

2. Your rights to equality from businesses providing goods, facilities or services to the public

Equality Act 2010 Guidance of your rights
Volume 2 of 9

Contents

Introduction	1
Other guides and alternative formats	1
The legal status of this guidance	3
1. Your rights to equality from businesses providing goods, facilities or services to the public	4
Who is this guide for?	4
What's in this guide?.....	4
What else is in this guide?	5
What equality law says a business providing goods, facilities or services to the public must and must not do	6
Protected characteristics.....	6
What is unlawful discrimination?	6
What does this mean for a business?	9
Do any of the exceptions in equality law apply to the business or situation I am dealing with?	11
Particular types of business	15
Businesses selling products, such as shops and petrol stations.....	15
Banks and other financial services providers	19
Builders, other trades people and companies providing similar services	27
Estate agents, letting agents and property management companies.....	29
Gyms, health clubs and sporting activities	33
Hairdressers, barbers and beauty salons	38
Hotels, restaurants, cafés and pubs.....	42
Theatres and other entertainment venues	46
Design and manufacture of goods	49

2. What equality law says about delivering services: staff, places, advertisements and marketing, written materials, websites, telephone services and call centres.....50

Staff behaviour.....	51
The building or other place where services are delivered	52
Advertisements and marketing	53
Written information.....	55
Websites and internet services	56
Reasonable adjustments	57
Exceptions	58
Telephone access and call centres.....	59

3. When a service provider is responsible for what other people do.....60

When a service provider can be held legally responsible for someone else's unlawful discrimination, harassment or victimisation.....	61
How a service provider can reduce the risk that they will be held legally responsible.....	62
When a service provider's workers or agents may be personally liable	63
What happens if a person instructs someone else to do something that is against equality law	64
What happens if a person helps someone else to do something that is against equality law	64
What happens if a service provider tries to stop equality law applying to a situation	65

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

.....	66
The three requirements of the duty	68
Are disabled people at a substantial disadvantage?	71
What is meant by 'reasonable'	72
The continuing duty on organisations	73
Who pays for an adjustment?	74
What you can do if you think an organisation has not made reasonable adjustments.....	75
When the duty is different	76

Associations.....	76
Rented premises or premises available to rent.....	77
Transport	80
5. What to do if you believe you've been discriminated against	81
Your choices	82
Was what happened against equality law?	82
Complaining directly to the person or organisation	83
Alternative dispute resolution	85
The questions procedure	85
Key points about discrimination cases outside the workplace	86
More information about making a claim in court	89
6. Further sources of information and advice	90
General advice and information	90
Advice on specific issues	93
Age	93
Carers	94
Disability	95
Gender	97
Gender Reassignment	98
Religion or belief	99
Sexual orientation	99
7. Glossary	101

Introduction

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

The full list of guides is:

1. Associations, clubs and societies
2. Businesses
3. Criminal and civil justice
4. Health and social care
5. Housing
6. Local council and central government and immigration
7. Parliaments, politicians and political parties
8. Transport
9. 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 the relevant helpline to discuss your needs.

England

Equality and Human Rights Commission Helpline

FREEPOST RRLG-GHUX-CTR

Arndale House, Arndale Centre, Manchester M4 3AQ

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

Scotland

Equality and Human Rights Commission Helpline

FREEPOST RSAB-YJEJ-EXUJ

The Optima Building, 58 Robertson Street, Glasgow G2 8DU

Telephone: 0845 604 5510

Textphone: 0845 604 5520

Fax: 0845 604 5530

Wales

Equality and Human Rights Commission Helpline

FREEPOST RRLR-UEYB-UYZL

3rd Floor, 3 Callaghan Square, Cardiff CF10 5BT

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

www.equalityhumanrights.com

The legal status of this guidance

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

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

This guide was last updated in March 2011. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version.

1. Your rights to equality from businesses providing goods, facilities or services to the public

Who is this guide for?

This guide is for you if you are using the services of a business, or buying goods or using facilities provided by a business to the public or a section of the public. When a business is doing this, equality law applies to it.

It does not matter whether the service is given for free (for example, when a business gives you information about the business' paid-for services) or if the business charges you for what it does.

The legal structure of the business does not matter, whether it is set up as a sole trader, a partnership, a limited company or anything else. The size of the business does not matter either.

What's in this guide?

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

We give examples of issues that may affect how you are treated by:

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

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

If a business is not in this list, it does *not* mean that equality law does not apply to what that business does. The general information this guide gives about what equality law means for businesses still applies.

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 using the services of a business:

- 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 their employees if they have 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.

What equality law says a business providing goods, facilities or services to the public must and must not do

Use this list to tell you how you can expect a business to treat you.

Protected characteristics

Make sure you know what is meant by:

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

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

What is unlawful discrimination?

Unlawful discrimination can take a number of different forms:

- A business must not treat you **worse** because of one or more of your protected characteristics (this is called **direct discrimination**).

For example:

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

- A business 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 business can show that what they have done is **objectively justified**, this will be what is called **indirect discrimination**. 'Doing something' can include making a decision, or applying a rule or way of doing things.

For example:

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

- If you are a disabled person, a business 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 business knows or could **reasonably** have been expected to know that you are a disabled person. This is called **discrimination arising from disability**.

For example:

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

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

For example:

A café refuses to serve a customer who has a disabled child with them.

- A business must not treat you worse than someone else because they incorrectly think you have a protected characteristic (**perception**).

For example:

A member of staff in a pub tells a woman that they will not serve her because they think she is a **transsexual person**.

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

For example:

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

- A business must not **harass** you.

For example:

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

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

In addition, to make sure that, if you are a disabled person, you can use the services of a business as far as is reasonable to the same standard as non-disabled people, the business must make **reasonable adjustments**.

The business is not allowed to wait until a disabled person wants 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 bank branch has a flight of steps up to its entrance but it is not permitted by the local authority to build a ramp because this would block the pavement. The bank installs a platform lift so that disabled people with mobility impairments can get into the branch. This is a reasonable adjustment.

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

What does this mean for a business?

Because of a protected characteristic, a business and anyone working for them:

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

For example:

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

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

For example:

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

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

For example:

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

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

For example:

They must not charge someone with a particular protected characteristic a higher deposit when they hire something from the business.

- Must not put you at any other disadvantage.

A business can still tell you what standards of behaviour they want from you as a customer or client - for example, behaving with respect towards their staff and to other customers.

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

If a business sets standards of behaviour for their customers or clients 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.

For example:

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

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

Do any of the exceptions in equality law apply to the business or situation I am dealing with?

There are some exceptions to the general rules of equality law, when your protected characteristics may be relevant to the goods, facilities or services someone provides. For businesses, these are:

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

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

For example:

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

It also may be possible for a business to target people with a particular protected characteristic through **positive action** if it can show that they have a different need or a past track record of disadvantage or low participation in its activities. It does not have to do this: positive action is completely voluntary.

This could include, for example, offering a discount on its services if this would be a **proportionate** step to take. A business needs to go through a number of steps to decide whether it is needed and what sort of action to take before it can be sure what it wants to do is allowed.

If you want to know more about whether this applies to your situation, you can read about it in the list of words and key ideas.

Services for particular groups

There are some situations in which a business can provide (or refuse to provide) all or some of their services to people based on a protected characteristic:

Services provided to people with a particular protected characteristic

If a business normally supplies services only for people with a particular protected characteristic (such as women or people of African Caribbean descent), it can carry on providing the service the same way.

For example:

A butcher only sells meat from animals which have been slaughtered in a way that conforms to particular religious requirements (Halal or Kosher meat). The butcher does not have to sell non-Halal or non-Kosher meat, even though this means that Muslim and Jewish people are more likely to be customers than others. However, the butcher cannot refuse to sell the Halal or Kosher meat to customers who are not Muslim or Jewish.

The business can refuse to provide the service to someone who does not have that characteristic if the business reasonably thinks it is impracticable for it to provide them with the service.

A business can also target their advertising or marketing 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 business is allowed to provide separate services for men and women where providing a joint service (ie one where men and women are provided with exactly the same service) would not be as effective. They are also allowed to provide separate services for men and women in different ways or to a different level where:

- providing a joint service would not be as effective, and
- the extent to which the service is required by one sex makes it not reasonably practicable to provide the service except in the different ways or to the different level.

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

A business 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
- 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, or
- the services are provided in a hospital or other place where users need special care, supervision or 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 reasonably 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.

For example:

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

Generally, a business 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 business can exclude a transsexual person or provide them with a different service, this is only if it can **objectively justify** doing so.

A business 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. Businesses 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.

Health and safety for pregnant women

A business 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 whose health and safety might be at risk because of a different physical condition.

For example:

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

Equality good practice: what to look for if a business is doing more than equality law requires

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

If you want to be sure a business 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 in the business who deals with customers or clients, to make sure they know the right and wrong ways to behave.

If equality matters to you, think about rewarding businesses who do more than the law requires.

Particular types of business

The next part of this guide gives examples of particular issues that may affect how you are treated by:

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

If a business is not in this list, it does not mean that equality law does not apply to what that business does. The general information this guide gives about what equality law means for businesses still applies.

Businesses selling products, such as shops and petrol stations

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

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

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

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

Possible issues

First, you can use the information earlier in the guide to make sure you know what equality law says businesses providing goods, facilities or services to the public must do.

Also look at:

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

Reasonable adjustments to remove barriers for disabled people

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

What is reasonable will depend, among other considerations, on the size and nature of the particular business. The business must think about what it is reasonable for them to change so that disabled people with a range of different impairments can buy their goods.

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

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

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

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

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

For example:

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

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

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

For example:

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

Petrol stations must make reasonable adjustments too.

For example:

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

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

Banks and other financial services providers

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

Possible issues

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

If a business provides insurance, pensions or annuities, there are some differences in relation to disability, sex, gender reassignment, and pregnancy and maternity. If the business can meet a number of strict conditions, which are explained in detail on page 11, it may be possible for them to take these protected characteristics into account when making decisions, for example when setting premiums and benefits.

How you are treated when you use or want to use the business's services

First, you can use the information earlier in this guide to make sure you know what equality law says businesses providing goods, facilities or services to the public must do.

Also look at:

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

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

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

For example:

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

It is important for a financial services provider to avoid unlawful discrimination in the way in which records are kept and changes are made to people's personal information.

For example:

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

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

For example:

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

Insurance

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

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

Ways in which an insurance provider could be in breach of equality law by discriminating because of a protected characteristic include:

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

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

For example:

An insurance company always refuses insurance to people who give a caravan site as their address. A Gypsy applies to insure their caravan which is kept on one of these sites. The insurer refuses the policy. Unless the insurer can **objectively justify** this decision, this may be indirect discrimination because of race.

- Asking some people to produce more evidence or a different type of evidence to support an insurance claim, if this is because of a protected characteristic.

For example:

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

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

However, it may be necessary to ask for more evidence relating to a protected characteristic where this is relevant to the claim, for example, a claim against health insurance could require medical evidence.

Existing contracts

In relation to **insurance business**, contracts entered into before 1 October 2010 do not have to be changed unless they are renewed or reviewed after that date (other than a general review of pricing structure). If they are renewed or reviewed, they may need to be brought into line with the Equality Act 2010 so that they do not discriminate because of a protected characteristic except if permitted by the exceptions for disability, sex, gender reassignment, or pregnancy and maternity.

For example:

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

Taking certain protected characteristics into account

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

If an insurance business provider wants to do this, they must be able to show that there is a difference in risk associated with one of these protected characteristics.

Slightly different tests apply for different protected characteristics.

Disability

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

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

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

For example:

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

Sex, gender reassignment, pregnancy and maternity

For insurance contracts entered into before 6 April 2008, an insurance provider can justify treating:

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

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

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

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

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

For example:

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

(in this case that the annuity will go on paying out for longer because a woman is likely to live longer than a man); the difference in benefits must be proportionate.

In relation to gender reassignment:

- When using sex as a factor in assessing risk insurers must not treat transsexual people less favourably than others of their sex.
- Previously case law has indicated that under European law, when someone is post operative, visually and practically indistinguishable from someone of their preferred gender they should be recognised in their acquired gender. How this principle applies in the context of insurance will need to be clarified by the courts.
- Where a transsexual person has a **Gender Recognition Certificate** (GRC), the insurance industry should accept the gender disclosed at point of application is that stated in the GRC.

For example:

- An insurer provides an annuity to a transsexual woman with a Gender Recognition Certificate, paid at a higher rate than it does to a non transsexual woman, because they are taking into account the woman's birth gender. This is not likely to be legal, would not be legal as it fails to recognise her reassignment.

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

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

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

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

You can find more information about both these situations in the Equality and Human Rights Commission guide *Your rights to equality at work: pay and benefits*.

Age

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

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

If this happens, this guide will be updated.

Builders, other trades people and companies providing similar services

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

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

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

Possible issues

First, you can use the information earlier in this guide to make sure you know what equality law says businesses providing goods, facilities or services to the public must do.

Also look at:

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

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

For example:

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

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

For example:

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

Estate agents, letting agents and property management companies

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

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

Possible issues

First, you can use the information earlier in this guide to make sure you know what equality law says businesses providing goods, facilities or services to the public must do.

Also look at:

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

Other issues businesses like this need to consider are:

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

Access to confidential information about a client's protected characteristics

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

For example:

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

Reasonable adjustments to remove barriers for disabled people

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

For example:

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

Instructions to discriminate

As well as not unlawfully discriminating against you themselves, an estate or letting agent must not accept an **instruction to discriminate** from a property seller or landlord.

If an estate agent accepts an instruction from a property seller or landlord to discriminate in disposing of housing premises (which includes letting or selling), this would be against equality law, and you can bring a legal claim against the estate or letting agent as well as against the property owner or landlord.

For example:

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

Managing premises

If a business is managing premises as part of what they do, whether those are residential or commercial premises, they must not unlawfully discriminate against, harass or victimise you as someone who occupies the property:

- in the way they allow you to use a benefit or facility associated with the property
- by evicting you, or
- by otherwise treating you unfavourably.

For example:

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

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

Gyms, health clubs and sporting activities

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

This includes sport and leisure related services, such as:

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

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

Is the organisation an association or a service provider?

Even though they may describe themselves as a 'club' (and many clubs are, in equality law, what are called **associations** which means slightly different rules apply to them), a business is really a **service provider** if they are offering a service to any member of the public, for example, by:

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

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

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

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

If the answer to is 'yes', then you should read the guide for members, associate members and guests of associations instead.

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

For example:

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

If an organisation is both an association and a service provider, the question you need to think about is whether the services you are concerned with are being provided to you as a member of the public or with the special status of being a **member**, **associate member** or **guest** of the association.

If you are using the services as a member of the public, then this is the right guide for you to read.

If you have the special status of being a member, associate member or guest (or someone who wants to become a member, associate member or guest), you should read the guide on associations instead.

Possible issues

First, you can use the information earlier in this guide to make sure you know what equality law says businesses providing goods, facilities or services to the public must do.

Also look at:

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

Particular issues for sport and leisure related businesses to think about are:

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

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

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

For example:

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

You can read more about this in 'Separate services for men and women and single-sex services' at page 12.

Access to changing rooms and other facilities

A leisure-related business may need to make **reasonable adjustments** to make sure that disabled people can change in the same privacy and comfort as non-disabled people.

For example:

The changing facilities in a women-only gym are located in a room that is only accessible by stairs. The gym owner suggests to disabled users of the gym with mobility impairments that they can change in a corner of the gym itself. This is unlikely to be a reasonable alternative method of making the service available, since

it may significantly infringe upon people's dignity. However, providing an alternative private room to change in may be a reasonable adjustment.

The business must also avoid discriminating against transsexual people. Transsexual people should be treated as belonging to the sex in which they present (as opposed to the physical sex they were born with) unless the business can **objectively justify** treating them differently

For example:

A clothes shop has separate changing areas for men and for women with individual cubicles. The shop concludes it would not be appropriate or necessary to exclude a transsexual woman from the female changing room as the privacy and decency of all users can be assured by the provision of the separate cubicles.

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.

What people can or must wear to take part in activities

Obviously, sometimes a business will require specialist or safety clothing or equipment to be worn by participants in activities. If they make this a condition of participating in their activities, a person may say that they cannot do what they are told because of a protected characteristic. If the person can show that the condition has a disproportionate impact on them and other people who share that characteristic, the business will need to **objectively justify** the condition they have put in place. For example:

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

If it is necessary to change what a disabled person wears to take part in activities, the business needs to consider whether making this change amounts to a reasonable adjustment. You can read more about reasonable adjustments in section [n], title.

Conditions on who takes part in activities, based on people's protected characteristics

- **Health and safety and disabled people:** A business should make sure that any action taken in relation to health or safety is proportionate to the risk. Disabled people are entitled to make the same choices and to take the same risks within the same limits as other people. Health and safety law does not require service providers to remove all conceivable risk, but to ensure that risk is properly appreciated, understood and managed. A business should not make assumptions; instead, they should assess the person's situation, and consider reasonable adjustments to reduce any risks, their duty not to discriminate and, where appropriate, the disabled person's own views. There must be a balance between protecting against the risk and restricting disabled people from access to services.
- **Health and safety and pregnancy:** A service provider can refuse to provide a service to a pregnant woman, or set conditions on the service, because they reasonably believe that providing the service in the usual way would create a risk to the woman's health or safety, and they would do the same thing in relation to a person with a different physical condition.

For example:

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

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

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

The participation of a transsexual person in such competitions must not be restricted unless this is strictly necessary to uphold fair or safe competition, but not otherwise. In other words, a transsexual person should be treated as belonging to the sex in which

they present (as opposed to the physical sex they were born with) unless there is evidence that they have an unfair advantage or there would be a risk to the safety of competitors which might occur in some close contact sports.

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

Hairdressers, barbers and beauty salons

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

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

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

Possible issues

First, you can use the information earlier in this guide to make sure you know what equality law says businesses providing goods, facilities or services to the public must do.

Also look at:

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

Particular issues for these beauty-related businesses to think about are:

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

Providing services for people with a particular protected characteristic or separate services for men and women or a single-sex service for only men or only women

Services for people with a particular protected characteristic

If a business normally supplies services only for people with a particular protected characteristic (such as gay men or lesbians), it can carry on providing the service the same way.

The business can refuse to provide the service to someone who does not have that characteristic if the business reasonably thinks it is impracticable for it to provide them with the service.

For example:

A hairdresser provides African Caribbean hairdressing services. Equality law does not force the hairdresser to provide European-style hairdressing services. However, if a white European woman asks for her hair to be styled in a way that the hairdresser would provide to an African Caribbean woman, such as braiding, the hairdresser cannot refuse to do this unless the hairdresser reasonably believes it would be impracticable, for example, because of the length or nature of the person's hair.

A business can also target their advertising or marketing at a group with particular protected characteristics, so 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 or a single-sex service for only men or only women

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

For example:

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

You can read more about this in 'Separate services for men and women and single-sex services' at page 12.

Access to washbasins, treatment rooms, and other facilities

Beauty-related businesses need to consider what **reasonable adjustments** are needed to remove barriers to disabled people in using their services. This is not necessarily about **physical features** at their premises; they could adapt the way they provide their services.

For example:

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

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

Businesses must also avoid discriminating against transsexual people in accessing their services or using their facilities. Transsexual people should be treated as belonging to the sex in which they present (as opposed to the physical sex they were born with) unless the business can **objectively justify** treating them differently. 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. Businesses 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.

Conditions on who uses services, based on people's protected characteristics

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

For example:

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

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

For example:

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

Hotels, restaurants, cafés and pubs

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

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

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

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

Possible issues for your business

First, you can use the information earlier in this guide to make sure you know what equality law says businesses providing goods, facilities or services to the public must do.

Also look at:

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

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

Is the organisation an association or a service provider?

Even though they may describe themselves as a 'club' (and many clubs are, in equality law, what are called **associations** which means slightly different rules apply to them), a business is really a **service provider** if they are offering a service to any member of the public, for example, by:

- charging an entry fee to watch an activity, or
- allowing anyone to join a dining club provided they pay for the service

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

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

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

If the answer to that is 'yes', then you should read the guide for members, associate members and guests of associations instead.

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

For example:

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

If an organisation is both an association and a service provider, the question you need to think about is whether the services you are concerned with are being provided to you as a member of the public or with the special status of being a **member**, **associate member** or **guest** of the association.

If you are using the services as a member of the public, then this is the right guide for you to read.

If you have the special status of being a member, associate member or guest (or someone who wants to become a member or guest), you should read the guide on associations instead.

Can the business decide who to serve?

If a business decides who to serve and who not to serve based on a **protected characteristic**, they risk discriminating against their customers.

For example:

- A café owner must not ask a woman to leave their cafe because she is breastfeeding her baby.
- 'Ladies' nights' where only women receive free drinks, 'two-for-one' offers or free admission are almost certainly direct sex discrimination against men. The same would be true of any other offer which was restricted to people with a particular protected characteristic, except for disability. Services should not be offered on this basis.
- A hotel or bed and breakfast cannot refuse to give a shared bedroom to a gay or lesbian couple if they give a shared bedroom to opposite sex partners. Nor could they insist on them having a twin room if they would offer a double room to opposite sex partners, and there are double rooms available.
- A pub cannot refuse to serve a customer because they are a transsexual person or with a transsexual person. Nor should the transsexual person be given a worse standard of service, for example, by allowing other customers to make

hostile remarks or refusing them access to the toilets appropriate to the sex in which they present.

- A disabled person has epilepsy. The owner of a bar knows this and refuses to serve them because, he says, he is worried about other customers being disturbed if they have a seizure. This is likely to be **direct disability discrimination** and/or (less likely) **discrimination arising from disability**.
- A disabled person with a learning disability wishes to book a hotel room. The hotel receptionist pretends that all rooms are taken in order to refuse their booking because of their impairment. This is likely to be unlawful disability discrimination.
- Waiting staff in a restaurant place a person with a severe facial disfigurement at a table out of sight of other customers, despite other tables being free, because they think other customers will find it embarrassing to look at the person. This is likely to be unlawful disability discrimination.

A hospitality business can still tell customers what standards of behaviour they want from them.

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

If a business sets standards of behaviour for their customers or clients which have a worse impact on people who share a particular protected characteristic than on people who do share 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.

Reasonable adjustments to remove barriers for disabled people

Hospitality businesses need to make sure their premises are accessible to disabled people by making reasonable adjustments. They cannot wait until a disabled person wants to use the services, but must think in advance about what people with a range of impairments might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

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

For example:

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

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

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

Theatres and other entertainment venues

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

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

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

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

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

Possible issues

First, you can use the information earlier in this guide to make sure you know what equality law says businesses providing goods, facilities or services to the public must do.

Also look at:

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

You may need to work out if an organisation is an **association** or a **service provider**.

Because the business' activities take place at a particular place, they need to make sure a venue is accessible to disabled people by making **reasonable adjustments**. They cannot wait until a 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.

Is the organisation an association or a service provider?

Even though they may describe themselves as a 'club' (and many clubs are, in equality law, what are called **associations** which means slightly different rules apply to them), a business is really a **service provider** if they are offering a service to any member of the public, for example, by:

- charging an entry fee to watch an activity, or
- allowing anyone to join a jazz club provided they pay for the service

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

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

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

If the answer to that is 'yes', then you should read the guide for members, associate members and guests of associations instead.

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

For example:

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

If an organisation is both an association and a service provider, the question you need to think about is whether the services you are concerned with are being provided to you as a member of the public or with the special status of being a member, associate member or guest of the association.

If you are using the services as a member of the public, then this is the right guide for you to read.

If you have the special status of being a member, associate member or guest (or someone who wants to become a member or guest), you should read the guide on associations instead.

Reasonable adjustments to remove barriers for disabled people

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

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

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

For example:

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

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

Design and manufacture of goods

If a business designs or manufactures goods then equality law does not cover their business operations as they relate to designing or making goods.

A business does not have to make changes to their physical products, packaging or instructions.

They can also target the advertising or marketing of their products at a group with particular protected characteristics. You can read more about advertising and marketing in Chapter 2. There are two ways a business like this might be covered as a **service provider**:

- If they provide information which is more than just an advertisement, they may need to supply this in **alternative formats**, if doing this would be a **reasonable adjustment**, which it may well be, although this depends on the circumstances. You can read more about reasonable adjustments to remove barriers for disabled people in Chapter 4.
- If the business sells or gives the goods they make directly to the public, then they will be covered by equality law as if they are a shop. You can use the information earlier in this guide to work out what this means for you.

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

2. 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, service user, club member, associate member or **guest**, 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 11), 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 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)

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 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:

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

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

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

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

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

5. What to do if 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:

- Complain directly to the person or organisation.
- Use someone else to help you sort it out (alternative dispute resolution).
- 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. 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 85.

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 *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:

- 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. The six months starts with the date when you believe you were unlawfully discriminated against, harassed or victimised.

So 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:

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

Details of these organisations are in *Further sources of information and advice*.

Conciliation

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

The questions procedure

If you believe you may have been unlawfully discriminated against, harassed or victimised under equality law, then you can get information from the person or organisation you believe is responsible to help you decide if you have a valid claim or not.

There is a set form to help you do this which you can [access](http://www.equalities.gov.uk/news/equality_act_2010_forms_for_ob.aspx) at: http://www.equalities.gov.uk/news/equality_act_2010_forms_for_ob.aspx, but your questions will still count even if you do not use the form, so long as you use the same questions. The form is sometimes called a 'questionnaire'.

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

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

If the person or organisation does not respond to the questions within eight weeks of being sent them, then 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 an organisation or person states that to give an answer could prejudice criminal proceedings and this is reasonable. Most of the time, breaking equality law only leads to a claim in a civil court. Occasionally, breaking equality law can be punished by the criminal courts. In that situation, someone may be able to refuse to answer the questions, if in answering they might incriminate themselves and it is reasonable for them not to answer.

If someone has told you this applies to the questions you have asked, you should get more advice on what to do.

Key points about discrimination cases outside the workplace

The key points this guide explains are:

- where claims are brought
- time limits for 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.

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.

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.

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

The standard and burden of proof

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

Equality and Human Rights Commission:

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

Website: www.equalityhumanrights.com

Helpline – England

Email: info@equalityhumanrights.com

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Fax: 0845 604 6630

08:00–18:00 Monday to Friday

Helpline – Wales

Email: wales@equalityhumanrights.com

Telephone: 0845 604 8810

Textphone: 0845 604 8820

Fax: 0845 604 8830

08:00–18:00 Monday to Friday

Helpline – Scotland

Email: scotland@equalityhumanrights.com

Telephone: 0845 604 5510

Textphone: 0845 604 5520

Fax: 0845 604 5530

08:00–18:00 Monday to Friday

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: 020 7469 5700

Fax: 020 7469 5701

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) 020 7833 2181

Fax: (admin only) 020 7833 4371

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

Community Legal Service (CLS):

The CLS can help you find legal advice and information from a range of sources, including Citizens Advice Bureaux, law centres, independent advice centres and high street solicitors across England and Wales. You can also find out more about legal aid and whether you might be entitled to financial help with your case. The CLS helpline can give you free advice about benefits, tax credits, debt, education, employment or housing if you qualify for legal aid.

Website: www.clsdirect.org.uk

Tel: 0845 345 4 345

Directgov:

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

Website: www.direct.gov.uk

Government Equalities Office (GEO):

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

Website: www.equalities.gov.uk

Telephone: 0303 444 0000

Law Centres Federation:

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: 020 7842 0720

Fax: 020 7842 0721

Email: info@lawcentres.org.uk

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: 01206 877 910

Fax: 01206 877 963

Email: clc@essex.ac.uk

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

Carers.org:

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: 020 7378 4999

Email: **info@carersuk.org**

Scotland

Website: **www.carerscotland.org**

Telephone: 0141 445 3070

Email: **info@carerscotland.org**

Wales

Website: **www.carerswales.org**

Telephone: 029 2081 1370

Email: **info@carerswales.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**

RADAR:

RADAR 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: **www.radar.org.uk**

Telephone: 020 7250 3222

Fax: 020 7250 0212

Minicom: 020 7250 4119

Email: **radar@radar.org.uk**

Rethink:

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

Website: www.rethink.org

Telephone: 020 7840 3188 or 0845 456 0455 (10:00 to 14:00 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

Royal National Institute for Deaf People (RNID):

The 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: www.rnid.org.uk

Telephone: 0808 808 0123

Textphone: 0808 808 9000

Fax: 020 7296 8199

Email: informationline@rnid.org.uk / tinnitushelpline@rnid.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

Text SCOPE, plus your message to 80039

Email: cphelpline@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: 0845 1221 200 (10:00–22:00 Monday– Friday, 12:00–18:00 Saturday and Sunday)

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 well-being 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: 020 7253 2288

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

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: 0845 231 0505

Press for Change (PfC):

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

Website: **www.transequality.co.uk / www.pfc.org.uk**

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

Email: **transequality@pfc.org.uk**

Trans Youth Network:

Run by and for young trans people aged 11–26, Trans Youth Network is a new UK-wide project to provide advocacy, support, signposting and training opportunities to young trans people and young people unsure of, questioning, and generally exploring their biological sex, gender or gender identity in any way at all.

Website: **<http://www.transyouth.org/>**

Email: **transyouthnet@yahoo.co.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 good list of contact details for faith groups and organisations across the UK.

Website: **www.interfaith.org.uk**

Telephone: 020 7931 7766

Fax: 020 7931 7722

Email: **ifnet@interfaith.org.uk**

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

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: 07020 933 952

Fax: 07080 933 954

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

Admin: 020 7704 6767

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

Email: info@lgf.org.uk

Queer Youth Network (QYN):

QYN is a national organisation providing advocacy, support, signposting and training opportunities to young lesbian, gay and bisexual people.

Website: www.queeryouth.org.uk

Email: info@queeryouth.net

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

Stonewall Housing:

Stonewall Housing provides supported housing, advice and advocacy for the lesbian, gay, bisexual and transgender communities in London.

Website: www.stonewallhousing.org

Telephone: 020 7359 5767

Email: info@stonewallhousing.org

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).
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.
armed forces	Refers to military service personnel.
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 service user 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, eg 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 .
Bill	A draft Act, not passed or in force.
breastfeeding	When a woman feeds her baby with breast milk. Breastfeeding is specifically protected for the first 26 weeks after birth by the pregnancy and maternity discrimination provisions in relation to non-work cases.
burden of proof	This refers to whether, in a court, it is for the service user to prove that discrimination occurred or it is for the service provider to disprove it. Broadly speaking, a service user must prove facts which, if unexplained, indicate discrimination. The burden of proof then shifts to the service provider to prove there was no discrimination. If the service provider cannot then prove that no discrimination was involved, the service user 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	Direct discrimination occurs when a service provider treats a service user less favourably than they treat or

would treat another service user in similar circumstances because of a protected characteristic. The person with whom the service user compares their treatment is called a 'comparator'. Sometimes there is no actual comparator, but the service user can still claim that another service user without their protected characteristic would have been treated better by the service provider. This is 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, eg 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 they have 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.

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, eg 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, eg 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 a service provider puts a service user at a substantial disadvantage in comparison with people who are not disabled. It also applies where a service user would be put at a substantial disadvantage but for the provision of an auxiliary aid. The service provider 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, a service provider must 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.
educational establishments	Schools, colleges and higher educational institutions.
employee	<p>In this guide, the word 'employee' is used only to refer to the definition in the Employment Rights Act 1996, ie a person who works under a contract of employment. This definition is fairly limited. It is only employees in this sense who have certain rights, eg to have a written statement of employment particulars; to use the formal procedure to request flexible working; and to claim unfair dismissal.</p> <p>The Equality Act uses the word 'employee' more widely, to include a person working on a contract of employment 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. To avoid confusion with the narrower definition of 'employee' applicable under the Employment Rights Act, this guide refers to someone in this wider category of workers covered by equality law as a 'worker'. See worker.</p>
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.
gender reassignment	The process of changing or transitioning from one gender to another. The Equality Act prohibits discrimination against a person who is proposing to undergo, is undergoing or has undergone a process, or part of a process, for the purpose of reassigning their sex. <i>See also transsexual person.</i>
gender recognition certificate	A certificate issued under the Gender Recognition Act to a transsexual person who has, or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years, and intends to continue to live in the acquired gender until death.
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 are available to the public or any part of it.
Guests	People invited to enjoy an association's benefits, facilities or services by that association or a member of it. In the context of a political party, a guest is someone who is invited by the party or one of its members to join in some of its activities.
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</i> sexual harassment .
impairment	A functional limitation which may lead to a person being defined as disabled according to the definition under the Act. <i>See also</i> disability .
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	<i>See</i> 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.
insurance business	An organisation which provides financial protection against specified risks to clients in exchange for payment.
judicial review	A procedure by which the High Court supervises the exercise of public authority power to ensure that it remains within the bounds of what is lawful.
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	Marriage is defined as a 'union between a man and a woman'. Same-sex couples can have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples.

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 and being treated equally. For example, monitoring the representation of women, or disabled people, in 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 sex, age, disability, race, religion, or sexual orientation. It is kept separately from any identifying information about 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 <i>choose</i> 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.
objective justification	This phrase is a shorthand way of referring to the legal test of objective justification, ie that the service provider’s treatment of the service user must be a proportionate means of achieving a legitimate aim. The Act uses this test in several situations. For example, once a service provider has proved that the service user has treated them unfavourably because of something arising from their disability, or that the service provider has indirectly discriminated against

them or that the service provider has directly discriminated against them because of age (if applicable), the service provider can defend the claim by proving their treatment (i) is in order to achieve a legitimate aim, and (ii) is proportionate, ie appropriate and necessary. If there is a less discriminatory way of achieving the same aim, it should be adopted. See also **proportionate**.

office-holders

There are personal and public offices. A personal office is a remunerated office or post to which a person is appointed personally under the direction of someone else. A public office is appointed by a member of the government, or the appointment is recommended by them, or the appointment can be made on the recommendation or with the approval of both Houses of Parliament, the Scottish Parliament or the National Assembly for Wales.

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.

past disability

A person who has had a disability as defined by the Equality Act.

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 goods, facilities and services or employment. *See also* 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. Physical features do not include furniture, furnishings, materials, equipment or other chattels in or on the premises.

positive action

If a service provider 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. For example, in response to evidence of lesbians' negative experiences with health care, a primary care trust produced a series of posters designed to encourage lesbian and bisexual women to access health services, including information on what to do if they have a bad experience; the Trust also explains the purpose of the campaign to staff in GP surgeries.

positive discrimination

Treating someone with a protected characteristic more favourably to counteract the effects of past discrimination. It is generally not lawful, although more favourable treatment of service users because of their disability is permitted if the service provider so wishes. Moreover, the duty to make reasonable adjustments may require a 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. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

principal

In the context used in this Guide, where a service provider uses an agent, the service provider is the **principal**.

private disposals

When an owner-occupier disposes of property (i.e. sells or leases etc.) without using an estate agent or publishing an advert in connection with the 'disposal'.

procurement	The term used in relation to the range of goods and services a public body or authority requires and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.
professional organisations	A body of persons engaged in the same profession, formed usually to provide advice, maintain standards, and represent the profession in discussions with other bodies about professional concerns.
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.
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 government departments, local authorities, courts and tribunals, health authorities and hospitals, schools, prisons, and police. Note that only those public authorities listed in Schedule 19 to the Equality Act 2010 are subject to the public sector equality duty.
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. For example, quangos, 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 is any act 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.
qualifications bodies	An authority or body which can confer qualifications.
questionnaire	See questions procedure .
questions procedure	A discrimination law 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'.
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 .
regulations	Secondary legislation made under an Act of Parliament (or European legislation) setting out subsidiary matters which assist in the Act's implementation.
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. <i>See also religion or belief.</i>
religious organisation	<i>See religion or belief organisations.</i>
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. <i>See also goods, facilities and services.</i>
service users	Those accessing or using a particular service. <i>See also goods, facilities and services.</i>
services	<i>See goods, facilities and services.</i>
services, goods or facilities	<i>See goods, facilities and services.</i>
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.
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).
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. This means that disabled workers do not need to be put at a huge disadvantage before an employer's equality duties are triggered.
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	Refers to a person who has the protected characteristic of gender reassignment. This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. Once a transsexual person has acquired a gender recognition certificate , it is probably the case that they should be treated entirely as 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.

victimise

The act of victimisation.

vocational service

A range of services to enable people to retain and gain paid employment and mainstream education.

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**. In employment law, the term ‘worker’ has a similar meaning to those people covered by the Equality Act. However, it is not quite identical to that and has its own definition; the term is used, for example, to people covered by the Working Time Regulations and the law on the minimum wage.

Contact us

The Equality and Human Rights Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

You can find out more or get in touch with us via our website at www.equalityhumanrights.com or by contacting one of our helplines below. If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs.

Equality and Human Rights Commission helpline – England

Telephone: 08456 046 610

Textphone: 08456 046 620

Fax: 08456 046 630

8am–6pm, Monday to Friday

Equality and Human Rights Commission helpline – Scotland

Telephone: 08456 045 510

Textphone: 08456 045 520

Fax: 08456 045 530

8am–6pm, Monday to Friday

Equality and Human Rights Commission helpline – Wales

Telephone: 08456 048 810

Textphone: 08456 048 820

Fax: 08456 048 830

8am–6pm, Monday to Friday

www.equalityhumanrights.com

This guide is one of a series written by the Equality and Human Rights Commission to explain your rights under equality law in relation to people and organisations providing services, carrying out public functions or running an association.

There are 9 guides:

1. Your rights to equality as a member, associate member or guest of an association, club or society
2. Your rights to equality from businesses providing goods, facilities or services to the public
3. Your rights to equality from voluntary and community sector organisations (including charities and religion or belief organisations)
4. Your rights to equality from the criminal and civil justice systems and national security
5. Your rights to equality from healthcare and social care services
6. Your rights to equality in housing
7. Your rights to equality from local councils, government departments and immigration
8. Your rights to equality from Parliaments, politicians and political parties
9. Your rights to equality: transport and travel

We have also produced:

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

If you would like a copy of any of these guides or require this guide in an alternative format, please call our helpline on **0845 604 6610** Monday to Friday 8am to 6pm or see our website:

www.equalityhumanrights.com

©Equality and Human Rights Commission
March 2011
ISBN 978-1-84206-373-6