

LETTER TO THE EDITOR

The Human Rights Act 1998 and Christian commitment as a requirement for employment

Dear Sir

At the recent conference of the Ecclesiastical Law Society on Religious Liberty and Human Rights, members were invited to identify examples of conflict or potential conflict involving the Church and resulting from the Act. A well recognised potential problem area is religious discrimination in employment. It seems clear that religious bodies including the Church of England will be free to discriminate in appointments of ordained ministers on the basis that ordination is an occupational requirement. Similarly, the statutory framework would seem to be acceptable which allows for a requirement of religious commitment from reserved teachers appointed to provide religious education in Church voluntary schools. However, other appointments may be vulnerable which exclude from consideration those who do not have religious commitment. Such appointments range from ordinary teachers in voluntary aided schools to staff in medical or legal partnerships which seek to follow a Christian ethos.

An example where this dilemma has already given some concern is in the framing of new constitutions and statutes for cathedrals under the Cathedrals Measure 1999. The transitional council drafting the new instruments for one cathedral wished to include criteria for future appointments such as head vergers, directors of music and chapter administrators. The motive of the council was in fact the ecumenical desire to make clear that Christians who were not Anglicans could be considered. The suggested wording would have provided that an appointee should be a baptised member of the Church of England or a member in good standing of another Christian church which subscribes to the doctrine of the Holy Trinity. An alternative could have been to require appointees to be actual communicants in the Church of England or in another Trinitarian church. However, the council was persuaded that any such provision should be left out as there was a risk that it could be attacked as unlawful discrimination against applicants who were atheists or members of other faiths. For example, from a secular perspective, an atheist organist who is a superb musician and lover of church music could well seem the best candidate for a post as a church musician.

A commonly expressed view from those consulted about this problem was that the best way to ensure that church appointees are Christians is to leave the matter to the appointment process, stipulating the requirement in advertisements or simply passing over applicants without Christian credentials. It seems to this writer that these approaches are questionable. The first will store up trouble in future if appointments are made which explicitly discriminate in favour of Christian applicants. The second approach lacks openness and transparency about the criteria for selection which is desirable in any event. An opportunity has been lost for putting down a marker for the future which asserts that it is appropriate for Christian commitment to be a requirement in Church appointments at any level, as well as simply for posts held by ordained clergy.

The writer would be interested to learn the views of readers on this case and to hear of other examples where the Human Rights Act may lead to problems over appointments which require Christian commitment from candidates.

Yours faithfully

David Harte
Newcastle Law School
University of Newcastle Law School, University of Newcastle
21–24 Windsor Terrace
Newcastle upon Tyne
NE1 7RU