

Briefing Note: Discrimination in the Provision of Goods and Services

Introduction

This Briefing Note sets out the duties your business owes to members of the public when you provide them with goods, services or facilities. Since 1 October 2010 these rules have been set out in the Equality Act 2010. This Briefing Note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

Who is a service provider?

A service provider is any person who provides services, goods or facilities (paid or unpaid) to members of the public. A service provider is responsible for the acts of its employees and agents.

What are services, goods and facilities?

The meaning of the words services, goods or facilities are not defined by the Equality Act 2010 and are likely to be interpreted widely by the courts. They can include:

- Access to any place members of the public are permitted to enter (for example, pubs or restaurants).
- Accommodation in a hotel, or similar establishment.
- Facilities for education (including privately run nursery schools or pre-schools).
- Facilities for entertainment, recreation or refreshment (for example, cinemas or theatres).
- The services of any profession or trade.
- Access to and use of means of communication and information services.

What are the protected characteristics?

- Members of the public who access your goods, services or facilities are protected on the basis of certain characteristics. They are protected both when requesting a service, good or facility and during the course of being provided with it. The protected characteristics are currently:
 - Age.
 - Gender.
 - Race.
 - Gender reassignment.
 - Disability.
 - Sexual orientation.
 - Pregnancy and maternity.

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June 2018

For detailed advice on all Employment Law matters, please contact

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- Religion or belief.
- The anti-discrimination rules vary according to the protected characteristic.
- The prohibition on age discrimination does not apply to children under the age of 18. However, there are specific exceptions from the prohibition on age discrimination, including age restricted sales..

What is prohibited?

- **Direct discrimination.** You must not treat a person worse than someone else on the basis of a protected characteristic. For example, a nightclub charges a higher price of entry to a man where the service provided to a woman is otherwise exactly the same.
- **Indirect discrimination.** You must not apply a policy or procedure to everyone which would particularly disadvantage a group of people with a protected characteristic. For example, a shop decides to apply a “no hats or headwear” rule to customers. If this rule is applied in exactly the same way to every customer, Sikhs, Jews 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.
- **Harassment.** You must not harass a member of the public. Harassment is any unwanted conduct relating to a protected characteristic or of a sexual nature that has the purpose or effect of violating a member of the public’s dignity or creates a hostile, degrading, humiliating or offensive environment for that individual.
- **Victimisation.** You must not treat someone badly or victimise them because they have:
 - Complained about discrimination.
 - Helped someone else complain.
 - Done anything to uphold their own or someone else’s rights under discrimination law.
- **Discrimination arising from disability.** You must not treat a disabled person unfavourably because of something arising from or in consequence of their disability, where you cannot show that what you were doing is objectively justified.
- **Failure to make reasonable adjustments.** You have a duty to make reasonable adjustments for all disabled people, whether you have disabled customers or not. You should review how accessible your services are to disabled people, rather than waiting for a disabled person to encounter a problem. Examples of steps it may be reasonable to take include:
 - A solicitors’ firm lending a tape recorder to a disabled client who cannot communicate in writing or travel to the firm’s office, so they can dictate their instructions and witness statement.
 - A utility company providing a quarterly bill in alternative formats (such as Braille or large print).

Fines for breaching discrimination law

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Many claims are limited to claims for injury to feelings as no other financial losses have been caused by the discriminatory acts complained of. Under current guidelines the levels of damages can range between £600 to £42,900.

If you would like to know more about this topic or our legal services, please contact Mark Williams or Gemma Ritchie on 01323 435900 or email mark.williams@gabyhardwicke.co.uk or gemma.ritchie@gabyhardwicke.co.uk

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