

The Equality Act 10 years on – spotting discrimination issues in social welfare law

Jo Chimes
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About this session

Introduction to some Equality Act 2010 rights, and social welfare law (employment, housing, welfare rights)

- Introduction to discrimination law and protected characteristics
- The discrimination advice gap, and identifying discrimination issues and situations in social welfare advice
- A quick Equality Act introduction
- Examples of discrimination issues relating to Coronavirus.
- Resources for taking action: rights and duties, and procedure.



Equality Act 2010

During this presentation we will refer to some free online public resources about social welfare and equality rights

- [Equally Ours: Welfare rights and equality online handbook](#)
- [Citizens Advice: Employment discrimination toolkit](#)
- [Citizens Advice: Housing discrimination toolkit](#)
- Inclusion London: [Disability Justice Project](#)

These resources were created for the public and advisers to use. They were funded by the EHRC.



Introduction to discrimination law and protected characteristics



Equality Act 2010 - introduction

The Equality Act protects everyone.

It gives protection against unfairness and unfair treatment **linked to** a protected characteristic.



Has there been unfair treatment?

Is the unfair treatment related to a protected characteristic?

Is it one of the unlawful types of discrimination?

Who did it?

Why did it happen?

How did it happen – and what happened?

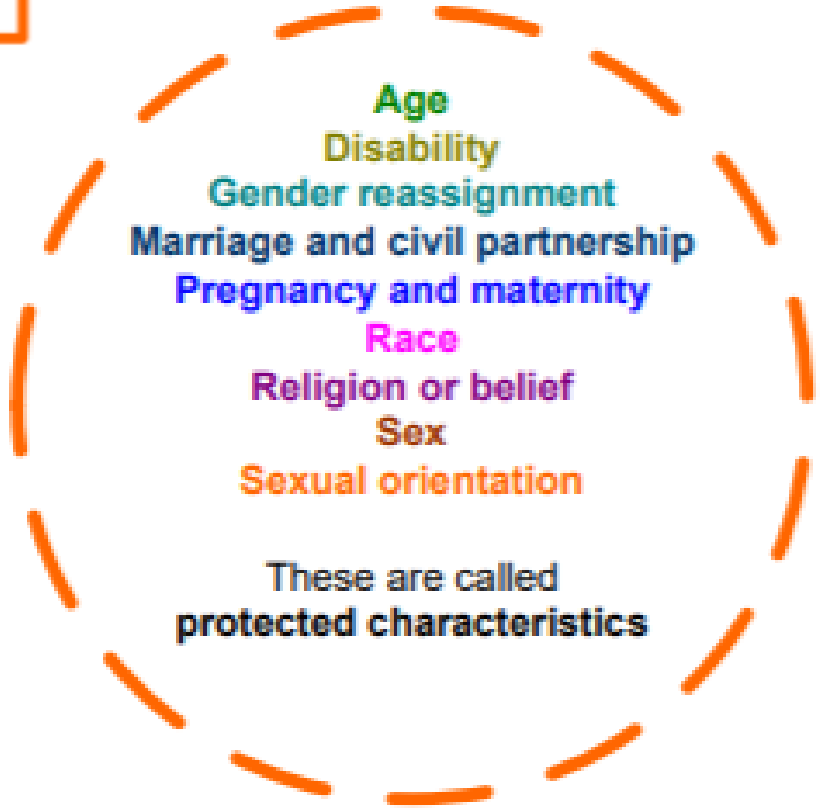
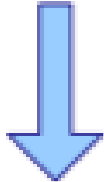
Who has a duty not to discriminate?



Do you think you've been treated unfairly?
This could be unlawful discrimination.

Equality Act 2010 says some unfair treatment is unlawful discrimination.

Unfair treatment will only be unlawful discrimination if it is to do with:



Why did it happen?
Your unfair treatment is because:

- of who you are
- of someone else
- of how someone else thinks about you
- you complained about discrimination or stood up for discrimination rights

What happened?

- you are treated differently and worse
- an apparently fair policy has a different impact on you and means you are disadvantaged
- you are harassed
- you are a disabled person and something is creating a barrier or disadvantage for you

Who treated you unfairly?

- an employer
- a shop or business
- a landlord
- a school or college
- a public transport provider
- a government department or council



Identifying discrimination issues and situations in social welfare advice

The discrimination advice gap



What is the discrimination advice gap?

- discrimination issues are not identified or recognised as legal problems
- people don't get advice about discrimination remedies
- there are rights in the Equality Act which could be used to help solve clients' problems



How big is the discrimination advice gap?

Are discrimination issues recognised?

Legal problem & resolution survey

13% of people with civil or admin problems reported they had experienced discrimination

Citizens Advice clients

11% said their problem was also about discrimination



Why are there discrimination advice gaps?

The rule of law: Equality Act doesn't fit with other legislation and technical language and structure of the Equality Act ·

How to access justice (forums): Court remedies for Equality Act rights don't smoothly fit with remedies (forums) for other social welfare rights

Access to advice and access to justice: Advisers knowledge and confidence, lack of training and other practical resources, advice delivery and funding for advice, funding for casework.

Awareness of rights and advice: Most advisers don't know how to use Equality Act rights when advising on housing, benefits debt, consumer, health services and public services. Some know about discrimination rights at work.

Starting to solve the problem...

- The duty on public authorities and service providers to make reasonable adjustments for disabled people is a positive anticipatory duty
- Around half of clients seeking advice on welfare benefits say they're disabled or have a long term health condition
- Clients who have disabled/long term health profile and issues relating to public authorities can be helped by the positive reasonable adjustments duty





What are some of the reasons that discrimination isn't identified for individual clients? (1)

- Clients often do not say there has been discrimination
- Client will describe a presenting problem as, for example, a housing problem and not talk about a discrimination problem
- Client feels stigma or embarrassment
- Client does not feel comfortable or have confidence in process or adviser to talk about it
- Clients will often use other language – because they don't know the legal terms or the protection from discrimination
- A feeling that discrimination is rare, it doesn't happen here



What are some of the reasons that discrimination isn't identified for individual clients? (2)

- Adviser does not know or recognise the different types of unlawful discrimination
- Adviser or client not feeling sure about how discrimination rights apply outside employment
- The hot potato effect – if an adviser identifies unfair treatment as discrimination, what can they do to help their client?
- Adviser not feeling sure if it is part of their role, eg they are a benefits adviser?
- Discrimination isn't clear cut, you can't say for sure so better not to say at all



What are some of the reasons that discrimination isn't identified for individual clients? (3)

- Concerns about using the wrong language or political correctness
- Concerns about looking for problems that client has not identified or mentioned
- Discrimination is not always clear cut, so adviser is worried about making judgements
- Discrimination is seen as an optional extra, as difficult, as only about taking complicated legal action
- Discrimination is rarely overt – other reasons are given for different treatment
- Disadvantage might be caused by the same policies or actions applied to everyone and 'that isn't discrimination'



How can we use Equality Act rights to help solve problems in social welfare law?

Equality Act rights, which could help solve problems in social welfare advice, are under used.

The Equality Act is another tool – it may not solve all problems – but can help by adding leverage, highlighting additional rights and solutions.

For example: the positive anticipatory duty upon DWP to make reasonable adjustments for disabled people:

- will have the biggest impact & affects large numbers of people
- it is a positive duty, so very practical, and easier for advisers and clients to use.

A quick Equality Act introduction

The main concepts of the Equality Act 2010

- **protected characteristics**
- **types of discrimination (prohibited conduct)**
- **scope of the act**



Equality Act - protected characteristics

- Age
- Disability
- Marriage & civil partnership status
- Pregnancy & maternity
- Race
- Religion or belief (or lack of)
- Sex
- Sexual orientation
- Transgender (gender reassignment)

There are 9 protected characteristics. We all have at least 4 of them.



Equality Act - types of discrimination

Direct discrimination s13

Discrimination arising from disability s15

Indirect discrimination s19

Failure to make reasonable adjustments s20/21

Harassment s26

Victimisation s27



⌂ Equality Act 2010 - scope of the act

Equality Act applies to:

- employers
- businesses
- service providers
- public authorities
- landlords

Welfare benefits

Consumer

Debt

Housing

Employment

Transport

Education

Health

Equality Act 2010 Structure

Part Two: protected characteristics and prohibited conduct

Part Three: services and public functions

Part Four: premises

Part Five: work

Part Nine: enforcement

Remember to check the schedules!

Is it discrimination?

Equality Act 2010 says what is unlawful discrimination.

Unlawful discrimination is unfair treatment based on a protected characteristic

The protected characteristics are:

Age
Disability
Marriage / civil partnership
Pregnancy / maternity
Race
Religion or belief
Sex
Sexual orientation
Transgender

What happened?

- treated differently and worse
- an apparently neutral policy has a different impact + disadvantage
- harassed or subjected to an intimidating environment
- treated unfavourably after complaint about discrimination
- something creates a barrier or disadvantage for a disabled person
- a disabled person is treated unfavourably

direct discrimination

indirect discrimination

harassment

victimisation

a failure to make reasonable adjustments

discrimination because of something arising in consequence of disability

DWP and other public authorities must not discriminate when they provide services or carry out public functions

Direct discrimination

s13 Equality Act



Direct discrimination is treating someone less favourably because of a protected characteristic.

- **What is the less favourable treatment?**
- **Can you show the less favourable treatment was because of a PC?**
- Do you have the protected characteristic? Or is it by association and perception?
- The comparator is a real or hypothetical person who doesn't have that same PC. Or in disability discrimination the comparator must be someone who doesn't have your disability, is in similar circumstances **and** has the same abilities.
- Must be 'no material difference' between the relevant circumstances for you and the comparator.
- Direct age discrimination: unusual as it can be defended.



Indirect discrimination

s19 Equality Act



Indirect discrimination happens when an apparently neutral policy is widely applied, and it puts people sharing a protected characteristic at a particular disadvantage, and puts an individual with that characteristic at that disadvantage.

- **Is there a blanket or one size fits all policy that causes some people to be disadvantaged? Focus on different impact.**
- Identify what precisely caused the different impact- the PCP
- PCP means 'provision criterion or practice'. It is a deliberately wide phrase.
- What was the particular disadvantage for the individual?
- What was the adverse/disproportionate impact on the pool of people you are comparing yourself to (who share your PCP)?
- The defence is that the PCP was a 'proportionate means of achieving a legitimate aim'. This is 'objective justification'.



Harassment

s26 Equality Act



- Harassment related to a protected characteristic: when someone engages in unwanted conduct related to a relevant protected characteristic that has **the purpose or effect of violating another's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.**
- Sexual harassment: unwanted conduct of a sexual nature.
- Less favourable treatment because a person submits to, or rejects conduct of, an unwanted sexual nature or conduct which is related to gender reassignment or sex.

Disability: s6 Equality Act

Disability is a protected characteristic: a physical or a mental condition which has a substantial and long-term adverse impact on your ability to do normal day to day activities:



- **includes physical and mental health conditions.**
- the phrase 'substantial' means more than minor or trivial.
- **long term means a condition which has lasted 12 months or more, or expected to last more than 12 months.**
- **can disregard the beneficial effects of medication or treatment.**
- covers recurrent and remitting conditions, as well as progressive ones.
- some conditions expressly excluded e.g. alcohol or drug addiction, hay fever, a tendency to steal or to set fires.
- some health conditions automatically deemed to meet this definition: cancer, HIV infection and multiple sclerosis.

Duty to make reasonable adjustments

s20, s21 Equality Act

A duty on employers, public authorities and service providers to make reasonable adjustments for disabled people who meet the Equality Act definition of disability.



The duty to make reasonable adjustments has 3 requirements:

- **take reasonable steps to avoid the disadvantage where a provision, criterion or practice (PCP) puts disabled people at a substantial disadvantage compared to those who aren't disabled.**
- take reasonable steps to avoid the disadvantage where a physical feature puts disabled people at a substantial disadvantage compared to those who aren't disabled.
- provide an auxiliary aid - where not providing an auxiliary aid puts disabled people at a substantial disadvantage compared with those who aren't disabled.

Duty to make reasonable adjustments **s20, s21 Equality Act**

Significant differences to the way the duty operates for service providers and public authorities, compared to employment situations, and the law on premises (housing) and education.



- **The duty on service providers and those exercising public functions to make reasonable adjustments is an anticipatory positive duty owed to disabled people generally.**
- A public authority shouldn't wait for an individual disabled person to raise an issue about the impact of a policy or process. The public authority should anticipate problems by thinking about the likely impact of any procedures in advance, and they should take positive steps to try to avoid disadvantage for disabled people using their services.



Discrimination because of something arising in consequence of disability

s15 Equality Act



Discrimination 'because of something arising in consequence of disability' happens when a disabled person is treated unfavourably, and this treatment is because of something arising in consequence of the disabled person's disability. Sometimes this is abbreviated to 'discrimination arising from disability'.

- **Discrimination arising from disability is about discrimination that happens because (1) of something arising in consequence of (2) a disabled persons disability.**
- Direct discrimination is about discrimination (1) because of a protected characteristic e.g. disability.

Public sector equality duty

S149 Equality Act



A general duty on public authorities to have due regard to equality when they exercise their public functions. In particular they must have due regard to the need to:

- 1. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the act.**
2. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
3. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In other words, a public authority should always think about equality, and how they can reduce inequality whenever they are formulating new policies, or when they apply their own policies when they make decisions.

Public sector equality duty

S149 Equality Act



- It isn't a duty that requires a public authority to take particular steps or actions. They simply need to show that they thought properly about the different aims of the public sector equality duty.
- If you think that a public authority didn't think about equality when it introduced a new policy, or when they applied it, your client can bring a claim of judicial review, asking the court to make an order that the policy is quashed.
- The court hearing this kind of claim will not order the public authority to make specific changes to the policy, but they can order the public authority to reconsider their equality duty and the policy.

Examples of discrimination issues relating to Coronavirus



Coronavirus and equality

[Equally Ours – great collection of resources on equality and human rights impacts](#)

[Scottish government: useful equality impact assessment – highlights some issues](#)

[EHRC – looking at impact of Coronavirus](#)

[Women and Equalities Select Committee inquiry](#)

Coronavirus and equality

The government did not provide a BSL interpreter for nine separate daily briefings by Prime Minister Boris Johnson at the beginning of the pandemic crisis, between 3 and 19 March.



Coronavirus and equality

Disabled people were not given a reasonable adjustment by supermarkets, to enable them to access online delivery slots.



Coronavirus and equality

Employers must not discriminate when they make employees redundant.

Women are protected against automatic unfair dismissal and discrimination from day one of their employment - if they are dismissed, made redundant or discriminated against because of their pregnancy or maternity leave.



Coronavirus and equality

MPs aren't covered by Equality Act
(as office holders)

Parliament exempted from S.29

Query if Parliament is considered to
be a public authority.....

Possible judicial review on public
law grounds?

'Common law rationality includes
the principle of non discrimination'





Coronavirus and equality

- Specific situations
- Anxiety and uncertainty financial pressures – may make ‘ordinary discrimination’ more likely?
- Some possible positives – the changes made for everyone in lockdown – can they provide a precedent for reasonable adjustments in the future?

Resources for taking action

Resources

Online handbook and toolkits

All these resources are free, online and can be shared with clients. EXCEPT some of the EHRC adviser support information.



Support for taking practical action

- **Get advice** for an adviser – from the EHRC adviser support helpline
- **Tell someone** eg
 - CPAG Early Warning System
 - rightsnet forum on equalities and human rights
- **Ask someone** – barristers chambers are often keen to hear about potentially great cases
- **Legal Aid is available** for discrimination
- Equally Ours online handbook
- Citizens Advice online toolkits
- Inclusion London [resources for DDPOs](#)

Equality Act 2010: reading and resources (1)

Two posters:

- Simple one page [Equality Act 2010](#)
- One page, more detail [Equality Act 2010 + welfare benefits](#) (pdf)

Citizens Advice/EHRC Discrimination Toolkits:

- [Employment Discrimination Toolkit](#) + a very useful page on [analysing discrimination](#)
- [Housing Discrimination Toolkit](#)

Equally Ours (for EHRC)

[Welfare rights and equality online handbook with A to Z of equality.](#)



Equality and Welfare Rights Advice handbook

- [A to Z of equality rights](#)
- [Getting started](#) – including posters and a ‘quick guide’
- [Case studies](#) – with example letters
- [Is it discrimination?](#) – examples and tips for identifying discrimination
- [Solving problems with equality rights](#) – lots of FAQs and a template letter
- [A directory of equality resources](#) (the fourth section on this page)
- [How to show the equality impact of welfare rights advice](#)
- [A guide for managers on developing discrimination advice](#)



Discrimination at work toolkit

- [Check if your problem at work is discrimination](#)
- [Check if you're disabled under the Equality Act](#)
- [If you're being harassed or bullied at work](#)
- [If you think you've been unfairly treated when applying for a job](#)

Taking action

- [Asking your employer for changes to help you if you're disabled](#)
- [Deciding what to do about discrimination at work](#)
- [Gathering evidence about discrimination at work](#)
- [Work out how much compensation you could get for discrimination](#)
- [Taking action about discrimination at work](#)
- [Get help with discrimination at work](#)

More detail on employment tribunal discrimination claims.

- [Negotiating and settling your discrimination claim](#)
- [Making a late claim about discrimination in the employment tribunal](#)
- [Adviser tool - getting the facts: first steps in gathering and organising evidence](#)
- [Assessing the merits of a discrimination claim and using a case plan](#)
- [**Adviser tool: analysing your client's discrimination problem**](#)
- [Proving a discrimination claim in the employment tribunal](#)
- [Starting a discrimination claim: completing the ET1](#)
- [ET3, case management and preliminary hearings](#)
- [Getting medical evidence about discrimination](#)
- [Preparing evidence for an employment tribunal](#)
- [Witness evidence in the employment tribunal](#)
- [At the employment tribunal hearing and beyond](#)

Discrimination and housing toolkit

- [Check if your housing problem is discrimination](#)
- [Check if you're disabled under the Equality Act](#)
- [If someone's harassed you in housing](#)

Taking action

- [Asking for adjustments to help with your disability](#)
- [Deciding what to do about housing discrimination](#)
- [Preparing to challenge your eviction if you've been discriminated against](#)
- [Gathering evidence about housing discrimination](#)
- [Complaining about housing discrimination](#)
- [Work out how much compensation you could get for discrimination](#)
- [Challenging an eviction with discrimination law](#)
- [Taking legal action for housing discrimination](#)
- [Get help with a housing discrimination problem](#)

Challenging an eviction with discrimination law

- Step 1: take action when you get an eviction notice
- Step 2: fill in the defence form
- Step 3: send the defence form
- Step 4: prepare for court
- Step 5: going to court

Taking action about discrimination in housing

- try to settle your dispute
- complete a claim form N1 – includes example
- send the claim form to court
- prepare for court
- go to a court hearing

Equality Act 2010: reading and resources (2)

[Resources for discrimination advice](#) (an article linking to both toolkits and handbook)

[EHRC Adviser support](#): all the EHRC resources for advisers on one page

[EHRC reading lists](#)

[EHRC Statutory Codes of Practice](#) - very useful guidance plus explanations and examples

[Asking questions process – guidance for services cases](#)

[Equal treatment bench Book](#)

[HMCTS customer accessibility and inclusion reasonable adjustment guide](#)

Any questions?

Thank you