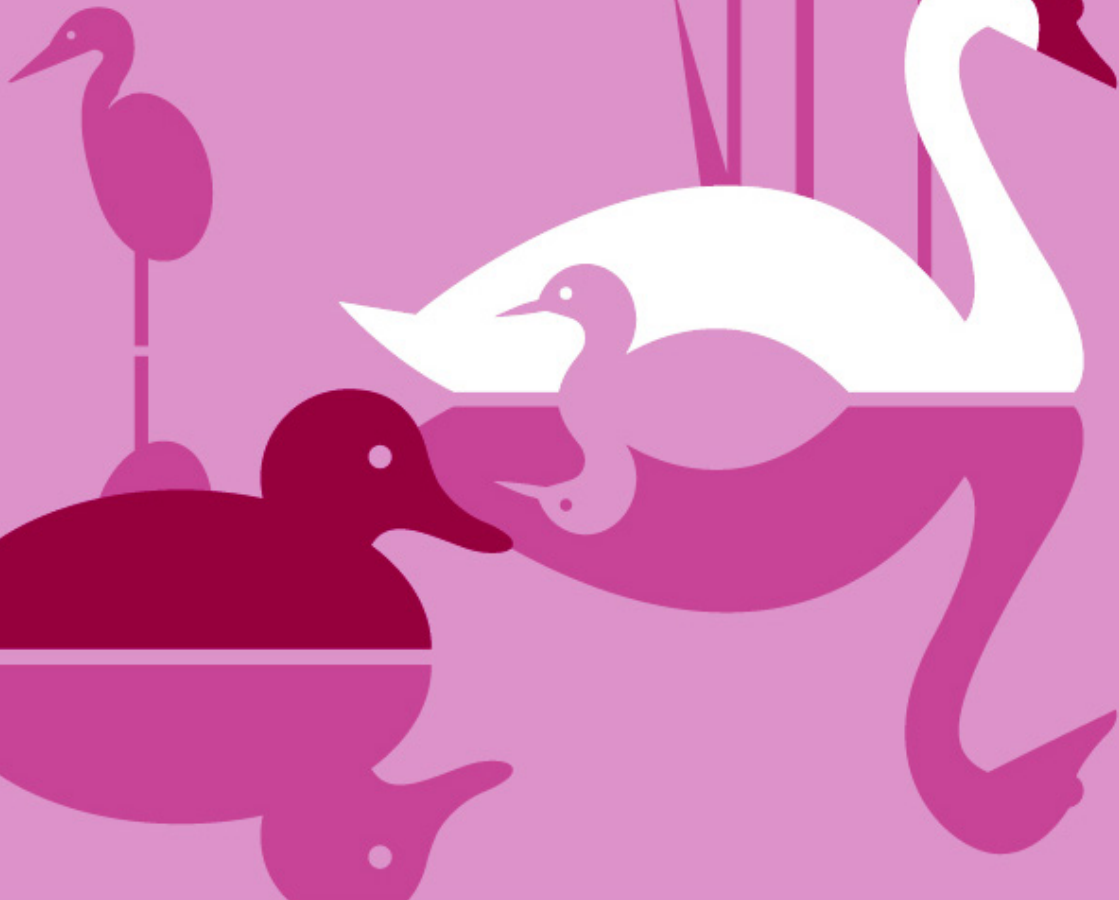


The Equality Act:
Guidance for small businesses

Your role as a service provider under the Equality Act



**Equality and
Human Rights**
Commission

This guide explains your obligations as a provider of services and public functions to the public. The Equality Act also sets out your responsibilities as an employer. The Act means treating everyone fairly, with dignity and respect.

Your business's policies for recruitment, promotion and management of staff should help you to stay within the law, attract talented employees and get the best out of them. Businesses which recruit from the widest possible talent pool will attract the best staff. Workplace policies that prevent discrimination and harassment, and that allow your employees to balance their work and home lives, will help you to retain workers and reduce your recruitment costs.

By being aware of the diverse needs of your customers, you could identify new products and markets. Your customers' buying decisions are also influenced by your reputation.

What is the Equality Act?

The Equality Act 2010 brought together and updated a wide range of laws passed since the 1970s into one place, to make things fairer for everyone. It sets out the personal characteristics that are protected by law and the behaviour that is unlawful. The Act is a simplification of previous anti-discrimination laws and is not designed to create additional paper work. It applies to businesses of any size, so it's important to understand what it means.

Who has duties under the Act?

All service providers, whatever their size, are covered by the Act. You are a service provider if you provide goods, facilities or services to the general public or a section of it, free or paid for. If you aren't providing services to the public, you still have responsibilities if you are a private club or association.

Any person or organisation providing goods, facilities or services to the public (service provider) must make sure that they do what equality law says 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 they provide their goods, facilities or services to the public
- The building or other place where the services are delivered, if this is open to the public or a section of the public
- Advertisements and marketing
- Written materials, for example, leaflets the person or organisation provide as part of their service
- Websites and internet services
- Telephone access and call centres.

You must avoid discrimination, harassment and victimisation of protected groups. Where necessary, you must also make reasonable adjustments for disabled people in all of these areas.

Who is protected by the Act?

Everyone in Britain is protected from unlawful behaviour by the Act. The ‘protected characteristics’ under the Act are:

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

What behaviour is unlawful?

Under the Act people are not allowed to discriminate, harass or victimise another person because they have a ‘protected characteristic’, are perceived to have or are associated with someone who has a protected characteristic.

The Act protects people with a protected characteristic against discrimination when using any service provided publicly or privately, whether that service is for payment or not. This does not necessarily mean that service providers should treat everybody in exactly the same way. In some circumstances a service provider will need to provide services in a different way to meet the needs of people for example by providing single sex services or by making reasonable adjustments for disabled people so that people with different needs can receive the same standard of service as far as possible.

Objective justification

It is possible to defend certain discrimination claims by arguing that the treatment or practice is justified. Those claims are:

- Indirect discrimination
- Direct age discrimination
- Discrimination arising from disability

In these claims, if a service provider can show that the treatment or practice is a proportionate means of achieving a legitimate aim then the claim will not succeed.

The test is best applied in two stages:

- Does the aim of the treatment or policy represent a real need, which is not discriminatory?
- Are the means of achieving the aim proportionate - are there less discriminatory ways of achieving it?

If the aim is legitimate and there are no less discriminatory ways of achieving it, then in some instances discrimination may be objectively justified.

Example

An outdoor centre provides a variety of activities from gentle walks to strenuous climbing. On safety grounds, it requires a medical certificate of good health for all centre users. Although ensuring health and safety is a legitimate aim, the blanket policy requiring certificates is likely to be unjustified.

This is because it could prevent certain disabled customers from using the centre even though they could participate in some of the activities. A less discriminatory policy would be to require certificates for the more strenuous activities only.

What aspects of your business should you consider?

Staff behaviour

The behaviour of staff who work for you towards customers, clients, service users, members, associates or guests is important for your business. Staff may require training or guidance on the best approach to dealing with customers or service users etc, so that they do not discriminate.

Service providers can be held legally responsible if an employee, or someone acting as an agent and carrying out the service provider's instructions, does something that is unlawful discrimination, harassment or victimisation.

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.

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

- You took all reasonable steps to prevent a worker employed by you acting unlawfully.

- An agent acted outside the scope of their 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).

Example

A shop owner becomes aware that her employee is refusing to serve a transsexual customer. The employer instructs the employee to treat transsexual customers in the same way as other customers and advises the employee that discrimination is a disciplinary offence. However, the employee continues to treat transsexual customers less favorably. One such customer brings a claim against both the employee and the employer. The employer may avoid liability by showing that she took all reasonable steps to stop the employee from acting in a discriminatory way such as:

- Establish a policy to ensure equality of access to and enjoyment of their services by potential service users or customers from all groups in society
- Communicate the policy to all staff, ensuring that they know that it is unlawful to discriminate when they are providing services
- Train all staff, including those not providing a direct service to the public, to understand the policy, the meaning of equality in this context and their legal obligations

All of the above could be considered reasonable depending on the circumstances.

The building or other place where services are delivered

If services are provided at a particular place, you must make sure that customers, clients, service users, members, associate members or guests with a protected characteristic are not unlawfully discriminated against, harassed or victimised in accessing the premises and reasonable adjustments must be made for disabled people.

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

You should consider every aspect of the premises, including:

- How people enter
- How they find their way around
- Signage
- How people communicate with staff
- Information
- Queuing systems
- Counters and checkouts
- Accessible toilet facilities.

Advertisements and marketing

Most written and other published material is likely to count as an advertisement if its aim is to tell customers or service users about a service. The 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. The exceptions to this are covered at pages 9 and 10 of this guide.

Example

A Gypsy couple are refused service in a pub that displays on its door a 'No Gypsies or Travellers' sign. It is obvious from the notice on the door and the treatment the Gypsy couple receive that their less favourable treatment is because of race.

Written information

When written information is provided as part of the service, it is important to think about providing it in alternative formats, such as on CD or electronically, for disabled people who need the information in this form. Although this depends on your resources, doing this is likely to be a reasonable adjustment.

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).

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).
- 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.
- That you make sure that your website, emails and e-newsletters are accessible to all customers.

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.

The Royal National Institute of Blind People provides comprehensive information about web accessibility for disabled people with a range of impairments. The Disability Rights Commission's guide to good practice in commissioning accessible websites is available [here](#).

The Commission's free online web accessibility training course is available [here](#).

Telephone access and call centres

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

You need to think about:

- What is said when a call is answered
- The way the service is provided
- How you will make reasonable adjustments for disabled people who would otherwise face a barrier to accessing the service.

The duty to make reasonable adjustments to remove barriers for disabled people

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

When the duty arises, you are under a positive duty to take steps to remove or prevent these obstacles. This means you cannot wait until a disabled person wants to use the service. You must think in advance (and on an ongoing basis) about what disabled people with a range of impairments (such as people who have a visual or hearing impairment, a mobility impairment or a learning disability) might reasonably need.

Many adjustments will not be particularly expensive and you are not required to do more than is reasonable. What is reasonable depends, among other factors, on the size and nature of the organisation, the nature of the goods, facilities or services provided and the resources available.

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

- The first situation involves changing the way things are done (equality law calls this a provision, criterion or practice). This relates to rules or ways of doing things, whether written or unwritten, that could present barriers to disabled people. It might be reasonable to stop the practice completely, or to change it so that it no longer has that effect.

Example

- 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 responds by introducing disability equality 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.
- The second situation involves making changes to overcome barriers created by the physical features of 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, or
- alter it so that it no longer has that effect, or
- 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 to remove or alter the physical feature or find a way of avoiding it (such as replacing steps with a ramp or, if it is reasonable, a lift) before looking at providing an alternative service. An alternative service may not give disabled people a similar level of service.

Examples

- A pub improves the paths in its beer garden so that the outside space can be accessed by disabled customers with a mobility or 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).

Sometimes you will need to ask the landlord's permission to alter rented premises. Equality law gives you 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.

The third situation 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).

Examples

- A shop keeps a portable induction loop on its counter so deaf people who use hearing aids can hear conversations with staff more easily.
- 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 restaurant has a regular booking by a group of people with hearing impairments. It makes sure that members of staff have training in communicating effectively with this group of customers.

Exceptions

There are some exceptions that are relevant to some small businesses.

Exceptions for particular groups

There are some services which are provided in such a way that they are commonly used only by people who share a protected characteristic. For example, an African Caribbean hairdresser would normally be providing services only to people of African and African Caribbean origin. A provider of such services doesn't have to change the way the service is provided but can continue with it. If a white European woman asks for her hair to be styled in a way that the hairdresser would provide to an African Caribbean woman, such as braiding, the hairdresser cannot refuse to do this.

Separate services for men and women and single-sex services

The Equality Act allows you to provide separate services for men and women and single-sex only services in certain circumstances, for example, where providing a joint service (i.e. one where men and women were provided with exactly the same service) would not be as effective or where only people of one sex need the service.

More detailed information on when separate and single- sex services are allowed is contained in the **Commission's Code of Practice on Services.**

Examples

- A large department store provides a private resting area for women who are breastfeeding . A man feeling tired complains that he does not have access to a similar facility. This is not discrimination because only women need the service.
- Post-natal exercise classes can be provided to women only, since only women need the service.
- A charity sets up separate hostels for men and women experiencing domestic abuse. The hostels each provide the same level of service, but the charity believes a unisex hostel would be less effective.

For further information:

This guide is part of the series entitled: **The Equality Act: Guidance for small businesses**, other titles in the series are

- Understanding legal definitions of discrimination and unlawful behaviour in the Equality Act
- Your role as an employer under the Equality Act

You can also find more detailed information in the 'Code of Practice on Employment' and the 'Code of Practice on Services, Public Functions and Associations', available on the Commission's website.

What is the role of the Commission?

The Commission is here to help you with information about the Act. We provide guidance and statutory Codes of Practice explaining how to comply with the law.

As well as explaining the law, we can enforce it. Our powers include helping individuals with their legal cases and taking legal action ourselves against organisations that appear to have broken the law.

Contacts

The Commission's publications are available to download on our website: **www.equalityhumanrights.com**

If you would like to discuss the option of accessing a publication in an alternative format please contact:

engagementdesk@equalityhumanrights.com

Equality Advisory and Support Service (EASS)

The Equality Advisory Support Service has replaced the Equality and Human Rights Commission Helpline. It gives free advice, information and guidance to individuals on equality, discrimination and human rights issues.

Telephone: 0808 800 0082

Textphone: 0808 800 0084

Opening hours:

09:00 to 20:00 Monday to Friday

10:00 to 14:00 Saturday

Website: www.equalityadvisoryservice.com

Post: FREEPOST Equality Advisory Support Service FPN4431

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