

GUIDANCE

Your rights to equality from the criminal and civil justice systems and national security

Equality Act 2010

Guidance for individuals

Vol. 3 of 7

Contents

- Introduction..... 5
 - Other guides and alternative formats 5
 - The legal status of this guidance 6
- 1 | Your rights to equality from the criminal and civil justice systems and national security..... 7**
 - Who is this guide for? 7
 - Criminal and civil justice systems and national security 7
 - Criminal justice..... 7
 - Civil justice 8
 - National security 8
 - Does equality law apply?..... 8
 - Services and public functions 9
 - The public sector equality duties and the Human Rights Act 10
 - What equality law says service providers must do 11
 - What does this mean for how services are delivered? 14
 - Is the way I’ve been treated unlawful discrimination?..... 15
 - Standards of behaviour 16
 - Equality good practice: what to look for if a service provider is doing more than equality law says they must do..... 17
 - Services for particular groups 17
 - Services provided to people with a particular protected characteristic 18
 - Separate services for men and women and single-sex services..... 18
 - Concessionary services for persons of particular age groups..... 20
 - Health and safety for pregnant women 20
 - Services provided by charities or religion or belief organisations 20
 - Particular situations 21
 - Police 21
 - Prisons and similar institutions, such as young offender institutions 23

- Probation services and criminal justice social work services 23
- National security 24
- Criminal courts, civil courts and tribunals 24
- 2 |** What equality law says about delivering services: staff, places, advertisements and marketing, written materials, websites, telephone services and call centres 30
 - Staff behaviour 31
 - Equality good practice: what to look for 31
 - The building or other place where services are delivered 31
 - Advertisements and marketing 32
 - Written information 34
 - Websites and internet services 35
 - Reasonable adjustments..... 36
 - Exceptions 37
 - Telephone access and call centres 37
- 3 |** When a service provider is responsible for what other people do 39
 - When a service provider can be held legally responsible for someone else’s unlawful discrimination, harassment or victimisation 40
 - How a service provider can reduce the risk that they will be held legally responsible..... 41
 - When a service provider’s workers or agents may be personally liable 41
 - What happens if the discrimination is done by a person who is not the service provider’s worker or agent..... 42
 - What happens if a person instructs someone else to do something that is against equality law 42
 - What happens if a person helps someone else to do something that is against equality law 43
 - What happens if a service provider tries to stop equality law applying to a situation..... 43
- 4 |** The duty to make reasonable adjustments to remove barriers for disabled people 44
 - The three requirements of the duty 45
 - Are disabled people at a substantial disadvantage? 48
 - What is meant by ‘reasonable’ 49
 - The continuing duty on organisations 50

- Who pays for an adjustment?..... 51
- What you can do if you think an organisation has not made reasonable adjustments..... 52
- When the duty is different..... 53
 - Associations..... 53
 - Rented premises or premises available to rent..... 54
 - Transport..... 56
- 5 |** What to do if you believe you've been discriminated against 57
 - Your choices 58
 - Was what happened against equality law? 59
 - Complaining directly to the person or organisation 59
 - Alternative dispute resolution 61
 - The questions procedure 62
 - Key points about discrimination cases outside the workplace 63
 - Where claims are brought 63
 - Time limits for making a claim 64
 - The standard and burden of proof..... 65
 - What the court can order a person or organisation to do 65
- 6 |** Further sources of information and advice 67
 - General advice and information 67
 - Advice on specific issues 69
 - Age 69
 - Carers 70
 - Disability..... 71
 - Gender..... 73
 - Gender reassignment 74
 - Religion or belief 75
 - Sexual orientation 75
- 7 |** Glossary 77
- Contacts 93

Introduction

This guide is one of a series written by the Equality and Human Rights Commission to explain your rights to equality. These guides support the implementation 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.

The full list of guides is:

1. Associations, clubs and societies
2. Businesses
3. Criminal and civil justice
4. Health and social care
5. Local council and central government and immigration
6. Parliaments, politicians and political parties
7. Voluntary and community sector organisations, including charities

Other guides and alternative formats

We have also produced: A separate series of guides which explain your rights to equality at work. Different guides for people and organisations who are employing people, or who are delivering services.

If you require this guide in an alternative format and/or language please contact us to discuss your needs. Contact details are available at the end of the publication.

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 April 2014. Any future changes in the law will be reflected in further editions.

1 | Your rights to equality from the criminal and civil justice systems and national security

Who is this guide for?

This guide is for you if you are involved with:

- the police
- other parts of the criminal justice system such as the prosecuting authorities, prisons, or probation services in England and Wales and criminal justice social work services in Scotland
- the criminal or civil courts or tribunals as a member of the public.

This is whether you are a victim, a witness, a suspect, involved in a court case or tribunal case in any way, or an offender.

Criminal and civil justice systems and national security

Criminal justice

If someone commits a crime, the police will be involved. The victim and any witnesses will say what happened. Suspects may be arrested and questioned. If the prosecuting authorities (the Crown Prosecution Service in England and Wales, and the Procurator Fiscal in Scotland, and, in some situations, the police) decide there is a strong enough case, the suspect will be charged, and there will be a trial in a criminal court. The victim and other witnesses will give evidence. In some courts, a jury will decide if the suspect committed the crime or not.

If the case ends with the suspect being found guilty of a crime, then their punishment may involve them going to prison or coming into contact with probation in England and Wales or criminal justice social work in Scotland.

The police are also involved in making sure criminal laws are not broken and preventing crime. They may give advice on making your home safe. They patrol the streets, carry out searches of people and vehicles, and police public events.

Civil justice

If you become involved in a disagreement between people, businesses or other organisations which does not involve the criminal law, it may end up in a civil court or tribunal.

National security

The police and other organisations – the security services – protect people against terrorism and other threats to national security.

Does equality law apply?

If a criminal or civil justice organisation provides any **goods, facilities or services** to the public or a section of the public, it must make sure it does what equality law says it must do. Sometimes a criminal or civil justice organisation is a voluntary or community sector organisation, charity or business. It also applies if you are a **public body** or you are carrying out public functions on behalf of a public body.

It doesn't matter if several organisations are working together, or if some of them are businesses, some are voluntary or community sector organisations or charities, and others are public bodies.

The size of the organisation does not matter either. Equality law applies to all of them although sometimes the rules are slightly different, for example, for charities, when judges are making decisions, and in situations involving national security.

Equality law affects everyone responsible for running an organisation or who might do something on its behalf, including staff or volunteers if the organisation has them.

What's in this guide?

This guide tells you about how you can expect people and organisations working in the civil and criminal justice systems to behave towards you to avoid unlawful discrimination.

It explains how equality law applies to the criminal and civil justice systems in general and to these particular organisations or situations:

- Police
- Prisons and similar institutions, such as young offender institutions
- Probation services and criminal justice social work services
- National security

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 your rights to equality in relation to the criminal and civil justice systems:

- Information on how people and organisations must avoid discrimination in the way they – and their staff – behave and how they run their association and provide their services, whether that is face to face, at a particular place, using written materials, by the internet or over the telephone.
- Information about when a person or organisation is responsible for what other people do, such as any workers employed by them.
- Information about reasonable adjustments to remove barriers for disabled people.
- Advice on what to do if you believe you've been discriminated against.
- A **Glossary** containing 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 and sometimes on subsequent occasions.
- Information on where to find more advice and support.

Services and public functions

Some activities of criminal and civil justice organisations are what the law calls **services**. Some, usually if an organisation is a public body or under contract to a public body, are what the law calls **public functions**.

For example: If a police officer is giving advice on crime prevention, they are providing a service. Services also include what other people do, such as court and tribunal staff, and people who work behind the scenes making decisions about how treatment or care should be provided.

Public functions include situations where the police are stopping and searching someone, or arresting a person, or when someone is held in prison or being supervised by offender management services, as well as decisions about priorities for services, such as how many police officers there should be in a particular area.

It does not usually matter whether what is being done is a service or a public function. This is because, in general, equality law applies in a very similar way to services and to public functions.

In this guide:

- ‘Service provider’ and ‘criminal or civil justice organisation’ are used to mean any person or organisation who is involved in the criminal or civil justice system, whether what they are doing counts as a service or as a public function.
- ‘Service user’ is used to mean you, or anyone else who is using the services of a criminal or civil justice organisation or who is on the receiving end of a public function. It includes someone who wants to use services (for example, someone who is stopped or put off using a service by unlawful discrimination).
- ‘Service’ includes goods and facilities as well as services, and public functions.

The public sector equality duties and the Human Rights Act

Public sector organisations and other organisations which carry out public functions on their behalf, must have what the law calls ‘due regard’ to the need to eliminate the types of conduct which are prohibited under the Equality Act 2010 and discussed in this guide, and to advance equality of opportunity and foster good relations between people who have particular protected characteristics and people who don’t. This is called the ‘public sector equality duty’. This applies to all protected characteristics except that in the case of marriage and civil partnership, a body subject to the duty only needs to comply with the first aim of the duty (elimination of the types of conduct which are prohibited under the Equality Act 2010).

In the case of organisations that are not public sector organisations, they are only subject to the public sector equality duty in respect of the public functions they carry out.

Some public sector organisations must also comply with what are known as specific equality duties. These require those public sector organisations to which they apply to take specific steps that are designed to enable them to better perform the public sector equality duty. The specific duties are different in England, Scotland and Wales.

When you are receiving services from (or are on the receiving end of public functions carried out by) a public sector organisation or others who deliver services for them or carry out public functions on their behalf, you may also have rights under the Human Rights Act 1998.

You can contact the Equality and Human Rights Commission to find out more about the public sector equality duties and the Human Rights Act.

What equality law says service providers must do

Use this list to tell you how you can expect a criminal or civil justice organisation to treat you.

Protected characteristics

Make sure you know what is meant by:

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

Then you will know how you fit into each of these **protected characteristics**.

Unlawful discrimination

Unlawful discrimination, in other words, treating some people **worse** than others because of a protected characteristic can take a number of different forms:

A service provider must not treat you worse than someone else because of a protected characteristic (this is called **direct discrimination**).

For example: A victim of a crime is not believed because of their disability or their ethnic origin.

A service provider must not do something which has (or would have) a worse impact on you and on other people who share a particular protected characteristic than it has on people who do not share that characteristic. Unless the service provider can show that what they have done is **objectively justified**, this will be what is called **indirect discrimination**.

However, when the treatment is because of age, it may be permissible if the organisation can show that what they have done is **objectively justified**.

'Doing something' can include making a decision, or applying a rule or way of doing things.

For example: A member of security staff at a court applies a 'no hats or other headgear' rule to everyone who goes into it. If this rule is applied in exactly the same way to everyone, Sikhs, Jews, Muslims and Rastafarians who may cover their heads as part of their religion will not be allowed to go into the court. Unless the court can **objectively justify** using the rule, this will be indirect discrimination.

If you are a disabled person, a service provider must not treat you unfavourably because of something connected to your disability where they cannot show that what they are doing is **objectively justified**. This only applies if the organisation knew or could reasonably be expected to know that you are a disabled person. A service provider does not have to **know** that the person meets the legal definition of 'a disabled person', *just that he or she has an impairment which is likely to meet the definition*. This is called **discrimination arising from disability**.

For example: Courts and tribunals usually have a 'no dogs' rule. If the court 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 court can **objectively justify** what it has done.

A service provider must not treat you worse than someone else because you are **associated with** a person who has a protected characteristic.

For example: A witness to a crime is told by a prosecutor that their statement will not be used because they were at a nightclub with a bisexual friend. If the prosecutor would not have said this to someone who was at the nightclub with a friend who was not a bisexual person, this will probably be unlawful discrimination because of sexual orientation.

A service provider must not treat you worse because they incorrectly think you have a protected characteristic (**perception**).

For example: A member of staff thinks a man is gay. Because of this they tell him he cannot use a particular service. It is likely the man has been unlawfully discriminated against because of sexual orientation, even though he is not gay.

A service provider must not treat you badly or **victimise** you because you have complained about discrimination or helped someone else complain or have done anything to uphold your own or someone else's equality law rights.

For example: A prisoner supports a prison officer's complaint that another member of prison staff unlawfully discriminated against the officer. The prisoner is repeatedly put to the bottom of the list for new clothing. If this is because of their part in supporting the prison officer's complaint of discrimination, this is likely to be victimisation.

A service provider must not **harass** you.

For example: A member of a service provider's support staff is verbally abusive to a service user 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 **direct discrimination** because the service provider is giving the service to you on worse terms than it would give someone who did not have the same protected characteristic.

In addition, if you are a disabled person, to make sure that you can use the services provided by criminal or civil justice organisations to the same standard as non-disabled people, the service provider must make **reasonable adjustments**.

The service provider is not allowed to wait until you or another disabled person want to use its 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 court has full access to its premises for people with a mobility impairment, including a ramp, handrails and wide entrances. However, it must consider the needs of disabled people with other impairments, so it ensures that, as reasonable adjustments, it provides information about its services in a range of **alternative formats**, like large print or Easy Read, and it has notices and other visual displays in its waiting area for people who have hearing impairments. However, if it has not also ensured that its front-desk staff are trained to assist people with mental health conditions, it has probably not done enough to anticipate the different needs of disabled people with a range of impairments.
- A deaf person who uses British Sign Language (BSL) is being questioned in connection with a crime. The police keep a list of suitable BSL to English interpreters to make sure they are ready to make this adjustment, which is almost certainly a reasonable adjustment. They wait until the interpreter has arrived before continuing the questioning (although they can carry on if a delay means an immediate risk of harm to someone or serious loss of or damage to property, or if the person agrees in writing to be interviewed without an interpreter). The police also pay the costs of interpreting.

You can read more about making reasonable adjustments to remove barriers for disabled people in [Chapter 4](#).

Where a service provider used to provide services to you, it will still be unlawful to discriminate against you in the ways described above if what they do arises out of and is closely connected to the relationship that used to exist between you and them.

What does this mean for how services are delivered?

Because of a protected characteristic, a criminal or civil justice organisation:

- Must not refuse to serve you or refuse to take you on as a service user.

For example: A probation officer or criminal justice social worker must not refuse to supervise someone because of a protected characteristic.

- Must not stop serving or working for you if they still serve or work for other service users who do not have the same protected characteristic.

For example: If a prosecutor usually writes to victims to explain a decision about the case that involves them, they must not fail to write to a victim of crime who has a learning disability.

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

For example: A police officer must not take twice as long to get round to taking a statement from a witness if this is because of a protected characteristic.

- Must not give you worse terms of service than they would usually offer.

For example: If a service is usually charged for, someone must not be charged more because of a protected characteristic.

- Must not put you at any other disadvantage.

For example: A criminal or civil justice organisation must not make it harder for someone to access their services because of a protected characteristic.

Is the way I've been treated unlawful discrimination?

It may be lawful for a criminal or civil justice organisation to refuse you a service or provide you with a different service from that which they provide to other people because of a judgment about your needs as a service user.

The important question is whether what the service provider has done is different because of an assessment of your needs as a service user, or whether it comes within the definition of unlawful discrimination which is explained earlier in this guide.

To answer this question, the reason for the way the service provider has acted will probably be important:

Did they do something because of a protected characteristic which:

- is yours, or
- belongs to someone you are **associated with**, or
- is a protected characteristic they incorrectly thought you had?

Or has what they have done had a worse impact on you and other people with the same protected characteristic? If so, their reason might help you work out if what they have done is **objectively justified**.

Or if you are a disabled person, have you been treated badly because of something connected to (or, as the law puts it, arising from) your disability? Or has the service provider failed to make reasonable adjustments?

Or does what they have done come within any of the exceptions which are explained later in this guide?

If you believe that what they did was **harassment**, does it relate to a protected characteristic?

If you believe you have been **victimised**, what did you do to uphold your own or someone else's equality law rights that has led to your worse treatment now?

If you want help in working out if the service provider is acting within equality law, or to complain about what it has done, you can read more about how to do this in Chapter 5: 'What to do if you think you've been discriminated against'.

Standards of behaviour

A criminal or civil justice organisation can still tell you what standards of behaviour they want from you as a service user. For example, behaving with respect towards their staff and to other service users.

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

If a service provider sets standards of behaviour for their service users which have a worse impact on people with a particular protected characteristic than on people who do not have that characteristic, they need to make sure that they can **objectively justify** what they have done. Otherwise, it will be indirect discrimination.

If they do set standards of behaviour, they 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.

Equality good practice: what to look for if a service provider is doing more than equality law says they must do

This guide tells you what equality law says a service provider must and must not do to avoid unlawful discrimination. If you want to be sure a service provider takes equality seriously, find out if it:

- uses an **equality policy** to help it check that it has thought about equality in the way it plans what it does and how it does it
- gives **equality training** to everyone who deals with service users to make sure they know the right and wrong ways to behave.

Services for particular groups

There are some situations in which any criminal or civil justice organisation can provide (or refuse to provide) all or some of its services to people based on a protected characteristic.

These exceptions apply to all organisations. There are some further exceptions which apply just to some particular types of organisation that may provide services, particularly charities and religion or belief organisations, which you can read about later in this guide.

There are also exceptions which apply just in particular situations, such as when a judge is making a decision in a court or tribunal or when national security is involved, and these are explained in the part of this guide which relates to those situations.

As well as these exceptions, equality law allows a service provider 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 court provides parking spaces for disabled people using the court closer to the entrance so they have less far to go (this may also be a **reasonable adjustment**).

In addition, it may be possible for a service provider to target its services at people with a particular protected characteristic through **positive action**.

The service provider must be able to show that the protected characteristic these people share means they have a different need or a past track record of disadvantage or low participation in the sort of activities the organisation runs.

If a service provider is thinking about taking positive action, it must go through a number of steps to decide whether positive action is needed and what sort of action to take. You can read more about this in the [Glossary](#).

For example: A police force provides a special helpline and specific crime prevention advice for people with a particular protected characteristic. This is because there is evidence that people with this characteristic are likely to be victims of a particular type of crime but have in the past under-reported crimes committed against them.

Services provided to people with a particular protected characteristic

If a criminal or civil justice organisation generally provides its service only for people with a shared protected characteristic (such as people of a particular religion or a particular ethnic group) then they can provide a limited service or refuse to provide the service to someone who does not share that protected characteristic. This only applies if the organisation reasonably believes it would be impracticable to provide the service to that person.

For example: A project to resettle offenders when they leave prison specialises in working with prisoners from a particular ethnic background. If a prisoner from a different ethnic group asked for help from the project, the organisation could only refuse them if they reasonably believed it would not be practicable to provide the service to that person.

A service provider can also target the information they hand out (their advertising or marketing information) at a group with particular protected characteristics, as long as they do not suggest they 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

A service provider is allowed to provide separate services for men and women where providing a combined service (that is, one where men and women are provided with exactly the same service) would not be as effective.

For example: Separate prisons are provided for men and women.

A service provider is also allowed to provide separate services for men and women, or to provide services differently, 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 because of the extent to which the service is required by one sex.

In each case, the organisation needs to be able to **objectively justify** what they are doing.

An organisation is 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
- if 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 the extent to which each sex requires the service makes it not reasonably practicable to provide separate services for each sex because of the extent to which the service is required by one 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
- the services may be used by more than one person at the same time and a woman
- might object to the presence of a man (or vice versa), or
- the services 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.

Gender segregation is permitted for a few specifically defined purposes.

For example, there is an exemption permitting gender segregation in certain situations where it is necessary to preserve privacy and decency. However, unless a specific exemption applies, segregation connected to gender will be unlawful

Generally, a service provider which is providing separate services or single-sex services should treat a **transsexual person** according to the sex in which the transsexual person presents (as opposed to the physical sex they were born with), as it is unlawful to discriminate against someone because of gender reassignment. Although a service provider can exclude a transsexual person or provide them with a different service, this is only if it can **objectively justify** doing so.

A service provider may have a policy about providing its service to transsexual users, but this policy must still be applied on a case-by-case basis. It is necessary to balance the needs of the transsexual person for the service, and the disadvantage to them if they are refused access to it, against the needs of other users, and any

disadvantage to them, if the transsexual person is allowed access. To do this may require discussion with service users (maintaining confidentiality for the transsexual service user). Care should be taken in each case to avoid a decision based on ignorance or prejudice.

Where a transsexual person is visually and for all practical purposes indistinguishable from someone of their preferred gender, they should normally be treated according to their acquired gender unless there are strong reasons not to do so. Service providers and their staff should take care to avoid a decision based on ignorance or prejudice, as this may lead to unlawful discrimination.

Where someone has a gender recognition certificate they should be treated in their acquired gender for all purposes and therefore should not be excluded from single-sex services.

Concessionary services for persons of particular age groups

A service provider can give concessions to persons of a particular age group, such as discounts for pensioners or young people.

Health and safety for pregnant women

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.

Services provided by charities or religion or belief organisations

Sometimes a criminal or civil justice organisation is a **charity** or a **religion or belief organisation**. There are particular exceptions for these types of organisation. If you think these exceptions might apply to your situation, you can read more about them in the Equality and Human Rights Commission guide *Your rights to equality from voluntary and community sector organisations*.

Briefly, a charity is allowed to restrict its benefits (which includes the services they offer) to people with a particular protected characteristic if:

- that is included in the legal document setting the charity up, and either
 - it is **objectively justified**, or
 - it is done to prevent or compensate for disadvantage linked to the protected characteristic.

But a charity must not treat you worse than someone else in relation to any other protected characteristic. They must make reasonable adjustments for you if you are a disabled person. They must not harass or victimise you.

In certain circumstances, a religion or belief organisation can discriminate because of religion or belief or sexual orientation in the way they operate. Unlike charities, they do not need a charitable instrument or to meet particular tests to be able to restrict their services.

In addition, if a religion or belief organisation contracts with a public body to carry out an activity on that body's behalf then it cannot discriminate because of sexual orientation in relation to that activity.

For example: A probation service has contracted out certain activities related to youth offending. A religious group has a contract to provide activities for young people to help them avoid offending behaviour in future. The group cannot refuse to accept a gay person as a service user.

These exceptions do not apply to an organisation whose sole or main purpose is commercial, such as the trading arm of a religious organisation.

Particular situations

The next part of this guide looks at particular organisations and situations:

- Police
- Prisons and similar institutions, such as young offender institutions
- Probation services and criminal justice social work services
- National security
- Criminal courts, civil courts and tribunals

Police

Equality law applies to the police just as it does to any other organisation providing services to the public or a section of the public or carrying out public functions. That means that police forces, police officers and anyone who is working for the police must do what equality law says.

This applies whether you come into contact with the police as a victim of crime, a witness to crime, as someone who is being stopped and searched, or when being questioned or arrested as a suspect, or charged with an offence, or in any other way,

for example, as a solicitor representing someone during an interview at a police station.

Decisions by police officers about actions such as:

- stopping you in the street and searching you ('stop and search')
- handing out a fixed penalty notice
- arresting you
- interviewing you as a suspect
- cautioning you, or
- charging you

wherever these take place, must not be based on your protected characteristics but on evidence.

You can find out more about your rights under laws other than equality law at:

<https://www.gov.uk/browse/justice/rights> if you are in England or Wales or at:

<http://www.scotland.gov.uk/Topics/Justice/public-safety/Police> if you are in Scotland.

Stop and search

In England and Wales and in Scotland, the police can stop and search you without a search warrant. Several different laws allow them to do this. Some require the police to have reasonable grounds to believe that you are committing, or about to commit, a crime and are carrying something illegal. Others are based on specific locations for a particular time and are aimed at stopping incidents of serious violence or terrorism.

If you are stopped, the police officer stopping you should provide their name and station location and explain under what law you have been stopped.

However, the reason for being stopped and searched must not be because of your disability, race, religion or belief, sex or sexual orientation (or your age, the way you dress or because you've committed a crime in the past). This is prohibited by the police's own rules.

The search must be made by a police officer of the same sex as you.

Some of the rules about stop and search are slightly different in England and Wales and in Scotland.

You will be asked what you describe your ethnic origin as. You do not have to give this information, but the reason for this is to help the police (and organisations who check on what the police are doing) to understand if one particular group of people is being stopped and searched more than another group.

In Scotland: every search must be done in as private a place as possible and out of the view of people of the opposite sex. An officer cannot ask you to take off more than your outer coat, jacket or gloves or ask you to take off anything you wear because of your religion or belief without a search warrant.

Prisons and similar institutions, such as young offender institutions

Equality law applies to prisons and to similar institutions, like young offender institutions, just as it does to any other organisation providing services to the public or a section of the public or carrying out public functions.

That means that prisons, prison officers and anyone who is working for a prison must do what equality law says.

This applies whether you come into contact with a prison and the people working there as a prisoner on remand, awaiting sentence or after sentence, because you are visiting a family member or friend, or in any other way, for example, as a solicitor representing someone during an interview in prison.

If you are a prisoner, regardless of your protected characteristics, you should have the same access as anyone else in the same circumstances to facilities within the prison like jobs, education, library services, exercise and accommodation. This may mean, for example, making reasonable adjustments for you if you are a disabled person. However, the factors that influence whether adjustments are reasonable may include your security level.

Probation services and criminal justice social work services

In England and Wales, services such as the supervision of offenders serving sentences out of prison, or of offenders who have been released from prison, are provided by probation officers working for Probation Trusts.

In Scotland, these services are provided by criminal justice social workers, working for Criminal Justice Social Work Services, which are run by local councils.

Equality law applies to these organisations, just as it does to any other organisation providing services to the public or a section of the public or carrying out public functions.

That means that Probation Trusts and Criminal Justice Social Work Services, and anyone who is working for them must do what equality law says.

This applies whether you come into contact with the service and the people working there as an offender serving a sentence out of prison, or having been released from prison, using a hostel run by the service, because you are a family member of an

offender, or in any other way, for example, as a victim of crime being given a chance to comment on the conditions surrounding an offender's release from prison.

National security

National security is different from other situations. If national security is involved, someone may be able to do something that would otherwise be **unlawful discrimination**. If this applies, you will not win a case for unlawful discrimination.

But the person who you believe has discriminated against you has to show that what they did was **proportionate** for national security in that particular situation. Every situation has to be looked at separately.

Special rules apply to cases (whichever court they are in) if the person you believe discriminated against you says that national security is involved. If this applies to your case for discrimination, someone will tell you this and the court will give you advice about what to do about it.

Criminal courts, civil courts and tribunals

Criminal cases are heard in Magistrates' Courts or Crown Courts in England and Wales and in Justice of the Peace Courts, District Courts, Sheriff Courts or the High Court in Scotland.

In England and Wales, civil cases (those not involving criminal law) are usually heard in the County Courts and the High Court. In Scotland, civil cases are heard in the Sheriff Courts and the Court of Session.

Civil cases may include:

- family issues, such as divorce / civil partnership dissolution, residence and contact
- arrangements for children, care and adoption
- debt
- claims for compensation for injury or loss or damage
- discrimination (though generally these are heard only in the County Courts and Sheriff Courts)
- eviction from your home
- anti-social behaviour.

A tribunal is a body which hears disputes relating to specific areas of law and is expected to adjudicate on them. Tribunals handle a range of cases such as:

- immigration
- social security
- child support
- planning
- pensions
- taxes
- employment
- education.

Each tribunal is run slightly differently, but they are usually more relaxed than courts.

Equality law applies to courts' and tribunals' services, just as it does to any other organisation providing services to the public or a section of the public or carrying out public functions.

That means that courts and tribunals, and anyone who is working for them, must do what equality law says.

This applies whether you are:

- a person bringing or defending a civil claim
- being tried in a criminal case
- a witness in a criminal or civil case
- the victim of a crime
- a juror
- someone who has gone with a relative or friend to support them during a case
- watching in the public gallery
- involved in any other way, for example, as a solicitor representing someone during the case.

When equality law does not apply to courts and tribunals

While public authorities like criminal courts and civil courts and tribunals must not discriminate against you because of a **protected** characteristic, this is about the experience you have of going to court. It is not to do with the decision that the court makes or some decisions other people make in connection with court cases.

Equality law does not apply to what the law calls a judicial act. This means something a judge does as a judge in a court or in a tribunal case. It also includes something another person does who is acting like a judge, or something that they have been told to do by a judge.

For example: A father, who is a disabled person who has a visual impairment, applies to court for a residence order in respect of his child. The court refuses his application. He believes that this is because of his impairment. As the decision of the court is a judicial act, he may be able to appeal against the decision, but he cannot bring a case against the judge under equality law.

Equality law does not apply to a decision not to start or continue criminal proceedings or anything done in order to reach a decision not to start or continue criminal proceedings.

For example: A person with a learning disability has reported an assault to the police. They are told by the prosecuting authorities (in England and Wales, the Crown Prosecution Service, and in Scotland, the Procurator Fiscal) that proceedings will not be brought against the alleged criminal. As this is a decision not to start criminal proceedings, the disabled person cannot bring a claim for unlawful discrimination under equality law relating to the decision, even if they believe that the reason for the decision is that they have a learning disability. The person may have other remedies (through judicial review proceedings), but they are not dealt with in this guide.

If the disabled person feels that he or she has been treated unfavourably in subsequent dealings with the Crown Prosecution Service or, in Scotland, the Procurator Fiscal's office, for example if they refuse to call him as a witness because they think he will not present well to the jury because of his learning disability, or if the CPS only offers to meet with him at a place which is inaccessible to him, without making reasonable adjustments, then they may be able to bring a claim for unlawful discrimination under equality law.

Reasonable adjustments for disabled people involved in court and tribunal cases

The courts' and tribunals' services must make **reasonable adjustments** so that existing and potential disabled service users can access their services as far as is reasonable on the same basis as non-disabled people.

Courts and tribunals are not allowed to wait until you or another disabled person wants to use their 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 court has information leaflets for witnesses in **alternative formats**, including Braille, large print, on CD and in Easy Read.
- A tribunal hearing is moved from a building which has no lift access and where the tribunal hearing rooms are upstairs.
- A county court which is completely inaccessible to wheelchair users (because all the court rooms are upstairs and even the ground floor is up several steps) pays the travelling expenses involved for a wheelchair user who has to go to the nearest accessible court 15 miles away.

If you are involved in a case in a court or tribunal, you will be sent information about it, which should include ways of contacting the court or tribunal. If you do not feel that reasonable adjustments have been made to remove the barriers you face to taking part in the case, you should contact the court and tell them what reasonable adjustments you need. Reasonable adjustments for a court or tribunal case are likely to be similar to those you need for any other activity, although there may be differences.

For example:

- Many people may not be used to sitting still in one place for a whole morning or a whole afternoon, or processing a large amount of information, whether that's in writing or while a witness gives evidence in person.
- A person may not be used to explaining what happened in a situation and answering questions about it.

These are all things someone may have to do at a court hearing and which may require reasonable adjustments, such as regular breaks during the course of a hearing.

If you are not sure what is involved in a hearing, ask the person you are dealing with, and explain why you need to know. Court and tribunal staff are trained to help service users, whether this is to do with a disability or not. So are judges. You may wish to visit the court or tribunal in advance so that you know more about what is involved. This may also help you and the court or tribunal staff work out what is needed as a reasonable adjustment.

In some criminal courts, there are also people specially trained to assist and support witnesses and victims. You can find out more information about these services at: <http://www.victimsupport.org.uk/> in England and Wales, or at: <http://www.victimsupportsco.org.uk/page/index.cfm> in Scotland.

If you are not a victim or witness in a criminal case but are, for example, the person on trial or are involved in a civil case, then the court or tribunal should help you to work out what is needed as a reasonable adjustment. If you have a lawyer or someone else representing you in or assisting you with a case, then they will be able to help make sure that you have the necessary reasonable adjustments too.

During a hearing, courts should be aware of the fact that some impairments can make it hard for you to concentrate and help you manage this. Or you may need to eat or drink more frequently, or take medication, or go to the lavatory at frequent intervals. If these are in the circumstances reasonable, the court or tribunal should make adjustments to make it possible for you to do these. (If they do not allow you to do what is necessary to manage your condition, and cannot **objectively justify** this, then this may also be **discrimination arising from disability**.)

If you have a mental health condition that causes anxiety, it will probably be a reasonable adjustment for staff to take time to explain the procedures and environment of the court to help to reduce your anxiety.

Courts do not usually allow dogs to be taken into court premises. However, a disabled person who uses a trained assistance dog as an aid to their mobility would find it unreasonably difficult to attend a hearing if they were not permitted to take the dog with them. It is likely to be a reasonable step for a court to amend its 'no dogs' policy in order to permit trained assistance dogs to be taken into court premises, including the hearing room itself (and if it did not allow them in and could not **objectively justify** this decision, this might well also be **discrimination arising from disability**).

There is a limit on the duty to make reasonable adjustments. In considering the duty, a court or tribunal is not required to take any steps which it has no power to take.

For example: A court cannot order someone to do something which the law does not allow it to order. A deaf person who uses British Sign Language (BSL) has been called for jury service and is keen to serve, but can only do so with the assistance of a BSL to English interpreter. Disabled people, including deaf people, can do jury service and reasonable adjustments are made for them, provided these are within the court's powers. However, the court cannot provide a BSL interpreter as a reasonable adjustment, because criminal law does not permit there to be an 'extra' person in the jury room for any reason. In these circumstances, the court does not have the power to take the steps required to enable the deaf person to be on the jury.

The court or tribunal cannot tell the people involved in a case that they must pay to provide you with all written documents in an **alternative format**, such as written records or the claim form. It may be a reasonable adjustment for the court or tribunal to provide alternative formats of at least some documents, but this will depend on the situation.

You can read more about the duty to make reasonable adjustments in [Chapter 4](#). This includes how a service provider works out what is reasonable.

2 | What equality law says about delivering services: staff, places, advertisements and marketing, written materials, websites, telephone services and call centres

When a person or organisation is providing you with **goods, facilities** or **services**, the way they deliver their services to you matters. This is true whether you are dealing with a business, a public sector organisation, a voluntary or community sector organisation, or an association or club. People and organisations providing services, including goods and facilities, (**service providers**) must make sure that they do what equality law says they must in relation to:

- the behaviour of staff who are dealing with you as a customer, client, or service user, 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, information leaflets the person or organisation provide as part of their service
- websites and internet services
- telephone access and call centres.

Staff behaviour

How people who work for a service provider behave towards you in relation to your **protected characteristics** is very important. Often what staff do (or don't do) will make a difference to whether they deliver services to you without unlawful discrimination, **harassment** or **victimisation** and whether they make **reasonable adjustments** for you if you are a disabled person.

This does not just apply to situations where people are dealing directly with you, but also to how they plan their services. When someone is planning services, they might make a decision, apply a rule or work out a way of doing things which will affect how you access their services. If this has a worse impact on you and other people with a particular protected characteristic than on people who do not share that characteristic, then it will be **indirect discrimination** unless they are able to **objectively justify** the decision, rule or way of doing things.

Equality law does not say exactly how an organisation should tell staff how to behave to avoid unlawful discrimination, harassment and victimisation. 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.

Equality good practice: what to look for

If equality matters to you, look out for organisations who tell you about their **equality policy** and the **equality training** they give their staff, or other ways they set standards for their staff to meet so that they do not discriminate against customers, clients, service users, members or guests.

The rest of this guide tells you more about the standards you can expect in particular situations or when dealing with a particular type of service provider. You can read more about what to do if you believe you've been discriminated against in [Chapter 5](#).

The building or other place where services are delivered

Often you will use services by going to a particular place, such as a building or an open air venue.

If their building or other place where they deliver services is open to the public or a section of the public, a service provider must make sure that:

- you are not unlawfully discriminated against
- you are not harassed or victimised in using their premises, and

- they make reasonable adjustments for disabled people.

In making reasonable adjustments, a service provider is not allowed to wait until a disabled person wants to use their services. They must think in advance about what people with a range of impairments might reasonably need. If they have not done this and a disabled person wants to use a service, then the service provider must make the reasonable adjustments as quickly as possible.

Service providers have to think about every aspect of their building or other premises, including:

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

You can read more about reasonable adjustments to remove barriers for disabled people in [Chapter 4](#).

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 a service provider is likely to count as an advertisement if its aim is to tell customers or service users about a service.

A service provider is allowed to 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 older people from a particular ethnic background.
- A sporting club advertises that particular sessions are targeted at introducing disabled people to its sport.

But, unless services are covered by one of the exceptions to equality law (which you will find at [page 17](#)), an advertisement must not tell you that, because of a particular protected characteristic, you 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, a service provider does not have to make reasonable adjustments for disabled people in advertising its services.

For example: If a business advertises in a newspaper, it does 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 read the written advertisement.

Equality good practice: what to look for

Even though organisations do not have to make reasonable adjustments when they are advertising their services, they can do this if they want to, for example, by advertising in ways that will be accessible to disabled people with a range of impairments, such as providing Easy Read information for people with a learning disability.

Written information

When a service includes providing written information, a service provider must not unlawfully discriminate against, harass or victimise you because of a protected characteristic in:

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

When written information is part of a service, a service provider must 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 it depends on the service provider's circumstances, this is likely to be a **reasonable adjustment** which the service provider must make. In making reasonable adjustments, a service provider is not allowed to wait until a disabled person wants to use their services. They must think in advance about what people with a range of impairments might reasonably need. If they have not done this and a disabled person wants to use a service, then the service provider must make the reasonable adjustments as quickly as possible.

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 reasonable adjustments to remove barriers for disabled people in [Chapter 4](#).

Websites and internet services

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

This applies if they have a one-page website which they maintain themselves. It also applies if they have a very sophisticated website maintained by a professional web design company. And it applies to anything in between.

If you believe that you have been unlawfully discriminated against by an ISSP, and the ISSP is established in the UK, you can bring a claim in the UK courts against the UK based ISSP. You do not have to be in the UK, so long as you are in a European Economic Area (EEA) member state.

An ISSP must make sure:

- That it does not allow discriminatory advertisements and information to appear on its 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 it does 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 it makes reasonable adjustments to make sure that its 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), a 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.

In making reasonable adjustments, a service provider is not allowed to wait until a disabled person wants to use their services. They must think in advance about what people with a range of impairments might reasonably need. If they have not done this and a disabled person wants to use a service, then the service provider must make the reasonable adjustments as quickly as possible.

If you want to know more about how service providers can make their websites accessible for disabled people with a range of impairments, the Royal National Institute of Blind People provides information at:

http://www.rnib.org.uk/professionals/webaccessibility/Pages/web_accessibility.aspx

You can read more about reasonable adjustments to remove barriers for disabled people in [Chapter 4](#).

Equality good practice: what to look for

Even if, in an organisation's particular circumstances, it is not a reasonable adjustment for it to make its website fully accessible to as many people as possible, an organisation can choose to do this.

Exceptions

Where a service provider only has a limited role, it is excused from the responsibilities of an **ISSP**. An example of this is if it is only temporarily storing information, and does not start sending it, decide who to send it to or change the information it is sending. This covers, 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

A service provider may provide services over the telephone as a main activity – for example, you phone up to buy something. Or it may have a telephone service as part of its service, for example, if you use telephone banking, or phone enquiry lines via a call centre. When a service provider offers telephone information as part of its service, it must not unlawfully discriminate against, harass or victimise you because of a protected characteristic in:

- what is said to you during a call, and
- the way the service is provided.

When a service provider offers services over the telephone, it 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 it must do it.

In making reasonable adjustments, a service provider is not allowed to wait until a disabled person wants to use their services. They must think in advance about what people with a range of impairments might reasonably need. If they have not done this and a disabled person wants to use a service, then the service provider must make the reasonable adjustments as quickly as possible.

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 a landline phone.

3 | When a service provider is responsible for what other people do

It is not just the people in charge of organisations providing **goods, facilities** or **services** to the public or carrying out **public functions** who must avoid unlawful discrimination, **harassment** and **victimisation**.

If another person who is:

- employed by a service provider, or
- carrying out a service provider's instructions (who the law calls the service provider's agent), and
- in some circumstances, not employed by, or an agent of, the service provider, does something that is unlawful discrimination, harassment or victimisation, the service provider can be held legally responsible for what they have done.

This part of the guide explains:

- When a service provider can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation.
- How a service provider can reduce the risk that they will be held legally responsible.
- When workers employed by the service provider or its 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 a service provider tries to stop equality law applying to a situation.

When a service provider can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation

A service provider is legally responsible for acts of discrimination, harassment and victimisation carried out by its workers in the course of their employment.

A service provider will also be legally responsible as the 'principal' for the acts of their agents done with their authority. Their agent is someone a service provider has instructed to do something on their behalf, even if they do not have a formal contract with them.

As long as:

- the worker was acting in the course of their employment – in other words, while they were doing their job, or
- the agent was acting within the general scope of their principal's authority – in other words, while they were carrying out the service provider's instructions

it does not matter whether or not the service provider:

- knew about, or
- approved of

what their worker 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 consultant acts on behalf of the organisation and in its name, both when dealing with internal staff and when dealing with external organisations. The effect of the consultant's 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, a service provider will not be held legally responsible if they can show that:

- they took **all reasonable steps** to prevent a worker employed by them acting unlawfully.
- an agent acted outside the scope of their authority (in other words, that they did something so different from what the service provider asked them to do that they could no longer be thought of as acting on the service provider's behalf).

How a service provider can reduce the risk that they will be held legally responsible

A service provider can reduce the risk that they will be held legally responsible for the behaviour of their workers or agents if they tell them how to behave so that they avoid unlawful discrimination, harassment or victimisation.

This does not just apply to situations where a service provider and their staff are dealing face-to-face with you, but also to how they plan their services.

When a service provider is planning their services, they need to make sure that their decisions, rules or ways of doing things are not:

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

and that they have made **reasonable adjustments** for disabled people, which you can read more about in [Chapter 4](#).

When a service provider's workers or agents may be personally liable

A worker or agent may be personally responsible for their own acts of discrimination, harassment or victimisation carried out during their employment or while acting with their principal's authority. This applies where either:

- the service provider is also liable as their employer or principal, or
- the service provider would be responsible but they show that:
 - they took **all reasonable steps** to prevent their worker discriminating against,
 - harassing or victimising you, or
 - their agent acted outside the scope of their 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.

But there is an exception to this. A worker 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 worker 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 a worker employed by them or their agent relies upon to carry out an unlawful act.

What happens if the discrimination is done by a person who is not the service provider's worker or agent

Usually a service provider will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent, however, case law indicates that it is possible that they could be found to be legally responsible for failing to take action where they have some degree of control over a situation where there is a continuing course of offensive conduct, but they do not take action to prevent its recurrence even though they are aware of it happening.

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 a worker employed by them or their 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 they reasonably believe this to be true, they 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 a service provider tries to stop equality law applying to a situation

A service provider cannot stop equality law applying to a situation if it does in fact apply.

For example, there is no point in a service provider making a statement in a contract with a customer, client or service user that equality law does not apply. The statement will not have any legal effect. That is, it will not be possible for the service provider 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**'. A duty is something someone must do, in this case because the law says they must.

The duty to make reasonable adjustments aims to make sure that if you are a disabled person, you can use an organisation's services as close as it is reasonably possible to get to the standard usually offered to non-disabled people.

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

The duty is 'anticipatory'. This means an organisation cannot wait until a disabled person wants to use its 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.

An organisation is not required to do more than it is reasonable for it to do. What is reasonable for an organisation to do depends, among other factors, on its size and nature, and the nature of the goods, facilities or services it provides, or the public functions it carries out, or the association it runs.

If you are a disabled person and can show that there were barriers an organisation should have identified and reasonable adjustments it could have made, you can bring a claim against it in court. If you win your case, the organisation may be told to pay compensation and make the reasonable adjustments.

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

- The three requirements of the duty
- Are disabled people at a substantial disadvantage?
- What is meant by 'reasonable'
- The continuing duty on organisations
- Who pays for an adjustment?
- What you can do if you think an organisation has not made 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 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.

For most organisations and in most situations:

The first requirement involves changing the way things are done (equality law talks about where the disabled service user is put at a substantial disadvantage by a **provision, criterion or practice** of the service provider).

An organisation may have rules or ways of doing things, whether written or unwritten, that present barriers to you as a disabled person. They may stop you using the service altogether, or make it unreasonably difficult for you to use it. Unless the practice can be justified, it might be reasonable for the organisation to drop it 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.

The second requirement involves making changes to overcome barriers created by the **physical features** of an organisation's 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, an organisation 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 an organisation 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 it to do this, a lift) before it looks at providing an alternative service. An alternative service may not give you a similar level of service.

Exactly what kind of changes are needed will depend on the kind of barriers the premises present. An organisation needs 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.

The third requirement involves providing extra aids and services like providing extra equipment or providing a different or additional service (which equality law calls **auxiliary aids** or **auxiliary services**).

An organisation 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 its 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 the accountant's 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 rostered 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 the organisation does. However, organisations 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, if it is reasonable for the organisation to do this.

If an organisation does 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 for an organisation is whether:

- the way it does things
- any physical feature of its 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 applies.

The aim of the adjustments an organisation makes is to remove the substantial disadvantage. But an organisation only has to make adjustments that are reasonable for it to make.

What is meant by 'reasonable'

When deciding whether an adjustment is reasonable an organisation 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
- the organisation's resources and size.

The aim of making adjustments is, as far as possible, to remove any disadvantage faced by disabled people.

An organisation 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. This has to be balanced 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.

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

This is an issue which has to be balanced against the other factors.

In changing policies, criteria or practices, an organisation does not have to change the basic nature of the service it offers.

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, an organisation decides an adjustment is reasonable then it must make the adjustment.

The continuing duty on organisations

The duty to make reasonable adjustments is a continuing duty. It is not something that needs simply to be considered once and once only, and then forgotten.

If a disabled person wants to use an organisation's services but finds barriers, then the organisation needs to think about reasonable adjustments. This applies whether or not it has already made any adjustments.

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

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 an organisation to have to take 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.

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 an adjustment?

If an adjustment is reasonable, the person or organisation providing it must pay for it. As a disabled person, even if you have asked for the adjustment, you must not be asked to pay for 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 the person or organisation charges other people for a service, such as delivering something, if the reason they are providing the service to you is as a reasonable adjustment, they must not charge you for it. But if you are using the service in exactly the same way as other customers, clients, service users or members, then they can charge you the same as they 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.

What you can do if you think an organisation has not made reasonable adjustments

If you look at the definition of disability, you will immediately realise that disabled people are a diverse group with different requirements. Different things about the way an organisation delivers its services may create different barriers for disabled people with different impairments.

An organisation providing goods, facilities or services to the public or a section of the public, carrying out public functions or running an association must think about disabled people in general. It must make reasonable adjustments even if it does not know that a particular customer, client, service user or member is a disabled person. It must make reasonable adjustments even if it believes it currently has no disabled customers, clients, service users or members.

But organisations are not expected to anticipate the needs of every person who may use their service.

If you are a disabled person and try to use a service but find there is a barrier which someone who did not have your impairment would not face, the organisation must consider reasonable adjustments to remove that barrier.

You should point out the difficulty you face in accessing the services, or receiving the public function, or joining or belonging to the association. You could even suggest a reasonable way to overcome the barrier, although you do not have to. It is up to the organisation to find the answer and decide if it is reasonable for them. But if you know about something that has removed a similar barrier, it would obviously be helpful for you to tell the organisation about it.

You can read more about what to do if you believe you've been discriminated against in [Chapter 5](#). This includes what to do if you believe an organisation has failed to make reasonable adjustments.

When the duty is different

Associations

What associations must do under equality law is explained in the Equality and Human Rights Commission guide *Your Rights to Equality: Associations, clubs and societies*. Associations must make reasonable adjustments for disabled people in their selection processes and in how members, associate members and guests (and prospective members and guests) access their services and enjoy their benefits and facilities.

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 the association 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.

Sometimes, a reasonable adjustment may involve providing disabled people with an alternative way of using the service, which involves some level of inconvenience or segregation. However, the best kind of reasonable adjustment is one which enables disabled people to access the service in much the same way as non-disabled people.

Indeed, if there is an adjustment which can reasonably be made which avoids segregation or inconvenience, then an adjustment which entails segregation or inconvenience may not be considered a reasonable adjustment 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 the landlord 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:

1. Providing auxiliary aids and services.
2. 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 items of 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, 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

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.

Special provisions apply in relation to disability discrimination and air travel.

5 | What to do if you believe you've been discriminated against

If you believe someone has unlawfully discriminated against you, **harassed** or **victimised** you in relation to the **goods, facilities** or **services**, or **public functions** they provide, or an association they run, what can you do about it?

This part of this guide:

- tells you what your choices are
- suggests how you can decide if what happened was against equality law
- suggests ways you might be able to sort out the situation with the person or organisation directly
- tells you where to find information about what is called 'alternative dispute resolution' (asking someone else, but not a court, to sort out the situation)
- explains the questions procedure, which you can use to find out more information from a person or organisation if you believe you 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 making a claim
 - the standard and burden of proof
 - what the court can order a person or organisation to do
- tells you where to find out more about making a claim in court.

Your choices

There are three things you can do:

1. Complain directly to the person or organisation.
2. Use someone else to help you sort it out (alternative dispute resolution).
3. Make a claim in court.

You do not have to choose only one of these. Instead, you could try them in turn. If the first does not work, you could try the second, and if that is also unsuccessful, you could make a claim in court.

Just be aware that if you do decide to make a claim in court, you need to tell the court about your claim (by filling in a form and paying a fee) within six months of what happened.

You do not have to go first to the person or organisation you believe discriminated against you or harassed or victimised you or to anyone else before making a claim in court.

You can, if you want to, make a claim in court straight away. But do think carefully about whether making a claim in court is the right course of action for you.

Making a claim may be demanding on your time and emotions, and before starting the process you may want to look at whether or not you have a good chance of succeeding. If you are not successful, you may have to pay some or all of the other side's legal costs and expenses of defending the claim. You may also want to see if there are better ways of sorting out your complaint.

Was what happened against equality law?

Write down what happened as soon as you can after it happened, or tell someone else about it so they can write it down. Put in as much detail as you can about who was involved and what was said or done. Remember, the problem will sometimes be that something was not done.

For example:

- If you are a disabled person and you asked for a **reasonable adjustment** which was not made.
- If someone did not change a decision they had made or stop applying a rule or way of doing things and this had a worse impact on you and other people with the same protected characteristic (**indirect discrimination**).

Read the rest of this guide. Does what happened sound like any of the things we say a person or organisation must or must not do? Sometimes it is difficult to work out if what happened is against equality law. You need to show that your protected characteristics played a part in what happened.

The rest of this guide tells you more about what this means for the different types of unlawful discrimination or for harassment or victimisation.

If you think you need more information from the person or organisation before deciding what to do, then you can use the questions procedure, which we explain at [page 62](#).

If you feel you need to get more advice on whether what happened was against equality law, you will find information on places where you can get help in 'Further sources of information and advice'.

Complaining directly to the person or organisation

Whether you contact the person or organisation direct will depend on what happened, how badly it has affected you, who it is possible to contact and how it is possible to contact them.

Even if you don't at this stage get advice from one of the places we suggest or from a lawyer, you can always ask a friend or someone else you know to help you work out what to write or say.

Follow any instructions the person or organisation gives you about how to comment, complain or give feedback. For example, they may ask you to contact a special telephone number or email address or postal address, or a particular person.

If you're not sure if there is a special way to complain, ask someone at the organisation how you can make a comment on their service or get someone else to ask for you.

Or you could look at any information you have about them, like a leaflet or a website.

If it is just one person providing the service (for example, someone running a small business), then, if you decide to try to sort it out with them first, your only option is for you or someone else to contact them direct.

When you get in touch, try to stick to just saying or writing what happened and, if you can, say why you believe it was the wrong way for the member of staff or other person to behave towards you.

Once you have got in touch, the person or organisation may need to take some time to look into what has happened. So you may need to allow a bit of time for this. But they should not take a very long time.

They may ask you for more information. Try to give them this as soon as you can.

They should then tell you within a reasonable time what they have decided.

If after investigating what has happened, the person or organisation decides:

- no unlawful discrimination, harassment or victimisation took place, or
- that they are not responsible for what has happened (see in [Chapter 3](#))

then they should tell you this is what they have decided.

If they don't explain why they decided this, you can ask them to explain. They do not have to explain, but if they do, it may help you to decide what to do next. For example, if it is worth making a claim in court.

If you don't hear anything from them within a reasonable time, you can remind them of your complaint.

But do remember that if you decide to make a claim in court, you only have six months to fill in the form that starts the claim and file this with the Court. The six months starts with the date of the act you believe was unlawful discrimination, harassment or victimisation.

Therefore, don't wait so long for an answer that you are not able to do anything else if the person or organisation does not agree with your complaint or does not agree to do what you believe they should do to set things right.

If they agree that you were unlawfully discriminated against, harassed or victimised, you need to agree with them the best way to solve the complaint.

You may want an apology and to be reassured that they have changed the way they do things or that they have told their staff what they must do to avoid the same thing happening again to you or to someone else.

Or you may have had to spend more money getting the service from somewhere else or have had your feelings badly hurt, which means you believe they should pay you some money in compensation.

Tell the person or organisation what you are thinking of and see if you can both agree. You may need to give way a bit in order to reach an agreement, but this is up to you. If you cannot agree between you how to set things right, then you need to decide if you want to get help from someone else (alternative dispute resolution) or make a claim in court.

Alternative dispute resolution

The first part of this section assumed you would make the complaint yourself, or with the help of someone you already know.

If you want to get help in sorting out a complaint about discrimination, you could try to get the person or organisation you are complaining about 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 the:

- [Equality Advisory Support Service \(EASS\)](#) (see 'Further sources of information and advice' section).
- Scottish Government publication *Resolving Disputes Without Going To Court* (if you are in Scotland).

For some sorts of cases mediation, services are available through the courts service, and these can be used instead of waiting for a case to be heard by a judge.

Mediation has the advantage of generally reducing cost and may successfully settle a claim without the inconvenience of a trial. You can find information about mediation services, including how to find mediators registered with the Civil Mediation Council for England and Wales here: <http://www.justice.gov.uk/courts/mediation> and for Scotland here: <http://www.scottishmediation.org.uk/>

The questions procedure

If you believe you may have experienced unlawful discrimination, harassment or victimisation under equality law it is good practice to seek relevant information from the person or organisation you think is responsible. This can help you decide if you have a valid claim or not.

How you can do this will depend on whether or not the claim is about something that happened before 6 April 2014.

Claims about events which happened before 6 April 2014

If the claim is about something that happened before 6 April 2014, there is a set procedure which you can use to obtain information from the person or organisation you think is responsible. It includes a set form called 'the questionnaire' or 'questions procedure' available at: <https://www.gov.uk/government/publications/discrimination-and-other-prohibited-conduct-complaints-questionnaire>

The form does not need to be used, provided the specified questions are adopted.

If you send questions to a person or organisation under this procedure, they are not legally required to reply or to answer the questions, but it may harm their case if they do not.

If the person or organisation doesn't 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 if it is reasonable to claim that it would. 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 if it is reasonable for them not to answer.

Claims about events which happened on or after 6 April 2014

The questions procedure and the questionnaire form were abolished on 6 April 2014. For claims about events which took place on or after that date it will remain good practice for anyone who thinks that they may have experienced unlawful discrimination, harassment or victimisation under equality law to seek relevant information before issuing a formal claim.

The Government Equalities Office has issued a good practice guide to help you ask the most relevant and helpful questions and to assist persons or organisations responding to your questions. This can be found at:

<https://www.gov.uk/government/publications/asking-and-responding-to-questions-of-discrimination-in-the-provision-of-goods-and-services-and-public-functions>

That guidance makes it clear that someone sent such questions should treat them seriously and promptly and not ignore them. The questions and answers can form part of the evidence in a case brought under the Equality Act 2010.

Key points about discrimination cases outside the workplace

The key points this guide explains are:

- where claims are brought
- time limits for making a claim
- the standard and burden of proof
- what the court can order a person or organisation to do

Where claims are brought

If the person or organisation you believe has unlawfully discriminated against you, harassed or victimised you against equality law is:

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

then you should make your claim against them in the County Court in England and Wales and in the Sheriff Court in Scotland.

If the organisation is a **public authority**, you may also make a claim for **judicial review** in the High Court in England and Wales or the Court of Session in Scotland. Different procedures and time limits apply to bringing such claims. If you are thinking of bringing a judicial review claim against a public authority you should seek legal advice as early as possible.

Time limits for making a claim

If you want to make a claim in court for unlawful discrimination, harassment or victimisation relating to equality law, you must make it within six months of the act that you are complaining about.

If you are complaining about behaviour over a period of time, then the six months begins at the end of the period in certain circumstances.

If you are 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 making a claim in court 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.

The standard and burden of proof

The standard of proof in discrimination cases is the usual one in civil (non-criminal) cases.

You and the other side must try to prove the facts of your 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 your version of events is true.

If you are claiming unlawful discrimination, harassment or victimisation against a person or organisation, then the burden of proof begins with you. You must prove enough facts from which the court can decide, without any other explanation, that the discrimination, harassment or victimisation has taken place.

Once you have done this, then, in the absence of any other explanation, the burden shifts onto the other side to show that they (or someone whose actions or failures to act they were responsible for – see [Chapter 3](#) for what this means) did not discriminate, harass or victimise you.

What the court can order a person or organisation to do

What the court can order the other side to do if you win 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 your 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 an injunction in England or Wales can be mandatory; that is, the person or organisation has to do something (for example, has 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 the other side can prove that they did not intend what they did to be discriminatory, the court must consider all of the remedies before looking at damages.

The court can also order the other side to pay your legal costs and expenses.

But if you lose your claim, the court may order you to pay the other side's legal costs and expenses.

More information about making a claim in court

You can find out more about what to do if you want to make a claim in court from:

In England and Wales: Her Majesty's Courts Service: see 'Further sources of information and advice' for contact details.

In Scotland: Scottish Courts Service: see 'Further sources of information and advice' for contact details.

6 | Further sources of information and advice

General advice and information

If you need expert information, advice and support on discrimination and human rights issues and the applicable law, especially if you need more help than advice agencies and other local organisations can provide, please contact the **Equality Advisory and Support Service (EASS)**, below. EASS was commissioned by Government in 2012 to replace the EHRC Helpline, which is now closed. EASS is completely independent of the Commission.

Equality Advisory Support Service (EASS)

The Helpline advises and assists individuals on issues relating to equality and human rights, across England, Scotland and Wales. They can also accept referrals from organisations which, due to capacity or funding issues, are unable to provide face to face advice to local users of their services.

Telephone: 0808 800 0082

Text phone: 0808 800 0084 (Mon to Fri 9am to 8pm and Sat 10am to 2pm)

Website: <https://www.equalityadvisoryservice.com>

Advicenow:

An independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

Website: <http://www.advicenow.org.uk/>

Advice UK:

A UK network of advice-providing organisations. They do not give out advice themselves, but the website has a directory of advice-giving agencies.

Website: www.adviceuk.org.uk

Email: mail@adviceuk.org.uk

Telephone: 0300 777 0107

Citizens Advice:

Citizens Advice Bureaux provide free, confidential and independent advice in England and Wales. Advice is available face-to-face and by telephone. Most bureaux offer home visits and some also provide email advice. To receive advice, contact your local Citizens Advice Bureau, which you can find by visiting the website.

Website: www.citizensadvice.org.uk

Telephone: (admin only) 03000 231 231

The Adviceguide website is the main public information service of Citizens Advice. It covers England, Scotland and Wales.

Website: www.adviceguide.org.uk/

Citizens Advice Scotland:

Citizens Advice Scotland is the umbrella organisation for bureaux in Scotland. They do not offer advice directly but can provide information on Scottish bureaux.

Website: www.cas.org.uk

Civil Legal Advice (CLA)

Free and confidential legal advice in England and Wales if you're eligible for legal aid

Website: www.gov.uk/civil-legal-advice

Telephone: 0845 345 4345

Minicom: 0845 609 6677

Text: 'legalaid' and your name to 80010.
(Mon to Fri, 9am to 8pm, Sat, 9am to 12:30pm)

GOV.UK:

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: <https://www.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

Law Centres Network:

The Law Centres Federation is the national co-ordinating organisation for a network of community-based law centres. Law centres provide free and independent specialist legal advice and representation to people who live or work in their catchment areas. The Federation does not itself provide legal advice, but can provide details of your nearest law centre.

Website: www.lawcentres.org.uk

Telephone: 0203 637 1330

The Law Society:

The Law Society is the representative organisation for solicitors in England and Wales. Their website has an online directory of law firms and solicitors. You can also call their enquiry line for help in finding a solicitor. They do not provide legal advice.

Website: www.lawsociety.org.uk

Telephone: 020 7242 1222 (general enquiries)

They also have a Wales office:

Telephone: 029 2064 5254

Fax: 029 2022 5944

Email: wales@lawsociety.org.uk

Scottish Association of Law Centres (SALC):

SALC represents law centres across Scotland.

Website: www.scotlawcentres.blogspot.com

Telephone: 0141 561 7266

Advice on specific issues

Age

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

Telephone: 0800 169 6565

Email: contact@ageuk.org.uk

ChildLine:

ChildLine is the UK's free, confidential helpline dedicated to children and young people. Advice can also be found on its website.

Website: www.childline.org.uk

Telephone: 0800 1111

The Children's Legal Centre (CLC):

The CLC provides legal advice, information and representation for children and young people.

Website: www.childrenslegalcentre.com

Telephone: 08088 020 008 (Mon-Fri 8am-8pm)

Children's Rights Alliance England (CRAE):

CRAE provides free legal information and advice, raises awareness of children's human rights, and undertakes research about children's access to their rights.

Website: www.crae.org.uk

Telephone: 020 7278 8222

Advice line (Tues to Thurs 3.30-5.30pm): 0800 32 88 759

Email: info@crae.org.uk

Advice email: advice@crae.org.uk

Carers

CarersTrust:

The Princess Royal Trust for Carers is the largest provider of comprehensive carers' support services in the UK through its unique network of 144 independently managed Carers' Centres, 85 young carers' services and interactive websites. The Trust currently provides quality information, advice and support services to over 400,000 carers, including approximately 25,000 young carers.

Website: www.carers.org/www.youngcarers.net

Telephone: 0844 800 4361

Fax: 0844 800 4362

Email: info@carers.org

Carers UK:

The voice of carers. Carers provide unpaid care by looking after an ill, frail or disabled family member, friend or partner.

England

Website: www.carersuk.org

Telephone: 0808 808 7777 (Mon to Fri, from 10am until 4pm)

Email: info@carersuk.org

Disability

Disability Law Service (DLS):

The DLS is a national charity providing information and advice to disabled and Deaf people. It covers a wide range of topics including discrimination, consumer issues, education and employment.

Website: www.dls.org.uk

Telephone: 020 7791 9800

Minicom: 020 7791 9801

Mencap:

Mencap is the leading UK charity for people with a learning disability and their families. It provides a range of services including advice and information.

Website: www.mencap.org.uk

Telephone: 0808 808 1111

Fax: 020 7608 3254

Email: information@mencap.org.uk

Mind:

Mind is the leading mental health charity for England and Wales. It provides information to help promote understanding of mental health and campaigns to promote and protect good mental health. It has an info-line and a legal services line, and also provides online advice.

Website: www.mind.org.uk

Infoline: 0845 766 0163

Legal Advice Service: 0845 2259393

Email: legal@mind.org.uk

Disability Rights UK:

Disability Rights UK is a national umbrella organisation with around 500 member groups. It campaigns for equal rights for disabled people and gives information and advice on disability issues.

Website: <http://disabilityrightsuk.org/>

Telephone: 020 7250 3222

Fax: 020 7247 8765

Minicom: 020 7250 4119

Email: enquiries@disabilityrightsuk.org

Rethink:

Rethink helps over 48,000 people every year through its services, support groups and by providing information on mental health conditions.

Website: www.rethink.org

Telephone: 0300 5000 927 (10:00 to 13:00 Monday–Friday)

Email: advice@rethink.org

Royal National Institute for the Blind (RNIB):

The RNIB is the UK's leading charity offering information, support and advice to over two million people with sight loss.

Website: www.rnib.org.uk

Helpline: 0303 123 9999

Email: helpline@rnib.org.uk

Action on hearing loss:

Action on hearing loss (previously RNID) offers a range of services for Deaf and hard of hearing people and provides information and support on all aspects of deafness, hearing loss and tinnitus.

Website: <http://www.actiononhearingloss.org.uk>

Telephone: 0808 808 0123

Textphone: 0808 808 9000

Email: informationline@hearingloss.org.uk

tinnitushelpline@hearingloss.org.uk

SCOPE:

Scope is the leading UK disability charity for children and adults with cerebral palsy. It provides information, help, support and advice on disability issues.

Website: www.scope.org.uk

Helpline: 0808 800 3333 (9am and 5pm on weekdays)

Text SCOPE, plus your message to 80039

Email: response@scope.org.uk

Terrence Higgins Trust:

Terrence Higgins Trust is the leading and largest HIV and sexual health charity in the UK. It offers a range of services including advice and information for people affected by HIV.

Website: www.tht.org.uk

Telephone: 0808 802 1221 (Mon to Fri, 9.30am to 5.30pm)

Fax: 020 7812 1601

Email: info@tht.org.uk

Gender

Gingerbread:

Gingerbread is a national and local charity working for, and with, single parent families, to improve their lives. It lobbies and campaigns to raise awareness and provides advice and information for single parents.

Website: www.gingerbread.org.uk

Telephone: 0808 802 0925 (single parent helpline)

Email: info@gingerbread.org.uk

Maternity Action:

Maternity Action works to end inequality and promote the health and wellbeing of all pregnant women, their partners and children from before conception through to the child's early years. It provides information sheets but cannot provide advice on individual cases.

Website: www.maternityaction.org.uk

Telephone: 0845 600 8533

Rights of Women (RoW):

RoW is a UK voluntary organisation working to attain justice and equality by informing, educating and empowering women on their legal rights. It provides free, confidential advice on a range of issues.

Website: www.row.org.uk

Telephone: 020 7251 6577

Textphone: 020 7490 2562

Email: info@row.org.uk

Women's Aid:

Women's Aid is the key national charity working to end domestic violence against women and children. It supports a network of over 500 domestic and sexual violence services across the UK and provides a free 24-hour helpline.

Website: www.womensaid.org.uk

Telephone: 0808 2000 247

Email: info@womensaid.org.uk

Helpline: helpline@womensaid.org.uk

Gender reassignment

Gender Identity Research and Education Society (GIRES):

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

Website: www.gires.org.uk

Telephone: 01372 801 554

Fax: 01372 272 297

Email: 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

Telephone: 01527 894 838

Email: info@gendertrust.org.uk

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.pfc.org.uk

Telephone: 08448 708165

Email: office@pfc.org.uk

Religion or belief

Inter Faith Network:

The Inter Faith Network for the UK promotes good relations between people of different faiths. It has a list of contact details for faith groups and organisations across the UK.

Website: www.interfaith.org.uk

Telephone: 020 7730 0410

Sexual orientation

The Albert Kennedy Trust:

The Albert Kennedy Trust provides information and support to lesbian, gay, bisexual and trans homeless young people.

Website: www.akt.org.uk

Telephone: 020 7831 6562 (London)

Telephone: 0161 228 3308 (Manchester)

Telephone: 0191 281 0099 (Newcastle-upon-Tyne)

Telephone: 0161 228 3308

Email: contact@akt.org.uk

Equality Network:

The Equality Network works for lesbian, gay, bisexual and transgender equality and human rights in Scotland. It provides information, and carries out campaigning and policy work.

Website: www.equality-network.org

Telephone: 0131 467 6039

Fax: 0131 476 9006

Email: en@equality-network.org

Galop:

Galop works to prevent and challenge homophobic and transphobic hate crime in Greater London. It aims to reduce crimes against lesbian, gay, bisexual and transgender people, and campaigns for an improved criminal justice system.

Website: www.galop.org.uk

Helpline: 020 7704 2040

Fax: 020 7704 6707

Email: info@galop.org.uk

The Lesbian and Gay Foundation (LGF):

The LGF is a North-West based charity working to support lesbian, gay and bisexual people. It provides advice and information, counselling, and support groups.

Website: www.lgf.org.uk

Telephone: 0845 3 30 30 30

Fax: 0161 235 8036

Email: info@lgf.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

Telephone: 08000 50 20 20

Email: info@stonewall.org.uk

7 | Glossary

accessible venue	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.
Act	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>).
age	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). The prohibition on age discrimination in relation to associations applies to those under and over the age of 18. The prohibition on age discrimination in services and public functions does not apply to those under the age of 18.
agent	A person who has authority to act on behalf of another ('the principal') but who is not an employee or worker employed by the employer.
alternative format	Media formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.
anticipatory duty	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.

associate members	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.
associated with	This is used in a situation where the reason a person is discriminated against is not because they have a particular protected characteristic, but because they are 'associated with' another person who has that protected characteristic, e.g. the other person is their friend or relative. For example, a golf club bars a person from membership because they have a disabled child. This is sometimes referred to as discrimination 'by association'.
association	An association of people which has at least 25 members, where admission to membership is regulated and involves a process of selection.
auxiliary aid	Usually a special piece of equipment to improve accessibility.
auxiliary service	A service to improve access to something often involving the provision of a helper/assistant.
barriers	In this guide, this term refers to obstacles which get in the way of equality for disabled people and other people put at a disadvantage because of their protected characteristics. Unless explicitly stated, 'barriers' does not exclusively mean physical barriers. For the wider context in relation to disabled people, see duty to make reasonable adjustments .
breastfeeding	Breastfeeding is specifically protected for the first 26 weeks after birth by the pregnancy and maternity discrimination provisions in the Equality Act in relation to non-work cases.

burden of proof	This refers to where the onus of proving discrimination lies. Broadly speaking, a person bringing a claim must prove facts which, if unexplained, indicate discrimination. The burden of proof then shifts to the person or organization against whom the claim is being brought to prove there was no discrimination. If that person or organization cannot then prove that no discrimination was involved, the person bringing the claim will win their case.
by association	See associated with .
charity	A body (whether corporate or not) which is for a statutory charitable purpose that provides a benefit to the public.
Code of Practice	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.
comparator	A person with whom a claimant compares themselves to establish less favourable treatment or a disadvantage in a discrimination case. If a comparator does not exist it is often possible to rely on how a person would have been treated if they did not have the relevant protected characteristic (known as a 'hypothetical' comparator).
data protection	Safeguards concerning personal data provided for by statute, mainly the Data Protection Act 1998.
direct discrimination	Less favourable treatment of a person compared with another person because of a protected characteristic. This may be their own protected characteristic, or a protected characteristic of someone else; for example, someone with whom they are associated . It is also direct discrimination to treat someone less favourably because the service provider wrongly perceives them to have a protected characteristic.

- disability** 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. Certain medical conditions are automatically classed as being a disability – for example, cancer, HIV infection, multiple sclerosis.
- disabled person** Someone who has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
- discrimination arising from disability** When a person is treated unfavourably because of something arising in consequence of their disability; for example, a restaurant does not allow a visually impaired customer to come in because they want to bring their dog inside. The dog is a guide dog and the reason the customer has the dog is because of their disability. If it is **objectively justifiable** to treat a person unfavourably because of something arising from their disability, then the treatment will not be unlawful. It is unlikely to be justifiable if the service user has not first made any **reasonable adjustments**.
- disproportionately low** Refers to situations where people with a protected characteristic are under-represented (e.g. among service users) compared to their numbers in the population.
- diversity** This tends to be used to refer to a group of people with many different types of protected characteristic, e.g. people of all ages, religions, ethnic background etc.

duty to make reasonable adjustments

This duty arises where (1) a physical feature or (2) a provision, criterion or practice applied by an association puts a service user at a **substantial** disadvantage in comparison with people who are not disabled. It also applies where a member, associate member or guest (or former member, former associate member or former guest) would be put at a substantial disadvantage but for the provision of an auxiliary aid. The association has a duty to take reasonable steps to avoid 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. In many situations, an association may have to treat the disabled service user more favourably than others as part of the reasonable adjustment. More detail of the law and examples of reasonable adjustments are set out in Chapter 4 of this guide.

employee

A person who carries out work for a person under a contract of service or 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. This guide refers to someone in these categories as 'workers'. See **worker**.

employer

A person who makes work available under a contract of employment, a contract of service or a contract of apprenticeship, or the Crown or a relevant member of the Houses of Parliament staff.

equality policy

A statement of an organisation's commitment to the principle of equality of opportunity in the workplace.

equality training

Training on equality law and effective equality practice.

exceptions

Where, in specified circumstances, a provision of the Act does not apply.

former disability	A person who has had a disability as defined by the Equality Act.
former member, associate member, or guest	A former member, former associate member or former guest is someone who used to be a member, associate member or who was a guest.
gender reassignment	The process of changing or transitioning from one gender to another. <i>See also transsexual person.</i>
gender recognition certificate	A certificate issued under the Gender Recognition Act to a transsexual person who seeks such a certificate and 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.
goods, facilities or services	Goods refer to moveable property; facilities to opportunities to enjoy a benefit or do something; and services can refer to the wide range of provisions that people might need, for example hotels, restaurants and pubs, post offices and banks, shops and market stalls, cinemas, parks, petrol stations, hospitals, telesales and services provided by bus and train operators. Goods, facilities and services must be available to the public or any part of it if they are to fall within the Equality Act 2010.
guests	People invited to enjoy an association's benefits, facilities or services by that association or by any of its members.
harass	To behave towards someone in a way that violates their dignity, or creates a degrading, humiliating, hostile, intimidating or offensive environment.
harassment	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 sexual harassment.</i>

impairment	A functional limitation which may lead to a person being defined as disabled according to the definition under the Act. <i>See also disability.</i>
indirect discrimination	Where a service provider applies (or would apply) 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 by the service provider.
indirectly discriminatory	See indirect discrimination.
Information Society Service Provider (ISSP)	A service provider which provides electronic data storage, usually for payment, for example, selling goods online.
instruction to discriminate	When someone who is in a position to do so instructs another to discriminate against a third party. For example, if a GP instructed their receptionist not to register anyone who might need help from an interpreter, this would amount to an instruction to discriminate.
judicial review	A procedure by which the High Court or Court of Session supervises the exercise of public authority power to ensure that it remains within the bounds of what is lawful.
knowledge	This refers to knowledge of a person's disability which, in some circumstances, is needed for discrimination to occur. An association does not have to <i>know</i> that the person meets the legal definition of 'a disabled person', <i>just that he or she has an impairment which is likely to meet the definition.</i>

liability	Legal responsibility. An employer is legally responsible for discrimination carried out by workers employed by them or by their agents, unless they have taken all reasonable preventative steps.
marriage and civil partnership	In England and Wales marriage is no longer restricted to a union between a man and a woman and now includes a marriage between two people of the same sex. This will also be the case in Scotland when the relevant legislation is brought into force (expected to be before the end of 2014). Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples.
maternity	See pregnancy and maternity .
members	People who have been formally accepted into membership of an association.
minister	Someone who is authorised to perform religious functions, such as weddings.
monitor	See monitoring .
monitoring	Monitoring for equality data to check if people with protected characteristics are participating in the activities of an organisation and being treated equally. For example, monitoring the representation of women, or disabled people, in the association or the workforce or at senior levels within organisations.
monitoring form	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 protected characteristics. It is kept separately from any information identifying the person.

more favourably	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. The law requires service providers to make reasonable adjustments for a disabled people to remove any disadvantage caused by their disability, and this often <i>requires</i> treating them more favourably. A service provider can also choose to treat a disabled service user more favourably in other ways, even if they are not at a particular disadvantage on the relevant occasion.
national security	The security of the nation and its protection from external and internal threats, particularly from activities such as terrorism and threats from other nations.
objectively justified	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. See also proportionate .
palantypist	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.
perception	This refers to a belief that someone has a protected characteristic, whether or not they do have it. The idea of discrimination because of perception is not explicitly referred to in the Equality Act, but it is incorporated because of the way the definition of direct discrimination is worded.
physical barriers	A physical feature of a building or premises which places disabled people at a substantial disadvantage compared to non-disabled people when accessing benefits or services. See <i>also</i> physical features .

physical features	Anything that forms part of the design or construction of a place of work, including any fixtures, such as doors, stairs etc. It may refer to things brought onto premises.
positive action	If an association reasonably thinks that people sharing a certain protected characteristic suffer a disadvantage connected to that characteristic or have different needs, or if their participation in an activity is disproportionately low, a service provider can take any action (which would otherwise be discrimination against other people) which is a proportionate means of enabling or encouraging those people to overcome or minimise their disadvantage or to participate in activities or meeting their needs.
positive discrimination	Treating someone with a protected characteristic more favourably to counteract the effects of former discrimination against those with that characteristic. It is generally not lawful, although more favourable treatment of members and of service users because of their disability is permitted. Moreover, the duty to make reasonable adjustments may require an association or service provider to treat a service user more favourably if that is needed to avoid a disadvantage.
pregnancy and maternity	Pregnancy is the condition of being pregnant or expecting a baby. In the non-work context, protection against maternity discrimination lasts for 26 weeks after giving birth, and this includes protection against unfavourable treatment on the grounds that a woman is breastfeeding.
principal	In the context used in this Guide, where an association or service provider uses an agent, the association or service provider is the principal .

proportionate	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 of the action.
protected characteristics	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.
provision, criterion or practice	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.
public authority	For the purposes of this Guidance a 'public authority' means a government department, local authority, court or tribunal, health authority, hospital, school, prison or police.
public bodies	For the purpose of this Guidance 'public bodies' includes public authorities (as above) as well as organisations which have a role in the processes of national governments but are not a government department or part of one. They operate to a greater or lesser extent at arm's length from Ministers and include, for example, a quango (a non-departmental government body) or an inspectorate. This is not an exhaustive list.

- public functions** a 'public function' for the purposes of this Guidance is any act or activities of a public nature carried out by a public authority or public body or by the private or voluntary sectors which is not already covered by the other sections of the Act dealing with services, housing, education and employment. Specifically, in relation to the private and voluntary sectors it will cover certain acts or activities carried out on behalf of the state. Examples of public functions include: determining frameworks for entitlement to benefits or services; law enforcement; receiving someone into prison or immigration detention facility; planning control; licensing; parking controls; trading standards; environmental health; regulatory functions; investigation of complaints; child protection. This is not an exhaustive list.
- public sector equality duty** 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.
- questionnaire** See **questions procedure**.
- questions procedure** A procedure whereby written pre-action questions are issued to the defendant, i.e. the person or organisation against whom a discrimination claim may be made. The questions are usually put onto a standard written form which is often called a 'questionnaire'. This procedure was abolished on 6 April 2014 though will continue to apply to claims of discrimination which took place before that date (see section in the Guidance on 'questions procedure' for details).
- race** 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.
- reasonable adjustment** See the **duty to make reasonable adjustments**.

reasonable steps	See the duty to make reasonable adjustments .
religion or belief	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.
religion or belief organisations	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 .
religious organisation	See religion or belief organisations .
separate services	Services only provided for one sex.
service complaint	In the context of provision of services, this is a complaint about service delivery.
service provider	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 .
service users	Those accessing or using a particular service. See <i>also</i> goods, facilities and services .
services, goods or facilities	See goods, facilities and services .
sex	This is a protected characteristic. It refers to whether a person is a man or a woman (of any age).
sexual harassment	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.

sexual orientation	Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.
single-sex facilities	Facilities which are only available to men or to women, the provision of which may be lawful under the Equality Act in certain specified circumstances.
single-sex services	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.
small premises	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).
Specific equality duties	These are duties imposed on certain public authorities. They are designed to ensure the better performance by a public authority of the public sector equality duty (see <i>also</i> public sector equality duty). The specific duties are different in Scotland, England and Wales.
stakeholders	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.
substantial	This word tends to come up most in connection with the definition of disability and the duty to make reasonable adjustments for disabled workers. The Equality Act says only that 'substantial' means more than minor or trivial.
terms of employment	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.

textphone	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.
transsexual person	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. Once a transsexual person has acquired a gender recognition certificate , it is probably the case that they should be treated entirely as in their acquired gender.
UK Text Relay Service	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.
unfavourably	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, or discrimination arising from disability .
victimisation	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; or making a relevant pay disclosure.
victimise	The act of victimisation.

worker

In this guide, 'worker' is used to refer to any person working for an employer, whether they are employed on a contract of employment (ie an '**employee**') or on a contract personally to do work, or more generally as a **contract worker**.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

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