

This submission is narrow in scope, and only addresses question 22:

How might religious exemptions apply in relation to discrimination on the grounds of sexual orientation or gender identity?

The issues of sexual orientation and gender identity are separate in fact, but according to some religious beliefs, are not.

This has caused numerous practical problems for Trans and Intersex people.

It is a tenet of some religious belief systems that neither Trans nor Intersex people can exist. That any entity born different from a male or female anatomical stereotype cannot be a person, or human. Opinions differ as to whether they are the spawn of supernatural malevolent entities, or some kind of soulless animal, but these are genuinely held beliefs, not mere pretexts. Others believe that no such anatomical differences can occur, that the assertion that they do is some kind of secular humanist plot by scientists to attack their religion. Again, no matter how dotty, these beliefs are not pretextual.

The usual consequence is that Trans and Intersex people are regarded as innately homosexual, and thus by definition have chosen a path of sin not commensurate with that religion's acceptable behaviour. Only a few practice the extermination of Intersex infants (as did St Constantine, immuring them in caskets and throwing them in the river to be "returned to God" as defective products, in a kind of divine recycling program)..

Religious Freedom is a cherished right, and rightly so on pragmatic grounds: if we restrict one set of religious beliefs, our own may be next to be restricted.

Nonetheless, it is not untrammelled. To take an extreme case, worshippers of some religions call for human sacrifice, yet we do not allow them to murder merely so they can practice their religion with complete freedom.

The principles involved in disallowing discrimination even when based on genuine religious conviction are very different in degree, but not in kind, from those disallowing homicide, even when based on genuine religious conviction..

Belief and worship must be allowed unfettered and unhindered, until it collides with others rights to equitable treatment. Then it must give way.

As an example, a religious-based school could quite reasonably insist that those teachers of doctrine and correct religious behaviour actually be active practitioners of the faith, If the faith teaches that all those with Black skin are illiterate savages, then obviously a person with Black skin with a masters in education cannot comply with the genuine requirements of the job of teaching doctrine. However, they would be perfectly capable of teaching history, mathematics etc. This may cause some discomfort amongst the staff, but would not actually infringe on their freedom of belief.

If the school had a requirement that all teachers teach doctrine, then "reasonable accommodations" for those unable to comply should be provided. This would also prevent pretextual employment conditions.

The same applies to Intersex and Trans people. Although their existence may conflict with religious belief, it is not the Government's business to provide exemptions in order to maintain a cosy niche

of Flat Earth belief that is obviously counter-factual, and not an arguable difference of opinion. As regards any exemption, a requirement for a written and authoritative justification is reasonable.

It is not the business of the Government though to require that the written justification actually accord with the tenets of the religion, merely that the justification, no matter how specious, be a matter of public record. It is up to the appropriate religious authorities to determine if the justification is erroneous or heretical, and to take appropriate action.

This is the case even if the justification states that the doctrine concerned is secret, and not for the eyes of unbelievers or the laity. “Secret Women's Business” for example.

Taking a concrete example, we know from the official Catholic press that a document concerning the treatment of Trans people was sent *sub secretum* to the world's Catholic bishops. What it contains we cannot be sure, it's a secret, though hints were published in the article revealing its existence. It had to be sent twice, as it was obvious that most Bishops had never read it, a state of affairs that still appears to be true today.

The doctrine perceived by the laity appears to differ from this document in significant ways, and has been given in the past as a reason for denial of medical treatment to both Trans and Intersex people in Catholic hospitals. Yet the religious beliefs were not pretextual. They were based on an incorrect perception of what official doctrine actually was, so not justifiable on that basis, yet nonetheless genuine. A requirement that the justification actually accord with doctrine is untenable. Those discriminating may not actually know what the official line is. If they do, they may not be allowed to reveal it. They should, however, be required to write a justification stating that fact, and no further inquiry should be made.

For this reason, the written justification should only be put on the public record, and not evaluated or second-guessed. If it's a secret, say so, but that's all.

The principle for deciding on religious exemptions should be that denying them would cause actual harm to the religion concerned. That unless the exemptions were granted, practising the religion would be impossible, not merely limited (as the prohibition on child sacrifice inhibits, but does not preclude, the worship of certain gods).. However, any assertion to the effect that it will prohibit it by the religion concerned must be accepted without demur, and published for all to see.

Flimsy pretexts would be exposed for what they are – but accepted anyway, as the Government has no business inquiring into what is “really” doctrinally sound or not.

Similarly the employment of a single Intersex or Trans person. If employment is refused because of a belief that Intersex doesn't exist, accept that as a genuine belief– but publicise it for all to see..

Sincerely,
Zoe E Brain
[PERSONAL ADDRESS REMOVED]