

## Factsheet 79

# Equality, discrimination and the Public Sector Equality Duty

August 2024

About this factsheet

The Equality Act 2010

) came into force on 1 October 2010.

# 1 What is the Equality Act?

#### The Equality Act 2010

means discrimination or unfair treatment based on certain personal characteristics when at work, accessing a service, and in certain other situations is unlawful. The Act applies to discrimination based on:

Age Disability Gender reassignment Marriage and civil partnership Pregnancy and maternity Race Religion or belief Sex Sexual orientation.

These are called *protected characteristics* under the Act.

#### 1.1 How does the law protect me from age discrimination?

You are protected against different types of discrimination under the Act.

#### **Direct discrimination**

This happens if someone treats you less favourably than they treat, or would treat, other people because you have a protected characteristic. For example, your local gym refuses you a membership because of your age.

Direct discrimination based on protected characteristics cannot be objectively justified, except in some cases involving age (see below).

#### **Indirect discrimination**

This happens where a criterion, policy or practice is applied equally to everyone but has a disproportionate negative effect on people sharing a protected characteristic

#### 1.2 Reasonable adjustme

The reasonable adjustments apply:

to employers, service provide associations and landlords

in situations where a disable substantial disadvantage cor

The **first requirement** involv disabled people are put at a criterion, or practice.

The **second requirement** in barriers created by the physi areas, signage, floor covering

The third requirement aid

an auxiliary service

This can include providing pe with autism or a learning disa communicate with others, or hearing loop or sign languag

The first and third requireme read formats on making appoint is happening in a clear and s

The duty to make reasonable provision is anticipatory. This exercising a public function s them that they need reasona services.

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If the organisation changes what it does, the way that it does it, or moves premises or makes changes to existing premises, it should review the adjustments it has made. What was originally a reasonable step to take may no longer be enough.

Equally, a step that might previously have been an unreasonable one for an organisation to have taken could become a reasonable step because circumstances have changed. For example, technological developments may provide new or better solutions to the problems of inaccessible services.

#### Example

A library has a small number of computers for public 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

on the replacement computers. This is likely to be a reasonable step for the library to have to take at this time.

#### What is reasonable?

It depends on factors such as:

how effective the change will be in assisting disabled people in general or a particular disabled customer, client, service user, or member

whether it can actually be done

the cost, and

It is not permissible to pass the costs of making an adjustment on to the disabled person.

Some adjustments are well known now so organisations should be able to anticipate them (for example, providing information in easy read, hearing loops, braille, large print, BSL, etc).

Organisations cannot be expected to anticipate the needs of every person using their services. Disabled people can suggest reasonable adjustments but they do not have to. It is up to the organisation to find the answer and decide if it is reasonable for them.

It can be helpful for a disabled person to tell an organisation about reasonable adjustments others have put in place to remove similar barriers.

#### 1.3 In what situations does the Equality Act apply?

The Act covers a wide range of relationships, including the provision of goods, facilities or services, as well as employment.

For example:

Consumer services such as:	Health services such as:
Shops	Your GP surgery
Hotels	Hospitals
Leisure facilities	Dentists
Employment includes:	Public services include:
Your treatment in the workplace	Local authority services
Applying for a job	Local transport
Interview for a job	Housing associations

Public services such as the NHS cannot provide substandard services or refuse to provide services purely because of your age, unless there is a good and sufficient reason.

For example, you should not be refused treatment because of a view of your age. Instead, the NHS must look at each case individually to decide what treatment options should be offered.

However, age ranges selected for cancer screening or a vaccination programme are examples of where there may be objective justification for different treatment due to age.

#### 1.3.1 Exemptions

Specific exemptions to the Act allow discrimination based on age or other protected characteristics in certain situations.

Examples of activities that may be permitted under these exemptions, subject to certain conditions being met, include:

age-related holidays offered for over 50 s or 18-30 only

discounts in shops for people aged 65 years and over

social or leisure clubs catering for people of specific ages only.

There is an exemption for financial services, including banks, building societies, and insurance companies which allows them to use age limits when deciding what services to offer.

If using age to assess risk, for example refusing insurance to an older person, or charging more, they must ensure their decision is based on reliable and relevant information, which shows people over a certain age are at greater risk.

### 1.4 What do I do if I have been discriminated against?

How you take action depends on whom your complaint is against but as a general guide, you should first make notes about what has happened and collect any related evidence. Next, you can:

Step one:

# 2 Public Sector Equality Duty (PSED)

The Act consolidated several duties contained in previous legislation to create a single PSED. This duty requires public bodies to have due regard to equality in carrying out their functions, especially in making decisions or policies, as explained in more detail below.

#### 2.1 Why is it important?

No-one should experience discrimination because of their age, disability, or other protected characteristics. The PSED aims to put such equality considerations at the heart of decision making by public bodies.

#### 2.2 General duties

Section 149 of the Act and regulations made under section 153 of the Act define what the PSED means in terms of general and specific duties.

The Act places a general duty on the public sector. In the exercise of its functions, a public authority must have due regard to the need s2f0 1 48B44 4420.741ET@.00000887

# 4 The PSED and older people

The PSED

It is possible for private individuals and organisations to take judicial review proceedings without legal representation. However, these proceedings are very complex and there can be significant costs attached to taking action. Always seek professional advice from a specialist adviser.

#### Note

Consider your claim very carefully and get advice on its potential for success. If there are other routes to challenge a decision, it is best

# 7 How the PSED has been applied

These legal decisions help show how public bodies should take action to comply with the PSED and provide guidance on the correct approach.

# Case 1 - R. (Brown) v. Secretary of State for Work and Pensions [2008] EWHC 3158

The court considered what a relevant body must do to fulfil its obligation to have due regard to the aims set out in the general equality duty. The *Brown principles* 

Amongst the key principles are that:

public bodies must be aware of their duties under the PSED and have *due regard* to the aims of the duty

due regard must be considered before and at the time decisions are made in relation to policies that affect people with protected characteristics, not afterwards

the duty must be exercised in substance, with rigour and in a manner that means consideration will influence the final decision

the duty is a non-delegable one. The duty always remains the responsibility of the body subject to the duty. In practice, another body may actually carry out practical steps to fulfil a policy

it is good practice for those exercising public functions to keep an accurate record showing that they had actually considered the general equality duty and pondered relevant questions

the duty is a continuing one.

#### Case 2 - (Winder and others) v Sandwell Metropolitan Borough

# 8 Human rights in the UK

Human rights in the UK are found in the *Human Rights Act 1998*, which implements the *European Convention of Human Rights* (ECHR) in the UK. They include the right to:

life

not to be subjected to torture, inhuman or degrading treatment

liberty

a fair trial

respect for and freedom from interference with privacy and family life

marriage and family

freedom from discrimination in the enjoyment of rights and freedoms under the ECHR.

These rights are important and affect everyone, including older people,

# **Useful organisations**

#### Advisory, Conciliation and Arbitration Service (ACAS)

www.acas.org.uk Telephone helpline 0300 123 1100 Mon-Fri 8am-6pm

Independent organisation aiming to improve employment relations.

#### British Institute of Human Rights (BIHR)

www.bihr.org.uk Telephone 020 7882 5850

A charity whose primary purpose is the promotion of human rights.

#### **Citizens Advice**

England or Wales go to www.citizensadvice.org.uk Northern Ireland go to www.citizensadvice.co.uk Scotland go to www.cas.org.uk In England telephone 0800 144 8848 In Wales telephone 0800 702 2020 In Scotland telephone 0800 028 1456

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

#### Equality Advisory Support Service (EASS)

www.equalityadvisoryservice.com Telephonedt@byTinc=10/a)B8(8a0-30/a2-B(0a)F3(18a)+tuTpmeJcoatton@emph2pmeot8871s1(a)-3(na)-3(na)-3(na)-3

Funded by the EHRC, the Helpline provides information and advice.

#### Equality and Human Rights Commission (EHRC)

www.equalityq71 0 595.32 841.92 reW\*nBT/F2 12 Tf1 0 0 1 256.49 431.35 Tm0 g0 G[(EASS)-08

#### Trades Union Congress (TUC)

www.tuc.org.uk www.worksmart.org.uk Telephone 020 7636 4030

Umbrella body for trade unions in Britain. Worksmart lets you find the most appropriate union for your employment.

# Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

#### Age UK Advice

www.ageuk.org.uk 0800 169 65 65 Lines are open seven days a week from 8.00am to 7.00pm

#### **In Wales contact**

#### Age Cymru Advice

www.agecymru.org.uk 0300 303 4498

#### In Northern Ireland contact

Age NI www.ageni.org 0808 808 7575

#### **In Scotland contact**

#### Age Scotland www.agescotland.org.uk 0800 124 4222

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#### Next update August 2025

The evidence sources used to create this factsheet are available on request. Contact *resources*@ageuk.org.uk