to the general position of not being able to specify the religion of an employee, these are described in detail in sections 7.2 to 7.3.

Is it legal to advertise only in the Catholic press?

Although not specified as unlawful in itself, it could lead to accusations of indirect discrimination (see section 4.6) in some instances.

To take the example above of advertising for an organist or cleaner, if the posts were only advertised in the Catholic press then it could be seen as indirectly discriminating against non-Catholics. If however an advert were placed in a Catholic newspaper as well as a local secular paper then that should mean that everyone would have an equal opportunity to be aware of the job and therefore probably no indirect discrimination.

With regards to commercial advertising for goods and services similar considerations apply. Advertising in the Catholic press alongside mainstream or secular publications should mean there are no accusations of indirect discrimination.

In both cases it would be lawful to advertise only in the Catholic press as long as it was a proportionate means to a legitimate aim (see section 4.7).

Must I let anyone join a Parish organisation?

This is regulated under the membership provisions in the Equality Act. More detail on this can be found in sections 7.6 to 7.8. It is likely that a parish organisation will be a “single characteristic organisation” (see section 7.7) and can therefore legally restrict membership to Catholics only.

Also bear in mind that an organisation made of less than 25 members is not regulated by the Equality Act with regards to its rules on the admission of members and that therefore any restrictions the group feels are appropriate can be imposed without being regulated by the law.

One must also consider what grounds it is appropriate to exclude someone on for the reason that their behaviour contravenes generally accepted Catholic teaching. Appropriate advice should be sought from the diocese on this matter before considering the legal implications.

Can I provide social activities just for the Catholic community?

This depends both on the type of services that are provided and the organisation that wishes to provide them. A charity with a specific charitable purpose to provide services to the Catholic community may be able to make use of an exception in the Equality Act (see section 7.10).

Any religious organisation may be able to restrict who services are provided to, as long as it is required under Catholic teaching. More details can be found in section 7.10.

Do I have to provide disabled access to every part of the Church and Hall, including cellars and choir lofts, whatever the cost?

There is a duty to make “reasonable adjustments” (see section 6.2) to ensure that disabled people are not discriminated against. As such an extravagantly high cost may mean that an adjustment is not reasonable. However every effort should be made to enable a disabled person to engage as fully as possible in the life of the church, and for them not to be excluded merely because of their disability.

Does Parish information have to be available in other languages or braille?

As above there is a duty to make reasonable adjustments for disabled people, and this may include the provision of braille or BSL. Contact the diocese or one of the other organisations in the “Sources of Advice” chapter below to see if there are materials available.

The requirement to make reasonable adjustments also extends to those with intellectual disabilities, and as such provision of materials in pictorial form, or in other ways that are accessible may be appropriate. Contact your diocese to find out if there are any materials available.

There is no explicit requirement to provide materials in other languages, however it might be considered indirectly discriminatory against the protected characteristic of race (see section 6.6). Of course reasonable efforts must be made to accommodate our Catholic brothers and sisters in every way we can, regardless of language.

3. EXECUTIVE SUMMARY

3.1. Introduction

1. This short guide sets out the basic principles of equality law, explaining the key concepts and outlining some of the exceptions to the general rules that may be of interest to religious organisations and individuals. It is not a substitute for taking legal advice

3.2. Basic overview of the Equality Act 2010

2. In the main the Equality Act deals with discrimination which is divided into direct and indirect discrimination. It also only applies in employment and membership situations and when providing services.³
3. Direct discrimination is treating a specific group⁴ less favourably. For example stating that no same sex couples can use a service would be directly discriminatory on the grounds of sexual orientation. Direct discrimination is only lawful if one of the exemptions within the Equality Act applies.
4. Indirect discrimination is where a decision, although not specifically disadvantaging a particular group, has a disproportionate effect of a particular group. For example a requirement that all employees be clean shaven might be indirectly discriminatory against certain religious groups. Indirect discrimination is lawful if it is “a proportionate means to a legitimate end”, or if one of the exemptions in the Equality Act applies.
5. The Equality Act also prohibits “harassment” (unwanted behaviour relating to a protected characteristic that creates a hostile atmosphere) and “victimisation” (discriminating against a person because they have enforced their rights under the Equality act or have helped someone else to do so).

3.3. Rights of Catholic employees

6. A Catholic employee has the same rights as any other employee. They should not be discriminated against because of their faith, but that does not give them complete license to pursue any activity related to their faith at work.
7. If an employee has a disagreement with his or her employer or fellow employees, then they should try to resolve this disagreement politely and respectfully. However if a Catholic employee considers that they are being asked to do something that conflicts with their religious obligations then it is

³ Providing services includes selling goods and providing your services to another (eg as a photographer). It does not include services in the religious sense, such as Mass.

⁴ The group must fall within the “protected characteristics” listed within the Equality Act, s.4: Age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

sensible to take advice from a spiritual advisor before raising the issue with the employer. See the appendix “Other sources of advice” for more information on how to proceed with a complaint as an employee. Please note that any advice taken from a spiritual advisor should be seen as explaining a Catholic’s obligations arising from Catholic teaching only, and any advice on the legal requirements should be sought from a legal advisor.

3.4. *Employment exceptions contained within the Act – Religious ethos exemption (religion/belief only)*⁵

8. If an employer organisation has a Catholic ethos and it is a genuine requirement of a job in question that, either by its nature or context and with regards to the ethos, it needs to be performed by a Catholic, then discrimination is not unlawful, providing the decision was a proportionate means to a legitimate end.

3.5. *Employment exceptions contained within the Act – Religious organisation exemption (other protected characteristics)*⁶

9. A religious organisation (as defined in the act) may discriminate on the basis of the many of the protected characteristics in employment matters.⁷ The definition of what constitutes a religious organisation is not very precise and is open to interpretation.
10. In order to make use of this exemption an organisation must show that the employment is for the purposes of an organised religion, and that the restriction is necessary in order to either to comply with religious doctrine or to avoid conflicting with the strongly held beliefs of a large number of the religion’s followers.

3.6. *Provision of service exceptions contained within the Act – The charity exemption*⁸

11. This exemption allows discrimination in the provision of services if it is in pursuance of the charitable instrument and it is a proportionate means to a legitimate end. This is similar to the test employed when examining indirect discrimination but also allows direct discrimination.

⁵ Equality Act 2010, Schedule 9, para 3

⁶ Equality Act 2010, Schedule 9, para 2

⁷ By imposing a requirement to be of a particular sex; a requirement not to be a transsexual person; a requirement not to be married or a civil partner; a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner; a requirement relating to circumstances in which a marriage or civil partnership came to an end; a requirement related to sexual orientation

⁸ Equality Act 2010, s 193

3.7. Provision of service exceptions contained within the Act – The religious organisation exemption⁹

12. If an organisation can show that it is “religious” within the definition of the equality act an organisation can discriminate on the basis of several protected characteristics,¹⁰ including sexual orientation, when providing services. The definition of what constitutes a religious organisation is not very precise and is open to interpretation.
13. In order to make use of this exemption an organisation must show that the restriction is necessary in order to either to comply with religious doctrine or to avoid conflicting with the strongly held beliefs of a large number of the religion’s followers.
14. An organisation cannot rely upon this exemption if it is working on behalf of a public authority or under a contract with the public authority.

⁹ Equality Act 2010, Schedule 9, para 2

¹⁰ By imposing a requirement to be of a particular sex; a requirement not to be a transsexual person; a requirement not to be married or a civil partner; a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner; a requirement relating to circumstances in which a marriage or civil partnership came to an end; a requirement related to sexual orientation

4. KEY TERMS

4.1. Human Rights

15. There are fundamental human rights that each human being intrinsically possesses by virtue of their inherent human dignity. As was noted in the Vatican II document *Gaudium et Spes*:

"... there is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable. Therefore, there must be made available to all men everything necessary for leading a life truly human, such as food, clothing, and shelter; the right to choose a state of life freely and to found a family, the right to education, to employment, to a good reputation, to respect, to appropriate information, to activity in accord with the upright norm of one's own conscience, to protection of privacy and rightful freedom even in matters religious."

16. The UK's human rights obligations are enforced domestically through the Human Rights Act 1998, and internationally through the European Convention on Human Rights and Fundamental Freedoms (ECHR).
17. The Human Rights Act requires that all domestic laws are to be read, so far as is reasonably possible, in accordance with the rights contained in the ECHR, or that if that is not possible they are declared not to be compliant with human rights.

4.2. Equality Act 2010

18. The ECHR gives some protection from discrimination, but the primary protection in this country is provided by the Equality Act 2010.
19. The Equality Act brings together several existing pieces of equality legislation as well as introducing some new provisions. It also ensures that the UK complies with EU equality requirements.

4.3. Protected characteristics

20. The Equality Act sets out nine "protected characteristics." It is unlawful to discriminate on the basis of these characteristics in certain contexts, with certain limited exceptions. The protected characteristics are:
 - (a) Age,
 - (b) Disability,
 - (c) Gender reassignment,

- (d) Marriage and civil partnership,
- (e) Pregnancy and maternity,
- (f) Race,
- (g) Religion or belief,
- (h) Sex,
- (i) Sexual Orientation.

4.4. Prohibited conduct

21. The Equality Act sets out four main types of prohibited behaviour; direct discrimination, indirect discrimination, harassment and victimisation. This is behaviour that is unlawful in certain contexts, most importantly in employment, education and the provision of services.

4.5. Direct Discrimination

22. Direct discrimination is treating a person less favourably than others because of a protected characteristic.¹¹ For example refusing to hire someone because of their race or gender would be directly discriminatory.
23. A person does not have to possess a protected characteristic in order to experience less favourable treatment because of that characteristic: a person might be associated with someone who has the characteristic ('discrimination by association') or the person might be wrongly perceived as having the characteristic ('discrimination by perception').
24. Direct discrimination is generally unlawful; however it may be lawful in certain limited circumstances. Those that are most relevant to Catholics and Catholic organisations will be examined later in this guide.

4.6. Indirect Discrimination

25. 'Indirect Discrimination' may occur where a provision, criterion, or practice is applied that appears to treat everyone equally, but in fact has a disproportionate adverse impact on individuals with protected characteristics. For example, a rule dictating that applicants for a job must be clean shaven puts members of some religious groups at a disadvantage.

4.7. Proportionate means to a legitimate aim

26. Many exemptions in the Equality Act require that any restriction based on a protected characteristic is a proportionate means towards achieving a legitimate aim. For example, indirect discrimination (but not direct discrimination) can be lawful if it is a proportionate means of achieving a legitimate aim.

¹¹ Equality Act 2010, s.13

27. In essence this means there must be a genuine need for a policy (a “legitimate aim”). If it is particularly disadvantageous to people with protected characteristics, it must be shown that there is not a less discriminatory alternative to achieving that legitimate aim, and that the benefit gained is more important than the discrimination caused (“a proportionate means”). Cost alone can never be a legitimate aim, although it could be part of a larger legitimate aim.
28. For example in a case taken to the European Court of Human Rights in 2013 it was stated that preventing a worker wearing a crucifix on a chain in order to maintain health and safety in a hospital contributes to achieving a very important benefit, whilst causing minor inconvenience to the wearer of the cross if other methods of keeping it on their person were allowed, the restriction would be acceptable. On the other hand if not allowing a small discreet crucifix to be visible whilst wearing a uniform provides a small benefit for the employer (a unified dress code) whilst infringing on a highly important right of the worker to express her religion, it is not acceptable.¹²

4.8. Harassment

29. Harassment is unwanted conduct, related to a protected characteristic, which has the purpose or effect of violating a person’s dignity or creating an intimidating hostile degrading humiliating or offensive environment for that person.¹³
30. Conduct that could constitute harassment might include insulting remarks about the individual’s religion. On the other hand a religious person could be accused of harassment if they engage in persistent unwanted proselytisation on behalf of their faith.
31. All employees have the right to be free from harassment and this includes the right not to be harassed because of their religion. Employers are therefore legally obliged to ensure that no employee suffers any form of harassment in the course of his or her employment, and should take action to address the situation whenever a person feels that he or she is being harassed. Catholic organisations should have a policy on both bullying and harassment.
32. If this conduct is brought to the attention of the employer but nothing is done to stop it then the conduct could constitute unlawful harassment for which the employer could be liable (also known as being vicariously liable).
33. Employers should take seriously claims by individuals that they are encountering prejudice, discrimination or harassment in their work and must not dismiss these as over-sensitivity. An employee must not be penalised for

¹² *Eweida & others v UK* [2013] ECHR 37

¹³ Equality Act 2010, ss.26(1)

raising these issues; such treatment could lead to the employer being liable for victimisation (see below).

4.9. Victimisation

34. The legislation on victimisation protects people who try to enforce their rights under the Equality Act, or who support others who do so. As such no one should be afraid to stand up for their rights to be treated equally, and it is important that if someone does bring a complaint under the Equality Act they are treated fairly and not subjected to unfavourable treatment because of it.¹⁴

4.10. Positive Action

35. Positive action allows an employer to overcome difficulties for those with protected characteristics, or to help and encourage those with protected characteristics to apply for positions where persons with the protected characteristic are under-represented.¹⁵
36. One of the most common examples of positive action is where an employer prefers candidates possessing protected characteristics in order to address under representation. In order for employers to take positive action in this situation they must satisfy a two part test; the applicant must qualify for positive action and the positive action must be for the correct aim.¹⁶
37. In order for the applicant to qualify they must have a protected characteristic (e.g. race), and it must be shown that people with that protected characteristic suffer a disadvantage connected to the characteristic, or that disproportionately few people possessing that characteristic take part in an activity.
38. It must then be shown that the applicant possessing the characteristic is at least as equally well-qualified as any rival candidates for the role who do not possess the protected characteristic. It is not lawful to prefer a less qualified applicant if they do not satisfy this criterion.
39. The aim of the positive action must be either to overcome the disadvantage or to encourage or enable the under-represented minority to take part in the activity and not for any other reason.
40. Positive action also makes possible the introduction of measures to ensure that those that could not fully participate in a given activity initially can do so, even if these measures may confer an additional benefit on that group of people. This could include, for example, the introduction of features in a building to make it easier for a disabled person to gain access to that building.

¹⁴ Equality Act 2010, ss.27(1)-(2)

¹⁵ Equality Act 2010, s.158

¹⁶

41. Positive action is not the same as positive discrimination. It is not allowed to treat those who are over-represented in a group less favourably than those who are under-represented.

5. PUBLIC SECTOR EQUALITY DUTY (PSED)

42. Under the Equality Act 2010 any “public authority” has a duty to:

- “(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”¹⁷*

43. The Act then goes on to specify that public authorities in particular need to:

- “(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”¹⁸*

44. This means that these public authorities have a much greater obligation under the Equality Act than private bodies. This can affect Catholics in a two main ways; in how public authorities are obliged to conduct their affairs with regard to Catholics and in how the Public Sector Equality Duty (PSED) affects contracts between Catholic organisations and public sector organisations for the provision of public services.

45. Different rules apply in England and in Wales. Although the specific duties organisations should comply with are too complex to be discussed within the scope of this guidance, both in England and in Wales individuals should be able to ask for a statement from a public organisation setting out key features about information relating to their PSED requirements.

46. It can be hard to define what constitutes a “public authority”. It includes all easily recognised public bodies such as local authorities, public hospitals, government departments, and the emergency services. However the definition also extends to so-called “hybrid” organisations which exhibit characteristics of public bodies, but which have non-public aspects also. For instance this could include a social housing trust in some cases.

¹⁷ Equality act 2010, s.149(1)

¹⁸ Equality act 2010, s.149(3)

47. Whether an organisation is considered public or not must be considered on a case by case basis. If your organisation is strongly influenced by a public authority, or does work that is normally carried out by a public authority it would be prudent to seek legal advice to decide whether the organisation was covered by the PSED.

5.1. PSED and Catholics

48. Public authorities have the same obligations as other organisations not to subject anyone to direct or indirect discrimination, harassment or victimisation. However the PSED goes further than this and also requires that public authorities take active steps to eliminate discrimination, harassment or victimisation, advance equality of opportunity between persons who share a relevant protected religion or belief, and persons who do not share it, and to foster good relations between persons who share a relevant protected religion or belief and persons who do not share it. On certain occasions, therefore, public authorities subject to this duty may be under an obligation to seek to prevent discrimination against Catholics, advance the equal opportunity of Catholics to access particular services, for example, or to seek to further good relations between Catholics and others.

5.2. PSED and the provision of public services

49. In general Catholic organisations will not be regarded as ‘public authorities’ and will not therefore fall directly under the PSED obligations. However, Catholic organisations may fall under these obligations indirectly, through public contracts. Catholic organisations should, therefore, be aware of this when tendering to provide services for public authorities. Any contract that a public authority signs must comply with the PSED, and as such contractors are likely to be required to maintain standards similar in nature to the PSED.
50. Any organisation that feels that this may be inappropriate for them having regards to the nature of their organisation or for any other reason should seek appropriate legal advice on the matter before tendering for contracts from public authorities.
51. Of course, Catholic educational establishments *will* mostly be ‘public authorities’ for these purposes. However this guide is not intended to cover equality issues in the education sector. For advice on the PSED and how it relates to schools it is best to contact the local diocese or the Catholic Education Service (<http://www.catholiceducation.org.uk/>).

6. THE PROTECTED CHARACTERISTICS

53. The protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) are different and yet inter-related. Each characteristic has its own history and nuances; but there are also similarities in the experience of prejudice and inequality across these areas. It is vital that the characteristics are never conflated; each must be examined on its own merits.
54. However protected characteristics do not exist in a vacuum. In any given situation it is likely that the protected characteristics of one person will have to be weighed against the protected characteristics of another, and the context within which a person with the protected characteristic is affected will be important.

6.1. Age

55. In general it is unlawful to discriminate on the grounds of age, although it is legal to discriminate on the grounds of age in particular circumstances, for example in the provision of services when someone is under 18.¹⁹ There are other specific exceptions which are outside the scope of this guidance, more information can be found on the Equality and Human Rights Commission website.²⁰

6.2. Disability

56. A person is considered to be a person with a disability under the Act²¹ if they have a physical or mental impairment that is more than minor or trivial (it is 'substantial')²² and has, or is likely to, affect their ability to perform normal daily activities for 12 months or more (it is 'long term').²³
57. The Equality Act requires employers and providers of goods and services to make 'reasonable adjustments'²⁴ to accommodate the needs of people with disabilities. This means that an employer must make sure that a person with disabilities has the same access, as far as is reasonable, to everything that is involved in getting and doing a job that a person without disabilities has. The Government may provide help for the extra costs incurred in order to make reasonable adjustments through the 'Access to Work' scheme.²⁵

¹⁹ Equality Act 2010, s. 28(1)(a)

²⁰ <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

²¹ Equality Act 2010, s.6

²² Equality Act 2010, s.212(1)

²³ Equality Act 2010, Schedule 1, para 2(1)

²⁴ Equality Act 2010, ss.20-22

²⁵ <https://www.gov.uk/access-to-work>

6.3. Gender Reassignment

58. A person is considered transsexual, and protected by this protected characteristic if:

"...the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex."²⁶

59. The Gender Recognition Act 2004 allows people to have their birth certificates altered and makes it unlawful to disclose information about gender reassignment unless the person has given permission.²⁷ There is no requirement for transsexual persons to inform their employer of their gender reassignment in order to be protected under the Equality Act 2010.²⁸

60. The law does not require a person to undergo a medical procedure to be recognised as a transsexual; however the Equality Act 2010 required that a person should have at least proposed to undergo gender reassignment (it does not require that such a proposal should be irrevocable).

61. Discrimination against a person outside of the exceptions contained in the Equality Act (see chapter 7) is prohibited once a person has been recognised in the acquired sex. There are, however, certain limited exceptions to this rule²⁹ but they are outside the scope of this guidance. Further advice on this can be found on the EHRC website.³⁰

6.4. Marriage and Civil Partnership

Marriage:

62. Both opposite sex couples and same sex couples can become legally married following the coming into force of the Marriage (Same Sex Couples) Act 2013.

63. The legal definition of marriage is now at odds with the Church's teaching on the meaning of marriage,³¹ but there is no requirement for the Church to change its teaching on what marriage is. Catholic teaching does not allow a marriage between two people of the same sex, or between two people of a different sex where one (or both) of them has had their gender re-assigned.³²

²⁶ Equality Act 2010, s.7

²⁷ Gender Recognition Act, s.22

²⁸ There are certain exceptions to these provisions but they are outside the scope of this guidance.

²⁹ Equality Act 2010, schedule 9, para 1(1) and (3)(a)

³⁰ <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

³¹ "The narrow gate" Archbishop Vincent Nichols (2013), available at: <http://www.catholic-ew.org.uk/Home/News/Marriage-Same-Sex-Couples-Act2>

³² Canon 1055 - 1165

64. There are protections that prevent most individuals and religious organisations from being compelled to take part in same sex marriage ceremonies. These are discussed in sections 7.12 to 7.14.
65. Treating a same sex “married” couple less favourably than an opposite sex married couple will amount to direct discrimination. Therefore it is not possible to argue that such behaviour is a proportionate means to a legitimate aim (see section 4.7), and as such will be unlawful unless it falls within the exceptions outlined in Chapter 7.

Civil Partnership:

66. Same sex couples can enter into civil partnerships with one another.³³ Civil partners generally have the same legal rights and responsibilities as married couples. It is unlawful to treat those in a civil partnership less favourably than those in a marriage, and vice versa.
67. Civil Partnership ceremonies may be conducted on religious premises³⁴ however the regulations allow for different premises to be approved for registration of civil partnerships from those approved for registration of civil marriages,³⁵ and for different provision to be made for different kinds of premises.
68. Nothing in the Civil Partnership Act 2004 obliges any religious organisation to host civil partnerships if they do not wish to.³⁶ Catholic Churches, as with same sex marriages, cannot be forced to host civil partnership ceremonies.
69. Treating those in civil partnerships less favourably than those in an opposite sex marriage has been held to constitute direct discrimination.³⁷ Therefore it is not possible to argue that such behaviour is a proportionate means to a legitimate aim (see section 4.7), and as such will be unlawful unless it falls within the exceptions outlined in Chapter 7.

6.5. Pregnancy and Maternity

70. This protected characteristic covers the condition of being pregnant and the subsequent period after birth. The Equality Act provides protection regarding both employment and the provision of services.³⁸
71. Maternity discrimination protection with regard to the provision of services lasts during the pregnancy and for 26 weeks after giving birth.³⁹ The Equality Act

³³ Civil Partnership Act 2004

³⁴ Equality Act 2010, s.202

³⁵ Civil Partnership Act 2004, s.6A(2A)

³⁶ Civil Partnership Act 2004, s.6A(3A)

³⁷ Bull & Anor v Hall & Anor [2013] UKSC 73

³⁸ Equality Act 2010, ss.17-18

³⁹ Equality Act 2010, s.17(3)

explicitly includes treating a woman unfavourably because she is breastfeeding as an example of discrimination.⁴⁰

72. Maternity law within employment is a complex subject, and is largely outside the scope of this guidance. Guidance on this issue can be found on the Equality and Human Rights Commission website.⁴¹

6.6. Race

73. The definition of race is quite broad, covering any reference to colour, nationality, and ethnic or national origins.⁴² The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group, for example those with a mixed descent.⁴³ As with some of the other protected characteristics there are certain limited exceptions which allow discrimination on the basis of race.⁴⁴

74. While some groups like Romany Gypsies, Irish Travellers, Jews and Sikhs have been treated as ethnic groups through case law, others like Muslims have not but this group can bring an action on the basis of religious belief.

75. Although there are provisions within the Equality Act for caste to be included within the protected characteristic of race, at the time of writing caste is not covered by the protected characteristic of race.⁴⁵ The government has announced a consultation on the matter.⁴⁶

6.7. Religion or Belief

76. Religion is defined as any religion and a reference to religion includes a reference to a lack of religion, and belief as any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.⁴⁷ This meaning is consistent with the ECHR.⁴⁸ Catholicism is a 'religion' for the purposes of the Equality Act 2010 and the ECHR.

77. 'Religious belief' goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion. A belief which is not a religious belief may be a philosophical belief, for example Humanism and Atheism. A belief need not include faith or worship of a

⁴⁰ Equality Act 2010, s.17(4)

⁴¹ <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

⁴² Equality Act 2010, s.9

⁴³ Equality Act 2010, s.9

⁴⁴ For further information see: <http://www.acas.org.uk/index.aspx?articleid=1849>

⁴⁵ Equality Act 2010, s.9 (5)

⁴⁶ <https://www.gov.uk/government/news/caste-discrimination-consultation-programme-timetable-announced>

⁴⁷ Equality Act 2010, s.10(1)-(2)

⁴⁸ European Convention of Human rights and Fundamental Freedoms, Article 9 (freedom of thought, conscience and religion)

God or Gods, but must affect how a person lives their life or perceives the world.

78. For a philosophical belief to be protected under the Act:
- (a) The belief must be genuinely held.
 - (b) It must be a belief and not an opinion or viewpoint based on the present state of information available.
 - (c) It must be a belief as to a weighty and substantial aspect of human life and behaviour.
 - (d) It must attain a certain level of cogency, seriousness, cohesion and importance.
 - (e) It must be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the fundamental rights of others.⁴⁹
79. The legislation allows faith communities to continue practicing their faith freely and to engage in a range of religious, educational and charitable activities. The Catholic community has traditionally been engaged in many activities, in parishes, schools and a variety of charitable organisations. Some of these are aimed primarily at Catholics and others are offered to the whole community. The provision of services or activities for its own members by the Catholic community or any other faith community is not to be equated with religious discrimination. This is addressed in greater detail in the guidance on employment and the provision of services in chapter 7.
80. While people have a right to hold a particular religion or belief under Article 9 of the European Convention on Human Rights, the manifestation or expression of that religion or belief is not an absolute right, and may in certain circumstances be restricted. For example, it may need to be balanced against other Convention rights such as the right to respect for private and family life (Article 8) or the right to freedom of expression (Article 10).
81. A practice or manifestation may be protected if it is sufficiently connected to the religion, even if it is not a mandatory requirement of the religion or belief.⁵⁰ Manifestations of a religion or belief could therefore include treating certain days as days for worship or rest; following a certain dress code; following a particular diet (for example not eating meat on a Friday); carrying out or avoiding certain practices; or wearing a religious symbol. There is not always a clear link between holding a religion or belief and the manifestation of that religion or belief.

⁴⁹ *Grainger Plc v. Nicholson* [2010] ICR 360 [24]

⁵⁰ *Eweida and Others v The United Kingdom* [2013] ECHR 37

82. On the whole the legislation allows space for faith communities to carry out activities for their own members, but this may be a matter that will require continued negotiation with public authorities.

6.8. Sex

83. Sex is a protected characteristic and refers to a male or female person. Save for very limited exceptions it is unlawful to treat a person of either sex less favourably than a person of the other sex.⁵¹

6.9. Sexual Orientation

"Sexual orientation means a person's sexual orientation towards—

- (a) persons of the same sex,*
- (b) persons of the opposite sex, or*
- (c) persons of either sex."⁵²*

84. Sexual orientation relates to how people feel as well as their actions. Sexual orientation discrimination includes discrimination against a person because that person is of a particular sexual orientation, or because they manifest that sexual orientation.
85. Gender reassignment is a separate protected characteristic and it is unrelated to sexual orientation. While there may be issues of overlap in certain cases, it is important to consider separately whether discrimination has occurred for each characteristic.

⁵¹ Equality Act 2010, s.11

⁵² Equality Act 2010, s.12

7.SPECIFIC GUIDANCE

7.1. Introduction

87. In general it is unlawful to perform any prohibited conduct (see section 4.4) when employing anyone, deciding whom to admit as a member of your organisation, and in the provision of goods or services. Remember that discrimination in employment can occur not only when deciding whether to hire someone but also when dealing with disciplinary procedures.
88. Catholic organisations should publicly set out their requirements for who they employ or provide services to. Usually this will take the form of an Equality Policy, which will shape and reflect the ethos and practice of the organisation. Once this policy has been made it is vital that it is applied fairly and impartially to all. Although there are exceptions to the general provisions of the Equality Act for religious organisations they may not apply if an organisation uses them to penalise a particular protected group.
89. For example, it might be permissible (if the requirements in this chapter are met) for a Catholic lay organisation to specify that in relation to a particular role that it would only employ in that role a person whose life publicly conformed to Catholic teaching on sexual morality. But it would then have to apply that policy in a non-discriminatory way, and therefore demonstrably apply that policy impartially both to a heterosexual applicant for the post who was publicly in a cohabiting non-married relationship and a homosexual applicant who was publicly in a same sex relationship.

7.2. Catholic educational establishments

90. Due to the many intersecting pieces of equality, human rights and education law that govern the educational sector the situation in educational establishments is very different to other areas of employment and service provision.
91. Because of this complexity if you are seeking guidance on the effect of the Equality Law on an educational establishment, it is suggested that you read the guidance of the Catholic Education Service on the matter (<http://www.catholiceducation.org.uk/>) or contact your local diocese.

7.3. Employers

92. The Catholic Church and Catholic organisations that employ staff have, in general, the same legal rights and obligations as other employers. There are some additional rights and exemptions for religious organisations contained in the Equality Act 2010; however the courts have indicated that these will be interpreted narrowly. These exceptions are discussed later on in this chapter.

93. The employment provisions of the Equality Act 2010 do not apply to volunteers. However recent legal developments have blurred the distinction between workers and volunteers and as such it would be sensible to apply the same tests and procedures to both employees and volunteers in order to avoid any allegations of unlawful discrimination.
94. Particular care should be taken not to discriminate inadvertently by adopting decisions that adversely affect certain groups in society as was discussed in sections 4.4 to 4.9.
95. It is unlawful for an employer to harass employees or victimise them because they have complained about discrimination, helped someone else to complain, or have done anything to uphold their own or someone else's equality law rights. More details on this kind of behaviour can be found in sections 4.8 and 4.9.
96. Every applicant and employee has a right to his or her private life and family life, and all Catholic employers must respect that right. At the same time, Catholic organisations and institutions will have expectations of their employees, and they should state explicitly what these are. A basic contractual element in any employment relationship is mutual trust and confidence.
97. Candidates for appointment should be fully informed about the expectations of the organisation, and they should be given the chance to discuss these before offers are made officially or in writing. This is particularly important in relation to employment in leadership and pastoral roles. Any such expectations should, of course, be applied in a consistent and non-discriminatory way, and reference should be made to them in the contract of employment.
98. It is important that special attention is paid to recruitment and advertising in order to ensure that potential candidates have a reasonable opportunity to learn of vacancies. To ensure fairness in this area recruitment by word of mouth only should be avoided as much as possible and communication of vacancies should facilitate applications from a suitably diverse selection of people. Failure properly to advertise vacancies could lead to accusations of indirect discrimination.
99. For example advertising a post only in a Catholic newspaper could lead to accusations of indirect discrimination against members of other or no faith. This is because they would be unlikely to find out about the job opportunity. As such if a job is advertised in a local newspaper as well as a Catholic newspaper then all applicants will have an opportunity to find out about the job opportunity. Of course the scale and scope of the advertisements will vary depending on the

role, but if it is limited to catholic publications or to a poster inside a church consider whether this is a “proportionate means to a legitimate end.”⁵³

100. In shortlisting, interviewing and appointing potential employees, those responsible for the process should be aware of the selection criteria contained in the job description and agreed person specification to help ensure that any potential unfairness is minimised. Of course every effort should be made to ensure these criteria are applied consistently to all candidates. Where appropriate, those making an appointment should be given guidance concerning the possible effects of stereotypes, prejudices, and misunderstandings on the selection process. It may also be appropriate to consider the composition of selection panels in order to ensure the avoidance of bias.
101. When employing a transsexual person consideration should be given to the fact that transsexual people face many difficulties before, during and after transitioning. Policies and practices should be in place to ensure their legal rights are respected.

7.4. *Employment within Religious Organisations - Restrictions concerning the religion or belief of the applicant*

102. An organisation with an ethos based on religion or belief may discriminate on the grounds of religion or belief. In order to restrict the role to a Catholic (for example) it must be shown that the religious ethos of the organisation makes it an “occupational requirement” to be and that the restriction is a proportionate means to a legitimate end (see the “Key Terms” chapter for more on this concept).⁵⁴
103. This provision is interpreted quite strictly and an employer would have to demonstrate a good reason why the “occupational requirement” was imposed with reference to the nature of the job. For example if a Catholic charity is seeking to employ an accountant it may be difficult to justify employing a Catholic accountant since the role most likely does not require any specific knowledge of Catholic theology. However if the charity is looking for a media relations officer or a Chief Executive, restricting the post to a Catholic is likely to be legitimate “having regard to the nature and context of the work”. The more senior the post is, the more reasonable it may be to appoint a Catholic to the post. Of course each post should be examined separately to see if it is genuinely required that the applicant is Catholic. This is an issue that is especially different area in educational law, and the guidance above does not apply in that context.

⁵³ See section 4.6 on indirect discrimination.

⁵⁴ Equality Act 2010, Schedule 9, para 3.

104. The requirement must be a “proportionate means of achieving a legitimate aim”. More information on this concept can be found in the “Key Terms” chapter at section 4.7.

105. As stated previously any restriction must be implemented in a completely consistent and unbiased way.

7.5. Employment within Religious Organisations - Restrictions concerning other protected characteristics of the applicant

106. A religious employer may be able to impose further restrictions on who is to be employed to fill a certain post. The following restrictions can be imposed through this section:

- “(a) a requirement to be of a particular sex;*
- (b) a requirement not to be a transsexual person;*
- (c) a requirement not to be married or a civil partner;*
- (d) a requirement not to be married to, or the civil partner of, a person who has a living former spouse or civil partner;*
- (e) a requirement relating to circumstances in which a marriage or civil partnership came to an end;*
- (f) a requirement related to sexual orientation.”⁵⁵*

107. Those restrictions can only be imposed if it can be shown that:

- (a) the employment is for the purposes of an organised religion, and
- (b) the requirement is necessary either to avoid conflicting with the strongly held belief of a large number of the religion’s followers or to comply with religious doctrine.⁵⁶

An employer must satisfy both parts of the test before being able to apply the restrictions mentioned in the previous paragraph.

108. First the employment must be for the “purposes of an organised religion.” The phrase “for the purposes of an organised religion” has a restrictive meaning, and applies to the post itself and not to the organisation in which the post is to be held. Therefore all the duties, responsibilities and expectations of the post must be considered in order to decide whether it can be said that the employment is for the purposes of an organised religion.

109. Second, the restriction must be imposed for one of two reasons:

- (a) To comply with the requirements of religious doctrine, or

⁵⁵ Equality Act 2010, Schedule 9, para 2(4)

⁵⁶ Equality Act 2010, Schedule 9, para 2 (1)

(b) To avoid conflicting with the deeply held beliefs of a large number of the religion's followers.

110. In essence reason (a) means that if Catholic doctrine requires a restriction be placed on a certain post or in certain types of employment then this part of the test will be satisfied.⁵⁷ Catholic doctrine can be defined by reference to the Catechism, Papal Encyclicals, etc.
111. In relation to reason (b) it is unclear how the "significant number of the religion's followers" in relation to the Catholic Church would be defined or assessed, or how it would be determined what their strongly held religious beliefs are. As such it may not be safe to rely upon this limb of the test, and instead to rely upon reason (a), if it applies.
112. It is important that any religious organisation contemplating imposing restrictions on who can apply for a post considers the reasons for doing so very carefully, whether the restrictions are necessary, and whether the restrictions can be justified having regard to the nature of the job. It is good practice to record these restrictions and the reasons for them in case the recruitment process is later questioned, and the restrictions should be reviewed regularly to see if they are still necessary. As stated previously any restriction must be implemented in a completely consistent and unbiased way.

7.6. Employees

113. A Catholic employee has the same rights as any other employee. If an employee has a disagreement with his or her employer or fellow employees, then they should try to resolve this disagreement politely and respectfully. However if a Catholic employee considers that they are being asked to do something that conflicts with their religious obligations then it is sensible to take advice from a spiritual advisor before raising the issue with the employer.
114. As Catholics we are expected to act with an informed conscience. If a Catholic has doubts about something that they are required to do as part of their employment, it is therefore sensible to seek proper religious guidance about the teachings of the Church and the Church's religious requirements. It is possible that a discussion with a spiritual advisor may reassure the individual that that the task may not conflict with the Catholic faith.
115. If, following consultation with a spiritual advisor, the employee still feels that they are being discriminated against then the employee should seek appropriate legal advice. Employment claims have very strict time limits so advice should be sought as quickly as possible.

⁵⁷ Equality Act 2010, Schedule 9, para 2(5)

116. Catholic employees should not be treated differently from any other employee as regards time off for religious observance, religious holidays etc. If it is alleged that a Catholic employee is being treated differently from others then clear evidence will be required to show discrimination.
117. Further advice for employees can be found in chapter 8 (“Sources of Advice”) at section 8.3.

7.7. Membership arrangements in general

118. The provisions of the Equality Act apply to the membership arrangements of any organisation that regulates membership according to its own rules and which has 25 members or more.⁵⁸ As such most organised groups are forbidden from taking any discriminatory action with regards to membership.
119. In general it is unlawful to discriminate directly or indirectly on the basis of any of the protected characteristics (apart from marriage and civil partnership) when determining membership criteria. There are certain general exceptions to this rule, for example on the grounds of health and safety in certain specific areas,⁵⁹ more details of which can be found on the EHRC website.⁶⁰

7.8. Membership of ‘single characteristic associations’

120. The Equality Act allows associations to restrict their membership to people who share a particular “protected characteristic”.⁶¹ It is therefore not unlawful for a Catholic law association to restrict its membership to Catholics or for an association of Catholic priests to restrict its membership to Catholic priests.

7.9. Membership of Religious Organisations

121. Religious organisations are allowed to restrict their membership on the grounds of religion or belief, for example by allowing a Catholic organisation to admit only Catholic members.
122. In order to restrict the membership on the grounds of religion and belief it must be shown that either the purpose of the organisation is such that the restriction is necessary, or because offence would be caused to members of the religion by admitting members outside of the restrictions imposed.⁶²
123. In the context of Catholic organisations, the purpose that may restrict who may be a member may well be based on Catholic doctrine (although of course there may be many other reasons). This means that if Catholic doctrine requires

⁵⁸ Equality Act 2010, s.107(2)

⁵⁹ Equality Act 2010, schedule 16, para 2

⁶⁰ <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

⁶¹ Equality Act 2010, Schedule 16, para 1

⁶² Equality Act 2010, Schedule 23, para 2

certain restrictions then this part of the test will be satisfied. Catholic doctrine can be defined by reference to the Catechism, Papal Encyclicals, etc.

124. In relation to the second potential reason (that offence would be caused to members of the religion if membership was not restricted on those grounds) it is unclear how this would be determined. As such it may not be safe to rely upon this limb of the test, and instead to rely upon the reason in the previous paragraph if it applies.
125. This applies to religious organisations only. An organisation is religious if it exists for any of the following reasons:

***"(a) to practise a religion or belief,
(b) to advance a religion or belief,
(c) to teach the practice or principles of a religion or belief,
(d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
(e) to foster or maintain good relations between persons of different religions or beliefs."***⁶³

126. This covers a wide range of organisations and would apply to Catholic Dioceses, Religious Orders, and Catholic lay associations.
127. If you consider that an organisation should fall within the definition, then it is helpful to ensure that the constitutions states clearly and unambiguously, if it is accurate to do so, that it is a Catholic organisation which exists to practice, support, or teach the Catholic faith. It would also be sensible (legally and spiritually) for the organisation to appoint a Chaplain and begin each meeting with a prayer. This will not automatically mean that your organisation will be found to be religious, but it may be valuable supporting evidence to that effect.
128. An organisation cannot be religious if its main purpose is commercial.⁶⁴ This does not prevent a religious organisation from carrying out some commercial activities, provided they are not the main purpose of the organisation. For example, a Monastery may let out rooms to pilgrims as one of its activities without becoming a commercial organisation; however an ordinary religious bookshop is likely to be carrying out a "commercial activity" even if the primary motive of the proprietors is not making money.
129. An organisation must be cautious if it is considering forming a subsidiary because the subsidiary could be classified as "commercial" meaning it would not be covered by the exception. If a subsidiary has been established by a

⁶³ Equality Act 2010, Schedule 23, para 2(1)

⁶⁴ Equality Act 2010, Schedule 23, para 2(2)

religious organisation it may be necessary to re-evaluate whether it would be necessary to impose similar restrictions on it as on the parent organisation.

7.10. Provision of services by Catholic Organisations

130. Before discussing exceptions for service providers it must be made clear that in this context “service” does not refer to religious services, for example Mass. Instead it refers to the provision of goods and services, such as the sale of goods (like foodstuffs) or services (such as a hotel or B&B). Religious ceremonies are not subject to regulation under equality law and it is entirely a matter for the religious denomination in question how those ceremonies take place and who can be admitted.
131. Service providers are covered by the Equality Act. They are prohibited from discriminating against, victimising or harassing those who wish to use their services⁶⁵ (see sections 4.4 to 4.9).⁶⁶ It will only be permitted to discriminate in the provision of services if one of the exceptions below applies.

7.11. Provision of services by Religious Charities and Organisations

132. Catholic charities may be able to restrict the provision of their services only to Catholics, or only in ways that do not run contrary to the teachings of the Church by using two exceptions contained within the Equality Act.
133. The first exception relates to restrictions based on the provision of services based upon the charitable instrument of a charity. Many religious bodies are charities and therefore may be able to rely on this provision.⁶⁷
134. In order to restrict the provision of services under this exception a charity must show that it is acting in accordance with the charitable instrument, and that the restrictions are either a proportionate means of achieving a legitimate aim, or that they prevent or compensate for a disadvantage linked to one of the protected characteristics.
135. The charitable instrument is the document establishing or governing the charity, which sets out the charity’s purposes, how its income can be spent, and generally how the charity will operate. This is generally the charity’s constitution and the charity must act in furtherance of the instrument. It is therefore desirable for every Catholic charity to include something along the following lines in their constitutions:

⁶⁵ There are some exceptions to when the prohibition on harassment and victimisation is removed, however these exceptions are outside the scope of this guidance.

⁶⁶ Equality Act 2010, s.29

⁶⁷ Equality Act 2010, s.193

"In carrying out its objects the Charity should not be involved in or support any activity which is contrary to the teachings of the Catholic Church"

136. This is not a failsafe precaution, and it would be prudent to seek legal advice if it is considered that the services being provided, or the way in which they were being provided, could be seen as discriminatory.
137. A restriction must be imposed for one of two reasons. The first is that the restriction is a proportionate means of achieving a legitimate aim. More information on what constitutes a proportionate means of achieving a legitimate aim can be found in the "Key Terms" chapter (see section 4.7), although a legitimate aim for a charity will likely be different to a legitimate aim for a business.
138. The second reason a restriction may also be imposed is as a way of overcoming difficulties caused by a protected characteristic. This could consist of, for example, offering specialist training to people with disabilities to help them cope in the workplace more easily, or a scheme encouraging Catholics to take part in activities in which they are typically underrepresented.
139. Another restriction can be used by any religious organisation regardless of whether they are a charity. This allows organisations to restrict the services they offer on the basis of religion or belief, the way they use or let their property, and participation in their activities.
140. An organisation is religious if it exists for any of the following reasons:

***"(a) to practise a religion or belief,
(b) to advance a religion or belief,
(c) to teach the practice or principles of a religion or belief,
(d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
(e) to foster or maintain good relations between persons of different religions or beliefs."***⁶⁸

141. As with restrictions on membership (see section 7.8), any restrictions imposed on service delivery must be necessary either because the purpose of the organisation is such that the restriction is necessary, or because offence would be caused to members of the religion in question by not restricting the provision of services on the basis of religion or belief.

⁶⁸ Equality Act 2010, Schedule 23, para 2(1)

142. For Catholic organisations the “purpose” mentioned in the previous paragraph may well be based on catholic doctrine (although of course there may be many other reasons). This means that if Catholic doctrine requires certain restrictions then this part of the test will be satisfied. Catholic doctrine can be defined by reference to the Catechism, Papal Encyclicals, etc.
143. In relation to the second potential reason (that offence would be caused to members of the religion if membership was not restricted on those grounds) it is unclear how this would be determined. As such it may not be safe to rely upon this limb of the test, and instead to rely upon the reason in the previous paragraph if it applies.
144. If persons are acting on behalf of the organisation then they may use the same exceptions as the organisation itself.⁶⁹ For example an estate agent acting for a religious organisation selling premises belonging to the organisation would be able to discriminate on the grounds of religion or belief when deciding on whom to sell to, if the organisation could discriminate in that way.
145. As stated previously any restriction must be implemented in a completely consistent and unbiased way.

7.12. Religious Premises

146. All parish properties that are owned by the Diocesan Trust can only be used for purposes which are consistent with the charitable objects of the Diocesan Trust, namely for the “advancement of the Roman Catholic religion.” That does not mean that Parish premises can only be used by Catholic Organisations or events but it does mean that premises cannot be used for any purpose which is incompatible with Catholic teaching. As stated previously any restriction must be implemented in a completely consistent and unbiased way.
147. If an enquiry is received from a group or an individual about hiring parish property, it should be made clear from the outset that diocesan premises can only be used for purposes that are compatible with the teaching of the Catholic Church. This can be done by providing the enquirer with a copy of the standard licence or hiring agreement, which should contain a clause similar to the following:

“The Premises are to be let out on the basis that they will not be used for any purpose which is contrary to the teachings of the Catholic Church or which could cause offence. At all times the Catholic nature of the Premises must be respected. Any breach or potential breach of this provision will mean that the use of the Premises is withdrawn.”

⁶⁹ Equality Act 2010, Schedule 23, para 2

148. Even if it is thought that the premises will not be used for purposes contrary to the teaching of the Catholic Church it would be wise to include the group's stated purpose for the letting within the licence or hiring agreement. If the premises are then used for any other purpose, the group's right to use the premises may be able to be terminated for breach of contract.
149. If there is concern that the potential use of the premises by any group (or individual) may not be in accordance with Catholic teaching, the group should be asked for written confirmation of the intended use of the premises and the nature, constitution (if any) and purposes of the organisation. The matter should then be referred to the Diocese.
150. Regardless of whether the premises are used by a group on a regular basis or for only once, an agreement or refusal to let the premises should always be in writing and records should be kept.
151. It may also be sensible to list the disability access measures within a building that is being let, and ensure that these measures are updated to keep up with the relevant regulations.

7.13. Same sex marriage⁷⁰

152. The Marriage (Same Sex Couples) Act 2013 introduced legally recognised marriages between same sex couples, and allowed those such marriages to take place both in a registry office and in the religious premises of those religions that opt into performing same sex marriage.
153. Protections were built into the Act to prevent religious organisations from being compelled to provide same sex marriages if they chose not to, and to prevent individuals from being compelled to attend or take part in a same sex marriage.

7.14. Protections for individuals

154. Specific provisions were built into the act to prevent people from being forced to attend same sex marriages by the law. The first was that an extra clause was inserted into the Equality Act 2010 that specifically states that refusing to attend a same sex marriage is not a breach of the Equality Act.⁷¹ In any event refusing to attend a same sex wedding could only possibly be a breach of the Equality Act if the person refusing to attend was providing a service or if the wedding was in some way related to their employment.⁷²

⁷⁰ The Equality and Human Rights Commission has produced a series of guides on the legal implications of the Marriage (Same Sex Couples) Act 2013. These are available at <http://www.equalityhumanrights.com/publication/marriage-same-sex-couples-act-2013-marriage-and-law>

⁷¹ Equality Act 2010, Schedule 3, Part 6A

⁷² Equality and Human Rights Commission, *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for Workplaces and Service Delivery*, p.8

155. There is also specific protection for religious ministers.⁷³ The government's view is that no individual minister can be compelled to take part in a ceremony even if the authority for their religion has opted into providing same sex marriages.
156. Chaplains employed by a secular organisation will still have legal protection to allow them to share their religious views on same sex marriage within the area they work. A decision on a chaplain's employment status should not be taken on the basis of their stance on same sex marriage, as this could lead to a claim for religious discrimination.⁷⁴
157. This protection for individuals does not extend to registrars. A "conscience clause" that would have allowed registrars to object to providing marriages to same sex couples on the grounds of a sincerely held belief were rejected during the course of the Marriage (Same Sex Couples) Bill through Parliament. It is not certain what leeway employers have to grant exemptions to those staff members who object to same sex marriage.⁷⁵ Any registrar who has a conscientious objection to performing same sex marriages should seek legal advice as soon as possible.

7.15. Protections for religious organisations

158. Religious organisations have very strong protections written into the Marriage (Same Sex Couples) Act 2013. Combined with protection under article 9 of the European Convention of Human Rights (right to freedom of thought, conscience and religion) this makes it very unlikely that a successful legal challenge could be brought against a religious organisation for refusing to provide same sex marriages.
159. As regards other services that might be provided, such as marriage preparation courses, the same protections apply in this instance as above. Only allowing opposite sex couples to make use of such services will almost certainly be direct discrimination and as such require one of the two exceptions (the charity exception or the religious organisation exemption) in order to make such behaviour lawful. Details on these exceptions can be found in sections 7.9 to 7.11.

7.16. Educational establishments

160. There is potential for the Marriage (Same Sex Couples) Act 2013 to affect schools, however this is not dealt with in this guidance. For further assistance on this please contact your local diocese or the Catholic Education Service.

⁷³ Equality and Human Rights Commission, *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for Religious*, p.3-4

⁷⁴ Equality and Human Rights Commission, *The Marriage (Same Sex Couples) Act 2013: The Equality and Human Rights Implications for Workplaces and Service Delivery*, p.5

⁷⁵ *Ibid*, p.5

8. SOURCES OF ADVICE

8.1. Educational establishments

As stated earlier, if you want to know how equality law will affect an educational establishment then it is advised that you contact the Catholic Education Service (<http://www.catholiceducation.org.uk/>) or your local diocese for advice.

8.2. Employers

If you are an employer a good place to start is ACAS, an independent organisation set up by the government to improve employment relations. ACAS provides a free equality and diversity advisory service that will provide useful advice on how to make your workplace compliant with equality law. More details can be found on [this page: http://www.acas.org.uk/index.aspx?articleid=2034](http://www.acas.org.uk/index.aspx?articleid=2034). You can also get advice from the [ACAS website \(http://www.acas.org.uk/\)](http://www.acas.org.uk/) and from the free helpline by calling 08457 47 47 47.

Another source of useful guidance on all aspects of equality and human rights law in relation to the workplace is the Equality and Human Rights Commission website, which has published a series of guides explaining the impact of the Equality Act 2010. These can be found [here: http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/](http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/).

Although it is often very costly, if the advice from the sources above is not adequate for your particular situation it may also be wise to contact an independent legal adviser as well for advice on how equality law will affect your workplace. Of course this may not be appropriate or feasible in your situation. You can find a solicitor by entering your address on [this page: http://www.lawsociety.org.uk/find-a-solicitor/](http://www.lawsociety.org.uk/find-a-solicitor/).

It is very important that if a formal complaint is raised by an employee that you address their concerns in the appropriate manner. If at all possible it is best for everyone involved to reach an amicable solution without resorting to formal grievance procedures. However if this is not possible advice should be sought from ACAS and/or in the form of independent legal advice as soon as possible.

8.3. Employees

If, as an employee, you feel that you have been discriminated against at work, or been harassed or victimised because you have a protected characteristic (see section 4.3), then it is best for you to seek legal advice as quickly as possible. This is because there are very strict time limits for bringing a case to an employment tribunal, in most cases 3 months from the date of the incident in question.

If at all possible an amicable resolution between employer and employee that resolves the situation to everyone's satisfaction is by far the best option. However if such a resolution is not possible then the employee should seek advice.

Often employees will be able to seek advice by contacting their trade unions. Procedures will differ between each union.

[ACAS](http://www.acas.org.uk/), an independent organisation set up by the government to improve employment relations, can provide advice on the situation. Information can be found on their website (<http://www.acas.org.uk/>) or by calling the free helpline on 08457 47 47 47.

You can also get advice from your local Citizens Advice Bureau (CAB), or from another local law clinic. You can find information on employment rights on <http://www.adviceguide.org.uk>, and can search for your local CAB by entering your postcode at this page:

http://www.adviceguide.org.uk/england/about_this_site/get_advice.htm.

Another source of useful guidance on all aspects of equality and human rights law in relation to the workplace is the Equality and Human Rights Commission website, which has published a series of guides explaining the impact of the Equality Act 2010. These can be found [here](http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/): <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

It may also be appropriate to seek advice from an independent legal adviser such as a solicitor, especially if considering taking your case to an employment tribunal. This can be very expensive, however. A list of solicitors in your area should be available from your local CAB office, or by entering your postcode on [this page](http://www.lawsociety.org.uk/find-a-solicitor/): <http://www.lawsociety.org.uk/find-a-solicitor/>.

If you wish to make a formal complaint, it is important you know the appropriate way to do this and your rights in the process. Seek advice from your union, ACAS, CAB (or other local law clinic), and/or from an independent legal adviser.

8.4. Service Providers

There is specific guidance published by the Equality and Human rights Commission to help ensure service providers comply with equality law whilst providing services. The guidance can be found on [this page](http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/):

<http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

In the event of a dispute between a service provider and a service user on the grounds of equality law it is important to seek independent legal advice. You can find a local solicitor by entering your address on [this page](http://www.lawsociety.org.uk/find-a-solicitor/):

<http://www.lawsociety.org.uk/find-a-solicitor/>.

8.5. Service Users

Advice on consumer issues can be found by ringing the Citizens Advice consumer helpline 08454 04 05 06. This has replaced Consumer Direct as the official government funded consumer advice service.

You can also seek advice by going to your local Citizens Advice Bureau (CAB) or other local law clinic. You can find your local CAB by entering your postcode on [this page](http://www.adviceguide.org.uk/england/about_this_site/get_advice.htm): http://www.adviceguide.org.uk/england/about_this_site/get_advice.htm.

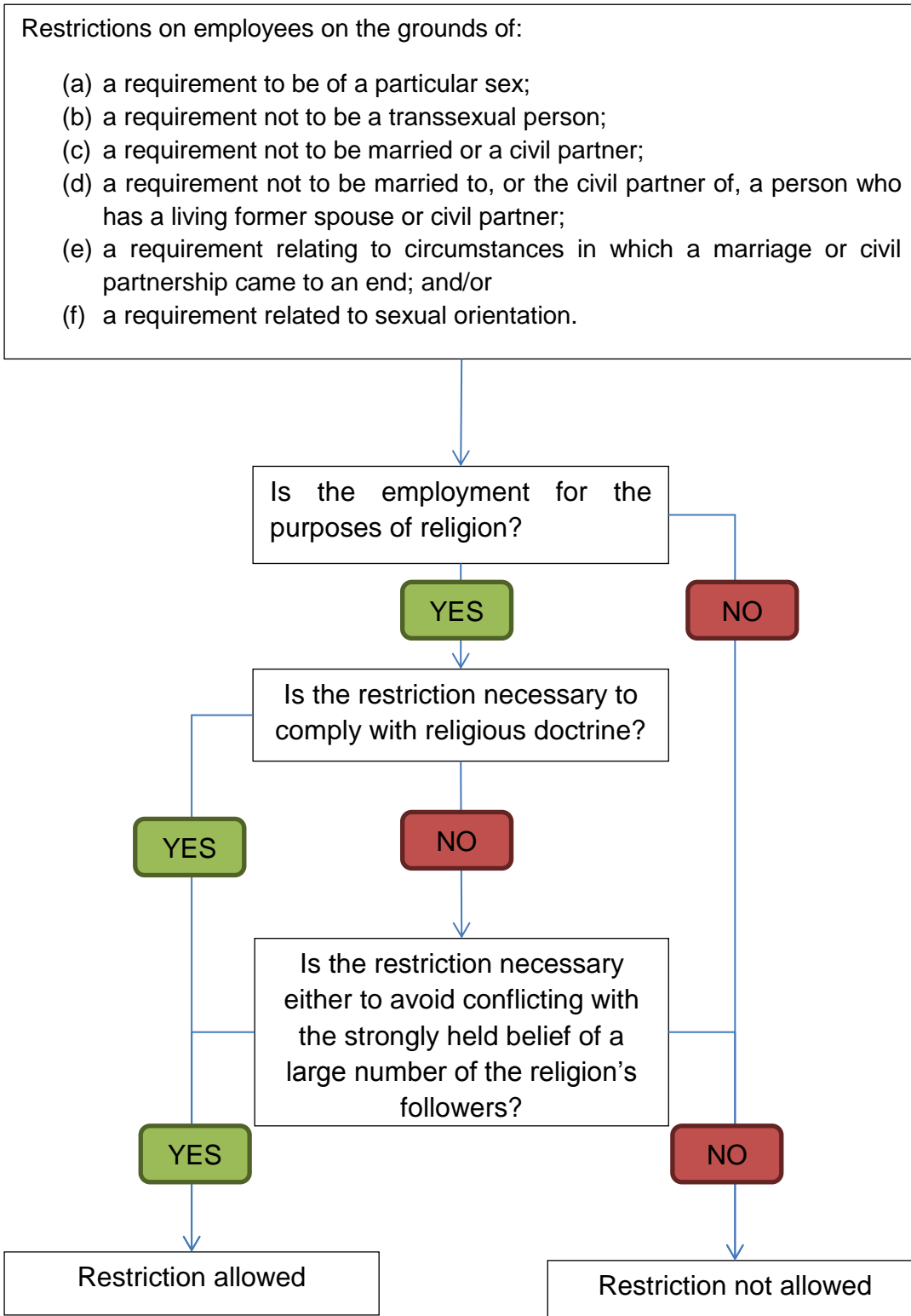
There is also guidance published by the Equality and Human Rights Commission to help service users understand their rights when accessing services. The guidance can be found on [this page](http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/): <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

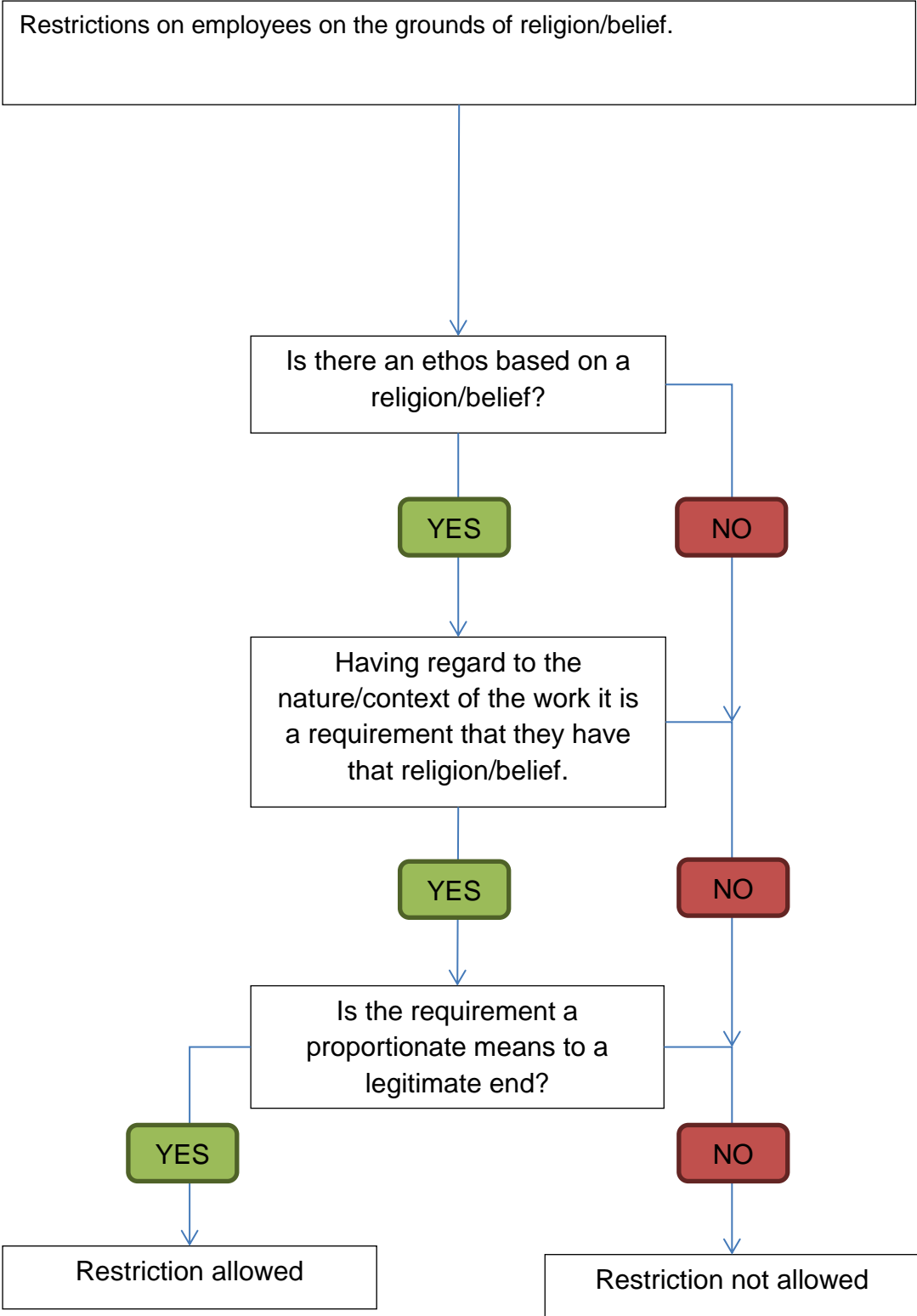
If the options above do not give you sufficient advice it may also be useful to contact an independent legal adviser. A list of solicitors in your area can be found at your local CAB office, or you can enter your address on [this page](http://www.lawsociety.org.uk/find-a-solicitor/): <http://www.lawsociety.org.uk/find-a-solicitor/>

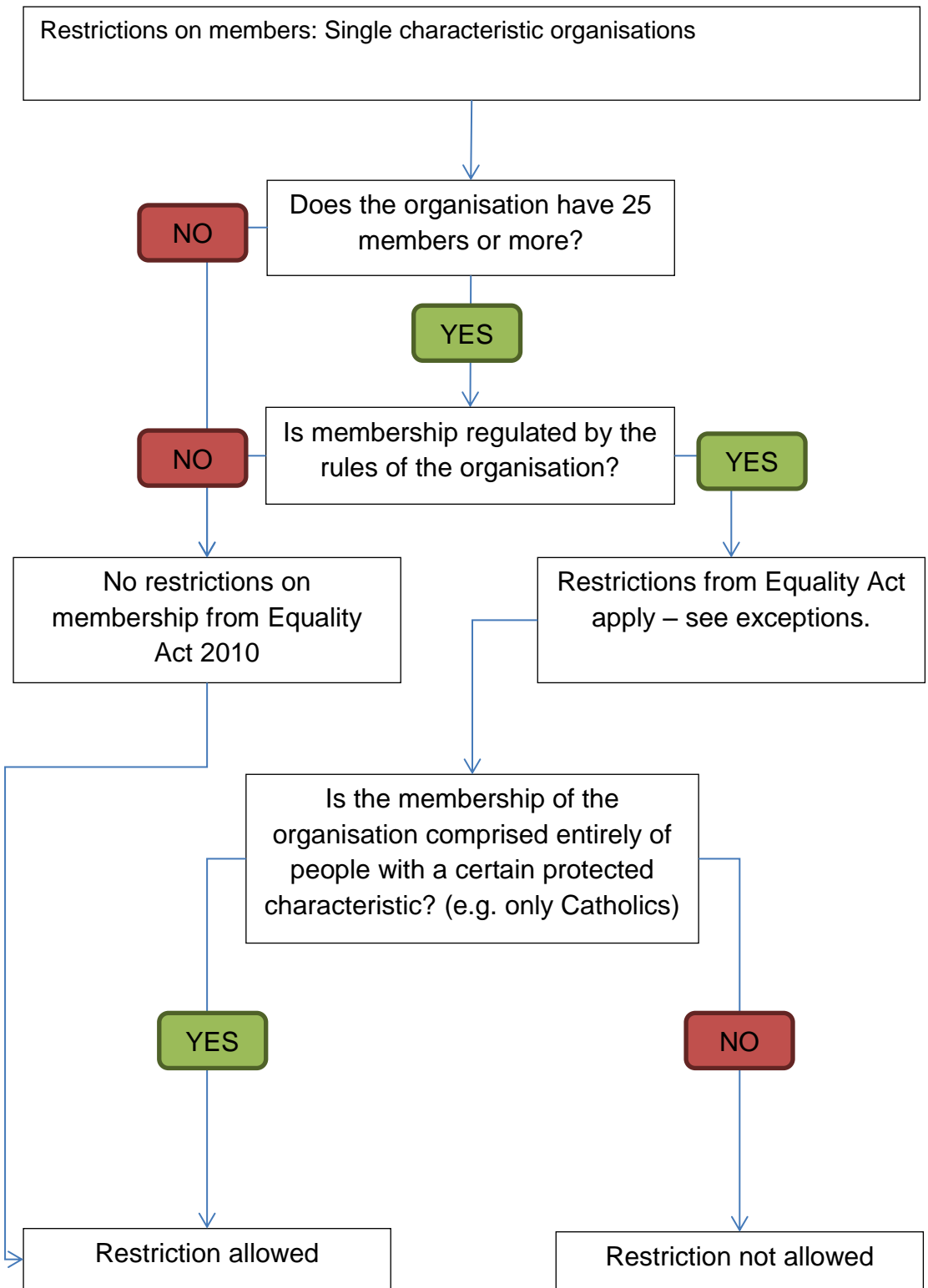
8.6. Further sources of advice

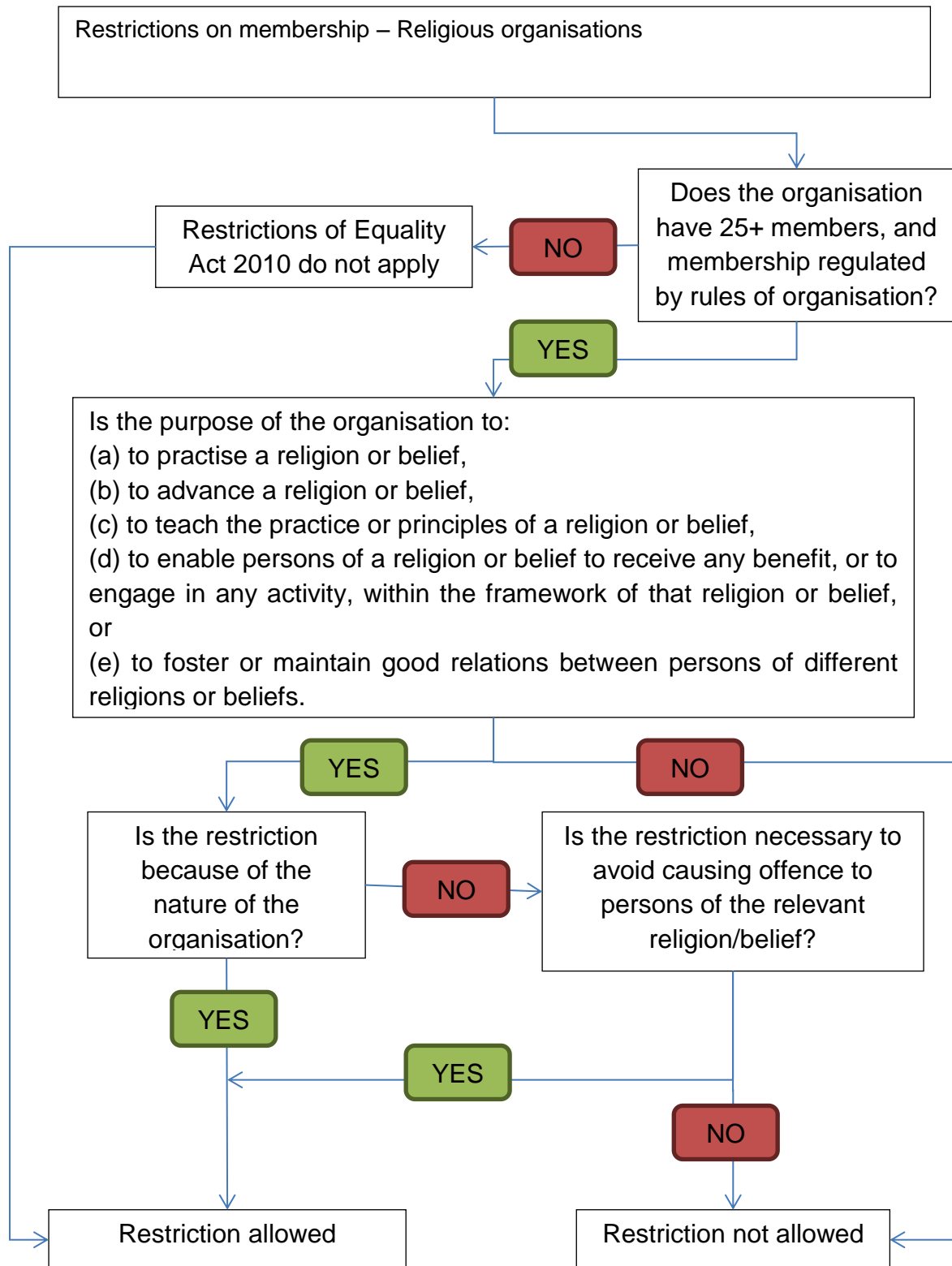
Catholic Education Service	www.catholiceducation.org.uk
Catholic Church in England and Wales	www.catholicchurch.org.uk
Catholic Bishops Conference	www.cbcew.org.uk
Catholic Deaf Association	www.cda-uk.com
Royal National Institute for the Deaf	www.actiononhearingloss.org.uk
Association of Blind Catholics	www.blindcatholics.org.uk
Royal National Institute for the Blind	www.rnib.org.uk
Equality and Human Rights Commission	www.equalityhumanrights.com
Thomas More Legal Centre	www.thomasmorelegal.org.uk
Religion Law Website	www.religionlaw.co.uk
Catholic Medical Association	www.catholicmedicalassociation.org.uk
Association of Catholic Nurses	www.catholicnurses.org.uk
Catholic Union	www.catholicunion.org

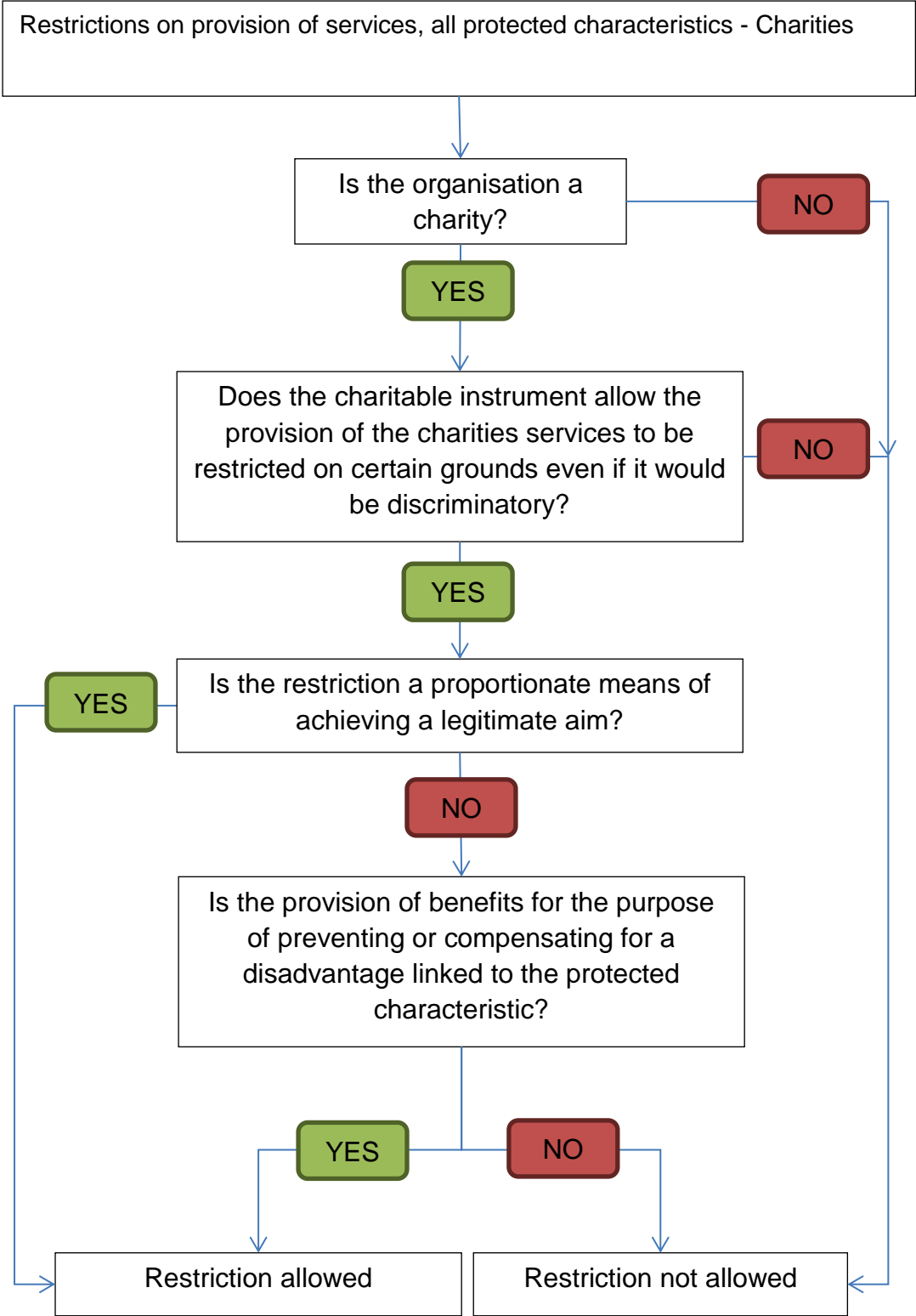
9. EXPLANATORY FLOWCHARTS



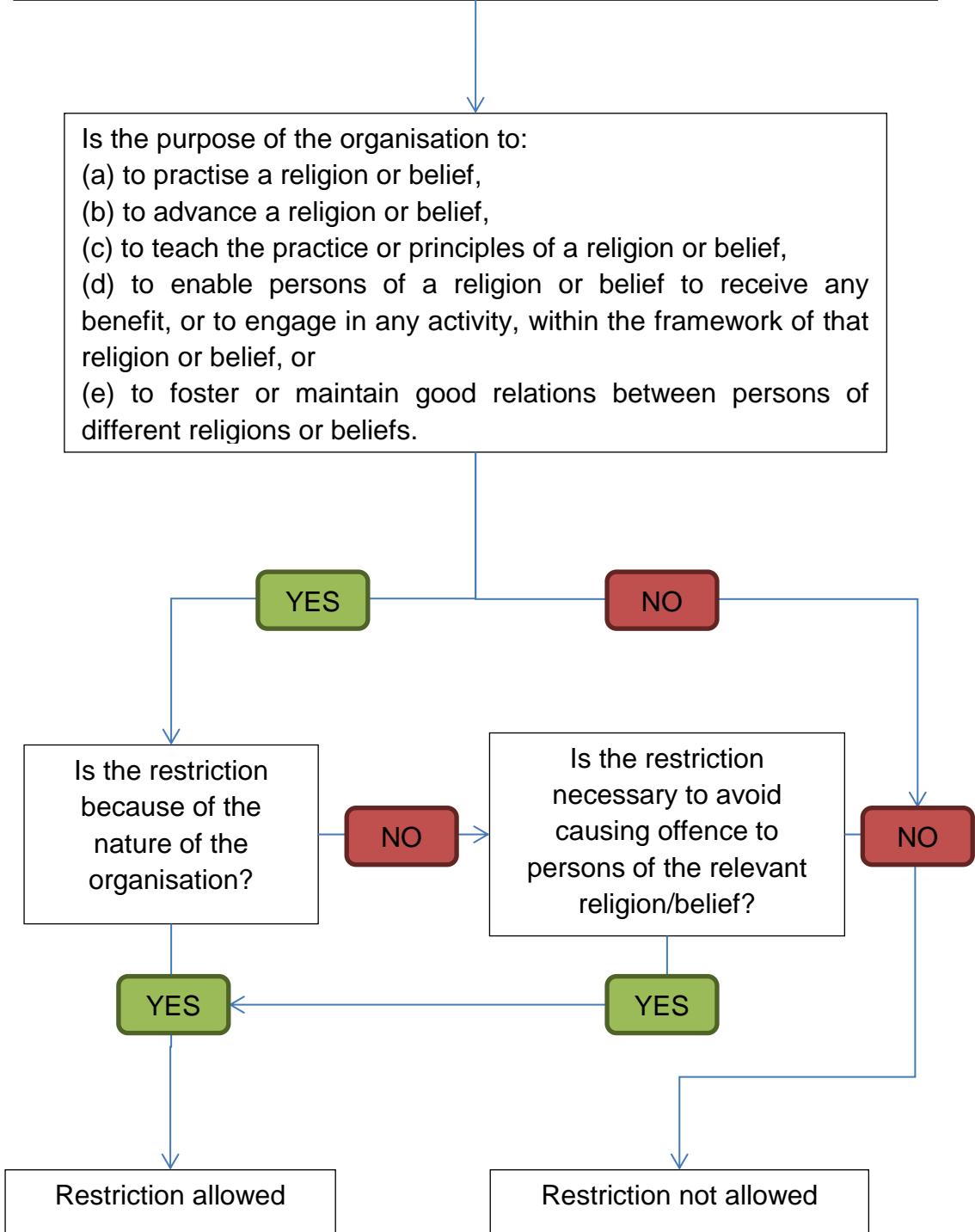


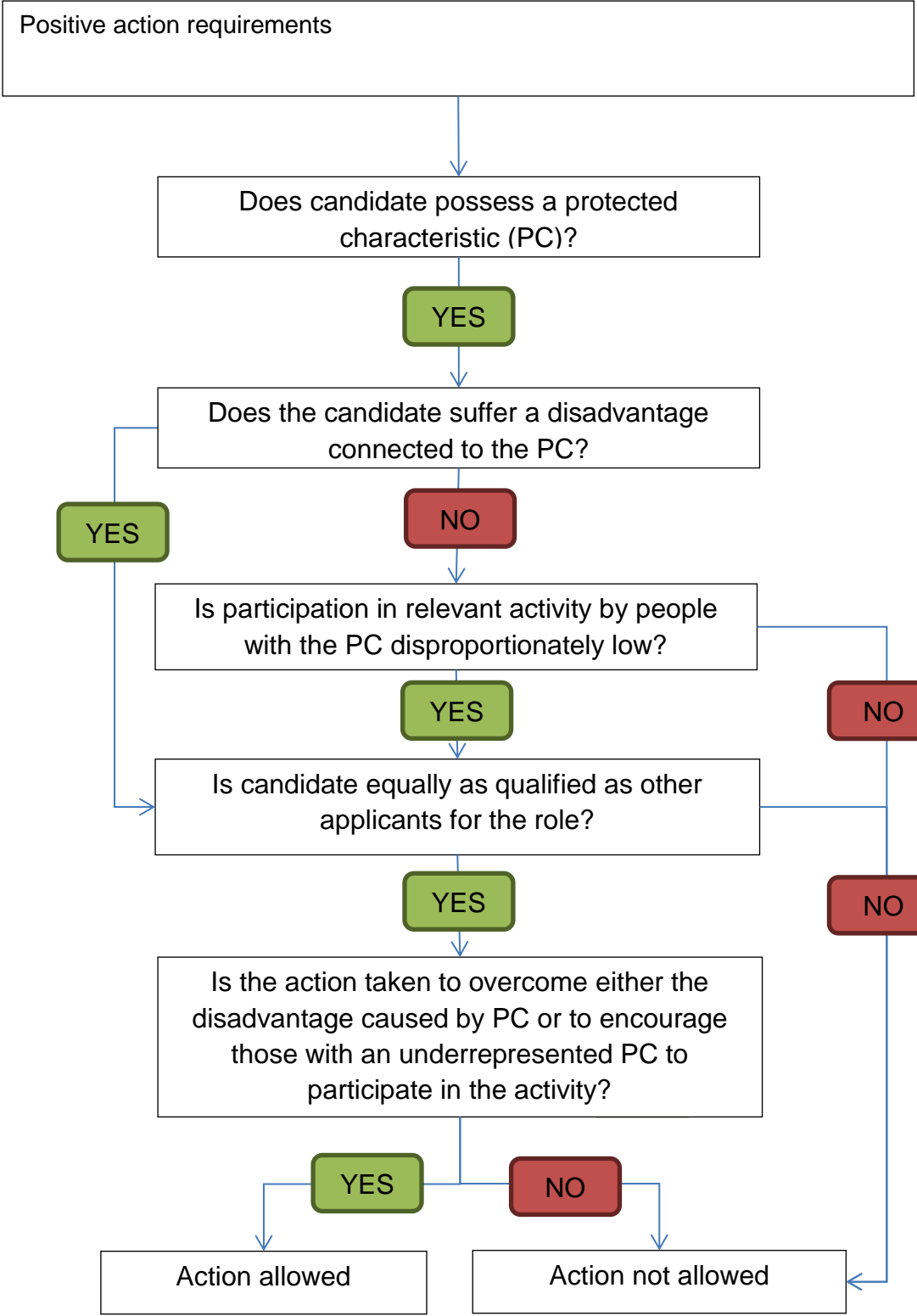






Restrictions on services based on religion/belief – Religious Organisations





10. GLOSSARY

Direct discrimination

Direct discrimination is where a group of people sharing a protected characteristic is put at a specific disadvantage either within an employment context, or when being provided goods or services. For example a business that did not serve Catholics would be directly discriminating on the basis of religion.

Direct discrimination is always unlawful unless an exception within the Equality Act 2010 applies.

Employment

Employment encompasses any decision that takes place within a period of employment, or when deciding whether to employ a person. This can include (amongst other things) interview procedures, decisions following an interview, rates of pay, pay rises, promotions, benefits provided at work and the manner in which they are provided, behaviour of fellow staff, disciplinary procedures, and dismissal.

Occupational requirement

Showing that an occupational requirement requires that there be discrimination may, in certain limited circumstances set out within the Equality Act 2010, allow such discrimination to take place. Specialist advice should be sought to gauge whether such a requirement exists in law, and if it does whether it allows discrimination under the Equality Act 2010.

Harrassment

Harassment is unwanted conduct, related to a protected characteristic, which has the purpose or effect of violating a person's dignity or creating an intimidating hostile degrading humiliating or offensive environment for that person. This typically, although not exclusively, occurs within an employment setting.

Indirect discrimination

Indirect discrimination is where a provision, criterion, or practice whilst not seeming to cause a disadvantage to a particular group sharing a protected characteristic, does in fact cause a group sharing a protected characteristic a disadvantage. For example a requirement that all employees be clean shaving does not appear to affect any particular group sharing a protected characteristic, but in fact certain religious groups would be disadvantaged by such a rule.

Indirect discrimination is unlawful unless it can be shown that it is a proportionate means to a legitimate end, or if an exception within the Equality Act 2010 applies.

Positive Action

This is the addressing of a disadvantage suffered by a group that is linked to the protected characteristic they share. It allows employers to choose an equally qualified person from a group suffering a disadvantage linked to a protected characteristic above a person from a different group not suffering such a disadvantage.

Positive action is permitted under the Equality Act 2010. It is very difficult to tell where the line between positive action and positive discrimination lies. As such it is highly recommended that legal advice be sought regarding any plans to make use of positive action.

Positive discrimination

Positive discrimination is the favouring of individuals from traditionally disadvantaged groups without direct reference to their equal qualification to people from other groups. For example a quota system that required there to be a certain amount of women hired per year in a company this would be positive discrimination.

Positive discrimination is not lawful under the Equality Act 2010. Extra care must be taken when taking positive *action* that it does not inadvertently become positive *discrimination*.

Proportionate means to a legitimate end

This is used in several parts of the Equality Act 2010 as a defence, or as part of a defence, to discrimination claims. It applies only in specific circumstances set out within the Equality Act 2010.

In order for this to be satisfied it must be shown that the discriminator had identified a legitimate aim, and that the discrimination adopted was a proportionate means of obtaining that aim.

Protected characteristics

These are the grounds upon which it is not permissible to discriminate. They are explained more fully earlier in the document (chapter 6). In brief they are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Provision of services

This includes all dealings with the public in which one party agrees to carry out a service for the other. This can include professional services (e.g. accounting, legal advice, and investments), more practical services (e.g. photography at a wedding, electrical engineering, and building) and sale of goods.

It does not include religious services such as Mass.

Public Sector Equality Duty

This is a positive duty upon public bodies to not only refrain from unlawful discrimination under the Equality Act 2010, but to take measures to eliminate such discrimination and to promote good relations between groups possessing protected characteristics.

Reasonable adjustments

The Equality Act 2010 requires that employers and service providers make reasonable adjustments to allow access to disabled people. These are not discussed in detail in this guide, but more information can be found on the Equality and Human Rights Commission website.⁷⁶

Religious Organisation

Religious organisations are allowed certain exemptions from the provisions of the Equality Act 2010. These are discussed in detail in chapter 7, at sections 7.5 and 7.11.

In order to count as a religious organisation for the purposes of the Equality Act 2010 an organisation must show that its main purpose is to practise a religion or belief, to advance a religion or belief, to teach the practice or principles of a religion or belief, to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or to foster or maintain good relations between persons of different religions or beliefs.

Victimisation

Victimisation is the penalisation of individuals because they enforce, or attempt to enforce, or help others to enforce their rights under the Equality Act 2010. Such behaviour is prohibited under the Equality Act 2010.

⁷⁶ <http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/work-place-adjustments>