

Uncovering the Equality Act 2010

Briefing for homelessness sector
professionals

Acknowledgement

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Introduction

About this briefing

The Equality Act 2010 aims to protect people in Britain from discrimination, harassment and victimisation. This briefing provides an overview of the Act and explores how it can be applied within the homelessness sector. It explores the rights of staff and the rights of those using services.

Who is this briefing for?

It is the responsibility of everyone to ensure that services are delivered in accordance with the Equality Act 2010. This briefing has been written for practitioners, managers and organisational leaders delivering homelessness services.

Why does it matter?

The Equality Act 2010 does not stop discrimination. However, through understanding what it requires and how it can be applied, organisations and practitioners can identify how to improve their services and the support they offer.

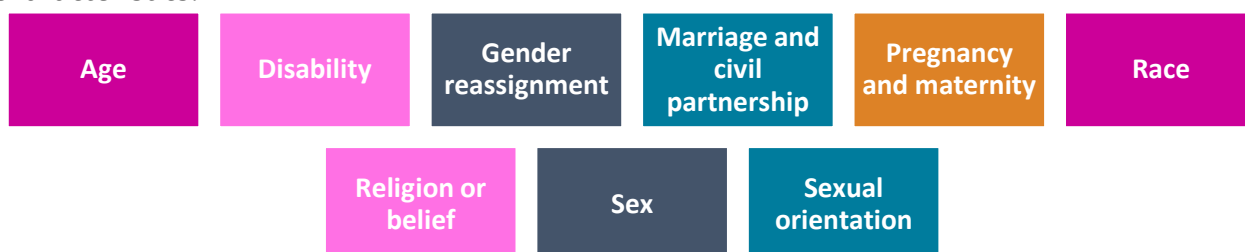
About the Equality Act 2010

Overview

The Equality Act came into force from October 2010. Bringing together over 116 separate pieces of legislation, the Equality Act provides a single legal framework to protect the rights of individuals from unfair treatment, and advance equality of opportunity for all.

Protected characteristics

The Equality Act 2010 refers to 9 protected characteristics which have legal protection against discrimination. It is against the law for individuals, private, public and voluntary organisations and other bodies to discriminate against someone on the basis of these protected characteristics.



You can find further information about each protected characteristic, including a short video, on the Equality and Human Rights Commission website:

www.equalityhumanrights.com/equality/equality-act-2010/protected-characteristics

Discrimination

The Equality Act 2010 defines and protects against different types of discrimination. It's important to understand these different types of discrimination in order to identify good and bad practice in service delivery. Some forms of discrimination can be harder to identify and describe.

Direct discrimination is where a person is treated less favourably than another person or people because they have a protected characteristic, someone thinks they have a protected characteristic (discrimination by perception), or they are connected to someone who has a protected characteristic (discrimination by association).

Indirect discrimination is where rules or arrangements are put place that apply to everyone but in practice disadvantage those with a certain protected characteristic. If the organisation can show an arrangement is a proportionate means of meeting a legitimate aim, it is not indirect discrimination. This is known as **objective justification**.

Harassment is unwanted behaviour and/or bullying linked to a protected characteristic that has the purpose or the effect of violating someone's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

Victimisation is where a person is treated unfavourably because they have made an allegation about discrimination or harassment, supported someone who has made an allegation of discrimination or harassment, acted as a witness to a complaint, or gathered information that may lead to a complaint. These actions are known as "protected acts".

Discrimination arising from disability is where a person is treated unfavourably for a reason that relates to or results from their disability, not because of the disability itself. Examples of things that could result from someone's disability are absence from work because of hospital appointments or changes in behaviour because of the medication a person is taking. This form of discrimination differs from direct discrimination because there does not have to be a comparison with how other people are treated. Sometimes there can be '**objective justification**' for this discrimination arising from disability. Read more about objective justification including examples in the **further information** section.

Failure to make reasonable adjustments: This form of discrimination relates only to the protected characteristic of **disability**. Read more about reasonable adjustments including examples in the **further information** section.

Situations in which people are protected from discrimination.

Under the Equality Act 2010 people are protected from discrimination when:

- they are in the workplace.
- they are using public services like healthcare or education.
- they use businesses and other organisations that provide services and goods.

- they are using transport.
- when they join a club or association (for example, a local tennis club).
- when they have contact with public bodies, for example the local council or central government departments.

The Equality Act 2010 in practice

The following scenarios have been designed to help teams consider where there may be a risk of discrimination and how to ensure services are actively inclusive for everyone.

Direct Discrimination

Scenario 1: Towards those being supported.

Paul is a gay man with HIV, and he has been living in supported accommodation for eight months. The support provider has started to offer recreational activities for residents including cooking classes and boxercise. The support staff have been actively promoting these activities to residents through 1-2-1 support sessions, but Paul's worker has not mentioned this, feeling that the activities may not be appropriate for someone who is HIV positive.

Paul's support worker is not mentioning these activities to Paul because of his HIV status, which is classed as a disability under the Equality Act 2010.

Can you think of a time you've seen direct discrimination occurring in a service or project you were delivering?

Did this relate to the behaviour of staff, behaviour of the people accessing the service or an organisational policy?

Scenario 2: Towards staff

A hostel service has a staff team of six people. One worker, Safa is notably younger than the others at 22 years old. The team are often asked to represent the service at various multi-agency meetings including Safeguarding and MARAC to discuss their residents. A safeguarding referral is made for a resident Safa is supporting. The team manager decides another member of staff will attend the meeting, feeling someone who is older and more experienced will represent the service more effectively.

The team manager is preventing Safa from representing the service because of her age and perceived inexperience which is age-related discrimination under the Equality Act 2010.

What did you do? Is there anything you would do differently now? Is there any support you need?

Indirect discrimination

Scenario 1: towards those being supported.

An accommodation service operates a self-catering model, where residents buy and cook their own food in a communal kitchen. To manage safety, a rule is applied that the kitchen is not available after 8pm until 8am. The residents sometimes feel frustrated with this rule but accept it and manage their meals accordingly. One resident, Ahmed is a practicing Muslim and during Ramadan cannot eat during daylight hours. The kitchen rules mean he is unable to eat before dawn or after sunset in accordance with his religion.

The blanket rules being applied to kitchen opening times are having a disproportionately negative impact for Ahmed due to his religious beliefs and practices and is discrimination under the Equality Act 2010.

Scenario 2: towards staff

Tom and Alice are outreach workers. They start early morning outreach at 6am and don't return to the day centre where they are based, until the end of outreach at 9am. When Alice is having her period, she finds it difficult to manage for three hours without access to a toilet and would prefer to return to the day centre, but Tom thinks this is a waste of time, and their manager agrees.

The decision not to return to the day centre is having a disproportionately negative impact on Alice due to being a woman who has periods and is sex-based discrimination under the Equality Act 2010.

Is there anyone else that a blanket policy such as the ones in scenario one and two discriminate against?¹

As a team or as an individual, consider the service you work for:

What policies do you have within your service(s)?

Could this indirectly discriminate against anyone accessing your service?

Could they discriminate against anyone delivering the services?

Can you think of any policies you have at your own organisation, or organisations you've previously worked at that may have indirectly discriminated against any other protected characteristics?

¹ The blanket rules being applied to kitchen opening time may also discriminate against those with other protected characteristics for example disability. A person may need access to food, or a fridge at certain times of the day due to their health-related needs, for example those who are diabetic may have insulin-related diets or may need access to a fridge in order to store insulin.

Harassment and Victimisation

Scenario 1: Harassment towards those being supported.

Harry has been living in an accommodation service for 6 months. After building relationships with staff and residents, Harry discloses to her friend Stephanie that she is a trans woman. The next day Harry finds a slur graffitied onto her bedroom door, and other residents use slurs against Harry while passing her in the corridors and in communal areas. Staff do not use the slurs but laugh when they hear them used by the residents.

Harry is being bullied due to her gender identity, by fellow residents. Staff are taking no action to protect Harry and are complicit with the harassment.

As a team or as an individual, consider the service you work for:

What actions can be taken to protect clients from harassment?

Where harassment occurs what can be put in place to support clients?

Scenario 2: Victimisation towards those being supported.

Harry's friend Stephanie has supported her complaint and has said that she has seen the abuse take place. Stephanie is told she's no longer able to take part in a communal activity for residents, that is run at the service.

Stephanie is being excluded from activities at the accommodation since she supported Harry's complaint. She can therefore argue she is being victimised as her situation is worse than before because she supported a harassment complaint.

What skills and knowledge are required to challenge harassment and victimisation?

Harassment and Victimisation

Scenario 1: Harassment towards staff

Malakai works at a day centre. He enjoys the job and has been told he is a good candidate for the role of interim senior worker that will become available when another colleague goes on maternity leave. A group of people who have recently started accessing the day centre are using racist terms when they see Malakai or have contact with him. His colleagues don't challenge the language used by those accessing the services and say it's just banter. Malakai tells his manager about the abuse he's experiencing from people accessing the service in his next supervision. His manager tells him, that's part of the job, that he should be able to handle it.

Malakai is being harassed by residents. The decision of his colleagues not to challenge the language means they are complicit in the behaviour. The organisation has taken no action to prevent or respond to the racial harassment Malakai is experiencing.

What actions can be taken to protect staff from harassment?

Do you know what policies are in place within your organisation to address harassment, or raise a complaint about harassment?

Scenario 2: Victimisation towards staff

Malakai's manager says this complaint should not be taken any further as it could affect his chance of promotion. Malakai notices in his supervision notes it's been written that he is "sensitive to client comments" and "struggling to handle the stress" of the role. When his colleague goes on maternity leave, he is not offered the role of senior worker. He hears that in discussions the interview panel was told he is difficult to work with and unable to handle stress attached to the senior position.

Malakai's manager writes negative supervision notes, which label him as difficult and incapable, and he is then overlooked for promotion. It appears Malakai's manager believes Malakai intends to make a complaint, which is a 'protected act'.

N.B.: Harassment can never be justified. However, if an organisation or employer can show it has done everything it could to prevent employees from harassing one another, a claim for harassment against the organisation will not be upheld.

Discrimination arising from disability:

Scenario 1 & 2: Discrimination rising from disability towards those being supported.

Scenario 1: A supported accommodation provider has a set of behaviour expectations that users must adhere to. Rich, a new user of the service, is prone to angry outbursts, which are a direct result of a mental health impairment covered under the Equality Act 2010. Due to these outbursts the service has issued Rich with an eviction notice.

Scenario 2: Leila is visually impaired and has an assistance dog to help her get around. She has tried to access a day centre offering daily lunches for people experiencing homelessness. The day-centre refuses to let Leila enter with the dog.

In both scenarios a person is being denied access to a service due to their disability, and this could be discrimination unless objective justification applies.

Scenario 3: Discrimination rising from disability towards staff.

Kayleigh has depression, she takes antidepressants which make her tired and sometimes she comes to work late. Kayleigh explains this to her employer; however, her employer thinks that this is unacceptable and places Kayleigh on a behaviour management plan, placing her at risk of dismissal.

In placing her on this performance management plan Kayleigh's manager could be discriminating against her due to her disability. This is unless they can evidence objective justification.

As a team or as an individual, consider the service you work for:

What reasonable adjustments can be put in place to avoid discrimination against Rich, Leila and Kayleigh arising from their disability? See [further information](#) for ideas.

Do you know what policies are in place for staff and people accessing services to request reasonable adjustment?

Further information

Dual Discrimination

If someone is discriminated against on multiple occasions but for different protected characteristics each time, they can bring separate claims in respect of each protected characteristic. However, dual discrimination is where a person is discriminated against because of a particular combination of two or more protected characteristics.

Objective justification

Objective justification gives a defence for applying a policy, rule or practice that would otherwise be unlawful indirect discrimination of discrimination arising from a disability. It also gives a defence for using a rule or practice based on someone's age, that would otherwise be direct discrimination. To rely on the objective justification defence, an employer, service provider or other organisation must show that its policy or age-based rule was for a good reason and is 'a proportionate means of achieving a legitimate aim'.²

To prove objective justification:

- the aim must be a real, objective consideration, and not in itself discriminatory (for example, ensuring the health and safety of others would be a legitimate aim).
- if the aim is simply to reduce costs because it is cheaper to discriminate, this will not be legitimate.
- working out whether the means is 'proportionate' is a balancing exercise: does the importance of the aim outweigh any discriminatory effects of the unfavourable treatment?
- there must be no alternative measures available that would meet the aim without too much difficulty and would avoid such a discriminatory effect: if proportionate alternative steps could have been taken, there is unlikely to be a good reason for the policy or age-based rule.³

An example of objective justification:

A service provider wishes to provide a service specifically for women. It is allowed to provide separate services for men and women if providing a combined service (in other words one where men and women had exactly the same service) would not be as effective.

The Equality Act 2010 allows this, as long as the service provider can show that a combined service would not be as effective, and it would not be reasonably practicable to provide the service. If providing a single sex service can be objectively justified in this way, it will not constitute direct discrimination on grounds of sex.

² www.equalityhumanrights.com/equality/equality-act-2010/your-rights-under-equality-act-2010/terms-used-equality-act?return-url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsearch%3Fkeys%3Dobjective%2Bjustification

³ <https://www.equalityhumanrights.com/en/advice-and-guidance/commonly-used-terms-equal-rights#objective>

Reasonable adjustments

Reasonable adjustments are changes organisations, people providing services, or people providing public functions have to make to prevent a person's disability putting them at a disadvantage compared with others who are not disabled. Where an employer or service provider fails to make changes that are reasonable to enable a disabled person to overcome a substantial disability-related barrier, they are likely to be discriminating. Additionally, service providers should be anticipating the needs of the public at large and making adjustments. What is reasonable depends upon a range of factors taken together, including cost, practicability and whether the adjustment will have a significant impact on other people.

Reasonable adjustments for people accessing services, or staff may include:

- Making changes to the workplace: for example, wheelchair access, creating quiet workspaces.
- Changing someone's working arrangements, for example reduced hours, compressed hours or other flexible working arrangements.
- Finding a different way to do something, or providing equipment, services or support that would aid a staff member to do their job or a user to access a service.

Read more about what reasonable adjustments are here:

www.acas.org.uk/reasonable-adjustments

Read more about how to request reasonable adjustments here:

www.acas.org.uk/reasonable-adjustments/asking-for-reasonable-adjustments

Resources and further reading

Equality Act 2010:

www.equalityhumanrights.com/equality/equality-act-2010

Objective justification:

Read more about objective justification and get advice:

www.acas.org.uk/employer-decision-protected-characteristic/objective-justification

www.acas.org.uk/contact

Protected characteristics:

www.equalityhumanrights.com/equality/equality-act-2010/protected-characteristics

Reasonable adjustments in the workplace

About reasonable adjustments:

www.acas.org.uk/reasonable-adjustments

Requesting reasonable adjustments

www.acas.org.uk/reasonable-adjustments/asking-for-reasonable-adjustments

Mental health and reasonable adjustments toolkit developed by Rethink Mental Health
www.mentalhealthatwork.org.uk/resource/reasonable-adjustments-at-work/

Guidance from Scope: reasonable adjustments at work
www.scope.org.uk/advice-and-support/reasonable-adjustments-at-work#Who-is-responsible-for-reasonable-adjustments-click

Homeless Link Knowledge Hub

Homeless Link has over 100 free resources for homelessness services, including guidance, briefings, toolkits and case studies on meeting the needs of different groups experiencing homelessness.
www.homeless.org.uk/areas-of-expertise/meeting-diverse-needs/

What We Do

Homeless Link is the national membership charity for frontline homelessness services. We work to improve services through research, guidance and learning, and campaign for policy change that will ensure everyone has a place to call home and the support they need to keep it.

Homeless Link

Minories House
2-5 Minories
London
EC3N 1BJ

www.homeless.org.uk
@HomelessLink

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