

# 2. What equality law means for your business.

Equality Act 2010 Guidance for service providers.  
**Vol. 2 of 3.**



**Equality and  
Human Rights  
Commission**

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# Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain what you must do to meet the requirements of equality law. These guides will support the introduction of the Equality Act 2010. This Act brings together lots of different equality laws, many of which we have had for a long time. By doing this, the Act makes equality law simpler and easier to understand.

There are three guides giving advice on your responsibilities under equality law when providing goods, facilities and services, carrying out public functions or running an association. These are aimed at:

1. Associations, clubs and societies
2. Businesses
3. Voluntary and community sector organisations, including charities

Guidance for people and organisations working in areas of the public sector other than in education will be published at a future date. We have produced a separate series of guides which explain what equality law means for you if you are providing education services, whether in a school or in further or higher education.

Other guides and alternative formats

We have also produced:

- A separate series of guides which explain what equality law means for you if you are an employer.
- Different guides for individual people who are using services, or working and who want to know their rights to equality.

If you require this guide in an alternative format and/or language please contact the relevant helpline to discuss your needs.

### **England**

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### **Scotland**

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### **Wales**

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[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## The legal status of this guidance

This guidance applies to England, Scotland and Wales. It has been aligned with the Code of Practice on Services, Public Functions and Associations. Following this guidance should have the same effect as following the Code. In other words, if a person or an organisation who has duties under the Equality Act 2010's provisions on services, public functions and associations does what this guidance says they must do, it may help them to avoid an adverse decision by a court in proceedings brought under the Equality Act 2010.

This guide is based on equality law as it is at 1 October 2010. Any future changes in the law will be reflected in further editions.

This guide was last updated on 23 July 2010. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.



# 1. What equality law means for your business when you're providing goods, facilities or services to the public

## Who is this guide for?

This guide is for you if your business provides any goods, facilities or services to members of the public. When you do this, equality law applies to you.

It does not matter whether you give the service for free (for example, giving someone information about your paid-for services) or if you charge for it. It does not matter if you are set up as a sole trader, a partnership, a limited company or any other legal structure. The size of your business does not matter either. Equality law applies to you.

Equality law affects everyone responsible for running your business or who might do something on its behalf, including staff if you have them.

## What's in this guide

This guide tells you how you can avoid all the different types of unlawful discrimination. We give you an overview of how equality law applies to all businesses, and then we go on to look at particular issues that businesses providing goods, facilities or services in different sectors may need to think about when considering what equality law requires them to do.

We give examples of issues that may affect:

- businesses selling goods, such as shops and petrol stations
- banks and other financial services providers
- builders, other trades people and companies providing similar services
- estate agents, letting agents and property management companies
- gyms, health clubs and sporting activity providers

- hairdressers, barbers and beauty salons
- hotels, restaurants, cafés and pubs
- theatres and other entertainment venues
- designers and manufacturers of goods – who are only covered in specific circumstances.

If your business is not in this list, it does not mean that equality law does not apply to you. Reading this guide will help you and your business. Use it to work out how to apply what it says to your business.

## *What else is in this guide*

This guide also contains the following sections, which are similar in each guide in the series and contain information you are likely to need to understand what we tell you about running a business in a way that meets the requirements of equality law:

- Advice on how to avoid discrimination in the way you – and your staff – behave and how you provide your services, whether that is face to face, at a particular place, using written materials, by the internet or over the telephone.
- Information about when you are responsible for what other people do, for example, staff who are working for you.
- Information about making reasonable adjustments to remove barriers for disabled people who are (or may want to become) your service users or clients.
- Advice on what to do if someone says they've been discriminated against.
- A list of words and key ideas you need to understand this guide – all words highlighted in **bold** are in this list. They are highlighted the first time they are used in each section. Exceptions to this are where we think it may be particularly useful for you to check a word or phrase.
- Information on where to find more advice and support.

Throughout the text, we give you some ideas on what you can do if you want to follow equality good practice. While good practice may mean doing more than equality law says you must do, many organisations find it useful in helping them to deliver better services. Sometimes equality law itself doesn't tell you exactly how to do what it says you must do, and you can use our good practice tips to help you.

# Making sure you know what equality law says you must do as a business providing goods, facilities or services to the public

First, use this list to make sure you know what equality law says you must do.

## *Protected characteristics*

Make sure you know what is meant by:

- **disability**
- **gender reassignment**
- **pregnancy and maternity (which includes breastfeeding)**
- **race**
- **religion or belief**
- **sex**
- **sexual orientation.**

These are known as **protected characteristics**.

## *What is unlawful discrimination?*

Unlawful discrimination can take a number of different forms:

- You must not treat a person worse just because of one or more of their protected characteristics (this is called **direct discrimination**).

For example:

- A shop will not serve someone because of their ethnic origin.
- A nightclub charges a higher price for entry to a man because of their sex where the service provided to a woman is otherwise exactly the same.

- You must not do something to someone in a way that has a worse impact on them and other people who share a particular protected characteristic than on people who do not share that characteristic. Unless you can show that what you have done is **objectively justified**, this will be what is called **indirect discrimination**. ‘Doing something’ can include making a decision, or applying a rule or way of doing things.

For example:

A shop decides to apply a ‘no hats or other headgear’ rule to customers. If this rule is applied in exactly the same way to every customer, Sikhs, Jews, Muslims and Rastafarians who may cover their heads as part of their religion will not be able to use the shop. Unless the shop can **objectively justify** using the rule, this will be indirect discrimination.

- You must not treat a disabled person **unfavourably** because of something connected to their disability where you cannot show that what you are doing is **objectively justified**. This only applies if you know or could **reasonably** have been expected to know that the person is a disabled person. This is called discrimination arising from disability.

For example:

A shop has a ‘no dogs’ rule. If the shop bars a disabled person who uses an assistance dog, not because of their disability but because they have a dog with them, this would be discrimination arising from disability unless the shop can objectively justify what it has done.

- You must not treat a person worse than someone else because they are **associated with** a person who has a protected characteristic.

For example:

A restaurant refuses to serve a customer who has a disabled child with them, but serves other parents who have their children with them.

- You must not treat a person worse because you incorrectly think they have a protected characteristic (**perception**).

For example:

A member of staff in a pub tells a woman that they will not serve her because they think she is a **transsexual person**. It is likely the woman has been unlawfully discriminated against because of gender reassignment, even though she is not a transsexual person.

- You must not treat a person badly or **victimise** them because they have complained about discrimination or helped someone else complain or done anything to uphold their own or someone else's equality law rights.

For example:

A customer complains that a member of staff in a café told her she was not allowed to breastfeed her baby except in the toilets. Because she has complained, the café tells her she is barred altogether. This is almost certainly victimisation.

- You must not **harass** a person.

For example:

A member of staff in a nightclub is verbally abusive to a customer in relation to a protected characteristic.

**Note:** Even where the behaviour does not come within the equality law definition of **harassment**, for example, because it is related to religion or belief or sexual orientation, it is likely still to be unlawful discrimination because you are giving the service to the person on worse terms than you would give someone who did not have the same protected characteristic.

In addition, to make sure that disabled people are able to use your services as far as is reasonable to the same standard as non-disabled people, you must make 'reasonable adjustments'. You cannot wait until a disabled person wants to use your services, but must think in advance about what people with a range of **impairments** might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

For example:

A bank branch has a flight of steps up to its entrance but it is not permitted by the local authority to build a ramp because this would block the pavement. The bank installs a platform lift so that disabled people with mobility impairments can get into the branch. This is a reasonable adjustment and is an example of the right approach.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4.

## **What does this mean for your business?**

Because of a protected characteristic, you and anyone working for you:

- Must not refuse to serve someone or refuse to take them on as a client.

For example:

- You must not refuse to serve a woman who is breastfeeding a baby.
- You must not say you will not take people with a particular religion or belief as a client.

- Must not stop serving or working for someone if you still serve or work for other customers or clients who do not have the same protected characteristic in the same circumstances.

For example:

- You must not stop offering home visits to disabled people that you find out have a mental health condition if you go on offering them to other clients. That is likely to be unlawful disability discrimination.

- Must not give someone a service of a worse quality or in a worse way than you would usually provide the service.

For example:

You must not keep someone waiting for service twice as long as usual because of a protected characteristic.

- Must not give someone a service with worse terms than you would usually offer.

For example:

You must not charge someone with a particular protected characteristic a higher deposit when they hire something from you.

- Must not put them at any other disadvantage.

You can still tell your customers or clients what standards of behaviour you want from them. For example, behaving with respect towards your staff and to other customers.

Sometimes, how someone behaves may be linked to a protected characteristic.

If you set standards of behaviour for your customers or clients which have a worse impact on people with a particular protected characteristic than on people who do not have that characteristic, you need to make sure that you can **objectively justify** what you have done. Otherwise, it will be indirect discrimination.

If you do set standards of behaviour, you must make **reasonable adjustments** to the standards for disabled people and avoid **discrimination arising from disability**. You can read more about reasonable adjustments in Chapter 4.

For example:

A couple and their teenage child who has a learning disability sit down in a café. Because of her disability, the child speaks and laughs loudly. One of the staff tells the family they will have to leave if their child is not quiet, even though the parents explain why the child is making a noise. If the child's behaviour is not causing any significant difficulties for other customers or for staff, it would probably be hard for the café to **objectively justify** telling the family to leave (in other words, withdraw the service from them), so doing this is likely to be discrimination arising from disability and/or indirect discrimination because of the child's disability. The right approach would be for the staff first to make a reasonable adjustment to the standard they expected and only then to decide if the child's behaviour was still unacceptable (which is unlikely).

**Check out:** What does equality law mean for you when you're providing services to the public: staff, places, written information, websites, telephone access?

You can read more in Chapter 2 about:

- staff behaviour
- advertisements and marketing
- how people access services: face to face, at a particular place, using written materials, by the internet or over the phone.

**Check out:** When you are responsible for what other people do.

You can read more about when you are responsible for what other people do, such as staff working for you, in Chapter 3.

**Exceptions:** There are some exceptions to the general rules of equality law, when the law may apply differently in some circumstances. You can read more next about when these exceptions may apply. Check if any of them apply to your business or situation.



## Do any of the exceptions in equality law apply to my business or situation?

There are some exceptions to the general rules of equality law, when people's protected characteristics may be relevant to the goods, facilities or services you provide. For businesses, these are:

- Services for particular groups:
  - Services provided for people with a particular protected characteristic.
  - Separate services for men and women or single-sex services.
- Where health and safety considerations apply to pregnant women.

As well as these exceptions, equality law allows you to treat disabled people more favourably than non-disabled people. The aim of the law in allowing this is to remove barriers that disabled people would otherwise face to accessing services.

For example:

- A hairdresser visits a disabled client at home when they do not usually provide home visits, as the client has a mobility impairment that makes the sinks at the salon unsuitable for washing their hair.
- A music venue gives two tickets for the price of one to disabled people who need to bring someone with them to assist them.

### Services for particular groups

There are limited and specific situations in which you can provide (or refuse to provide) all or some of your services to people based on a protected characteristic. These exceptions apply to any organisation which meets the strict tests.

## ***Services provided to people with a particular protected characteristic***

You can generally provide your service in a way that means it is only usually used by people with a shared protected characteristic (such as people of a particular religion or a particular ethnic group). You can provide a limited service or refuse to provide the service to someone who does not share that protected characteristic if you **reasonably** believe it would not be **practicable** to provide the service to that person.

For example:

A butcher only sells meat from animals which have been slaughtered in a way that conforms to particular religious requirements (halal or kosher meat). They cannot refuse to sell meat to any customer (as it is unlikely that they could say they **reasonably** believe it is not practicable to provide the service to that person), whether or not the customer belongs to the particular religion. But they do not have to sell meat from animals that have been slaughtered in ways that do not conform to their religious requirements, even if the way they run their business makes it more likely that people with a particular religion or belief will buy their goods.

You can also target your advertising or marketing at a group with particular protected characteristics, as long as you do not suggest you will not serve people with a particular characteristic (unless one of the exceptions applies). You can read more about advertising and marketing in Chapter 2.

## ***Separate services for men and women and single-sex services***

You are allowed to provide separate services for men and women where providing a combined service (in other words one where men and women had exactly the same service) would not be as effective. You are also allowed to provide separate services for men and women in different ways or to a different level where:

- providing a combined service would not be as effective, and
- it would not be **reasonably** practicable to provide the service except in the different ways or to the different level.

In each case, you need to be able to **objectively justify** what you are doing.

You are allowed to provide single-sex services (services just for men or just for women) where this is objectively justified and:

- only men or only women require the service, or
- there is joint provision for both sexes but that is not enough on its own, or
- if the service were provided for men and women jointly, it would not be as effective and it is not **reasonably** practicable to provide separate services for each sex, or
- the services are provided in a hospital or other place where users need special attention (or in parts of such an establishment), or
- they may be used by more than one person and a woman might object to the presence of a man (or vice versa), or
- they may involve physical contact between a user and someone else and that other person may **reasonably** object if the user is of the opposite sex.

For example:

- At a commercial gym and swimming pool, women-only swimming sessions could be provided as well as mixed sessions.
- Separate services for men and women could be provided by a beauty therapist where intimate personal health or hygiene is involved.
- A healthcare provider can offer services only to men or only to women, such as particular types of health screening for conditions that only affect men or only affect women.

A business which is providing separate services or single-sex services must not exclude a **transsexual person** from the services appropriate to the sex in which the transsexual person presents (as opposed to the physical sex they were born with) unless it can **objectively justify** this, taking into account the needs and wishes of everyone involved. Different treatment in this situation will rarely be justified. You and your staff should take care to avoid a decision based on ignorance or prejudice, as this may lead to unlawful discrimination.

## **Health and safety for pregnant women**

You can refuse to provide a service to a pregnant woman, or set conditions on the service, because you **reasonably** believe that providing the service in the usual way would create a risk to the woman's health or safety, and you would do the same thing in relation to a person with a different physical condition.

For example:

- The owner of a fairground bumper-car ride displays a notice which states that the ride is unsuitable for people with back injuries. When they also refuse to allow a pregnant woman to go on the ride, this is likely to be allowed because of this exception.
- A beauty therapist refuses a particular treatment to a pregnant woman which they would also refuse to someone who had a heart condition. This is likely to be allowed because of this exception.

## Equality good practice: what you can do if you want to do more than equality law requires

Equality good practice can win you new customers or clients, or help you to keep existing ones, because you are showing that you aim to treat everyone well. It can also help you to avoid court claims, because you have shown that you have done everything you could be expected to do to make sure unlawful discrimination does not happen.

This guide tells you what equality law says you must and must not do to avoid unlawful discrimination.

If you want to be sure you are doing this, it is a good idea to:

- use an **equality policy** to help you check that you have thought about equality in the way you plan what you do and how you do it
- give **equality training** to everyone in your business who deals with customers or clients, to make sure they know the right and wrong ways to behave.

You may want to target people with a particular protected characteristic through **positive action** if they are currently missing out on your services. To do this, you must show that people with a particular protected characteristic have a different need or a track record of disadvantage or low participation in an activity.

## Particular types of business

The next part of this guide gives examples of particular issues that may affect:

- businesses selling goods, such as shops and petrol stations
- banks and other financial services providers
- builders, other trades people and companies providing similar services
- estate agents, letting agents and property management companies
- gyms, health clubs and sporting activity providers
- hairdressers, barbers and beauty salons
- hotels, restaurants, cafés and pubs
- theatres and other entertainment venues
- designers and manufacturers of goods – who are only covered in specific circumstances.

If your business is not in this list, it does not mean that equality law does not apply to you. Read this guide and work out how to apply what it says to your business. It will help you not only to avoid unlawful discrimination, but will often mean you provide a better service to a wide range of customers.

### ***Businesses selling products, such as shops and petrol stations***

Equality law applies to every business that provides goods, facilities or services to the public or a section of the public.

This includes any business, large or small, that is selling goods. This could be anything from somebody who sells cosmetics door-to-door through to a large supermarket or electrical retailer.

It also includes you if you sell something alongside another service, for example, you are a garage that sells cars as well as servicing cars for customers.

It doesn't matter whether your service is free, for example, a stall handing out free newspapers, or whether it must be paid for – it will still be covered by equality law.

## Possible issues for your business

First, use the information earlier in this chapter to make sure you know what equality law says you must do as a business providing goods, facilities or services to the public.

Also look at:

Delivering services: staff, places, advertisements and marketing, written materials, websites, telephone services and call centres.

## Reasonable adjustments to remove barriers for disabled people

For many shops, especially small shops, the biggest question will be what reasonable adjustments they need to make to make sure that disabled people who want to buy from them are able to.

What is reasonable will depend, among other considerations, on the size and nature of your business. Just because you cannot do everything does not mean it is all right to do nothing. You must think about what it is reasonable for you to change so that disabled people with a range of different impairments are able to buy your goods.

This might include changes to the **physical features** of your premises for people who have a mobility impairment or a visual impairment, and thinking about how you (and your staff, if you have any) communicate with people.

Because the adjustments and what is reasonable for a business to do depend on the circumstances, the following are examples, not an exhaustive list.

Even if a business can't afford things like a permanent ramp and automatic doors, or is refused planning permission (and considerations like these may be factors in deciding if an adjustment is reasonable for you to make), it could, for example:

- Keep a temporary ramp just inside the door; install a simple doorbell next to the door and put a typed notice in the shop window next to the bell saying 'if you require assistance, please ring this bell' and put other notices up on the front of the counter offering assistance.
- Explain to all staff the duty to make reasonable adjustments (a note about what this means could be kept behind the till). For example, greeting customers if staff notice they have a visual impairment and offering assistance, and being ready to open the door/set up the ramp for anyone who rings the bell.

- Spend a small amount of money on a portable induction loop (which is usually contained in a small box) to make it easier for customers who use hearing aids to hear what is said to them, and make sure staff keep the loop switched on and on the counter but know they can pick it up if they need to go with a customer to the shelves. Putting a notice about the loop on the door could mean winning extra customers.
- Make its entrance a different colour from the surrounding shop front.
- Designate any parking spaces close to the shop entrance as for disabled customers and make sure that non-disabled customers are challenged if they park in them.
- Move display units at the entrance of a small shop which otherwise stop wheelchair users entering, provided the units could go somewhere else without any significant loss of selling space.
- Take special orders for items for disabled customers if the business would take them for non-disabled customers.

For example:

A disabled customer who has a visual impairment wishes to buy a large-print edition of a book from a bookshop. The bookshop does not stock large-print books (nor does equality law say it has to). However, the disabled customer asks the bookshop to order a large-print copy of the book. If the bookshop would usually take special orders from non-disabled customers, a refusal to accept the disabled customer's order is likely to be unlawful.

These are all examples of the right sort of approach to take.



Even if your shop is small, it is unlikely to be all right to refuse to serve a disabled person, for example, by saying that a nearby larger shop can offer them a better service. However, depending on the nature and size of your business and the type of goods you sell, it may be possible for a reasonable adjustment to be made to change how you interact with the customer.

For example:

- If a shop cannot provide a fitting room suitable for a wheelchair user, it could ask a customer to buy the clothes to try them on at home but make it clear that it will refund their money without question if they decide to return the clothes within a certain period, whereas usually only faulty goods could be returned.
- In some circumstances, it may be acceptable for a shop to take goods out to a customer in the street, but this will very much depend on the nature of the business and if there are any alternative ways round the shop's lack of accessibility, such as taking goods to a customer's home for them to look at and make a choice. It would not be acceptable where a customer was expected to provide any personal information which other people could overhear, if this is not something a non-disabled customer has to put up with, or if doing this involved any loss of dignity, for example, expecting someone to make a choice of underwear in the street. So do not assume that this is a possible reasonable adjustment for your shop and its staff.

Petrol stations must make reasonable adjustments too.

For example:

At a petrol station, the manager decides that an assistant will help disabled people use the petrol pumps on request. It places a prominent notice at the pumps advertising this and a bell to ring. All new staff are told what they have to do if the bell rings: go out to the pump to serve the customer, and deal with payment. A further step could be to offer to fetch any other goods that the customer wants from the shop. In this situation, staff training and attitudes are just as important as providing the bell. The reasonable adjustment will not have been properly put in place if the assistant fails to respond to the bell, delays for a long time, or is rude to the customer in carrying out the transaction because they resent the extra effort.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4 including how to work out what is reasonable

## ***Banks and other financial services providers***

Equality law applies to financial services providers, including banks, insurance companies, building societies, credit card companies, loan companies, hire purchase companies and credit unions.

### **Possible issues for your business**

You must not **discriminate unlawfully** because of a **protected characteristic** when giving or refusing people access to financial services such as bank accounts, overdrafts, credit and debit cards, loans, mortgages and hire purchase agreements.

If you provide insurance, pensions or annuities, there are some differences in relation to disability, sex, gender reassignment and pregnancy and maternity. If you can meet a number of strict conditions, which are explained in detail in this guide, it may be possible for you to take these protected characteristics into account when making decisions, for example when setting premiums and benefits.

### **How people are treated when they use or want to use your services**

First, use the information earlier in this chapter to make sure you know what equality law says you must do as a business providing goods, facilities or services to the public.

Also look at:

Delivering services: staff, places, advertisements and marketing, written materials, websites, telephone services and call centres

Remember, it doesn't matter whether the service is free, for example, when a member of staff gives information to a customer, or whether it must be paid for – it will still be covered by equality law.

It is important to avoid making assumptions about people that may lead to discrimination because of a protected characteristic.

For example:

- A mortgage provider only gives mortgages to people who work full time, assuming that part-time workers won't be reliable at making payments. Although this condition would apply to both sexes, it is likely to adversely affect more women than men since more women work part time. The mortgage provider would have to **objectively justify** the condition to avoid its being **indirect discrimination**. The right sort of approach is to look at the person's income or employment history, not their full- or part-time working status.
- A disabled person who is a long-term patient in a psychiatric hospital wishes to open a bank account. The bank incorrectly assumes that because she is in a hospital she cannot manage her affairs. It refuses to open an account unless it is provided with an enduring power of attorney. The bank continues with its refusal despite being provided with good evidence that the person has full capacity to manage her own affairs. This is the wrong approach. It is probably **direct discrimination** because of disability. A better approach is to accept the evidence that has been given.
- A transsexual woman is questioned very closely with extra security questions whenever she uses telephone banking services because the pitch of her voice is low. This would probably count as providing a service on worse terms. A better approach would be for the bank to train its staff not to make judgments about the identity of customers based on what they sound like.

It is important to avoid discrimination in the way in which records are kept and changes are made to people's personal information.

For example:

A transsexual woman is asked for a **Gender Recognition Certificate** (GRC) when she supplies supporting documentation of her new name and asks to have her records changed. It is not necessary for her to have a GRC to have the protected characteristic of gender reassignment. If the bank asks her for more proof than it would ask someone else who changed their name for another reason, this may amount to direct discrimination.

If you are a financial service provider, you need to think particularly about different communication needs that disabled people may have, and how to combine meeting these needs with the requirement of confidentiality. Depending on the circumstances, meeting people's needs in this way may be a **reasonable adjustment**. You can read more about making reasonable adjustments to remove barriers for disabled people at in Chapter 4.

For example:

- A bank has a policy not to accept calls from customers through a third party. This could amount to indirect discrimination against a disabled person with a learning disability who may use a support worker to call the bank. The right sort of approach is to make sure the customer's records show anyone who deals with them that they may be communicating using a support worker. This is also likely to be a reasonable adjustment.
- A credit union provides information on an audio CD about its services. A customer with a visual impairment can use the CD at home to decide whether to open an account. This is an example of the right sort of approach, where the credit union is making a reasonable adjustment.
- A person with a hearing impairment who lip-reads as her main form of communication wants a secured loan from a bank. In the initial stages, it might be reasonable for the bank to communicate with her by providing printed literature or information displayed on a computer screen. However, before a secured loan agreement is signed, this particular bank usually gives a borrower an oral explanation of its contents to make sure that the customer understands the implications of what they are agreeing to. At that stage it is likely to be the right thing for the bank to arrange for a qualified lip-speaker to be present (with the customer's consent) so that any complex aspects of the agreement can be fully explained and communicated.
- An independent financial adviser insists that a disabled person with a learning disability brings a relative with them to an appointment to carry out a financial review, despite the disabled person not wishing to do this. This may result in a breach of confidentiality for the disabled person, and would therefore probably be providing a service on worse terms. A better approach is for the financial adviser to find an independent advocacy service to support them, which may also (depending on the circumstances) be a reasonable adjustment.

## Insurance

Insurance and similar financial products involving the assessment of risk include annuities, life insurance, buildings and contents insurance, accident insurance, travel insurance, payment protection insurance, mortgage protection insurance, health insurance and critical illness cover.

In general, an insurance provider must not discriminate against a person because of a protected characteristic in relation to providing them with insurance products or in the terms of the products themselves, for example, premiums and benefits.

Ways in which you must not discriminate as an insurance provider because of a protected characteristic include:

- Not charging a higher premium to people with a protected characteristic or giving them lower benefits or refusing them insurance altogether, either just because of the protected characteristic or because you apply a condition to the policy which has a worse impact on people with that protected characteristic and you cannot **objectively justify** this.

Some exceptions may apply to disability, sex, gender reassignment and pregnancy and maternity (see below). No exceptions apply to the other protected characteristics: race, religion or belief, and sexual orientation.

For example:

An insurance company always refuses insurance to people who give as their address council-run caravan sites designated for use by Gypsies and Travellers. A Gypsy applies to insure their caravan which is kept on one of these sites. The insurer refuses the policy. Unless the insurer can **objectively justify** this decision, this may be indirect discrimination because of race.

- Not asking some people to produce more evidence or a different type of evidence to support an insurance claim, if this is because of a protected characteristic.

For example:

A long-term UK resident who has a UK driving licence but who the insurance company's records show was born outside the UK (in other words, they have a different national origin) is asked for additional proof of identity when they make a claim on their car insurance, whereas people who were born in the UK are only asked for their driving licence.

If an insurance company insisted that a man applying for life insurance takes an HIV test before they will give him life insurance because his application form discloses that he is gay by referring to his male partner, this would almost certainly be direct discrimination because of sexual orientation.

However, it may be necessary to ask for more evidence relating to a protected characteristic where this is relevant to the claim, for example, a claim against health insurance (which may relate to a person's disability) could require medical evidence.

### ***Existing contracts***

In relation to **insurance business**, contracts entered into before 1 October 2010 do not have to be changed unless they are renewed or reviewed after that date. If they are renewed or reviewed, they may need to be changed to bring them into line with the Equality Act 2010 so that they do not discriminate because of a protected characteristic except in line with the exceptions for disability, sex, gender reassignment, or pregnancy and maternity.

For example:

An existing life insurance policy which was taken out in 1989, and has not been subsequently renewed or reviewed, continues to be lawful and does not have to be altered to comply with equality law. If it is renewed after 1 October 2010, the policy must be altered if it would otherwise discriminate because of any of the protected characteristics except in line with the exceptions for disability, sex, gender reassignment and pregnancy or maternity listed below.

## ***Taking certain protected characteristics into account***

It may sometimes be possible for an insurance business provider to refuse cover to someone or offer cover on different terms because of disability, sex, gender reassignment, or pregnancy and maternity.

As an insurance business provider, if you want to do this, you must be able to show that there is a difference in risk associated with one of these protected characteristics.

Slightly different tests apply for different protected characteristics.

### ***Disability***

Providers of 'insurance business' can only justify treating disabled people (including people with a **past disability**) differently when providing them with insurance if:

- the different treatment is by reference to relevant information from a source on which it is **reasonable** for you to rely, and
- it is **reasonable** for you to treat the person differently.

This means it is important to have relevant information from a reliable source when making decisions about offering insurance services to a disabled person. Using untested assumptions, stereotypes or generalisations can lead to **unlawful discrimination**.

For example:

- Someone who was previously a disabled person because of a mental health condition is charged a higher premium for travel insurance because of a blanket exclusion policy, even though they have not had any recurrence of their condition for many years. The insurer does not have any information that the person's past condition involves a particular risk now. It is unlikely the insurer will be able to show that the different treatment is based on relevant information from a source on which it is **reasonable** to rely, and that it is **reasonable** to treat the person differently because of their past disability. Unless it can demonstrate this, the insurer must not charge higher premiums or refuse them insurance altogether.
- A disabled person being treated for cancer applies for a life insurance policy. The insurance provider refuses the application on the basis of a medical report from the person's doctor, which makes it clear that the prognosis is as yet far from certain. This decision is based on relevant information from a source on which it is likely to be **reasonable** to rely and it is also likely to be **reasonable** to treat the disabled person differently because of it.

## ***Sex, gender reassignment, pregnancy and maternity***

If you are an insurance provider, you can justify treating:

- men and women
- transsexual people
- women because of their pregnancy whether that is current or past
- women who have given birth in the last 26 weeks

differently in relation to an annuity, life insurance policy, accident insurance policy or similar matter involving the assessment of risk if:

- the different treatment is done by reference to actuarial or other data on which it is **reasonable** for you to rely, and
- it is **reasonable** to treat people differently.

For contracts of insurance or related financial services entered into on or after 6 April 2008, including new contracts for which you are assessing the risk now, the different treatment because of a person's sex, gender reassignment, pregnancy, or having given birth in the last 26 weeks is only allowed in relation to premiums and benefits if:

- the use of that protected characteristic as a factor in the assessment of risk is based on relevant and accurate data compiled, published and updated by the insurance industry in line with Treasury guidance, and
- the differences are proportionate having regard to the data.

For example:

- Male drivers may be charged higher motor insurance premiums if there is relevant and accurate data compiled, published and updated in line with Treasury guidance to show that sex is a factor in the assessment of the risk (in this case, that their use of the vehicle will lead to a claim or that their claims will be more expensive), and the difference in premium is proportionate to the extra risk.
- Women may receive lower benefits from an annuity than a man paying the same premium if there is relevant and accurate data compiled, published and updated in line with Treasury guidance to show sex is a factor in the assessment of risk (in this case that the annuity will go on paying out for longer because they are likely to live longer than a man); the difference in benefits must be proportionate.



In relation to gender reassignment:

- Where a transsexual person has a **Gender Recognition Certificate** (GRC), the insurance industry accepts the gender disclosed at point of application is that stated in the GRC.
- It is not necessary to have a GRC to have the protected characteristic of gender reassignment. Where a transsexual person has not obtained a GRC but has been living in a gender other than the one they were assigned at birth, including changing their name and bank account details, the insurance industry will accept in good faith the acquired gender to be disclosed when the individual applies for insurance.

For example:

- An insurer provides an annuity to a transsexual women, paid at a higher rate than it does to a non transsexual woman, because they are taking into account the woman's birth gender, this is not likely to be legal, because the insurer must provide the same benefit to all women, whether transsexual or not, unless they have data or evidence specific to transsexual women upon which they are basing their annuity prices.
- A transsexual man wishes to buy car insurance, he does not have a GRC, but presents as a man, and has a driving licence in his male gender. The insurance company prices his policy of the basis of being a man, this is likely to be legal as the insurance company is accepting the man's statement of his gender in good faith.

For contracts entered into *before* 6 April 2008, the test is slightly different: the different treatment must be reasonable in the light of actuarial or other reliable data; there is no requirement for it to be compiled, published and updated in line with Treasury guidance. See website: [http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/d/consult\\_insurance070308.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/d/consult_insurance070308.pdf)

For contracts entered into on or *after* 22 December 2008, the differences must not relate to a woman's pregnancy (whether that is current or past) or to her having given birth within the previous 26 weeks.

## Financial services provided by an employer as part of an employment package

If insurance or a group personal pension is provided by an **employer** as part of an employment package, the employer rather than the financial services provider must avoid unlawful discrimination because of a protected characteristic.

There are also particular rules about occupational pensions provided by employers, which are treated as part of an employee's pay.

You can find more information about both these situations in the Equality and Human Rights Commission guide *What equality law means for you as an employer: pay and benefits*.

### Age

The law does not yet require **service providers** not to discriminate against people because of their age or the age group they belong to, although service providers may wish to avoid harmful age discrimination as a matter of good practice.

Protection against harmful age discrimination outside the workplace including in relation to financial services may be introduced in the future.

If this happens, this guide will be updated.

## ***Builders, other trades people and companies providing similar services***

Equality law applies to any business that provides goods, facilities or services to members of the public. This includes local trades people like builders, plumbers, locksmiths, electricians and gardeners.

It also includes larger companies who may specialise in particular areas of building work like heating engineering, replacement windows, loft conversions, conservatories and extensions.

It doesn't matter whether the service is free, for example, information about services which is provided at no charge, or whether it must be paid for – it will still be covered by equality law.

## Possible issues for your business

First, use the information earlier in this chapter to make sure you know what equality law says you must do as a business providing goods, facilities or services to the public.

When you run a business like this, you will often have access to people's homes. This means you may have knowledge about a client's or customer's **protected characteristics** which you would not have without this access. It is important you do not use your knowledge in a way that puts your client or customer at a disadvantage, such as by breaching client confidentiality, if this would count as providing them with a worse service or on worse terms.

For example:

A plumber works on a radiator in a client's main bedroom and notices from clothing and toiletries that they are clearly in a same-sex relationship. The plumber tells their work colleagues, to the extent that the next time someone different arrives to work on the heating system, they treat the client in a hostile way. The first plumber would not have spoken about an opposite sex couple's living arrangements in the same way and it has led to the client receiving the service on worse terms, so what they have done may be unlawful discrimination because of sexual orientation. The right sort of approach is for the plumber to avoid commenting on the client's personal circumstances where these relate to a protected characteristic, and to respect client confidentiality in the same way that they would, for example, in relation to the security arrangements at a person's home.

You need to think particularly about different communication needs that disabled people may have. A failure to communicate or understand an instruction may lead to very expensive or dangerous mistakes. Depending on the circumstances, meeting people's needs in this way may be a **reasonable adjustment**. You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4.

For example:

- A builder usually provides a written quotation before starting work. Instead, a disabled client who is visually impaired asks the builder to go through the quotation in detail while the client makes notes on their computer as a record for themselves of the quotation. Holding this meeting is likely to be a reasonable adjustment and, if so, this is an example of the right approach.
- A heating repair company installs an SMS alert system for customers needing emergency repairs to their heating systems. They do this so that their existing and potential deaf customers are able to benefit from their services as easily as other customers. This is an example of the right sort of thing to do.

## ***Estate agents, letting agents and property management companies***

Equality law applies to any business that provides goods, facilities or services to members of the public. This includes estate agents, letting agents and property management companies.

It doesn't matter whether the service is free, for example, information about properties which is provided at no charge, or whether it must be paid for – it will still be covered by equality law.

### **Possible issues for your business**

First, use the information earlier in this chapter to make sure you know what equality law says you must do as a business providing goods, facilities or services to the public.

Other issues you need to consider are:

- access to confidential information about a client's **protected characteristics**
- **reasonable adjustments** to remove barriers for disabled people
- instructions to discriminate
- managing premises.

## Access to confidential information about a client's protected characteristics

When you run an estate agents or similar business, you will have often have access to people's homes. This means you may have knowledge about a client's or customer's protected characteristics which you would not have without this access. It is important you do not use your knowledge in a way that puts your client or customer at a disadvantage, such as by breaching client confidentiality, if this would count as providing them with a worse service or the same service on worse terms.

For example:

An estate agent visits a client's home to draw up the property details so the house can be put on the market. From letters about medical appointments pinned on a notice board, the estate agent becomes aware that the client is a disabled person who has multiple sclerosis. The estate agent mentions this to a colleague and when the client next contacts the office, the colleague takes the call and asks about their symptoms, which makes the client feel upset that their privacy has been invaded. Even though the colleague did not mean any harm, the client is receiving the service on worse terms than a non-disabled person who would not have been treated in this way and it is therefore possible that this is **unlawful discrimination because of disability**. The right sort of approach is for the estate agent to avoid commenting on the client's personal circumstances where these relate to a protected characteristic, and avoiding this sort of breach of client confidentiality.

## Reasonable adjustments to remove barriers for disabled people

When you are acting for clients in letting and selling property, you need to think particularly about different communication and accessibility needs that disabled people may have. Depending on the circumstances, meeting people's needs in this way may be a reasonable adjustment. You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4.

For example:

- An estate agent checks with potential purchasers how they would like to receive property particulars. This gives an opportunity for disabled people with a visual impairment who require them to be sent as word processing files by email to request this. Providing the chance to request the information in a particular format and then sending the information in that format are examples of reasonable adjustments the estate agent has made.
- A letting agent works out of a first floor office without a lift. The agent's marketing material makes it clear that they will make home visits to potential clients who have a mobility impairment who would not otherwise be able to access their services. The letting agent has made a reasonable adjustment.

## Instructions to discriminate

As well as not unlawfully discriminating against a client yourself, you must not accept an **instruction to discriminate** from a property seller or landlord.

If you accept an instruction from a property seller or landlord to discriminate in disposing of housing premises (which includes letting or selling), this would be against equality law, and the person could bring a legal claim against you.

For example:

- A landlord asks a letting agent to say that their flat to let has been taken if a lesbian or gay couple ask about renting it. If the letting agent agrees, they would be just as liable as the landlord for direct discrimination because of sexual orientation.
- A property seller asks an estate agent to say that the asking price of a property has gone up if a person of a particular national or ethnic origin expresses interest in viewing the property. If the estate agent agrees, this would almost certainly be direct discrimination because of race, and both the property owner and the estate agent could be taken to court by the would-be buyer.

## Managing premises

If you are managing premises as part of your business, whether those are residential or commercial premises, you must not unlawfully discriminate against, harass or victimise someone who occupies the property in the way you allow the person to use a benefit or facility associated with the property, by evicting the person or by otherwise treating them unfavourably.

For example:

- A property management company manages and controls a residential block of flats on behalf of the landlord-owner. The block has a basement swimming pool and a communal garden for use by the tenants. A disabled tenant with a severe disfigurement is told by the company that they can only use the swimming pool at restricted times because other tenants feel uncomfortable in their presence. This would almost certainly be direct discrimination because of disability and/or discrimination arising from disability.
- A property management company refuses to allow a lesbian tenant to use facilities which are available to other tenants, or deliberately neglects to inform her about facilities which are available for the use of other tenants, because she had previously made a claim of discrimination against the manager. This would almost certainly be victimisation.
- A property management company responds to requests for maintenance issues more slowly or less favourably for one tenant than similar requests from other tenants, because the tenant has a learning disability. This would almost certainly be direct discrimination because of disability in the management of premises.

You may in some circumstances be required to make reasonable adjustments to the premises you manage or the way you manage them to remove barriers for disabled people. You can read more about making reasonable adjustments in Chapter 4.

## ***Gyms, health clubs and sporting activity providers***

Equality law applies to any business that provides goods, facilities or services to members of the public.

This includes sport and leisure related services, such as:

- leisure centres
- swimming pools
- tennis clubs and tennis courts
- golf clubs
- rugby, cricket and football clubs
- ice rinks
- riding schools and equestrian centres
- gyms
- health and fitness clubs
- rowing and sailing clubs
- adventure centres
- sporting venues.

It doesn't matter whether the service is free, for example, free swimming sessions in a swimming pool run on behalf of a local authority, or whether it must be paid for – it will still be covered by equality law.

### **Are you an association or a service provider?**

Even though you may describe yourself as a 'club' (and many clubs are, in equality law, **associations**), you are really a service provider if you are offering a service to any member of the public, for example, by:

- charging them an entry fee to watch an activity
- allowing anyone to join your leisure club provided they pay for the service

even if the charge is described as a membership fee or if the service is free. If, for example, you allow a person to have a free trial session, you are still providing them with a service.



If you are not sure whether you are a service provider or an association, then ask yourself:

- Do you have more than 25 members and is membership regulated by rules – for example, do all the members have to decide who becomes a new member?

If the answer to this is 'yes', then you should read the guide on associations instead.

It is possible to be both an association and a service provider.

For example:

A private golf club with rules regulating membership will be an association when it is dealing with its members and their guests, but a service provider if it opens its golf course, café and shop to members of the public on certain days of the week or when spectators attend to watch club competitions. If someone does not have to be a club member to take part in a competition, then the golf club is also providing competitors with a service.

If you are both an association and a service provider, the question you need to think about is whether your services are provided to the public or to your **members, associate members** and their **guests** or people who want to become members or guests.

If it is the public, then this is the right guide for you to read.

If it is your members or their guests or people who want to become members or guests, you should read the guide on associations instead.

## **Possible issues for your business**

First, use the information earlier in this chapter to make sure you know what equality law says you must do as a business providing goods, facilities or services to the public.

Particular issues for you to think about are:

- whether, if you want to, you can provide separate services for men and women or a service for only men or only women
- access to changing rooms and other facilities
- what you say about what people can or must wear to take part in your activities
- whether you can put conditions on who takes part in your activities, based on people's **protected characteristics**.

## Providing separate services for men and women or a single-sex service for only men or only women

If you want to provide **separate services** for men and women or a **single-sex service** for men or women only, then you need to be able to **objectively justify** providing your service in this way. You must meet other conditions as well, such as showing that a joint service would be less effective, or that men's needs and women's needs are different.

For example:

A gym restricts access to its small sauna to men at some times and women at other times. Each sex has access to a mixture of daytime and evening use. At the times when the opposite sex is excluded, the gym is providing a single-sex service for the sex which is allowed to use the sauna. The gym believes the restriction is **objectively justified** and can also show that the sauna may be used by more than one person and a woman might object to the presence of a man (or vice versa). It is likely that the provision of the service in this way will come within the exception.

## Access to changing rooms and other facilities

You may need to make **reasonable adjustments** to make sure that disabled people are able to change in the same privacy and comfort as non-disabled people.

For example:

The changing facilities in a women-only gym are located in a room that is only accessible by stairs. The gym owner suggests to disabled users of the gym with mobility impairments that they can change in a corner of the gym itself. This is unlikely to be a reasonable alternative method of making the service available, since it may significantly infringe upon people's dignity. However, providing an alternative private room to change in may be a reasonable adjustment.

You must also avoid discriminating against transsexual people. Treat a transsexual person as belonging to the sex in which the transsexual person presents (as opposed to the physical sex they were born with) unless you can **objectively justify** treating them differently, taking into account the needs and wishes of everyone involved. Different treatment in this situation will rarely be justified.

## What you say about what people can or must wear to take part in your activities

Obviously, sometimes you will require specialist or safety clothing or equipment to be worn by participants in your activities. If you make this a condition of participating in your activities, and a person says that they cannot comply with the condition because of a protected characteristic, and can show that the condition has a disproportionate impact on people who share that characteristic, you will need to **objectively justify** the condition you have put in place.

For example:

A riding stables says that all riders must wear a riding hat or helmet which meets a particular safety standard. This is because the approved helmet protects riders from serious head injury in the event of a fall. The riding stable refuses to exempt someone who usually keeps their head covered with a particular type of head covering for religious reasons. Provided the stables can **objectively justify** the refusal, this will not be **unlawful indirect discrimination** because of religion or belief, even though the requirement has a worse impact on the individual and others who share their protected characteristic.

If it is necessary to change what a disabled person wears to take part in your activities, you need to consider whether making this change amounts to a reasonable adjustment. You can read more about reasonable adjustments in Chapter 4.

## Whether you can put conditions on who takes part in your activities, based on people's protected characteristics

- **Health and safety and disabled people:** Make sure that any action taken in relation to health or safety is proportionate to the risk. Disabled people are entitled to make the same choices and to take the same risks within the same limits as other people. Health and safety law does not require you as a service provider to remove all conceivable risk, but to ensure that risk is properly appreciated, understood and managed. Don't make assumptions; instead, assess the person's situation, and consider reasonable adjustments to reduce any risks, your duty not to discriminate and, where appropriate, the disabled person's own views. There must be a balance between protecting against the risk and restricting disabled people from access to services.

- **Health and safety and pregnancy:** A service provider can refuse to provide a service to a pregnant woman, or set conditions on the service, because they **reasonably** believe that providing the service in the usual way would create a risk to the woman's health or safety, and they would do the same thing in relation to a person with a different physical condition.

For example:

A gym restricts pregnant women's access to its steam room because it has advice from its trade association that pregnant women may be at risk from the high temperatures. It also restricts access to the steam room for people with high blood pressure and heart conditions. This is likely to come within the exception.

- **Separate sporting competitions:** Separate sporting competitions can be organised for men and women where:
  - physical strength, stamina or physique are major factors in determining success or failure, and
  - one sex is generally at a disadvantage in comparison with the other.

Separate competition for girls and boys may or may not be allowed, depending on the age and stage of development of the children who will be competing. At some ages and in some sports, it is not possible to say that boys and girls have significant differences of physical strength or stamina or that one sex is at a disadvantage in comparison with the other. Only if it is possible to say this will separate competitions be allowed.

You must not restrict the participation of a transsexual person in such competitions unless this is strictly necessary to uphold fair or safe competition, but not otherwise. In other words, treat a transsexual person as belonging to the sex in which they present (as opposed to the physical sex they were born with) unless there is evidence that they have an unfair advantage or there would be a risk to the safety of competitors which might occur in some close contact sports.

Sports teams can continue to select on the basis of nationality, place of birth or residence if the competitor or team is representing a country, place, area or related association or because of the rules of the competition.

## ***Hairdressers, barbers and beauty salons***

Equality law applies to any business that provides goods, facilities or services to members of the public.

This includes hairdressers, barbers, beauty salons, spas and manicure services among others. This ranges from sole traders who visit people in their own homes to large national chains.

It doesn't matter whether the service is free, for example, a free haircut provided to people willing to be models, or whether it must be paid for – it will still be covered by equality law.

### **Possible issues for your business**

First, use the information earlier in this chapter to make sure you know what equality law says you must do as a business providing goods, facilities or services to the public.

Particular issues for you to think about are:

- whether, if you want to, you can provide targeted services, or separate services for men and women, or a service for only men or only women
- access to washbasins, changing rooms, treatment rooms and other facilities
- whether you can put conditions on who uses your services, based on people's **protected characteristics**.

## *Providing targeted services or separate services for men and women or a single-sex service for only men or only women*

### **Targeted services**

If a service is generally provided only for people with a shared protected characteristic (such as men or women or people of a particular ethnic group) then you can provide a limited service or refuse to provide the service to someone who does not share that protected characteristic if you **reasonably** believe it would not be **practicable** to provide the service to that person.

For example:

A hairdresser specialises in cutting and styling hair for women of Black Caribbean ethnic origin. Equality law does not force the hairdresser to cut and style men's hair, nor does it mean they have to cut and style hair for people of other ethnic origin. However, if the hairdresser is asked to cut or style other people's hair in a way that they would provide to a Black Caribbean woman, such as braiding, the hairdresser should do this unless they think it would not be practicable for them to do so, for example, because of the length or nature of the person's hair.

You can also target your advertising or marketing at a group with particular protected characteristics, so long as you do not suggest you will not serve people with a particular characteristic (unless one of the exceptions applies). You can read more about advertising and marketing in Chapter 2.

## Separate services for men and women or a single-sex service for only men or only women

If you run a beauty-related business and want to provide separate services for men and women or a single-sex service for men or women only, then you need to be able to **objectively justify** providing your service in this way. You must meet other conditions as well, such as that a joint service would be less effective, or that men's needs and women's needs are different.

For example:

A beauty therapist who operates on her own and provides massages in clients' own homes only provides this service to women. She believes the restriction is **objectively justified** and it also involves physical contact between the client and herself, which is something she has a **reasonable** objection to. It is likely that the provision of the service in this way will come within the exception.

## Access to washbasins, treatment rooms, and other facilities

You need to consider what **reasonable adjustments** are needed to remove barriers to disabled people in using your services. This is not necessarily about **physical features** at your premises; you could adapt the way you provide your services.

For example:

A beauty salon usually carries out a facial for clients by asking them to lie on a high bed in a treatment room. A client who is a disabled person with a mobility impairment would not be able to get up onto the high bed. The salon decides that it will consider alternative ways of carrying out its services as a reasonable adjustment, such as carrying out the facial for a client sitting in a chair or lying on a lower couch if this is available. It advertises on its marketing material that it will make reasonable adjustments for disabled people, showing that it has thought in advance about the need for reasonable adjustments, rather than waiting for an individual client to ask to access the service.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4.

You must also avoid discriminating against transsexual people in accessing your services or using your facilities. Treat a transsexual person as belonging to the sex in which the transsexual person presents (as opposed to the physical sex they were born with) unless you can **objectively justify** treating them differently, taking into account the needs and wishes of everyone involved. Different treatment in this situation will rarely be justified. Make sure you and your staff take care to avoid a decision based on ignorance or prejudice, as this may lead to unlawful discrimination.

## **Whether you can put conditions on who uses your services, based on people's protected characteristics**

- **Health and safety and disabled people:** Make sure that any action taken in relation to health or safety is proportionate to the risk. Disabled people are entitled to make the same choices and to take the same risks within the same limits as other people. Health and safety law does not require you as a **service provider** to remove all conceivable risk, but to ensure that risk is properly appreciated, understood and managed. Don't make assumptions; instead, assess the person's situation, and consider reasonable adjustments to reduce any risks, your duty not to discriminate and, where appropriate, the disabled person's own views. There must be a balance between protecting against the risk and restricting disabled people from access to services.

For example:

A spa refuses to allow disabled people who are receiving chemotherapy for cancer to have aromatherapy massages. This is because the spa owner understands there is uncertainty about the interaction of aromatherapy oils and the drugs used in chemotherapy. A disabled person who is affected by the refusal says this is indirect discrimination because it stops her and other disabled people in the same position receiving the service. Provided the spa owner can **objectively justify** the refusal, this will not be **unlawful discrimination** because of disability. However, a reasonable adjustment might be to offer a similar massage using unscented oil instead.



- **Health and safety and pregnancy:** A service provider can refuse to provide a service to a pregnant woman, or set conditions on the service, because they **reasonably** believe that providing the service in the usual way would create a risk to the woman's health or safety, and they would do the same thing in relation to a person with a different physical condition.

For example:

A beauty salon states that some of its treatments are unsuitable for pregnant women and people with high blood pressure or heart conditions. Provided it **reasonably** believes that providing these treatments would create a risk to a pregnant woman's health and safety, the refusal would probably come within this exception.

## ***Hotels, restaurants, cafés and pubs***

Equality law applies to any business that provides goods, facilities or services to members of the public.

This includes a wide range of different businesses and services. These include:

- hotels
- bed and breakfast establishments
- guest houses
- self-catering holidays
- hostels
- restaurants
- cafés
- bars and nightclubs
- public houses
- takeaway food establishments.

It doesn't matter whether the service is free, for example, a takeaway food delivery service provided at no charge, or whether it must be paid for – it will still be covered by equality law.

## Possible issues for your business

First, use the information earlier in this chapter to make sure you know what equality law says you must do as a business providing goods, facilities or services to the public.

- You may need to work out if you are an **association** (which is what equality law calls some organisations that describe themselves as clubs) or a **service provider**.
- You need to avoid **unlawful discrimination** if you set conditions on who you serve and the terms and conditions on which you serve them.
- Because your service is likely to be provided at a particular place, you need to consider **reasonable adjustments** to your premises or to the way you deliver your services.

## Are you an association or a service provider?

Even though you may describe yourself as a 'club' (and many clubs are what equality law calls **associations**), you are really a service provider if you are offering a service to any member of the public, for example, by:

- charging them an entry fee to watch an event
- allowing anyone to join your dining club provided they pay for the service

even if the charge is described as a membership fee or if the service is free.

If you are not sure whether you are a service provider or an association, then ask yourself:

- do you have 25 or more **members** and is membership regulated by rules – for example, do all the members have to decide who becomes a new member?

If the answer to that is 'yes', then you should read the guide on associations instead.

It is possible to be both an association and a service provider. For example:

A private members' club with rules regulating membership will be an association when it is dealing with its members and their guests, but a service provider if it opens its restaurant and function rooms to members of the public on certain days of the week.

If you are both an association and a service provider, the question you need to think about is whether your services are provided to the public or to your members or **associate members** and their **guests** or people who want to become members or guests.

If it is the public, then this is the right guide for you to read.

If it is your members, associate members or their guests or people who want to become members or guests, you should read the guide on associations instead.

## Deciding who to serve

If you decide who to serve and who not to serve based on a **protected characteristic**, you risk discriminating against your customers.

For example:

- A café owner must not ask a woman to leave their cafe because she is breastfeeding her baby.
- ‘Ladies’ nights’ where only women receive free drinks, ‘two-for-one’ offers or free admission are almost certainly direct sex discrimination against men. The same would be true of any other offer which was restricted to people with a particular protected characteristic, except for disability. Services should not be offered on this basis.
- A hotel or bed and breakfast cannot refuse to give a shared bedroom to a gay or lesbian couple if they give a shared bedroom to opposite sex partners. Nor could they insist on them having a twin room if they would offer a double room to opposite sex partners, and there are double rooms available.
- A pub cannot refuse to serve a customer because they are a transsexual person or with a transsexual person. Nor should the transsexual person be given a worse standard of service, for example, by allowing other customers to make hostile remarks or refusing them access to the toilets appropriate to the sex in which they present.
- A disabled person has epilepsy. The owner of a bar knows this and refuses to serve them because, he says, he is worried about other customers being disturbed if they have a seizure. This is likely to be disability discrimination and/or **discrimination arising from disability**.
- A disabled person with a learning disability wishes to book a hotel room. The hotel receptionist pretends that all rooms are taken in order to refuse their booking because of their impairment. This is likely to be unlawful disability discrimination.
- Waiting staff in a restaurant place a person with a severe facial disfigurement at a table out of sight of other customers, despite other tables being free, because they think other customers will find it embarrassing to look at the person. This is likely to be unlawful disability discrimination.

You can still tell customers what standards of behaviour you want from them.

However, sometimes how someone behaves may be linked to a protected characteristic.

If you set standards of behaviour for your customers or clients which have a worse impact on people with a particular protected characteristic than on people who do not have that characteristic, you need to make sure that you can **objectively justify** what you have done. Otherwise, it will be indirect discrimination.

If you do set standards of behaviour, you must make **reasonable adjustments** to them for disabled people and avoid **discrimination arising from disability**.

## **Reasonable adjustments to remove barriers for disabled people**

If you run a hospitality business, you will need to make sure your premises are accessible to disabled people by making reasonable adjustments. You cannot wait until a disabled person wants to use your services, but must think in advance about what people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

Reasonable adjustments are not just about physical accessibility, although this is important for some disabled people, but can be about the way in which services are offered.

For example:

A hotel's reservations system allocates rooms on a first-come, first-served basis as guests arrive and register. The effect is that on some occasions the specially refurbished rooms that it has for disabled customers are allocated to non-disabled guests, and late-arriving disabled guests cannot be accommodated in those rooms. The hotel decides to change its reservation policy so that the accessible rooms are either reserved for disabled guests in advance or are allocated last of all. This is likely to be a reasonable adjustment for the hotel to have to make.

Adjustments only have to be made if they are reasonable, taking a range of factors into account, including the nature of the business.

For example:

A nightclub with low-level lighting is very unlikely to have to adjust the lighting to accommodate customers who are partially sighted if this would fundamentally change the atmosphere or ambience of the club. This is unlikely to be a reasonable adjustment.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4.

## ***Theatres and other entertainment venues***

Equality law applies to any business that provides goods, facilities or services to members of the public.

This includes a wide range of different businesses and services. Within this, it would include lots of different entertainment venues both large and small, such as:

- theatres
- cinemas
- music venues – everything from a large opera house through to a local jazz café
- comedy clubs
- arts festivals, including music and children’s festivals.

This also applies to places that are not usually used for entertainment but have occasions when members of the public do use them for that purpose. For example, a church which holds lunchtime music recitals or an empty shop which is opened up for an arts festival.

It doesn’t matter whether the service is free, for example, a free concert, or whether it must be paid for – it will still be covered by equality law.

## Possible issues for your business

First, use the information earlier in this chapter to make sure you know what equality law says you must do as a business providing goods, facilities or services to the public.

You may need to work out if you are an **association** or a **service provider**.

Because your activities take place at a particular place, you will need to make sure a venue is accessible to disabled people by making **reasonable adjustments**. You cannot wait until a disabled person wants to use your services, but must think in advance about what people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

## Are you an association or a service provider?

Even though you may describe yourself as a 'club' (and many clubs are what equality law calls associations), you are really a service provider if you are offering a service to any member of the public, for example, by:

- charging them an entry fee to watch an event
- allowing anyone to join your jazz club provided they pay for the service

even if the charge is described as a membership fee, or if the service is free. If, for example, you allow a person to watch a concert for free, you are still providing them with a service.

If you are not sure whether you are a service provider or an association, then ask yourself:

- Are there 25 or more **members** and is membership regulated by rules – for example, do all the members have to decide who becomes a new member?

If the answer to that is 'yes', then you should read the guide on associations instead.

It is possible to be both an association and a service provider.

For example:

A private members' club with rules regulating membership will be an association when it is dealing with its members and their guests, but a service provider if it allows members of the public to attend stand-up comedy events held in its function rooms.

If you are both an association and a service provider, the question you need to think about is whether your services are provided to the public or to your members, **associate members** and their **guests** or people who want to become members or guests.

If it is the public, then this is the right guide for you to read.

If it is your members or their guests or people who want to become members or guests, you should read the guide on associations instead.

## **Reasonable adjustments to remove barriers for disabled people**

Reasonable adjustments are not just about changes to **physical features** or the addition of **auxiliary aids** such as a hearing loop, although these can be important to some disabled people. Consider providing information (such as programmes and publicity material) in **alternative formats** and offering an additional ticket for free to a disabled person who needs to bring an assistant.

If your venue is of a type that means that you need to restrict services based on health and safety considerations, make sure that any action taken in relation to health or safety is proportionate to the risk.

Disabled people are entitled to make the same choices and to take the same risks within the same limits as other people. Health and safety law does not require you as a service provider to remove all conceivable risk, but to ensure that risk is properly appreciated, understood and managed. Don't make assumptions; instead, assess the person's situation, and consider reasonable adjustments to reduce any risks, your duty not to discriminate and, where appropriate, the disabled person's own views. There must be a balance between protecting against the risk and restricting disabled people from access to services.

For example:

A cinema manager turns away a wheelchair user because they assume, without checking, that the disabled person could be in danger in the event of a fire. Although the manager genuinely believes that refusing admission to wheelchair users is necessary in order not to endanger the health or safety of either the disabled person or other cinemagoers, they have not made enquiries as to whether there are adequate means of escape (which there are). The belief is therefore unlikely to be **reasonably** held. In these circumstances, the refusal of admission is unlikely to be justified. The right approach is for the manager to check the facts and to make a decision based upon them.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4.

## **Design and manufacture of goods**

If your business is as a designer or manufacturer of goods then equality law does not cover your business operations as they relate to designing or making goods.

You do not have to make changes to your physical products, packaging or instructions.

You can also target the advertising or marketing of your products at a group with particular protected characteristics. You can read more about advertising and marketing in Chapter 2.

### **Equality good practice: what you can do if you want to do more than equality law requires**

Even though you do not have to, it can be good business sense to make goods, packaging and instructions more accessible to all potential and existing customers.

For example:

- A manufacturer of bath and skincare products puts Braille labelling on its packaging and on the plastic bottles so blind customers who read Braille can tell products apart when using them. People for whom this makes a difference are more likely to buy these products.
- A manufacturer of doorbells makes a system that incorporates a portable wireless receiver. The receiver can be carried round the home to wherever the person is at the time and it rings when the doorbell is pressed. The manufacturer decides to add a bulb to the receiver which lights up when the doorbell is pressed. This means that people with a hearing impairment will find it useful as well as anyone who is, for example, listening to music with headphones on.

There are two ways you might be covered as a **service provider**:

- If you provide information which is more than just an advertisement, you may need to supply this in **alternative formats**, if doing this would be a reasonable adjustment, which it is may be, depending on the circumstances. You can read more about making **reasonable adjustments** to remove barriers for disabled people in Chapter 4.
- If you sell or give the goods you make directly to the public, then you will be covered by equality law as if you are a shop.

So, for example, if a company sells its products by mail order, over the internet or through a factory shop, then it will have duties under equality law as a service provider.



## 2. Delivering services: staff, places, advertisements and marketing, written materials, websites, telephone services and call centres

Whether you run or work in a business, the public sector, a voluntary or community sector organisation or a club or association, the way you deliver your **services** matters.

You need to make sure that you do what equality law says you must do in relation to:

- the behaviour of staff who are dealing with **customers, clients, service users, club members, associate members** or **guests** or who are taking decisions about how you provide **goods, facilities** or **services** to the public or a section of the public
- the building or other place where you deliver your services if this is open to the public or a section of the public
- advertisements and marketing
- written materials, for example, information leaflets you provide as part of your service
- websites and internet services
- telephone access and call centres.

## Staff behaviour

How you and any staff who work for your organisation behave towards customers, clients, service users, members, associates or guests in relation to their **protected characteristics** will be at the heart of whether your organisation delivers **services** without **unlawful discrimination, harassment or victimisation** and whether it makes **reasonable adjustments** for disabled people.

### Equality good practice tip for how you and your staff should behave

Ideally, you want anyone who comes into contact with members of the public to treat everyone they come across with dignity and respect. This will help you provide good customer service (not just without unlawfully discriminating but more generally) and can make customers less likely to complain.

Tell your staff how to behave so that they do not discriminate against people because of a protected characteristic – and make sure you know what this means too. By doing this, you will reduce the risk that you will be held responsible for their behaviour.

Even if the person who has been discriminated against does not bring a legal case against your organisation, your reputation may suffer.

This does not just apply to situations where you and your staff are dealing directly with members of the public, but also to how your services are planned. This is the point at which a decision might be made, a rule might be applied or a way of doing things might be worked out which will affect how someone accesses your services. If this has a worse impact on people with a particular protected characteristic than on people who did not have that characteristic, then it will be **indirect discrimination** unless you are able to **objectively justify** the decision, rule or way of doing things.

So it is important that you and everyone who works for you knows how equality law applies to what you and they are doing.

## *How can I make sure my staff know how equality law applies to them?*

You can tell them what you expect of them. Equality law does not set out exactly how an organisation should tell staff how to behave to avoid unlawful discrimination, harassment and victimisation, so none of what follows is a legal requirement. It is a suggestion for good practice which may help you to avoid being held responsible by a court for what the people working for you have done. But it is clear that an organisation that does not bother to do this risks being held legally responsible by a court for unlawful discrimination, harassment or victimisation carried out by its staff. You can read more about when you are responsible for what other people do in Chapter 3.

Possible ways to make sure your staff know what equality law means for them are by:

- telling them when they start working for you – and checking from time to time that they remember what you told them, for example, by seeing if/how it has made a difference to how they behave. This could be a very simple checklist you talk them through, or you could give them this guide, or you could arrange for them to have **equality training**
- writing down the standards of behaviour you expect in an **equality policy**
- making sure that staff understand that they may need to be flexible about some of your organisation's policies or the way you do things if this would be a reasonable adjustment
- including a requirement about behaving in line with equality law in every worker's **terms of employment** or other contract, and making it clear that breaches of equality law will be treated as disciplinary matters or breaches of contract.

You can read more about equality training and equality policies in the list of words and key ideas at the end of this guide.

## *Using written terms of employment for employees*

Employment law says you must, as an employer, give every employee a written statement of the main terms of their employment. You could include a sentence in these written terms that requires the person working for you to meet the requirements of equality law, making it clear that a failure to do this will be a disciplinary offence.

Obviously, if you do this, it is important that you also tell the employee what it means. You could use an equality policy to do this, or you could just discuss it with them, or you could give them this guide to read. But it is important that they are clear on what equality law says they must and must not do, or you may be held responsible for what they do.

Remember, if the employee is a disabled person, it may be a reasonable adjustment to give them this information in a way that they can access or understand.

Then, if you receive a complaint claiming unlawful discrimination by a customer, client, service user, member, associate or guest, you can use the written terms to show that you have taken your responsibilities seriously.

If this happens, you should investigate what has taken place and, if appropriate, you can discipline your employee.

If you do find that an employee has unlawfully discriminated against a customer, client, service user, member, associate or guest, then look again at what you are telling your staff to make sure they know what equality law means for how they behave towards the people using your services.

You can read more about what to do if someone says they've been discriminated against in Chapter 5.

## **The building or other place where you deliver your services**

If you deliver your services at a particular place or places, such as a building or an open air venue, you must make sure that your customers, clients, service users, members, associate members or guests with a protected characteristic are not unlawfully discriminated against, harassed or victimised in accessing your premises and you must make reasonable adjustments for disabled people.

You cannot wait until a disabled person wants to use your services, but must think in advance about what people with a range of impairments might reasonably need.

You should consider every aspect of your building or other premises, including:

- how people enter
- how they find their way around
- what signs you provide
- how people communicate with staff
- information you provide
- queuing systems, if you have them
- counters and checkouts. if you have them
- accessible toilet facilities.

The way your staff behave and assist your disabled customers can make a big difference to how accessible disabled people find your building and service.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4.

### **Equality good practice: what you can do if you want to do more than equality law requires**

You may find it helpful to make one person – which may be you – responsible for checking all these issues for your organisation.

You could make this part of your **equality policy**.

You could ask a range of disabled people – for example, by contacting local disabled people's organisations – what adjustments would make it easier for them to use your services. Then you could decide if the adjustments are reasonable adjustments for you to make.

## **Advertisements and marketing**

An advertisement includes every form of advertisement or notice or marketing material, whether aimed at members of the public or a specialised audience, including:

- in a newspaper or other publication
- by television or radio
- by display of notices
- signs
- labels
- show-cards or goods
- by distribution of samples
- circulars
- catalogues
- price lists or other material
- by exhibition of pictures
- three-dimensional models or filmed material.

Most written and other material published by you is likely to count as an advertisement if its aim is to tell customers or service users about a service.

You can target advertising material at a particular group of people, including a group who share a particular **protected characteristic**.

For example:

- A mortgage company advertises a product as particularly suitable for women by advertising that borrowers can take payment holidays if they take maternity leave.
- A bar advertises in a newspaper mostly bought by lesbian or gay women and gay men.
- A barber has flyers printed only advertising haircuts and listing prices for men.
- A community organisation makes it clear on its website that the lunch club it runs is aimed at people from a particular ethnic background.
- A sporting club advertises that particular sessions are targeted at introducing disabled people to its sport.

But, unless your services are covered by one of the exceptions to equality law, your advertisement must not tell people that, because of a particular protected characteristic, they cannot use the service, or would not be welcome to use the service, or would receive worse terms in using the service.

For example:

- If someone advertising a service (for example, by putting a notice in a shop window) makes it clear in the advert that people from a particular ethnic group are not welcome as customers, this would amount to **direct discrimination** because of race against people who might have considered using the service but are deterred from doing so because of the advertisement.
- A flyer for a nightclub offering women free admission while men are charged for entry would probably be **unlawful**.
- An advertisement that said 'unsuitable for disabled people' would probably be unlawful.

However, you do not have to make **reasonable adjustments** in advertising your services.

For example:

If you advertise in a newspaper, you do not have to put out an equivalent advertisement on the radio just because disabled people with a visual impairment may not have been able to access the written advertisement.

### **Equality good practice: what you can do if you want to do more than equality law requires**

Even though you do not have to make reasonable adjustments when you are advertising your services, you may want to think about advertising in ways that will be accessible to disabled people with a range of impairments, such as Easy Read information for people with a learning disability. Doing this will help more people to access your services.

## **Written information**

When you provide written information as part of your service, you must not discriminate against, harass or victimise people because of a protected characteristic in:

- what the information itself says
- the way it is provided.

When you provide written information as part of your service, think about providing it **in alternative formats**, such as in Braille, on CD, or electronically, for disabled people who need the information in this form. Although this depends on your circumstances, doing this is likely to be a reasonable adjustment; if it is a reasonable adjustment, then you must do it.

You cannot wait until a disabled person wants to use your services, but must think in advance about what people with a range of impairments might reasonably need.

For example:

- A café whose menu does not often change provides menus in Braille and large print so that customers with different visual impairments can independently use the menu.
- A restaurant changes its menus daily. Because of this, it considers that it is not practicable to provide menus in alternative formats, such as Braille. However, its staff spend a little time reading aloud the menu for blind customers, and the restaurant ensures that there is a large-print copy available.
- A community organisation providing health advice produces its leaflets in a range of alternative formats.

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4.

## Websites and internet services

If you provide services through a website – such as online shopping, direct marketing or advertising – you are known as an **Information Society Service Provider (ISSP)**.

This applies whether you have a one-page website which you maintain yourself or a very sophisticated website maintained by a professional web design company, and covers anything in between.

If someone believes that they have been discriminated against by an ISSP, and the ISSP is established in the UK, they can bring a claim in the UK courts against the UK-based ISSP even if the person is not in the UK, so long as they are in a European Economic Area (EEA) member state.



As an ISSP, you must make sure:

- That you do not allow **discriminatory** advertisements and information to appear on your website (whatever the advertisement is for).

For example:

- A local newspaper accepts an advertisement which says that jobs at a particular company are only open to people of a particular ethnic or national origin. The newspaper puts it on its website. The advertisement **directly discriminates** because of race, and the newspaper as well as the advertiser may be liable for discrimination: the advertiser as an **employer** and the newspaper as an ISSP.

- That you do not accept requests for the placing of information that unlawfully discriminates against people because of a **protected characteristic** in using a service.

For example:

- An online holiday company established in the UK refuses to take bookings for shared accommodation from same-sex couples. A lesbian or gay couple could bring a claim for direct discrimination because of sexual orientation in the British courts regardless of whether the couple were in the UK or another EEA member state.

- That you make reasonable adjustments to make sure that your website is accessible to disabled people.

## ***Reasonable adjustments***

Where this is a reasonable adjustment (and, as with other written information, it is likely to be), your website must be accessible to all users – this will include, for example:

- people with visual impairments, who use text-to-speech software
- people with manual dexterity impairments, who cannot use a mouse
- people with dyslexia and learning difficulties.

You cannot wait until a disabled person wants to use your services, but must think in advance about what people with a range of impairments might reasonably need.

The Royal National Institute of Blind People provides comprehensive information about web accessibility for disabled people with a range of impairments at:

[http://www.rnib.org.uk/professionals/webaccessibility/Pages/web\\_accessibility.aspx](http://www.rnib.org.uk/professionals/webaccessibility/Pages/web_accessibility.aspx)

You can read more about making reasonable adjustments to remove barriers for disabled people in Chapter 4, including how you can work out what is reasonable in your circumstances.

### **Equality good practice: what you can do if you want to do more than equality law requires**

If, in your particular circumstances, it is not a reasonable adjustment for you to make all the adjustments necessary to make your website fully accessible to as many people as possible, you could make as many changes as possible to ensure good customer service. This will make it easier for everyone to use your website and mean more people can buy your products or learn about your services.

## **Exceptions**

Where your role is a limited one – for example, you are only temporarily storing information, and not initiating the transmission, selecting the recipient or selecting or modifying the information in the transmission – you are excused the responsibilities of an **ISSP**. This excludes, for example, websites that temporarily transmit or store messages between users.

If an ISSP is not based in the UK, then the laws of the country where it is based will apply to it, rather than UK equality law.

For example:

An online retailer, which provides tickets to major sporting events, offers discounts to large groups of men but not women when booking hospitality packages for a football tournament. The online retailer is established in Germany so in this instance a case of direct discrimination because of sex would have to be brought in the German courts regardless of whether the person complaining was in the UK or another EEA member state.

## Telephone access and call centres

You may provide services over the telephone as a main activity – for example, providing a telephone order line for the purchase of goods – or you may have a telephone service as part of your service, for example, telephone banking, or enquiry lines via a call centre.

When you provide telephone information as part of your service, you must not discriminate against, harass or victimise people because of a protected characteristic in:

- what is said when a call is answered
- the way the service is provided.

When you provide services over the telephone, you must make reasonable adjustments for disabled people who would otherwise face a barrier to accessing the service. If it is a reasonable adjustment to provide the service in a different way, then you must do it. You cannot wait until a disabled person wants to use your services, but must think in advance about what people with a range of impairments might reasonably need.

For example:

- A call centre makes sure that it has a textphone to accept calls from people with a hearing impairment, as well as allowing calls to be made through a third-party interpreter.
- A community organisation offers 'live chat' with its helpline via the internet.
- A small business which offers goods for sale by phone includes an email address and mobile phone number for SMS text messaging in its marketing information and makes it clear that orders will be accepted by these methods as well as by phone.

However, if an individual disabled person asks for an adjustment that you haven't yet considered to enable them to use your service, you will need to make the adjustment if it is reasonable for you to do so.

## 3. When you are responsible for what other people do

It is not just how you personally behave that matters when you are running an organisation providing **goods, facilities** or **services** to the public or carrying out public functions.

If another person who is:

- employed by you, or
- carrying out your instructions (who the law calls your agent)

does something that is **unlawful discrimination, harassment** or **victimisation**, you can be held legally responsible for what they have done.

This part of the guide explains:

- When you can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation.
- How you can reduce the risk that you will be held legally responsible.
- How you can make sure your employees and agents know how equality law applies to what they are doing.
- When your employees or agents may be personally liable.
- What happens if a person instructs someone else to do something that is against equality law.
- What happens if a person helps someone else to do something that is against equality law.
- What happens if you try to stop equality law applying to a situation.

### When you can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation

If you use other people to provide services or carry out public functions for you, you are legally responsible for acts of discrimination, harassment and victimisation carried out by your **employees** in the course of their employment.

You are also legally responsible as the 'principal' for the acts of your **agents** done with your authority. Your agent is someone you have instructed to do something on your behalf, but who is not an employee, even if you do not have a formal contract with them.

As long as:

- your employee was acting in the course of their employment – in other words, while they were doing their job, or
- your agent was acting within the general scope of your authority – in other words, while they were carrying out your instructions

it does not matter whether or not you:

- knew about, or
- approved of

what your employee or agent did.

For example:

- A shop assistant bars someone they know to be gay from the shop where they work because they are prejudiced against gay people. The person who has been barred can bring a case in court for unlawful discrimination because of sexual orientation against both the shop assistant and the person or company that owns the shop.
- A community organisation hires a consultant to devise a new plan for how the organisation delivers its services. The effect of the plan is to stop some people with a particular protected characteristic accessing its services. A service user with that characteristic complains of unlawful **indirect discrimination**, saying that the new approach has a worse impact on them and other people who share the protected characteristic. The organisation is unable to **objectively justify** the approach. The consultant who made the decision which has resulted in indirect discrimination would be liable, as would the principal (in this case the organisation), which would be liable for what their agent (the consultant) has done.

However, you will not be held legally responsible if you can show that:

- you took **all reasonable steps** to stop an employee acting unlawfully.
- an agent acted outside the scope of your authority (in other words, that they did something so different from what you asked them to do that they could no longer be thought of as acting on your behalf).

## How you can reduce the risk that you will be held legally responsible

You can reduce the risk that you will be held legally responsible for the behaviour of the people who work for you if you tell them how to behave so that they avoid unlawful discrimination, harassment or victimisation.

This does not just apply to situations where you and your staff are dealing face-to-face with other people when you are delivering your services, but also to how you plan what happens.

When you or your employees or agents are planning what happens to people you are delivering your services to, you need to make sure that your decisions, rules or ways of doing things are not:

- **direct discrimination**, or
- **indirect discrimination** that you cannot **objectively justify**, or
- **discrimination arising from disability** that you cannot **objectively justify**, or
- **harassment**

and that you have made reasonable adjustments for disabled people, which you can read more in Chapter 4.

It is therefore important to make sure that your employees and agents know how equality law applies to what they are doing.

# How you can make sure your employees and agents know how equality law applies to what they are doing

Tell your employees and agents what equality law says about how they must and must not behave while they are working for you.

Below are some examples of reasonable steps you can take to prevent unlawful discrimination or harassment happening in your workplace:

- Telling your employees and agents when they start working for you – and checking from time to time that they remember what you told them, for example, by seeing if/how it has made a difference to how they behave. This could be a very simple checklist you talk them through, or you could give them this guide, or you could arrange for them to have **equality training**.
- Writing down the standards of behaviour you expect in an **equality policy**.
- Including a requirement about behaving in line with equality law in every worker's **terms of employment** or other contract, and making it clear that breaches of equality law will be treated as disciplinary matters or breaches of contract.

You can read more about equality training and equality policies in the Equality and Human Rights Commission guide *Good equality practice for employers: equality policies, equality training and monitoring*.

## **Using written terms of employment for employees**

Employment law says you must, as an employer, give every employee a written statement of the main terms of their employment. You could include a sentence in these written terms that tells the person working for you that they must meet the requirements of equality law, making it clear that a failure to do so will be a disciplinary offence.

Obviously, if you do this, it is important that you also tell the employee what it means. You could use an equality policy to do this, or you could just discuss it with them, or you could give them this guide to read. But it is important that they are clear on what equality law says they must and must not do, or you may be held legally responsible for what they do.

Remember, if the employee is a disabled person, it may be a reasonable adjustment to give them the information in a way that they can understand.

If you receive a complaint claiming unlawful discrimination in relation to your services, you can use the written terms to show that you have taken a reasonable step to prevent unlawful discrimination and harassment occurring. You may need to consider if other steps would also be reasonable, such as providing training.

If someone does complain, you should investigate what has taken place and, if appropriate, you may need to discipline the person who has unlawfully discriminated against or harassed someone else, give them an informal or formal warning, or provide training; the action you take will obviously vary according to the nature of the breach and how serious it was.

If you do find that an employee has unlawfully discriminated against a service user, then look again at what you are telling your staff to make sure they know what equality law means for how they behave towards the people they are working with.

You can read more about what to do if someone says they've been discriminated against at in Chapter 5.

### **Good practice tip for how you and your staff should behave**

Ideally, you want anyone who works for you to treat everyone they come across with dignity and respect, including customers, clients or service users, members, associate members or guests. This will help you provide a good service (not just without discriminating but more generally).

If your staff do unlawfully discriminate against people using your services, your reputation may suffer, even if the person on the receiving end does not bring a legal case against you.



## When your employees or agents may be personally liable

Your employee or agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with your authority. This applies where either:

- you are also liable as their employer or principal, or
- you would be responsible but you show that:
  - you took **all reasonable steps** to prevent your employee discriminating against, harassing or victimising someone, or
  - your agent acted outside the scope of your authority.

For example:

- Unknown to their employer, the receptionist in an estate agent refuses to give details of houses for rent to a client with a mental health condition. The estate agent has issued clear instructions to its staff about their obligations under equality law, has provided equality training, and regularly checks that staff are complying with the law. It is likely that the receptionist has acted unlawfully but that their employer will have a defence.
- A community organisation hires a consultant to devise a new plan for how the organisation delivers its services. The effect of the plan is to stop some people with a particular protected characteristic accessing its services. A service user with that characteristic complains of unlawful **indirect discrimination**, saying that the new approach has a worse impact on them and other people who share the protected characteristic. The organisation is unable to **objectively justify** the approach. The consultant who made the decision which has resulted in indirect discrimination would be liable, as would the principal (in this case the organisation), which would be liable for what their agent (the consultant) has done, unless the organisation can show that the consultant had exceeded the scope of their authority, for example, because the organisation explicitly told the consultant that they must meet the requirements of equality law.

But there is an exception to this. An employee or agent will not be responsible if their employer or principal has told them that there is nothing wrong with what they are doing and the employee or agent **reasonably** believes this to be true.

It is a criminal offence, punishable by a fine, for an employer or principal to make a false statement which an employee or agent relies upon to carry out an unlawful act.

## **What happens if a person instructs someone else to do something that is against equality law**

An employer or principal must not instruct, cause or induce their employee or agent to discriminate against, harass or victimise another person, or to attempt to do so.

'Causing' or 'inducing' someone to do something can include situations where someone is made to do something or persuaded to do it, even if they were not directly instructed to do it.

Both:

- the person who receives the instruction or is caused or induced to discriminate against, harass or victimise, and
- the person who is on the receiving end of the discrimination, harassment or victimisation

have a claim against the person giving the instructions if they suffer loss or harm as a result of the instructing or causing or inducing of the discrimination, harassment or victimisation.

This applies whether or not the instruction is actually carried out.

## What happens if a person helps someone else to do something that is against equality law

A person must not help someone else carry out an act which the person helping knows is unlawful under equality law.

However, if the person helping has been told by the person they help that the act is lawful and he or she **reasonably** believes this to be true, he or she will not be legally responsible.

It is a criminal offence, punishable by a fine, to make a false statement which another person relies on to help to carry out an unlawful act.

## What happens if you try to stop equality law applying to a situation

You cannot stop equality law applying to a situation if it does in fact apply. For example, there is no point in making a statement in a contract with a client, customer or service user that equality law does not apply. The statement will not have any legal effect. That is, it will not be possible to enforce or rely on a term in a contract that tries to do this. This is the case even if the other person has stated they have understood the term and/or they have agreed to it.

For example:

A business gives a client a written contract to sign which includes a term saying that they cannot bring a claim under the Equality Act 2010. The business withdraws the service in circumstances which amount to unlawful discrimination. The term in the contract does not stop the client bringing a claim in court.

## 4. The duty to make reasonable adjustments to remove barriers for disabled people

Equality law recognises that bringing about equality for disabled people may mean changing the way in which services are delivered, providing extra equipment and/or the removal of **physical barriers**.

This is the **duty to make reasonable adjustments**.

The duty to make reasonable adjustments aims to make sure that a disabled person can use a service as close as it is reasonably possible to get to the standard usually offered to non-disabled people.

When the duty arises, you are under a positive and proactive duty to take steps to remove or prevent these obstacles.

If you are providing **goods, facilities or services** to the public or a section of the public, or carrying out **public functions**, or running an **association** and you find there are barriers to disabled people in the way you do things, then you must consider making adjustments (in other words, changes). If those adjustments are reasonable you and your organisation to make, then you must make them.

The duty is 'anticipatory'. This means you cannot wait until a disabled person wants to use your services, but must think in advance (and on an ongoing basis) about what disabled people with a range of **impairments** might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

Many of the adjustments you can make will not be particularly expensive, and you are not required to do more than it is reasonable for you to do. What is reasonable for you to do depends, among other factors, on the size and nature of your organisation and the nature of the goods, facilities or services you provide.

If, however, a disabled person can show that there were barriers you should have identified and **reasonable adjustments** you could have made, they can bring a claim against you in court, and you may be ordered to pay them compensation as well as make the reasonable adjustments.

As well as being something you are required by equality law to do, making reasonable adjustments will help a wider range of people use your services.

Once you have made a reasonable adjustment, don't forget to tell people about it. For example, put up a sign at your premises, include it in information you publish (make sure you provide **alternative formats** if appropriate) and put it on your website. This is not just because it will bring more customers; it is an essential part of meeting the duty. If the adjustment is not reasonably apparent to disabled people, they may still think they cannot use your services and in some circumstances this could mean you have not met the duty.

For example:

An airport provides transfer by electric buggy between check-in and gates for passengers with mobility impairments. Prominent signs at the entrance to the arrival and departure halls and at check-in desks assist disabled passengers in accessing that service. If the notices are not put up, and no one informs disabled passengers who require them that they exist, the adjustment would not be effective. The duty would not be met by the mere fact that they were present in the airport if disabled people who needed them were not made aware that they were available.

The rest of this section looks at the detail of the duty and gives examples of the sorts of adjustments you could make. It looks at:

- The three requirements of the duty
- Are disabled people are at a substantial disadvantage?
- Working out what needs to change
- What is meant by 'reasonable'
- The continuing duty on organisations
- Who pays for reasonable adjustments?
- When the duty is different
  - Associations
  - Rented premises or premises available to rent
  - Transport

## The three requirements of the duty

The duty contains three requirements that apply in situations where a disabled person would otherwise be placed at a substantial disadvantage compared with people who are not disabled.

- The first requirement involves changing the way things are done (equality law calls this a **provision, criterion or practice**).

Does your organisation have rules or ways of doing things, whether written or unwritten, that present barriers to disabled people?

A practice may have the effect of excluding disabled people from enjoying access to your services. Or it may create a barrier or hurdle that might put disabled people at a substantial disadvantage to access your services.

It might be reasonable for you to stop the practice completely, or to change it so that it no longer has that effect.

For example:

- A private club has a policy of refusing entry during the evening to male members who do not wear a shirt and tie. A disabled member who wishes to attend in the evening is unable to wear a tie because he has psoriasis (a severe skin complaint) of the face and neck. Unless the club is prepared to change its policy at least for this member, its effect is to exclude the disabled member from the club. This is likely to be an unlawful failure to make a reasonable adjustment.
- A shop receives feedback from a customer with facial scars from severe burns that the ways in which its staff interact with her have made her feel uncomfortable and failed to provide a helpful service. The retailer decides to introduce disability awareness training, with a particular emphasis on issues around disfigurement, to improve the customer service of its staff. This is likely to be a reasonable adjustment to make.

Ask yourself, for example:

- Could you be more flexible about where or how you provide your services? Could you or your staff change a policy, criterion or practice where this is needed to remove a barrier?
- Do you insist on particular forms of communication, such as putting requests in writing? Or particular proof of identity such as a driving licence?

In addition, where you provide information to customers or clients you must take steps to ensure that the information is provided in an accessible format.

- The second requirement involves making changes to overcome barriers created by the **physical features** of your premises, if these are open to the public or a section of the public.

Where a physical feature puts disabled people using a service at substantial disadvantage, you must take reasonable steps to:

- remove the feature
- alter it so that it no longer has that effect
- provide a reasonable means of avoiding the feature, or
- provide a reasonable alternative method of making the service available to disabled people.

It is better for you to look at removing or altering the physical feature or finding a way of avoiding it (such as replacing steps with a ramp or, if it is reasonable for you to do this, a lift) before you look at providing an alternative service. An alternative service may not give disabled people a similar level of service.

Exactly what kind of changes are needed will depend on the kind of barriers your premises present. You need to look at the whole of the premises that are open to the public or a section of the public, and may have to make more than one change.

For example:

- A pub improves the paths in its beer garden so that the outside space can be accessed by disabled customers with a mobility impairment or a visual impairment.
- A small shop paints its doorframe in a contrasting colour to assist customers with a visual impairment.
- A hairdressing salon moves product display stands from just inside its door to create a wider aisle which means that wheelchair users can use its services more easily.

Physical features include: steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators, floor coverings, signs, furniture, and temporary or movable items (such as equipment and display racks).

Physical features also include the size of premises (for example, the size of an airport where a clearly signed short route to departures might enable people with a mobility impairment to use the airport more easily, or of a shopping centre, where wheelchairs, buggies and extra staff to help shoppers find their way around are made available). This is not an exhaustive list.

Sometimes you will need to ask your landlord's permission to alter rented premises. Equality law gives service providers the right to do so even if the lease states that the alteration in question is prevented by the terms of the lease.

The landlord cannot withhold their consent **unreasonably** although they may put in place a condition, provided that it is reasonable to do so.

If you are not sure if you are allowed to change the physical features at your premises, but you think you need to do this as a reasonable adjustment, then you should get advice. There is a list of organisations who may be able to help you at the end of this guide.



The third requirement involves providing extra aids and services such as providing extra equipment or providing a different, or additional, service (which equality law calls **auxiliary aids** or **auxiliary services**). You must take reasonable steps to provide auxiliary aids or services if this would enable (or make it easier for) disabled people to make use of any of your services.

For example:

- A shop keeps a portable induction loop on its counter so conversations with staff can be heard more easily by disabled people who use hearing aids.
- A club records its handbook onto **audio CD for members with a visual impairment**, and sends out its newsletters by email as an audio file if members ask for this.
- An accountant offers to make a home visit to a client with a mobility impairment when usually clients would come to their premises.
- A leisure centre has a regular booking by a group of deaf people. The leisure centre makes sure that the members of staff who have had basic training in British Sign Language (BSL) are rotad to work on that day to make sure that the deaf customers get the same level of service that other people would expect.

The kind of equipment or service will depend very much on the individual disabled person and what your organisation does. However you may be able to think in advance about some things that will help particular groups of disabled people.

Technological solutions may be useful in overcoming communication barriers, but sometimes a person offering assistance will be what is needed.

For example:

- Asking a disabled person with a visual impairment if they would like assistance in finding goods in a shop or having information read to them.
- Taking the time to explain services to a disabled person with a learning disability.
- If someone is being asked to make a major decision, providing a disabled person who uses British Sign Language (BSL) with a BSL to English interpreter, it is reasonable for the organisation to do this.

If you do provide equipment, the equipment must work and be maintained. It is also important that staff know how to use the equipment

The duty is slightly different for associations, in relation to management of premises, and for transport services. These differences are explained at the end of this section of the guide.

## **Are disabled people at a substantial disadvantage?**

The question you need to ask yourself is whether:

- the way you do things
- any physical feature of your premises, or
- the absence of an auxiliary aid or service

puts disabled people at a substantial disadvantage compared with people who are not disabled.

Anything that is more than minor or trivial is a substantial disadvantage.

If a substantial disadvantage does exist, then the duty to make reasonable adjustments arises.

The aim of the adjustments you make is to remove the substantial disadvantage.

But you only have to make adjustments that are reasonable for you to make.

## Good practice tips for working out whether disabled people face a substantial disadvantage in using your services

- Local disabled people's groups may be happy to help you work this out. Contact groups representing people with a range of impairments. Explain that you want to make reasonable adjustments, and ask if they can help.
- National organisations of disabled people may also have information available about the impact of different impairments.
- If your organisation is part of a group such as a local chamber of commerce, community and voluntary sector umbrella group or group of local clubs, then you could organise a joint approach and ask them to help you survey several organisations together and share good practice.
- If you belong to a national association, they may produce specialist advice on the sorts of barriers disabled people face in your sector, as well as the changes made by similar organisations to your own.
- You could commission an access audit of premises which the general public have access to.

## Working out what needs to change

If you look at the definition of disability, you will immediately realise that disabled people are a diverse group with different requirements. No single aspect of the way in which you deliver your services will create barriers for all disabled people, or, in most cases, for disabled people generally.

A practice, or a feature of your premises, which is a barrier for people with a particular impairment may present no difficulties for others with a different impairment.

Some barriers may affect some people with the same impairment differently.

For example:

People with a visual impairment who use assistance dogs will be prevented from using services with a 'no dogs' policy, whereas visually impaired people who do not use assistance dogs will not be affected by this policy. The service provider must think about the needs of both groups.

Remember, the duty is a duty to disabled people in general. You must make reasonable adjustments even if you do not know that a particular customer, client, service user or member is a disabled person or even if you believe that you currently have no disabled customers, clients, service users or members.

On the other hand, once you are aware of the requirements of a particular disabled person who uses or seeks to use your services, it might then be reasonable for you to take a particular step to meet these requirements. This is especially so where someone has pointed out the difficulty that they face in accessing services, or has suggested a reasonable solution to that difficulty.

You are not expected to anticipate the needs of every individual who may use their service. You are required to think about and take reasonable steps to overcome features that may create a disadvantage for people with particular kinds of impairments – for example, people with visual impairments hearing impairments, mobility impairments, learning disabilities and mental health conditions.

## What is meant by ‘reasonable’

You only have to do what is reasonable.

When deciding whether an adjustment is reasonable you can consider:

- how effective the change will be in assisting disabled people in general or a particular customer, client, service user or member
- whether it can actually be done
- the cost, and
- your organisation’s resources and size.

Your overall aim should be, as far as possible, to remove any disadvantage faced by disabled people.

You can consider whether an adjustment is **practicable**. The easier an adjustment is, the more likely it is to be reasonable. However, just because something is difficult doesn’t mean it can’t also be reasonable. You need to balance this against other factors.

If an adjustment costs little or nothing and is not disruptive, it would be reasonable unless some other factor (such as impracticality or lack of effectiveness) made it unreasonable.

Your size and resources are another factor. If an adjustment costs a significant amount, it is more likely to be reasonable for you to make it if you have substantial financial resources. Your organisation’s resources must be looked at across your whole organisation, not just for the branch or section that provides the particular service.

This is an issue which you have to balance against the other factors.

In changing policies, criteria or practices, you do not have to change the basic nature of the service you offer.

For example:

- An association which exists to taste wine does not have to hold soft drink tastings when a member's disability prevents them drinking alcohol.
- Just because some of its treatments may be unsuitable for some disabled people, such as people undergoing chemotherapy for cancer, a beauty salon does not have to stop offering certain treatments altogether.

If, having taken all of the relevant issues into account, you decide that an adjustment is reasonable then you must make it happen.

## The continuing duty on organisations

The duty to make reasonable adjustments is a continuing duty. You should keep the duty and the ways you are meeting the duty under regular review in light of your experience with disabled people wishing to access your services. It is not something that needs simply to be considered once and once only, and then forgotten. What was originally a reasonable step to take might no longer be sufficient, and the provision of further or different adjustments might then have to be considered.

For example:

A large sports complex amends its 'no dogs' policy to allow entry to assistance dogs. It offers assistance dog users a tour of the complex to acquaint them with routes. This is likely to be a reasonable step for it to have to take at this stage. However, the complex then starts building work and this encroaches on paths within the complex, making it difficult for assistance dog users to negotiate their way around. Offering an initial tour is therefore no longer an effective adjustment as it does not make the complex accessible to assistance dog users. The service provider therefore decides to offer assistance dog users appropriate additional assistance from staff while the building work is being undertaken. This is likely to be a reasonable step for the service provider to have to take in the circumstances then existing.

Equally, a step that might previously have been an unreasonable one for a service provider to have to take could subsequently become a reasonable step in light of changed circumstances. For example, technological developments may provide new or better solutions to the problems of inaccessible services.

For example:

A library has a small number of computers for the public to use. When the computers were originally installed, the library investigated the option of incorporating text-to-speech software for people with a visual impairment. It rejected the option because the software was very expensive and not particularly effective. It would not have been a reasonable step for the library to have to take at that stage. The library proposes to replace the computers. It makes enquiries and establishes that text-to-speech software is now efficient and within the library's budget. The library decides to install the software on the replacement computers. This is likely to be a reasonable step for the library to have to take at this time.

## Who pays for reasonable adjustments?

If an adjustment is reasonable, you must pay for it. You are not allowed to ask a disabled person to pay for it, even if you have made it in response to their request and even if it has cost you extra to provide it.

For example:

A guest house has installed an audio-visual fire alarm in one of its guest bedrooms in order to accommodate visitors with a sensory impairment. In order to recover the costs of this installation, the landlady charges disabled guests a higher daily charge for that room, although it is otherwise identical to other bedrooms. This increased charge is unlikely to be within the law.

Even if you charge other people for a service, such as delivering something to their home, if the reason you are providing the service to a disabled person is as a reasonable adjustment, you must not charge the disabled person for it. But if the disabled person is using the service in exactly the same way as other customers, clients, service users or members, then you can charge them the same as you charge other people.

For example:

A wine merchant runs an online shopping service and charges all customers for home delivery. Its customers include disabled people with mobility impairments. Since this online service does not create a substantial disadvantage for disabled people with mobility impairments wishing to use it, home delivery, in these circumstances, will not be a reasonable adjustment that the wine merchant has to make. Therefore, the wine merchant can charge disabled customers in the same way as other customers for this service.

However, another wine merchant has a shop which is inaccessible to disabled people with mobility impairments. Home delivery in these circumstances might be a reasonable adjustment for the wine merchant to have to make for these customers. The wine merchant could not then charge such customers for home delivery, even though it charges other customers for home delivery.

## When the duty is different

### *Associations*

What associations must do under equality law is explained in the Equality and Human Rights Commission guide *What Equality Law Means for Your Association, Club or Society*.

The aim of reasonable adjustments is to make sure that disabled people are able to join an association or use its services as far as is reasonably possible to the same standard usually offered to non-disabled people.

An association does not just have to think about reasonable adjustments for disabled people who are already members, associate members or guests, but also to disabled people who are:

- seeking or might wish to become members, or
- are likely to become guests.

This means they must think in advance about what disabled people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

If it is the **physical features** of a building the association occupies or is using that put disabled people at a substantial disadvantage, the association must either:

- make reasonable adjustments to avoid the disadvantage, or
- find a reasonable alternative way of providing members, associate members and guests (and prospective members and guests) with the same access to membership and to its services.

It is important to note that an alternative way of providing the service which segregates or inconveniences disabled people may not be as good as an adjustment which allows disabled people to access the service in much the same way that non-disabled people do. If there is a better adjustment which could reasonably be made and which does not segregate or inconvenience disabled people, the alternative way of providing the service and so on may not actually be a reasonable adjustment to make at all.

Where meetings take place in a member's or associate member's home, then reasonable adjustments do not have to be made to **physical features** to make it accessible for a member who is a disabled person and for whom the physical features of the meeting place present a barrier to their attending the meeting.

But it may be a reasonable adjustment to hold the meeting at an **accessible venue**.

For example:

A cycling club has 30 members and no premises of its own. Instead members meet in the leader's house once a year for their AGM. This has no suitable access for a disabled member of the club, an amputee who uses a wheelchair. (The member uses a specially adapted tandem when cycling.) As a reasonable adjustment, the club decides to hold its meetings in a local sports hall which has suitable access.

Even if this is not a reasonable adjustment taking into account all the circumstances of the association, such as its size and resources, the association may want to consider whether as a matter of good practice it should change where it meets to an accessible venue.



## ***Rented premises or premises available to rent***

The duty to make reasonable adjustments applies to landlords and managers of rented premises or premises which are available to rent. This may include a landlord, a letting agency, a property management company, a management or residents' committee of a block of flats, and any other person who, in practice, has control over how the premises are let or managed. In this guide, these people are referred to as 'controllers of the premises'.

The letting of both commercial premises and houses for domestic use (subject to some exceptions) are covered. Letting includes sub-letting, and the granting of contractual licences to occupy premises (as opposed to an interest in the property which is granted by a lease). However, it does not include private sales (called **private disposals** in the Act) provided that an estate agent has not been used and no advert published. Similarly, it does not apply if the landlord is simply renting a room or rooms in a house with room for six people or less where she or a relative or partner are still living. This is called the **small premises** exemption.

The duty to make reasonable adjustments in relation to the letting of premises is different from the usual duty to make reasonable adjustments relating to services.

First, it is not anticipatory. The duty only arises if the controller of the premises is requested to make an adjustment by a person to whom the premises are let or who wishes to rent the premises, or someone on their behalf. The request may not necessarily be made formally and the landlord should presume that they are under an obligation to make a reasonable adjustment if it is reasonable to assume that a request has been made.

For example:

A landlord is speaking to a prospective tenant on the telephone to arrange a meeting to sign a tenancy agreement. During the conversation, the tenant explains that they are visually impaired and find the print in the tenancy agreement too small. The tenant is identifying an impairment and it is likely that it would be reasonable to regard this as being a request for an auxiliary aid, such as a tenancy agreement in an alternative format. The tenant does not have to request a particular format for the landlord to have to consider an adjustment.

Second, there are just two requirements. These are:

- Providing auxiliary aids and services.
- Changing provisions, criteria or practices, including (once premises have been let) changing a term of the letting. For example, a 'no dogs' term in a lease entered into by a disabled person who uses an assistance dog.

There is no requirement to make any changes which would consist of or include the removal or alteration of a physical feature, which includes:

- any feature arising from the design or construction of a building
- any feature of any approach to, exit from or access to a building
- any fixtures or fittings in or on premises
- any other physical element or quality.

Physical features do not include furniture, furnishings, materials, equipment or other personal property.

Changes are unlikely to be treated as consisting of or including the alteration of a physical feature where they have only an incidental effect on a physical feature.

For example:

Attaching something to a physical feature, such as a wall, with a screw is unlikely to amount to an alteration of the physical feature. However, something more significant, such as installing a concrete ramp between a step and a path, is likely to amount to an alteration of a physical feature.

Things like the replacement or provision of any signs or notices, the replacement of any taps or door handles, the replacement, provision or adaptation of any doorbell or door entry system, changes to the colour of any surface (such as a wall or a door, for example) do not count as physical features, so the duty to make reasonable adjustments could require changes to them.

The same tests apply when deciding if an adjustment is a reasonable adjustment:

- how effective the change will be in assisting the tenant or family member who needs the adjustment
- whether it can actually be done or not
- the cost
- the controller's resources and size.

Although a controller of premises is not required to alter physical features, there are specific rules about when a controller of premises must agree to tenants themselves making alterations to physical features of rented homes, and these are explained in the Equality and Human Rights Commission guide *Your rights to equality in housing*.

In future, there may also be specific rules about the process to be followed when requests are made for alterations to shared areas or 'common parts' of buildings and this guidance will be updated to reflect these changes.

## **Transport services**

A transport provider's duty to make reasonable adjustments so that disabled people can use services applies to the way vehicles are operated, for example, by requiring train or station staff to assist a person with a mobility impairment in getting on and off a train, or by a bus driver telling a visually impaired person when they have reached their stop. It may require a service to be provided in a different way.

The duty to make reasonable adjustments also applies to adding auxiliary aids or equipment to existing vehicles, such as audio-visual passenger information, priority seating and contrasting handrails; these may be reasonable adjustments and, if so, the transport provider must provide them.

However, changes do not have to be made to physical features of existing land vehicles, except for some rental vehicles.

But some types of land vehicle must be replaced by a certain date with new vehicles, which do provide level access and a range of other equipment to make sure that they can be used by disabled people with a range of impairments.

These rules are explained in detail in the Equality and Human Rights Commission guide *Your rights to equality: transport and travel*.

## 5. What to do if someone says they've been discriminated against

If a **customer, client, service user, member, associate member** or **guest** believes that you (or, if you have anyone else working for you, your **employee** or **agent**) have **unlawfully discriminated** against them, **harassed** or **victimised** them against equality law in relation to the **goods, facilities** or **services**, or **public functions** you provide, they may:

- Complain directly to you.
- Use someone else to help sort the situation out (alternative dispute resolution).
- Make a claim in court.

These are not alternatives, since the person complaining can still make a claim in court even if they first complained to you and/or used someone else to sort it out.

This part of this guide:

- looks at ways you can sort out the situation if they complain directly to you
- tells you where to find information about alternative dispute resolution (you can suggest this without waiting for the person complaining to suggest it)
- explains the questions procedure, which someone can use to find out more information from you if they think they may have been unlawfully discriminated against, harassed or victimised
- explains some key points about court procedures in discrimination cases relating to claims outside the workplace:
  - where claims are brought
  - time limits for bringing a claim
  - the standard and burden of proof
  - what the court can order you to do
- tells you where to find out more about defending a court case.

## If someone complains directly to you

If a customer, client, service user, member, associate or guest contacts you to say they have been discriminated against, you will obviously want to find out as much as possible about what has happened.

Consider the information given in this guide.

You will need to make a realistic assessment about whether what you and/or your employees and/or agents have done (or failed to do) amounts to unlawful discrimination, harassment or victimisation.

You may need to conduct an investigation into the complaint in order to form a view.

If you are an **employer**, and you think a complaint might need you to take disciplinary action against an **employee**, the Arbitration and Conciliation Service (Acas) publish guidance on discipline and grievance procedures.

If you feel you need to get more advice on whether what has happened was against equality law, you will find information on places where you can get help see Further information and advice section.

If you decide that the person who complained was unlawfully discriminated against, harassed or victimised, you then need to decide the best way to solve the complaint.

If, after investigating what has happened, you decide:

- no unlawful discrimination, harassment or victimisation took place, or
- that you are not responsible for what has happened then tell the person who has complained.

You do not have to explain why you came to your conclusion, but it may help if you do. For example, they may decide that it is not worth taking their claim to court.

### Good practice tips on solving complaints

Defending a claim in court can be lengthy, expensive and draining, and it can have a damaging impact on the reputation of your organisation.

It is likely to be in everyone's interest to try to put things right before a claim is made to a court.

If you need to apologise to the person who has complained for the way they were treated or the way something was done, then do this.

If you need to change the way you do things so the same thing does not happen again, then do this.

Also:

- consider **equality training** for yourself and/or people working for you
- think about having an **equality policy**.

## Alternative dispute resolution

The first part of this section assumed you would do all the investigating and negotiating yourself. If you want to get help in sorting out a complaint about discrimination, you could try to get the person complaining to agree to what is usually called 'alternative dispute resolution' or ADR. ADR involves finding a way of sorting out the complaint without a formal court hearing. ADR techniques include mediation and conciliation.

You can find out more about ADR, whether any of the options might be suitable in your situation, what you have to do and how much it might cost from:

- ADRnow, an information service run by the Advice Services Alliance (ASA) if you are in England and Wales, and
- the Scottish Government publication *Resolving Disputes Without Going To Court* if you are in Scotland.

Details of these organisations are at Further information and advice section.

## Conciliation

The Equality and Human Rights Commission runs a conciliation service as an alternative route to court action. The service is free, confidential and accessible. If the complaint is resolved during the conciliation, it can result in a binding settlement. If it is not resolved, the person complaining still has the option of taking their claim to court. If you want to find out more about this service, contact the Equality and Human Rights Commission helpline.

## The questions procedure

If someone thinks they may have been unlawfully discriminated against, harassed or victimised under equality law, then they can obtain information from you to help them decide if they have a valid claim or not.

There is a set form to help them do this which you can see at: [www.equalities.gov.uk](http://www.equalities.gov.uk), but their questions will still count even if they do not use the form, so long as they use the same questions.

If you receive questions from someone, you are not legally required to reply to the request, or to answer the questions, but it may harm your case if you do not.

The questions and the answers can form part of the evidence in a case brought under the Equality Act 2010.

If you do not respond to the questionnaire within eight weeks of it being sent, the court can take that into account when making its judgment. The court can also take into account answers which are evasive or unclear.

- There is an exception to this. The court cannot take the failure to answer into account if a person or organisation states that to give an answer could prejudice criminal proceedings and this is reasonable. Most of the time, breaking equality law only leads to a claim in a civil court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, the person or organisation may be able to refuse to answer the questions, if in answering they might incriminate themselves and it is reasonable for them not to answer. If you think this might apply to you, you should get more advice on what to do.

# Key points about discrimination cases outside the workplace

The key points this guide explains are:

- where claims are brought
- time limits for bringing a claim
- the standard and burden of proof
- what the court can order you to do.

## *Where claims are brought*

If you are:

- a service provider, or
- carrying out public functions, or
- an association, including private clubs and political parties, or
- a premises provider, whether you provide housing or commercial premises, or
- in some circumstances, an education provider

then any claim against you that someone has been discriminated against (including that there has been a failure to make reasonable adjustments), harassed, or victimised on the basis of a **protected characteristic** will be brought against you in the County Court in England and Wales and in the Sheriff Court in Scotland.

If you are a **public authority**, a person who wishes to claim discrimination may also bring a claim for **judicial review** in the High Court in England and Wales or the Court of Session in Scotland.



## ***Time limits for bringing a claim***

If someone wants to bring a claim of unlawful discrimination, harassment or victimisation relating to equality law, they must bring it within six months of the act that they are complaining about.

If the person is complaining about behaviour over a period of time, then the six months begins at the end of the period.

If the person is complaining about a failure to do something, for example, a failure to make **reasonable adjustments**, then the six months begins when the decision was made not to do it. If there is no solid evidence of a decision, then the decision is assumed to have been made either:

- when the person who failed to do the thing does something else which shows they don't intend to do it, or
- at the end of the time when they might reasonably have been expected to do the thing.

For example

A business sells goods over the internet. It is having its website redesigned. It looks into having its website made more accessible to disabled people and decides that doing this is a reasonable adjustment. The new website claims to be fully accessible. However, when the new website goes live, it turns out not to be any more accessible than the old one. The business does not do anything about this. A disabled person writes to the organisation and asks them to bring their website up to the standard they are claiming for it. The organisation does nothing. The time limit for bringing a claim is measured from the time when they might reasonably be expected to have made improvements to the website.

A court can hear a claim if it is brought outside this time limit if the court thinks that it would be 'just and equitable' (fair to both sides) for it to do this.

If a claim has been referred within six months of the alleged unlawful discrimination, harassment or victimisation taking place to the Equality and Human Rights Commission for conciliation, the time limit for bringing a claim is increased to nine months.

## *The standard and burden of proof*

The standard of proof in discrimination cases is the usual one in civil (non-criminal) cases. Each side must try to prove the facts of their case are true on the balance of probabilities, in other words, that it is more likely than not in the view of the court or tribunal that their version of events is true.

If someone is claiming unlawful discrimination, harassment or victimisation against you, then the burden of proof begins with them. They must prove enough facts from which the court can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place.

Once they have done this, then, in the absence of any other explanation, the burden shifts onto you to show that you or someone whose actions or omissions you were responsible for did not discriminate, harass or victimise the person making the claim.

## *What the court can order you to do*

What the court can order if you lose your case is called 'a remedy'.

County Courts and Sheriff Courts hearing discrimination claims can grant any remedy that the High Court in England or Wales or the Court of Session in Scotland can grant for a civil wrong or in a claim for judicial review.

The main remedies available are:

- Damages (including compensation for injuries to feelings).
- An injunction in England or Wales or an interdict in Scotland) – this is an order made by the court to stop a person or organisation from acting in an unlawful way. Sometimes in England and Wales an injunction can be mandatory; that is, you have to do something (for example, you have to change a policy or make a reasonable adjustment). In Scotland an order for specific implement works in the same way.
- A declaration in England or Wales or a declarator in Scotland – this is a statement by the court which says that someone has been discriminated against.

In cases of **indirect discrimination**, if you can prove that you did not intend what you did to be discriminatory, the court must consider all of the remedies before looking at damages.

The court can also order you to pay the legal costs and expenses of the person bringing the claim. You would have to pay these on top of your own legal costs and expenses.

## More information about defending a court case

You can find out more about what to do if someone brings a court case against you from:

- In England and Wales: Her Majesty's Courts Service: see Further information and advice section for details.
- In Scotland: Scottish Courts Service: see Further information and advice section for details.

# 6. Further sources of information and advice

## General advice and information

### **Equality and Human Rights Commission:**

The Equality and Human Rights Commission is the independent advocate for equality and human rights in Britain. It aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights. The Equality and Human Rights Commission helplines advise both individuals and organisations such as employers and service providers.

Website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

### **Helpline – England**

Email: [info@equalityhumanrights.com](mailto:info@equalityhumanrights.com)

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

08:00–18:00 Monday to Friday

### **Helpline – Wales**

Email: [wales@equalityhumanrights.com](mailto:wales@equalityhumanrights.com)

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

08:00–18:00 Monday to Friday

### **Helpline – Scotland**

Email: [scotland@equalityhumanrights.com](mailto:scotland@equalityhumanrights.com)

Telephone: 0845 604 5510

Textphone: 0845 604 5520

Fax: 0845 604 5530

08:00–18:00 Monday to Friday

**Directgov:**

Directgov is the UK government's digital service for people in England and Wales. It delivers information and practical advice about public services, bringing them all together in one place.

Website: [www.direct.gov.uk](http://www.direct.gov.uk)

**Government Equalities Office (GEO):**

The GEO is the Government department responsible for equalities legislation and policy in the UK.

Website: [www.equalities.gov.uk](http://www.equalities.gov.uk)

Telephone: 020 7944 4400

## Business advice and information

**British Chambers of Commerce (BCC):**

The BCC is the national body for a network of accredited Chambers of Commerce across the UK; each Chamber provides representation, services, information and guidance to its members.

Website: [www.britishchambers.org.uk](http://www.britishchambers.org.uk)

Telephone: 020 7654 5800

Fax: 020 7654 5819

Email: [info@britishchambers.org.uk](mailto:info@britishchambers.org.uk)

**British Retail Consortium (BRC):**

The BRC is a trade association representing a broad range of retailers. It provides advice and information for its members.

Website: [www.brc.org.uk](http://www.brc.org.uk)

Telephone: 020 7854 8900

Fax: 020 7854 8901

**Business Gateway (Scotland):**

Business Gateway provides practical help, advice and support for new and growing businesses in Scotland.

Website: [www.bgateway.com](http://www.bgateway.com)

Telephone: 0845 609 6611

### **Business Link:**

Business Link is a free business advice and support service, available online and through local advisers.

Website: [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

Telephone: 0845 600 9 006

Minicom: 0845 606 2666

### **EEF:**

EEF is a membership organisation which provides business services to help members manage people, processes, environment and more, so that members can meet their regulatory commitments.

Website: [www.eef.org.uk](http://www.eef.org.uk)

Telephone: 020 7222 7777

Fax: 020 7222 2782

### **Federation of Small Businesses (FSB):**

The FSB works to protect, promote, and further the interests of the self-employed and small business sector. It provides a range of member services.

Website: [www.fsb.org.uk](http://www.fsb.org.uk)

Telephone: 01253 336 000

Fax: 01253 348 046

## **Charities and voluntary organisations**

### **Charity Commission for England and Wales:**

The Charity Commission registers and regulates charities in England and Wales. It offers them advice and provides a wide range of services and guidance to help them run as effectively as possible.

Website: [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

Telephone: 0845 300 0218

Textphone: 0845 300 0219

### **Council of Ethnic Minority Voluntary Sector Organisations (CEMVO):**

CEMVO is the umbrella organisation for black and minority ethnic, faith, women, age and disability-related organisations. They offer a wide range of training, employment, communication and consultancy services to businesses and organisations nationwide.

Website: [www.cemvo.org.uk](http://www.cemvo.org.uk)

Telephone: 020 8432 0200

Email: [enquiries@cemvo.org.uk](mailto:enquiries@cemvo.org.uk)

### **National Council for Voluntary Organisations (NCVO):**

The NCVO provides information, advice and support to others working in or with the voluntary sector in England.

Website: [www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)

Freephone: 0800 2 798 798

Minicom: 0800 01 88 111

Email: [ncvo@ncvo-vol.org.uk](mailto:ncvo@ncvo-vol.org.uk)

### **Office of the Scottish Charity Regulator (OSCR):**

The OSCR is the independent regulator and registrar for Scottish charities. It is a Non-Ministerial Department and forms part of the Scottish Administration.

Website: [www.oscr.org.uk](http://www.oscr.org.uk)

Telephone: 01382 220446

Fax: 01382 220314

Email: [info@oscr.org.uk](mailto:info@oscr.org.uk)

### **Scottish Council for Voluntary Organisations (SCVO):**

The SCVO is the national body representing the voluntary sector in Scotland and provides information, advice and support to members.

Website: [www.scvo.org.uk](http://www.scvo.org.uk)

Telephone: 0800 169 0022

Email: [enquiries@scvo.org.uk](mailto:enquiries@scvo.org.uk)

### **Voice 4 Change England:**

Voice4Change England is a national policy body dedicated to strengthening the ethnic minority Third Sector. It provides a co-ordinated policy voice for ethnic minority groups and organisations and supports them to thrive.

Website: [www.voice4change-england.co.uk](http://www.voice4change-england.co.uk)

Telephone: 020 7843 6130

### **Wales Council for Voluntary Action (WCVA):**

The WCVA is the national body representing the voluntary sector in Wales and provides information, advice and support to members.

Website: [www.wcva.org.uk](http://www.wcva.org.uk)

Telephone: 0800 2888 329

SMS: 07797 805628

Email: [help@wcva.org.uk](mailto:help@wcva.org.uk)

## **Advice on specific issues**

### **Age UK:**

Age UK aims to improve later life for everyone by providing information and advice, campaigns, products, training and research.

Website: [www.ageuk.org.uk](http://www.ageuk.org.uk)

Telephone: 0800 169 6565

Email: [contact@ageuk.org.uk](mailto:contact@ageuk.org.uk)

### **Centre for Accessible Environments (CAE):**

CAE is a registered charity providing information and training on the accessibility of the built environment for disabled people.

Website: [www.cae.org.uk](http://www.cae.org.uk)

Telephone: 020 7840 0125

Textphone: 020 7840 0125

Fax: 020 7840 5811

Email: [info@cae.org.uk](mailto:info@cae.org.uk)

### **Gender Identity Research and Education Society (GIRES):**

GIRES provides a wide range of information and training for Trans people, their families and professionals who care for them.

Website: [www.gires.org.uk](http://www.gires.org.uk)

Telephone: 01372 801 554

Fax: 01372 272 297

Email: [info@gires.org.uk](mailto:info@gires.org.uk)



**The Gender Trust:**

The Gender Trust is the UK's largest charity working to support transsexual, gender dysphoric and transgender people or those who are affected by gender identity issues. It has a helpline and provides training and information for employers and organisations.

Website: [www.gendertrust.org.uk](http://www.gendertrust.org.uk)

Telephone: 0845 231 0505

**Press for Change (PfC):**

PfC is a political lobbying and educational organisation. It campaigns to achieve equality and human rights for all Trans people in the UK through legislation and social change. It provides legal advice, training and consultancy for employers and organisations as well as undertaking commissioned research.

Website: [www.transequality.co.uk](http://www.transequality.co.uk) / [www.pfc.org.uk](http://www.pfc.org.uk)

Telephone: 0161 432 1915 (10:00–17:00, Thursdays only until further notice)

Email: [transequality@pfc.org.uk](mailto:transequality@pfc.org.uk)

**Stonewall:**

Stonewall is the UK's leading lesbian, gay and bisexual charity and carries out campaigning, lobbying and research work as well as providing a free information service for individuals, organisations and employers.

Website: [www.stonewall.org.uk](http://www.stonewall.org.uk)

Telephone: 08000 50 20 20

Email: [info@stonewall.org.uk](mailto:info@stonewall.org.uk)

## 7. Glossary

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|-----------------------------|--|
| <b>accessible venue</b>     | A building designed and/or altered to ensure that people, including disabled people, can enter and move round freely and access its events and facilities.   |
| <b>Act</b>                  | A law or piece of legislation passed by both Houses of Parliament and agreed to by the Crown, which then becomes part of statutory law (ie is <i>enacted</i> ).  |
| <b>affirmative action</b>   | Positive steps taken to increase the participation of under-represented groups in the workplace. It may encompass such terms as positive action and positive discrimination. The term, which originates from the United States of America, is not used in the Equality Act.          |
| <b>age</b>                  | This refers to a person belonging to a particular age group, which can mean people of the same age (e.g. 32-year-olds) or range of ages (e.g. 18–30-year-olds, or people over 50).   |
| <b>agent</b>                | A person who has authority to act on behalf of another ('the principal') but who is not an employee.   |
| <b>all reasonable steps</b> | In relation to harassment by an employee, all the things which the employer could reasonably have done to stop it; in relation to reasonable adjustments, 'reasonable steps' is another term for the things that the employer could reasonably have done to remove the disadvantage. |
| <b>alternative format</b>   | Media formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.  |
| <b>anticipatory duty</b>    | For service providers, the duty to make reasonable adjustments is anticipatory; within reason, it is owed to all potential disabled customers and not just to those who are known to the service provider.   |
| <b>armed forces</b>         | Refers to military service personnel.  |

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| <b>associate members</b>  | A person who has access to some or all of an association's benefits, facilities and services because they are a member of another associated private club.   |
| <b>associated with</b>  | Where a victim of discrimination does not have a protected characteristic but is discriminated against because of their association with someone who does e.g. the parent of a disabled child.                               |
| <b>association</b>  | An association of people sharing a particular characteristic or interest which has at least 25 members, where admission to membership is regulated and involves a process of selection.                                      |
| <b>association with</b>   | See associated with.   |
| <b>auxiliary aid</b>  | Usually a special piece of equipment to improve accessibility.   |
| <b>auxiliary service</b>  | A service to improve access to something often involving the provision of a helper/assistant.  |
| <b>Bill</b>   | A draft Act, not passed or in force.   |
| <b>breastfeeding</b>  | When a woman feeds her baby with breast milk. Breastfeeding is specifically protected for the first 26 weeks after birth by the pregnancy and maternity discrimination provisions in relation to non-work cases.             |
| <b>by association</b>   | In the Act, this refers to discrimination against a person who does not have a protected characteristic but because of their association with someone who has a protected characteristic. See <i>also</i> 'associated with'. |
| <b>charity</b>  | A body (whether corporate or not) which is for a statutory charitable purpose that provides a benefit to the public.   |
| <b>civil, diplomatic, armed or security and intelligence services</b> | Respectively, this refers to (i) the civil service, (ii) the diplomatic service (iii) the armed forces, (iv) organisations responsible for internal security and counter-intelligence (but not civil police forces).         |
| <b>clients</b>  | A customer or patron of a service or organisation, generally where the service provider is professional and is in a position of trust and confidence.  |

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| <b>Code of Practice</b>        | A statutory guidance document which must be taken into account by the Courts when applying the law and which may assist people to comply with the law.  |
| <b>Comparator</b>              | A person with whom a claimant compares themselves to establish less favourable treatment in a discrimination case.  |
| <b>customers</b>               | People who buy or use goods or services.  |
| <b>Data Protection</b>         | Safeguards concerning personal data provided for by statute, mainly the Data Protection Act 1998.   |
| <b>different needs</b>         | Refers to the different requirements that people with protected characteristics may have which either must or should be met to provide equality, including equality of opportunity and access.  |
| <b>direct discrimination</b>   | Less favourable treatment of a person compared with another person because of a protected characteristic.   |
| <b>directly discriminatory</b> | See direct discrimination.  |
| <b>disability</b>              | A person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.   |
| <b>disabled person</b>         | Someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.  |
| <b>disadvantage</b>            | A detriment or impediment – something that the individual affected might reasonably consider changes their position for the worse.  |
| <b>disadvantaged</b>           | When someone suffers a detriment or finds an impediment to enjoying a benefit in comparison with others because of a characteristic of theirs; encountering a pre-existing barrier which is inherent in their workplace but which doesn't have the same effect on others. |
| <b>discriminate unlawfully</b> | See unlawful discrimination.  |

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| <b>discriminating directly or indirectly</b>  | Refers to discrimination because of a person's protected characteristic (direct); or discrimination that occurs when a provision, criteria or practice is applied that creates disproportionate disadvantage for a person with a protected characteristic as compared to those who do not share that characteristic (indirect).   |
| <b>discrimination arising from disability</b> | When a person is treated unfavourably because of something arising in consequence of their disability.  |
| <b>disproportionately low</b>                 | Refers to situations where people with a protected characteristic are under-represented (e.g. in the workforce or among service users) compared to their numbers in the population.   |
| <b>diversity</b>                              | Where many different types of people are included.  |
| <b>duty to make reasonable adjustments</b>    | Where a disabled person is at a substantial disadvantage in comparison with people who are not disabled, there is a duty to take reasonable steps to remove that disadvantage by (i) changing provisions, criteria or practices, (ii) altering, removing or providing a reasonable alternative means of avoiding physical features, and (iii) providing auxiliary aids. |
| <b>educational establishments</b>             | Schools, colleges and higher educational institutions.  |
| <b>employee</b>                               | A person who carries out work for a person under a contract of service, a contract of apprenticeship, or a contract personally to do work; or a person who carries out work for the Crown or a relevant member of the Houses of Parliament staff. See <i>also</i> worker.   |
| <b>employer</b>                               | A person who makes work available under a contract of service, a contract of apprenticeship, the Crown or a relevant member of the Houses of Parliament staff.  |
| <b>employment service provider</b>            | A person who provides vocational training and guidance, careers services and may supply employers with workers.   |
| <b>employment services</b>                    | Vocational training and guidance, finding employment for people, supplying employers with workers.  |

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| <b>equal pay audit</b>                | Comparing the pay of women and men who are doing equal work in an organisation, and investigating the causes of any pay gaps by gender or working pattern. The provisions in the Act directly relating to equal pay refer to sex equality but an equal pay audit could be applied to other protected characteristics to help an employer equality proof their business. |
| <b>equal work</b>                     | A woman's work is equal to a man's in the same employment (and vice versa) if it is the same or broadly similar (like work); rated as equivalent to his work under a job evaluation scheme or if she can show that her work is of equal value to his in terms of the demands made of her.   |
| <b>equality clause</b>                | A sex equality clause is read into a person's contract of employment so that where there is a term which is less favourable than that enjoyed by someone of the opposite sex doing equal work, that term will be modified to provide equal terms.   |
| <b>equality policy</b>                | A statement of an organisation's commitment to the principle of equality of opportunity in the workplace.   |
| <b>equality training</b>              | Training on equality law and effective equality practice.   |
| <b>exceptions</b>                     | Where, in specified circumstances, a provision of the Act does not apply.   |
| <b>flexible working</b>               | Working different hours or at home, including to accommodate disability or childcare commitments.   |
| <b>gender reassignment</b>            | The process of changing or transitioning from one gender to another. <i>See also</i> transsexual person.  |
| <b>Gender Recognition Certificate</b> | A certificate issued under the Gender Recognition Act to a transsexual person who has, or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years, and intends to continue to live in the acquired gender until death.  |
| <b>goods, facilities or services</b>  | Goods refer to moveable property; facilities to opportunities to enjoy a benefit or do something; and services to provisions for meeting people's needs. Goods, facilities and services are available to the public or any part of it.  |

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| <b>guaranteed interview scheme</b>                 | This is a scheme for disabled people which means that an applicant will be invited for interview if they meet the essential specified requirements of the job.   |
| <b>guests</b>                                      | People invited to enjoy an association's benefits, facilities or services by that association or a member of it.   |
| <b>harass</b>                                      | To behave towards someone in a way that violates their dignity, or creates a degrading, humiliating, hostile, intimidating or offensive environment.   |
| <b>harassment</b>                                  | Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment. <i>See also</i> sexual harassment.  |
| <b>impairment</b>                                  | A functional limitation which may lead to a person being defined as disabled according to the definition under the Act. <i>See also</i> disability.  |
| <b>indirect discrimination</b>                     | The use of an apparently neutral practice, provision or criterion which puts people with a particular protected characteristic at a disadvantage compared with others who do not share that characteristic, and applying the practice, provision or criterion cannot be objectively justified. |
| <b>indirectly discriminatory</b>                   | <i>See</i> indirect discrimination.  |
| <b>Information Society Service Provider (ISSP)</b> | A service provider which provides electronic data storage, usually for payment, for example, selling goods online.   |
| <b>instruction to discriminate</b>                 | When someone who is in a position to do so instructs another to discriminate against a third party. For example, if a GP instructed her receptionist not to register anyone who might need help from an interpreter, this would amount to an instruction to discriminate.                      |
| <b>insurance business</b>                          | An organisation which provides financial protection against specified risks to clients in exchange for payment.  |

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| <b>job evaluation study</b>           | This is a study undertaken to evaluate jobs in terms of the demands made on a person, using factors such as effort, skill and decision-making. This can establish whether the work done by a woman and a man is equal, for equal pay purposes. See <i>also</i> equal work. |
| <b>judicial review</b>                | A procedure by which the High Court supervises the exercise of public authority power to ensure that it remains within the bounds of what is lawful.   |
| <b>less favourably</b>                | Worse, not as well as.   |
| <b>like work</b>                      | See equal work.  |
| <b>manifest</b>                       | Refers to the appearance or expression of a protected characteristic. For example manifestations of sexual orientation can include the person's appearance, the places they visit or the people they mix with.   |
| <b>manifestation</b>                  | Appearance or expression. See manifest.  |
| <b>marriage and civil partnership</b> | Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples.   |
| <b>maternity</b>                      | See pregnancy and maternity.   |
| <b>maternity leave</b>                | Leave which a woman can take whilst she is pregnant and after the birth of her child divided into compulsory, ordinary and additional maternity leave. How much leave a woman is entitled to will vary, but all women employees are entitled to 26 weeks.                  |
| <b>members</b>                        | People who have been formally accepted into membership of an association.  |
| <b>minister</b>                       | Someone who is authorised to perform religious functions, such as weddings.  |
| <b>monitor</b>                        | See monitoring.  |
| <b>monitoring</b>                     | Monitoring for equality data to check if people with protected characteristics are participating and being treated equally. For example, monitoring the representation of women, or disabled people, in the workforce or at senior levels within organisations.            |



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| <b>monitoring form</b>                  | A form which organisations use to collect equality monitoring data – from, for example, job applicants or service users. It records information about a person’s sex, age, disability, race, religion, or sexual orientation. It is kept separately from any identifying information about the person.                       |
| <b>more favourably</b>                  | To treat somebody better than someone else. This is unlawful under the Act if it is because of a protected characteristic except in very limited circumstances e.g. the duty to make reasonable adjustments for a disabled person. The law can require pregnant workers to be treated more favourably in some circumstances. |
| <b>national security</b>                | The security of the nation and its protection from external and internal threats, particularly from activities such as terrorism and threats from other nations.   |
| <b>needs that are different</b>         | See different needs.   |
| <b>Normal retirement age</b>            | This is the retirement age at which, in practice, employees in a particular job and workplace would normally expect to retire. Normal retirement age can differ from the contractual retirement age. If it is under 65, it must be objectively justified.  |
| <b>objective justification</b>          | When something (e.g. an otherwise discriminatory action) can be objectively justified. <i>See also</i> objectively justified.  |
| <b>objectively justified</b>            | When something can be shown to be a proportionate means of achieving a legitimate aim – that is, the way of achieving the aim is appropriate and necessary.  |
| <b>occupational health</b>              | Occupational health can be defined as the ongoing maintenance and promotion of physical, mental and social wellbeing for all workers.  |
| <b>occupational health practitioner</b> | A health professional providing occupational health services.  |
| <b>occupational pension</b>             | A pension which an employee may receive after retirement as a contractual benefit.   |

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| <b>occupational requirement</b> | Where having a protected characteristic is an occupational requirement, certain jobs can be reserved for people with that protected characteristic (e.g. Women support workers in women's refuges; Ministers of Religion).   |
| <b>office-holders</b>           | There are personal and public offices. A personal office is a remunerated office or post to which a person is appointed personally under the direction of someone else. A public office is appointed by a member of the government, or the appointment is recommended by them, or the appointment can be made on the recommendation or with the approval of both Houses of Parliament, the Scottish Parliament or the National Assembly for Wales. |
| <b>organised religion</b>       | Refers to a religion which manifests its beliefs through organised worship.  |
| <b>palantypist</b>              | Also known as 'Speech to Text Reporter'. A palantypist reproduces speech into a text format onto a computer screen at verbatim speeds for Deaf or hard of hearing people to read.  |
| <b>past disability</b>          | A person who has had a disability as defined by the Equality Act.  |
| <b>perception</b>               | In the Equality Act, the belief that someone has a protected characteristic, whether or not they do have it.   |
| <b>physical barriers</b>        | A physical feature of a building or premises which places disabled people at a substantial disadvantage compared to non-disabled people when accessing goods, facilities and services or employment. <i>See also</i> physical features.  |
| <b>physical features</b>        | Anything that forms part of the design or construction of a place of work, including any fixtures, such as doors, stairs etc. Physical features do not include furniture, furnishings, materials, equipment or other chattels in or on the premises.   |

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| <b>positive action</b>            | Refers to a range of lawful actions that seek to overcome or minimise disadvantages (e.g. in employment opportunities) that people who share a protected characteristic have experienced, or to meet their different needs.  |
| <b>positive discrimination</b>    | Treating someone with a protected characteristic more favourably to counteract the effects of past discrimination. It is generally not lawful although the duty to make reasonable adjustments is an exception where treating a disabled person more favourably may be required by law.  |
| <b>practicable</b>                | Capable of being carried out or put into effect.   |
| <b>pregnancy and maternity</b>    | Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding. |
| <b>pregnant</b>                   | See pregnancy and maternity.   |
| <b>private disposals</b>          | When an owner-occupier disposes of property (i.e. sells or leases etc.) without using an estate agent or publishing an advert in connection with the 'disposal'.   |
| <b>procurement</b>                | The term used in relation to the range of goods and services a public body or authority requires and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.  |
| <b>professional organisations</b> | A body of persons engaged in the same profession, formed usually to provide advice, maintain standards, and represent the profession in discussions with other bodies about professional concerns.   |
| <b>proportionate</b>              | This refers to measures or actions that are appropriate and necessary. Whether something is proportionate in the circumstances will be a question of fact and will involve weighing up the discriminatory impact of the action against the reasons for it, and asking if there is any other way of achieving the aim.  |

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| <b>protected characteristics</b>        | These are the grounds upon which discrimination is unlawful. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.  |
| <b>protected period</b>                 | This refers to the time in a work context when the specific prohibition against unfavourable treatment of expectant and new mothers applies. The period begins at the start of a woman's pregnancy and continues until the end of her maternity leave.  |
| <b>provision, criterion or practice</b> | Identifying a provision, criterion or practice is key to establishing indirect discrimination. It can include, for example, any formal or informal policies, decisions, rules, practices, arrangements, criteria, conditions, prerequisites or qualifications.  |
| <b>public authority</b>                 | Organisations and individuals that carry out public functions – this would include, for example, government departments, local authorities, health authorities and hospitals, schools, prisons, and police.   |
| <b>public bodies</b>                    | Public bodies are defined as bodies which have a role in the processes of national Government but are not a Government department or part of one. They operate to a greater or lesser extent at arm's length from Ministers.  |
| <b>public functions</b>                 | Any act or activity undertaken by a public authority in relation to delivery of a public service or carrying out duties or functions of a public nature e.g. the provision of policing and prison services, healthcare, including residential care of the elderly, government policy-making or local authority planning services. |
| <b>public sector equality duty</b>      | The duty on a public authority when carrying out its functions to have due regard to the need to eliminate unlawful discrimination and harassment, foster good relations and advance equality of opportunity.   |
| <b>qualifications bodies</b>            | An authority or body which can confer qualifications.   |

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| <b>questions procedure</b>              | A discrimination law procedure whereby a pre-action questionnaire is issued to the respondent/defendant, i.e. the person or organisation against whom a discrimination claim may be made.  |
| <b>race</b>                             | Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, nationality (including citizenship), ethnic or national origins.   |
| <b>rated as equivalent</b>              | An equal pay concept – see equal work.   |
| <b>reasonable</b>                       | What is considered reasonable will depend on all the circumstances of the case including the size of an organisation and its resources, what is practicable, the effectiveness of what is being proposed and the likely disruption that would be caused by taking the measure in question as well as the availability of financial assistance. |
| <b>reasonable adjustment</b>            | See the duty to make reasonable adjustments.   |
| <b>reasonable steps</b>                 | See the duty to make reasonable adjustments.   |
| <b>reasonably</b>                       | See reasonable.  |
| <b>reasonably believe</b>               | This refers to a belief based on objective grounds.  |
| <b>regulations</b>                      | Secondary legislation made under an Act of Parliament (or European legislation) setting out subsidiary matters which assist in the Act's implementation.   |
| <b>religion or belief</b>               | Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.   |
| <b>religion or belief organisations</b> | An organisation founded on an ethos based on a religion or belief. Faith schools are one example of a religion or belief organisation. See <i>also</i> religion or belief.   |
| <b>religious organisation</b>           | See religion or belief organisations.  |

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| <b>retirement age</b>                    | The age at which an employee retires. This may be the national default retirement age, if there is one, or an age which is set in the contract of employment but which must be capable of being objectively justified.                            |
| <b>right to request flexible working</b> | The legal right that qualifying employees, e.g. carers of children have, to request flexible working, e.g. a change in the way you work or the hours you work.  |
| <b>same employment</b>                   | An equal pay concept (see equal work). Generally, women and men can compare their pay and other conditions with those employed by the same or an associated employer.   |
| <b>separate services</b>                 | Services only provided for one sex.   |
| <b>service complaint</b>                 | A complaint about service delivery.   |
| <b>service provider</b>                  | Someone (including an organisation) who provides services, goods or facilities to the general public or a section of it. See <i>also</i> goods, facilities and services.  |
| <b>service users</b>                     | Those accessing or using a particular service. See <i>also</i> goods, facilities and services.  |
| <b>services</b>                          | See goods, facilities and services.   |
| <b>services, goods or facilities</b>     | See goods, facilities and services.   |
| <b>sex</b>                               | This is a protected characteristic. It refers to whether a person is a man or a woman (of any age).   |
| <b>sexual harassment</b>                 | Any conduct of a sexual nature that is unwanted by the recipient, including verbal, non-verbal and physical behaviours, and which violates the victim's dignity or creates an intimidating, hostile, degrading or offensive environment for them. |
| <b>sexual orientation</b>                | Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.   |
| <b>single-sex facilities</b>             | Facilities which are only available to men or to women, the provision of which may be lawful under the Equality Act.  |

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| <b>single-sex services</b>      | A service provided only to men or women. It is not always discriminatory to provide single-sex services, for example provision of single-sex changing facilities in a leisure centre.   |
| <b>small premises</b>           | Premises are small if they are not normally sufficient to accommodate more than two other households (and no more than six people in addition to the owner-occupier and/or their relatives and/or close relations).   |
| <b>stakeholders</b>             | People with an interest in a subject or issue who are likely to be affected by any decision relating to it and/or have responsibilities relating to it.   |
| <b>substantial disadvantage</b> | A disadvantage which is more than minor or trivial.   |
| <b>terms of employment</b>      | The provisions of a person's contract of employment, whether provided for expressly in the contract itself or incorporated by statute, custom and practice or common law etc.   |
| <b>textphone</b>                | A type of telephone for Deaf or hard of hearing people which is attached to a keyboard and a screen on which the messages sent and received are displayed.  |
| <b>trade unions</b>             | These are organisations formed to represent workers' rights and interests to their employers, for example in order to improve working conditions, wages or benefits. They also advocate more widely on behalf of their members' interests and make recommendations to government, industry bodies and other policy makers.            |
| <b>transsexual person</b>       | Refers to a person who has the protected characteristic of gender reassignment. This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. |
| <b>Two Ticks symbol</b>         | A sign awarded by Jobcentre Plus to employers who are positive about employing disabled people and are committed to employing, keeping and developing disabled staff.   |

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| <b>UK Text Relay Service</b>                         | Text Relay is a national telephone relay service for Deaf, deafened, hard of hearing, deafblind and speech-impaired people. It lets them use a textphone to access any services that are available on standard telephone systems.   |
| <b>unfavourably</b>                                  | The term is used (instead of less favourable) where a comparator is not required to show that someone has been subjected to a detriment or disadvantage because of a protected characteristic – for example in relation to pregnancy and maternity discrimination.  |
| <b>unlawful</b>                                      | Not permitted by law (as distinct from illegal which means 'forbidden by law'). On occasions, unlawful and illegal may be synonymous, but unlawful is more correctly applied in relation to civil (as opposed to criminal) wrongs.  |
| <b>unlawful disability discrimination</b>            | See unlawful discrimination and discrimination arising from disability.   |
| <b>Unlawful discrimination</b>                       | When an employer or service provider has engaged in prohibited conduct against someone with a protected characteristic (discriminated against them) and does not have a valid defence.  |
| <b>unlawful discrimination because of disability</b> | See unlawful discrimination and discrimination arising from disability.   |
| <b>unlawful indirect discrimination</b>              | See indirect discrimination.  |
| <b>unlawfully discriminated</b>                      | See discriminate unlawfully and unlawful discrimination   |
| <b>unlawfully discriminated</b>                      | See unlawful discrimination   |
| <b>unreasonable</b>                                  | Not reasonable, beyond what's practicable. <i>See also</i> reasonable.  |
| <b>victimisation</b>                                 | Subjecting a person to a detriment because they have done a protected act or there is a belief that they have done a protected act i.e. bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes or in connection with the Act; making an allegation that a person has contravened the Act. |



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| <b>victimise</b>           | The act of victimisation.   |
| <b>vocational service</b>  | A range of services to enable people to retain and gain paid employment and mainstream education.   |
| <b>vocational training</b> | Training to do a particular job or task.  |
| <b>work of equal value</b> | See equal work.   |
| <b>work situation</b>      | Refers to the employment and workplace context – if disputes or discrimination complaints arise in relation to work they will be heard in the Employment Tribunal.  |
| <b>WORKSTEP</b>            | The WORKSTEP employment programme provides support to disabled people facing complex barriers to getting and keeping a job. It also offers practical assistance to employers.                             |
| <b>worker</b>              | The definition of 'employee' given above also encompasses that of 'worker'. However, in employment law, worker is generally a wider category than employee and includes a contract personally to do work. |
| <b>worse</b>               | When someone is treated less favourably they are treated worse than someone else, literally something which is not as good as someone or something else.  |

This guide is one of a series written by the Equality and Human Rights Commission to explain your responsibilities under equality law if you are a person or organisation providing services, carrying out public functions or running an association.

There are 3 guides:

1. What equality law means for your association, club or society
2. What equality law means for your business
3. What equality law means for your voluntary and community sector organisation (including charities and religion or belief organisations)

We have also produced:

- A separate series of guides explaining the responsibilities people and organisations have if they are employing people to work for them
- Different guides which explain people's rights at work and in relation to people and organisations providing services, carrying out public functions or running an association

If you would like a copy of any of these guides or require this guide in an alternative format, please call our helpline on **0845 6046610** Monday to Friday 8am to 6pm or see our website **[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**.



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