

Equality and Human Rights Commission

Following Grenfell:

equality and

non-discrimination

This briefing focuses on the principles of equality and protection from discrimination, including the meaning of these terms, case law and relevance to Grenfell. The briefing forms part of a series explaining human rights issues raised by the Grenfell Tower fire: the right to life, adequate and safe housing, inhuman or degrading treatment, equality and non-discrimination, children's rights, and access to justice.

What are the principles of equality and non-discrimination and what are their sources?

The UK's domestic equality legislation, the Equality Act (EA) 2010, provides robust equality rights and protection from discrimination in a range of contexts, including access to public goods, facilities and services (such as accommodation), and when in contact with public bodies. All public authorities have a duty under the EA 2010 not to discriminate against a person on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (known as 'protected characteristics'). Public authorities are also obliged to make reasonable adjustments for disabled people. This means they must take reasonable steps to adjust their policies and practices and, sometimes, the physical features of a property.

The European Convention on Human Rights (ECHR) prohibits discrimination in relation to the enjoyment of the rights and freedoms protected by the ECHR.¹ The Human Rights Act (HRA) 1998 incorporated the ECHR into UK law. This means people can take Government or public bodies to court based on a violation of ECHR rights.²

In addition, international human rights law prohibits all forms of unjustifiable discrimination, and imposes duties on the state to prevent discrimination. Relevant treaties which the UK has signed up to include the International Covenant on Civil

¹ The ECHR makes it illegal to discriminate on a wide range of grounds 'such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status' (article 14). The case law has shown that the term 'other status' includes disability, sexual orientation, illegitimacy, marital status, trade union membership, gender identity, imprisonment, and, in some instances, age.

² On the EU level, Article 21 of the EU Charter of Fundamental Rights provides for a general prohibition of discrimination when applying EU law. However, the EU (Withdrawal) Act 2018 means that the rights in the Charter will no longer apply in the UK following Brexit. In this context, we have called on Parliament to replace this EU protection with the UK's own guarantee of equal treatment, and ensure that a free-standing right to be protected from discrimination is included in domestic law after we leave the EU.

and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as treaties relating to specific groups of people, including ethnic minorities, women, disabled people and children.³

The principles of equality and non-discrimination have played a central role in the development of regional and international human rights law. Non-discrimination has been described by the English courts as ‘one of the most significant requirements of the protection provided by the rule of law’.⁴

The non-discrimination principle in international human rights treaties applies in the political, economic, social, cultural, civil or any other field. For example, both the ICCPR and ICESCR contain a provision that requires all of the rights set out under those treaties to apply without discrimination. Article 26 of the ICCPR also contains a general, free-standing prohibition of discrimination in law or in practice in any field regulated by public authorities, and on any ground ‘such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.⁵ The UK Government has ratified ICCPR and ICESCR, and has therefore committed to the human rights standards set out in these treaties under international law. However, these treaties have not been transferred into domestic law. As a result, claims in UK courts cannot rely on these treaty rights.

What do the principles of equality and non-discrimination mean in practice?

What is the difference between direct and indirect discrimination?

International human rights law prohibits discrimination in the enjoyment of all human rights, whether it is direct or indirect. The EA 2010 also prohibits both types of discrimination.

Direct discrimination means treating one person worse than another person because of a protected characteristic. For example, if a letting agency would not let a flat to someone because of their race or ethnicity, this would be direct discrimination.

³ International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD) and Convention on the Rights of the Child (CRC).

⁴ *A v SSHD* [2004] QB 355, §7.

⁵ The protected grounds are open-ended and can evolve over time, based on jurisprudence (see footnote 1).

Under the EA 2010, direct discrimination in relation to most protected characteristics cannot be justified.⁶

Indirect discrimination occurs where a policy, practice or rule, supposedly applying to everyone equally, works to the disadvantage of people with a particular protected characteristic. For example, if a local authority planning to redevelop some of its housing decides to hold consultation events in the evening, and many of the female residents complain that they cannot attend because of childcare responsibilities, that is indirect sex discrimination.

As the above makes clear, direct discrimination focuses on treatment, whereas indirect discrimination is concerned with outcome or impact. In UK law, indirect discrimination can be objectively justified if there is a good reason for it, that is, it is a proportionate means of achieving a legitimate aim.

What are the obligations on the UK Government and public authorities?

The non-discrimination duties under international human rights law, including the ECHR, give rise to both negative and positive obligations on the state. This includes public bodies like local councils, hospitals, and publicly funded service providers.

The **negative** duty requires the state **not to discriminate** against anyone on a prohibited ground.

The **positive** duty requires **action** by the state. The UK Government must put in place, and enforce, measures to prevent discrimination and ensure substantive equality. This includes, for example, reviewing laws and policies against the principles of equality and non-discrimination, but also proactively accommodating particular needs certain groups might have. The UN Committee on the Rights of Persons with Disabilities has given the examples of ‘making existing facilities and information accessible to disabled people, modifying equipment, [...] or enabling access to support personnel without disproportionate or undue burden’.⁷

Duties on public authorities in the Equality Act 2010

a) The Public Sector Equality Duty (section 149)

The Public Sector Equality Duty (PSED) requires public authorities to consider how their decisions and policies, for example, on the provision of services or resource

⁶ The exception is age. Direct age discrimination is permitted if it can be objectively justified.

⁷ UN Committee on the Rights of Persons with Disabilities (2018), ‘[General comment No. 6 on equality and non-discrimination](#)’, UN document CRPD/C/GC/6, para. 23 [accessed: 29 November 2018].

allocation, affect people with different protected characteristics. The public body should also have evidence to show how it has done this.

This 'due regard' duty is more than simply giving consideration; it may require substantive consultation with people affected, and a careful assessment of the impact a decision or policy might have on groups sharing protected characteristics. The duty also involves having due regard to the UK's obligations under international law.

For example, safety standards in social housing are lower than those required in the private rented sector. However, residents in both sectors are equally entitled to safe housing under international human rights law. This is particularly important given the large proportion of people facing socio-economic disadvantage and people sharing protected characteristics who live in social housing. The relevant public authorities should have due regard to the effects of the different standards, and should consider providing equivalent high-level safety standards for buildings in the private rented and social rented housing sectors. They should do so in close consultation with residents and residents' associations.

b) The duty to make reasonable adjustments (section 20)

In accordance with the EA 2010, public authorities, including landlords and service providers, are obliged to make reasonable adjustments for disabled people. This means they must take reasonable steps to address the particular needs of a disabled person in their policies and practices and in relation to the physical features of property.

The Convention on the Rights of Persons with Disabilities also includes accessibility duties. The state must build accessibility into systems and processes from the outset, to guarantee equal access to, for example, transportation, public facilities and services, and information, to enable disabled people to live independently and participate fully in all aspects of life.

c) The socio-economic duty (section 1)

Section 1 of the EA 2010 contains a 'socio-economic duty', which requires the UK Government and public authorities to do more to reduce inequalities linked to socio-economic disadvantage. However, the socio-economic duty is not yet in force in England and Wales. We have been calling for it to be brought into effect by the UK and Welsh governments as a matter of urgency.

The socio-economic duty would focus local authorities' minds on having a clearer understanding of the socio-economic inequalities in their locality, and how their strategic decisions, such as priorities and objectives relating to social housing, can help to reduce them. Better awareness of socio-economic inequalities, coupled with a legal obligation to actively consider remedial action, could be an additional lever for the voices of social housing residents to be heard and heeded by those in power.

Equality and non-discrimination in relation to the right to housing

The [right to housing](#) not only includes equal treatment in access to housing on the part of public or private landlords, but also in the way that housing is allocated, maintained and rented. This means that low quality or remote housing must not be allocated to particular groups, properties inhabited by particular groups must not be neglected, and there must not be insecure tenure or higher rental prices for those belonging to particular groups. Our [evidence](#) highlights significant inequality in relation to housing in England – in terms of both access and standards – in particular for people from ethnic minorities, Roma, Gypsies and Travelers, disabled people and refugees and asylum seekers.

Equality and non-discrimination in action

There is important case law on equality and non-discrimination, which demonstrates how it applies to different groups and in different circumstances. A few examples are provided below.

In 2018, the **UK High Court** decided that the London Borough of Hillingdon's housing allocation policies, which prioritised applicants who had lived in the borough for 10 years, were indirectly and unlawfully discriminatory against Irish Travellers, in contravention of the EA 2010. Moreover, there was no evidence that the council sought to assess the extent of the disadvantage on Irish Travellers, or considered whether it was justified or what might be done to reduce it (see *TW, SW, and EM, R (On the Application Of) v London Borough of Hillingdon [2018] EWHC 1791 (Admin)*).

In 2015, the **European Court of Human Rights** found that public authorities only providing children of displaced men with a refugee card, which allows for access to a range of benefits (such as housing assistance), and not children of displaced women, are in breach of the non-discrimination principle (see *Vrountou v Cyprus*).

In 2013, the **Court of Appeal** decided that the Government, when deciding to close a fund to assist disabled people to lead independent lives, failed to have due regard to its impact on the ability of a large number of people to live independently, in line with the Government's PSED (see *R (Bracking) v Secretary of State for Work and Pensions [2013] EWC Civ 1345*).

In 2012, the **Court of Appeal** held that, in the provision of housing benefits, the Government failed to take into account the differences in accommodation needs and cost of living between disabled people and non-disabled people, and that there was no objective and reasonable justification (see *Burnip v Birmingham City Council [2012] EWCA Civ 629*).

In 2008, the **High Court** found that a council, by imposing a new policy on the funding of voluntary and community organisations supporting victims of domestic violence, had failed to assess the impacts on ethnic minority women and to provide specialist services to further equality (see *R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062 (Admin)*).

In 2008, the **European Committee of Social Rights** concluded that the state must be attentive to the impact that its policy choices (in this case, in respect to housing) have on all groups of people concerned and, more specifically, the most vulnerable (see *FEANTSA v France*).

How is equality and non-discrimination relevant to Grenfell and the work of the Grenfell inquiry?

A range of equality and anti-discrimination issues arise from the Grenfell Tower fire. The people who died, survivors and others affected by the fire include, among others, children, older people, disabled people and migrants. These individuals may have faced discrimination because of a protected characteristic (such as age, disability or race). This section identifies the key issues and concerns surrounding equality and anti-discrimination law and the Grenfell fire.

Prior to the Grenfell Tower fire

We consider that, in line with the EA 2010 and the UK's international human rights obligations, the Grenfell inquiry must examine whether there were any policies and practices in place that disadvantaged any protected group.

This must also involve an examination of whether the responsible authorities, especially the Royal Borough of Kensington and Chelsea (RBKC), conducted an equality impact assessment, consistent with the PSED, which sufficiently addressed the impact of decisions regarding the refurbishment and maintenance of the Grenfell Tower on people with protected characteristics.

We consider that the inquiry will also have to examine whether the responsible authorities assessed the impact of allocating housing in Grenfell Tower to disabled people. In particular:

- In line with the EA 2010 duty to make reasonable adjustments, how did the responsible authorities identify the disabled people living in Grenfell Tower and the reasonable adjustments that needed to be made to ensure equal enjoyment of their rights?
- To what extent was accessibility considered? Did the responsible authorities monitor the accessibility of Grenfell Tower to ensure evacuation was possible for all residents? Was signage and information accessible? Did Grenfell Tower have a fire safety plan that included provisions for the emergency evacuation of people who require assistance?
- Were proper plans made to take account of children's particular needs and the needs of pregnant women and parents with small children?

Another crucial question for the inquiry to address is what records relevant authorities have that show how they had due regard to the need to advance equality and prevent discrimination:

- Were residents, especially those with protected characteristics, able to meaningfully participate and be heard by the responsible Tenant Management Organisation (TMO) regarding their living conditions, concerns about the dangers presented by combustible cladding, or any other issue they identified, in Grenfell Tower? In what way did the responsible authorities seriously consider their views? Was there sufficient oversight of the TMO's compliance with minimum standards?
- Did senior public officials who were alerted by residents to fire safety problems (for instance, by coroners in rule 43 reports sent to housing ministers) take necessary action to adequately address these concerns?

We consider that the inquiry should also examine whether the socio-economic duty (EA 2010 section 1), if in force, would have made any difference to what happened.

During the Grenfell Tower fire

We consider that it will be critical for the inquiry to examine the extent to which the death of, or injury to, a person with a protected characteristic was the result of a failure of the responsible authorities to provide them with housing suitable to their needs, and give them special care and assistance, in line with the UK's equality and non-discrimination duties.

After the Grenfell Tower fire

We consider that the Grenfell inquiry should also examine whether the responsible authorities conducted a thorough assessment of the impact the fire has had on survivors and others affected, especially those with protected characteristics. It will be crucial to look at the measures taken by these authorities to address the impacts identified. For example, whether those affected by the fire have been provided with therapeutic services, such as confidential counselling and rehabilitation programmes, and the extent to which re-housing policy has adequately taken into account needs of people with protected characteristics (see also our briefings on the [right to life](#) and [inhuman and degrading treatment](#)).

Further key questions in light of the EA 2010 and the non-discrimination principle are:

- What records do relevant authorities have that show how they had due regard to the need to advance equality and put an end to discrimination, when making decisions regarding the rehousing of survivors?
- What measures have the responsible authorities adopted to prevent death, illness and injury in high-rise residential accommodation similar to Grenfell Tower?
- Have the responsible authorities collected equality information regarding who has been impacted by the Grenfell fire, and how to prevent any unequal impact in the future?

We have been working with the Ministry of Housing, Communities and Local Government, RBKC and the local clinical care commissioning group, to seek to ensure that they have complied with the PSED over recent months since the fire.

The inquiry process

The UK's equality and non-discrimination obligations are also relevant to the inquiry itself. In particular, the EA 2010 imposes specific obligations on public authorities

that require steps to be taken to ensure equality, and these will be applicable to a number of the inquiry's functions. It needs to consider:

- how participation in the inquiry has been facilitated for disabled and minority language people, religious groups and people with caring responsibilities
- how the inquiry has ensured that immigration status, access to childcare and cost of transport are not a barrier to participation by survivors
- how the inquiry proceedings are being communicated to disabled people affected, in particular, whether the inquiry documents have been produced in alternative formats, and
- how the inquiry will communicate that it seriously considered the views of people with protected characteristics impacted by the Grenfell fire.

Further information on our work following the Grenfell inquiry is available on [our website](#).

If you have any queries on human rights in relation to the Grenfell Tower fire, please contact grenfell@equalityhumanrights.com.

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