



Discrimination: its just not fair

A rough guide to your rights

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Introduction

This guide is aimed at individual members of the public to give them a rough introductory guide to what rights they have under anti-discrimination laws.

In the United Kingdom, anti-discrimination laws are complex and not easily understood unless you are a lawyer or specially trained person.

The purpose of this guide is to give individual members of the public a quick guide to what protection they have under anti-discrimination laws.

This guide covers the seven discrimination areas covered by law as well as human rights.

You must not make any assumptions based on the information contained in this rough guide as the guide is intended to provide guidance on your legal rights only. You are advised to get legal advice at your nearest advice centre if you feel you have been discriminated against in any of the ways explained in this guide.

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What is Discrimination?

Discrimination occurs when someone is treated unfairly because they happen to belong to a particular group of people or have a particular characteristic.



Elizabeth Woodroffe

Many people have fixed ideas about groups of people who are different from themselves. If we aren't careful, this can lead us to discriminate against people who belong to those groups.

In England and Wales many types of discrimination are against the law. The laws dealing with discrimination aim to help give everyone an equal chance.

The law covers you when you are applying for employment, during employment and when buying goods facilities and services. (Age discrimination law currently does not cover goods facilities and services. However this is proposed in the new single equality law which the government plans to introduce in the near future.)

Duties of public authorities

Public organisations by law must consider your human rights in the way

they provide services to you as a member of the public. (See the Human Rights section for details about your human rights.)

What types of discrimination are against the law?

The following types of discrimination are against the law:

• Age

It is against the law for your age to be the cause of less favourable treatment in your workplace or in vocational training.

• Religion and belief

Your religion or similar beliefs, or those of somebody else, should not interfere with your right to be treated fairly at work, at school, in shops or while using public services such as health care and housing. This also includes being treated unfairly for having no religion or beliefs.

What is Discrimination?

- **Disability**

If you have a physical, sensory or mental impairment, you have specific rights that protect you against discrimination. Employers and service providers are obliged to make adjustments for you.

- **Gender**

Women, men and transgender people should not be treated unfairly because of their gender, because they are married or because they are raising a family.

- **Race**

Wherever you were born, wherever your parents came from, whatever the colour of your skin, you have a right to be treated fairly.

- **Sexual orientation**

Whether you are gay, lesbian, bisexual or straight should not put you at a disadvantage at work or in using goods and services.

Both 'direct' and 'indirect' discrimination are against the law

Direct discrimination

Means someone is treated unfairly compared to someone else in the same or similar circumstances, and this is because of their race, age, sexual orientation, disability, gender or

religion or belief. For example, if an employer won't hire someone just because they are a woman this is likely to be direct sex discrimination.

Indirect discrimination

Means a requirement (or rule) that is the same for everyone but has an effect or result that is unequal and unreasonable. For example, an employer who says that they need a person over 180 cm tall to do a certain job could be indirectly discriminating against women and some ethnic groups, who are less likely to be this height than men or people from other ethnic groups. Individuals could claim indirect sex or race discrimination but only if they could show that the job does not really need someone that tall to do it.

Victimisation is also against the law

It is against the law for anyone to harass or victimise you or treat you unfairly because:

- you have complained to your employer or another person about discrimination or harassment;
- you have taken legal action; or
- you have supported someone with a discrimination or harassment complaint, or
- acted as a witness in a discrimination or harassment case.

What is Discrimination?

Incitement to hatred on racial, sexual orientation or religious grounds is also against the law.

This includes serious public acts that incite or encourage hatred or violence. It includes verbal and written material.

What can I do if I have been discriminated against in one of the ways listed above?

Read through this booklet to check that what has happened is against the law. If you are not sure, you can get more detailed information from the Equality and Human Rights Commission helpline on: 0845 604 6610. You can also phone the Equality and Human Rights Commission helpline to check on your rights or visit <http://www.equalityhumanrights.com/en/Pages/default.aspx>

If what has happened is against the law, try talking to the person or organisation that you think is discriminating against you. The organisation should have a policy on these issues and/or a process to deal with grievances, and you may be able to address your problem through these channels. You can also get help from other sources such as your Trade Union.

If this doesn't work, or isn't appropriate, you may decide to take legal action. It is strongly advised you get legal advice before doing this. You can get free legal advice from your local Law Centre, CAB or other advice agencies.

Sex Discrimination

What the Law says: It is against the law for an employer to treat you differently from others because of your gender or sex, because you are married or not married, or if you have had, are having or are going to have gender reassignment.



The law covers recruitment, terms and conditions, pay and benefits, status, training, promotion and transfer opportunities, right through to redundancy and dismissal. It also covers you when you buy or use goods and services.

Equal pay

The 1970 Equal Pay Act makes it unlawful for employers to discriminate between men and women in terms of their pay and conditions where they are doing the same or similar work.

What the law does not cover:

However, in some cases, a job can be offered to someone of a particular sex, if the nature of the job is such that it requires a particular sex to carry out the duties. This is called a 'genuine occupational requirement'. Examples could include:

- Jobs with a rape crisis centre for women
- Jobs in some welfare services
- Role acting jobs that need a man or a woman

Positive action:

In some circumstances, an employer may encourage or offer support specifically to men or women. For example, if they are under-represented at higher level positions in the organisation. This is called 'Positive action' and this is allowed under sex discrimination laws. For example, an employer who has no women managers might offer some training in management skills only to women or encourage them to apply for management posts. Positive action applies only to training and encouragement to apply for posts, but when it comes to choosing who is offered a post, the employer must consider all applicants on their suitability only.

Sex Discrimination

Example:

Susan took time off after the birth of her first child. On her return to work, she was put in a different post lower than the level she was on before she had the time off for the baby. Her manager remarked to her that since she wasn't "reliable" as she may fall pregnant again, he had no choice but to put her in a position with less responsibility.

Another example: A woman is subject to personal comments about her physical appearance in a way that would not have happened to a man.

Both examples above are against sex discrimination law.



Where to go for advice and information

If you think you have been discriminated against because of your gender or sex, contact your nearest Law Centre. To find your nearest Law Centre, visit: www.lawcentres.org.uk where you will find a list of Law Centres across the country.

Race Discrimination

What the Law says:

The Law makes it unlawful for an employer to discriminate against someone on racial grounds. The Law also makes it unlawful for anyone to be refused a service or goods because of their race, colour or ethnic origin.



For the purpose of the Act, the definition of race includes:

- colour
- nationality
- ethnic or national origins

The law says it doesn't matter if the discrimination is done on purpose or not. The important thing is whether (as a result of an employer's actions) an employee has been treated unfavourably because of his or her race. The Race Relations Act protects all racial groups, regardless of their race, colour, nationality, religious beliefs, national or ethnic origins.

Positive action

Positive action is where an employer provides **support or encouragement** to a particular racial group. It is only allowed where a specific racial group is badly under-represented among those doing particular work or filling particular posts in an employer's workforce.

The employer is allowed to provide special training to members of the racial group. They can also encourage members of the racial group to apply to do the work or fill the posts (for example, by saying that applications from them will be particularly welcome).

This does not mean that employers can discriminate in favour of the members of the group when it comes to choosing people to do the work or fill the posts. That is unlawful discrimination.

Positive action is not the same as 'positive discrimination', which is where members of a particular racial group are treated more favourably. Positive discrimination is against the law.

Race Discrimination

Example one:

Mrs Tambu is a manageress working in a strategic post for a large corporation. She is the only black manager in her section and she supervises four white members of staff. Two of them object to being managed by a black woman and have threatened to resign if Mrs Tambu is not moved.

The corporation in order not to lose two highly experienced staff decided to move Mrs Tambu from her post into another post where there is no managerial responsibilities. The corporation are liable under the Race Relation Act for direct racial discrimination by moving Mrs Tambu.

Example two:

Mr Singh, an Asian man, has been working as an engineer at a motor vehicle plant for a number of years. Recently Mr Singh has been receiving racial abuse from a new white employee whose uncle is the union rep at the plant. Mr Singh makes a complaint and is moved by his local management to a new post in the plant.

The plant under the Race Relations Act is liable of direct race discrimination by transferring Mr Singh.

Goods and Services:

A service or provider of goods such as hotels, shops and restaurants must not refuse service to someone because of their colour, race or ethnic origin.

If you're being discriminated against at work because of your race or colour...

If you feel that another employee or a member of management other than your immediate boss is discriminating against you because of your race, talk to your immediate boss and explain your concerns. Your employee representative (such as a trade union official) - if you have one - may also be able to help.

If your line manager or supervisor is discriminating against you, you should talk to their boss or to the company's Human Resources department.

Be clear in your mind about what you see as discrimination, and if necessary give examples in writing. You should also talk to your employer if you're told to act in a way that you think discriminates - for example if you're told to treat someone differently because of their race, colour, nationality, ethnicity or national origins.

Race Discrimination

If your employer doesn't want to help, you may need to make a complaint using your employer's grievance procedure. You shouldn't be victimised for complaining as this would count as discrimination.



Where to go for advice and information

If you would like an independent advisor to help with your situation, contact your nearest Law Centre. To find out your nearest Law Centres, visit: www.lawcentres.org.uk where you find a list of Law Centres across the country.

Age Discrimination

Age Discrimination in Employment and Vocational Training

At the time of producing this information pack, age discrimination law only covers employment and vocational training but not goods, facilities and services.



Elizabeth Woodroffe

What the law says:

Age discrimination law says it is unlawful for employers to discriminate against someone in terms of recruitment, promotion and training. The law also bans unjustified retirement ages of below 65 and removes the current age limit for unfair dismissal and redundancy rights.

The law gives employees a right to request working beyond retirement age of 65 and a duty on employers to consider that request.

Employers must give at least six months notice to employees about their intended retirement date so that individuals can plan better for retirement, and be confident that "retirement" is not being used as cover for unfair dismissal.

Can you be refused a job because you're too young?

Age discrimination is not experienced by only older people. Young people experience age discrimination too. It is unlawful for an employer to impose a lower age limit when recruiting, unless this age restriction can be objectively justified or is imposed by law. For example, certain jobs where it would be illegal to employ a young person such as bar work.

Age Discrimination

Example:

Janet is 58 and has worked with her current organisation for 5 years. In the past few months, due to expansion, younger workers between ages 20 and 35 have joined Janet's team. Janet has noticed that during general office banter younger colleagues call her "grandma" and she is not invited when they go out socialising after work. She became aware recently, that her colleagues discuss work issues during their after work socialising. Janet feels left out and no longer part of the team.

This is harassment. Janet needs to speak with her employer about the situation including letting the workers

know that referring to Janet as "grandma" is unacceptable. The employer also needs to make it clear that discussions or meetings concerning work related issues are held in the office, especially if Janet is directly involved in any of the work issues being discussed.

Goods and Services

At the time of producing this booklet, providers of goods, facilities and services could still discriminate against someone because of their age. For example, insurance companies can legitimately charge older customers higher premiums for car, holiday or health insurance.



If you are suffering discrimination because of your age

Talk to your manager in the first instance to try to resolve the matter informally. If you feel you have been put at a disadvantage because of age-related criteria for recruitment or promotion policies, you can bring a claim for age discrimination to an Employment Tribunal. If you think you've been discriminated against or harassed because of your age, you'll also be able to bring a claim to an Employment Tribunal.

Contact your local Law Centre for more information and advice. To find out your nearest Law Centre, visit: www.lawcentres.org.uk where you find a list of Law Centres across the country.

Disability Discrimination

What the law says:

The Disability Discrimination Act (DDA) is a law that aims to end the discrimination and prejudice which many disabled people face in their everyday lives.



If you have a disability, the DDA makes it unlawful for you to be discriminated against in:

- Employment and occupation
- Trade organisations and qualifications bodies
- Access to goods, facilities and services
- The management, buying or renting of land or property
- Education

The law also requires public bodies like local authorities and government departments to promote equality of opportunity for disabled people. It also allows the government to set minimum standards so that disabled people can use public transport easily.

What is disability?

The Disability Discrimination Act sets out the circumstances in which it considers a person to be 'disabled'. It says you are disabled if:

- you have a mental or physical impairment;
- this has an adverse effect on your ability to carry out normal day-to-day activities; and
- the adverse effect is substantial and long-term (meaning it has lasted for 12 months, or is likely to last for more than 12 months or for the rest of your life).

To make a claim under the DDA the person's condition or illness must fall within definition of disability as outlined by the law. It is important to note that some conditions may not fall within the DDA especially if they do not meet the definition of disability outlined above.

Disability Discrimination

Examples:

Beth has a facial disfigurement. A hotel refused to book in Beth because it thought this would upset other guests. This is against the law.

Andrew was offered a position as customer service manager with a large internet based company. Soon after, Andrew informed his manager he was HIV positive though he was well and able to his job. About a week later, Andrew was called into the manager's office where he was informed that due to his HIV status, the company felt he would not be able to deal with the stress and physical demands of his job. He was therefore paid off in lieu of notice. This is against the law. The manager was making assumptions about Andrew's condition without any justification.

A holiday company asked for a bigger deposit from a deaf person booking a holiday just because the company thinks, for no good reason, that the deaf person is more likely to cancel their holiday. This is against the law.

Human Rights for disabled people

Disabled people have human rights which should be enjoyed without discrimination. The Human Rights Act works alongside the DDA to make sure that disabled people are treated with respect, dignity and fairness. The rights contained in the Human Rights Act belong to everyone – it does not contain any rights specifically for disabled people. However, the general principles in the Human Rights Act are relevant to several issues which many disabled people face. The Human Rights Act therefore provides an important tool for disabled people to use to challenge discrimination and unacceptable treatment.

The Human Rights Act influences the way public services are delivered to disabled people. The Human Rights Act says that providers of public services, such as staff at residential homes, educational bodies or hospitals, or carers in your own home, must make sure that they do not breach your human rights.

Disability Discrimination



Where to go for advice and information

If you need more information or advice on your situation, contact your nearest Law Centre. To find out your nearest Law Centre, visit: **www.lawcentres.org.uk** where you find a list of Law Centres across the country.

Sexual Orientation Discrimination

What the law says:

The sexual orientation law says it is unlawful to treat someone less favourably (or differently) on grounds of their sexual orientation in employment and accessing goods, facilities and services.



The law covers a worker's actual sexual orientation, or perceived sexual orientation (even if it is a wrong perception), or the sexual orientation of someone else.

For example:

- A man is turned down for a job because he is gay.
- A woman is refused promotion because her boss thinks she is a lesbian.
- A worker is made redundant because of his association with gay people.
- A hotel refuses booking from a gay couple.

It does not matter the intention or motive of the employer, apart from some specific exceptions (for genuine occupational requirements and limited positive action), there is no defence.

* Where to go for advice and information

If you need more information or advice on your situation, contact your nearest Law Centre. To find out your nearest Law Centre, visit: www.lawcentres.org.uk where you find a list of Law Centres across the country.

Religion or Belief Discrimination

What the law says:

It is against the law to treat a person less favourably (or differently) because of or his/her religion or philosophical belief, because of lack of religion or belief or that of someone else.



There could also be discrimination where an employer has put into place a criterion that would put employees with certain religious beliefs at a disadvantage. In such a situation the employer must have and provide very good reasons why the criterion is necessary.

church, mosque or synagogue or any other religious premises because he or she has no faith or religion or does not belong to the faith or religion of the employing organisation.

For example:

- An employer refuses to employ a worker because s/he is Rastafarian.
- A manager sacks an employee because he or she has Muslim friends.
- A manager requires an employee to work Saturday mornings. This would indirectly discriminate against observant Jewish workers who cannot work on the Sabbath.
- A gardener is not offered a job in a

* Where to go for advice and information

If you need more information or advice on your situation, contact your nearest Law Centre. To find out your nearest Law Centre, visit: **www.lawcentres.org.uk** where you find a list of Law Centres across the country.

Transgender Discrimination

It is against the law to discriminate against anyone because of gender reassignment. Gender reassignment means having a sex change from man to woman or woman to man.



What is Gender Reassignment?

According to the law (Sex Discrimination Act), **Gender reassignment** is: *"a process which is taken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process"*.

Gender recognition means that, if you are transsexual, you must be treated as of your new sex for all legal purposes, including in the workplace.

What the law says:

It is against the law to discriminate against someone if he or she:

- Intends to undergo gender reassignment, or
- Is undergoing gender reassignment, or
- Has, at some time in the past, undergone gender reassignment.

The law also says you should not be discriminated against, victimised or harassed because:

- you are transgender, or
- others think you are transgender, or
- you have a relative or associate who is (or others think is) transgender.

The Gender Equality Duty which came into force in April 2007 requires public authorities to promote gender equality and eliminate sex discrimination. The Duty covers employment practices such as recruitment and flexible working and requires employers to be more explicit in their fair practice in regard to transsexual people.

What the Regulations do not cover:

The law only covers direct discrimination which mainly includes harassment and victimisation. There are also exceptions especially

Transgender Discrimination

in relation to where a person's sex is classed as a Genuine Occupational Requirement for a job. For example, where the job is legally only open to people of their birth gender, the employer can only dismiss someone once they have a birth certificate or recognition certificate in their new gender. In all other cases, a transgender person can only be dismissed for the same reasons that anyone else can be dismissed - for example, for ongoing poor work performance, serious misconduct, medical reasons that mean they're no longer fit enough to do the job, or redundancy.

You are protected during employment, vocational training and when accessing goods and services.

You are also protected in situations where discrimination, harassment or victimisation occurs under the instruction of someone else. Employers can be liable, when any of the above is carried out by their employees.

If you are transexual, the Gender Recognition Act 2004 enables you to apply for 'gender recognition' and transexuals born in the UK can obtain a new birth certificate. To qualify, a transexual person has to show that:

- They have been diagnosed as having gender dysphoria, or
- They have had gender reassignment surgery and
- They have lived in their acquired gender role for two years, and
- They intend to do so permanently for the rest of their life.



For help and information, please contact:

The Beaumont Society, 24 hour information line on: 01582 412220.
You may also contact your nearest Law Centre if you have been discriminated against. To find your nearest Law Centre please visit www.lawcentres.org.uk

Human Rights and the Human Rights Act

The Human Rights Act 1998 sets out the rights in the UK which are protected by the European Convention on Human Rights.



The Act did not invent human rights for British people. Instead, it introduced into UK law some of the rights set out in the Universal Declaration of Human Rights and other international documents as well as the European Convention on Human Rights. The Act meant that these basic rights and freedoms are now more easily protected within the UK. People must use this law before going to European or other International law.

Who does the Human Rights Act apply to?

The Act applies to all public authorities (such as central government departments, local authorities and NHS Trusts) and other organisations performing public functions (such as private companies operating prisons). These organisations must comply with the Act – and your human rights – when providing you with a service or

making decisions that have a decisive impact upon your rights.

Although the Act does not apply to private individuals, companies and charities (except where they are performing public functions), sometimes a public authority has a duty to stop people, companies or charities abusing your human rights. For example, a public authority that knows a child is being abused by its parents has a duty to protect the child from inhuman or degrading treatment.

Your rights under the Human Rights Act 1998 are not the only rights you have. Some rights may also be covered under anti-discrimination law or other laws. You should seek legal advice.

Human Rights and the Human Rights Act

What is the Human Rights Act 1998?

The Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) into British law. It came fully into force in England on 2nd October 2000. Its main principles are:

- All legislation must be compatible with the ECHR as far as possible.
- Where the law is not compatible the High Court (and above) can make a 'declaration of incompatibility' which should prompt government action. This declaration cannot change or get rid of the law but require the government to improve the situation.
- All public authorities, including courts and tribunals, must act in a way which is compatible with the ECHR. Any person who is performing functions of a public nature is included in the definition of a public authority.
- Individuals who believe their rights have been infringed by a public authority can take legal action directly against the public authority. They can also raise the matter in any other court or tribunal proceedings on a different matter. The remedies available for a breach of the Act are wide and include damages.

What the Human Rights Act Covers

- Right to life
- Protection from torture
- Protection from slavery and forced labour
- Right to liberty and security
- Right to a fair trial
- No punishment without law
- Right to respect for private and family life
- Freedom of thought, belief and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry and found a family
- Protection from discrimination
- Protection of property
- Right to education
- Right to free elections

Examples of how human rights could have made a difference:

- An older woman being left completely naked on a mixed ward by workers who were training her to dress herself as part of a rehabilitation programme
- Disabled children not being able to go to the toilet in school because of a blanket ban on manual handling
- Muslim men in detention being told they cannot shower before going to

Human Rights and the Human Rights Act

a mosque because it interferes with the prison's bathing schedules. Above examples were taken from a British Institute of Human Rights Publication titled "The Human Rights Act – changing lives".

Absolute or limited rights?

Some rights are absolute. This means they cannot lawfully be infringed in any way. Others may be limited or qualified by the law depending on circumstances.

- **Absolute rights** - Absolute rights cannot be infringed under any circumstances. Article 3 – Prohibition of torture is a good example of an absolute right. Under no circumstances can torture, inhuman or degrading treatment or punishment be lawful under this article – it provides absolute protection.
- **Qualified rights** - Qualified rights are rights that the state can lawfully interfere with in certain circumstances. Examples of such rights include the right to respect for your private life, under Article 8, or the right to freedom of expression under Article 10.

- **Limited rights** – The right to liberty and security is a limited right. This means that the circumstances in which this right can be limited are set out in the text of the article itself. For example, if you commit a crime and found guilty in a court of law, the state has the right to deprive you of your liberty by sending you to prison as punishment for the crime.

You should get legal advice about what rights apply to your situation and whether they are absolute or qualified/limited.

More information about your human rights can be found at:

<http://www.equalityhumanrights.com/en/Pages/default.aspx> or visit <http://www.bihr.org/> for more general information on human rights.

Legal Advice can be obtained from your local Law Centre or other advice agencies.

Discrimination: its just not fair

A rough guide to your rights

This guide is aimed at individual members of the public to give them a rough introductory guide to what rights they have under anti-discrimination laws.

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Legal action for the community

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