

## Factsheet 79

# The *Equality Act 2010*: the Public Sector Equality Duty

August 2016

### About this factsheet

The *Equality Act 2010* came into force on 1 October 2010 and combines almost all UK previous anti-discrimination laws in one single law.

One of its most important aims is to consolidate and update the Public Sector Equality Duty – a duty for public bodies to consider and apply fairness and equality, especially in making decisions or policies.

It expanded the scope of the Public Sector Equality Duty to cover the following: Disability, Race, Sex, Religion, Sexual Orientation, Marriage and Civil Partnership, Pregnancy and Maternity, Age, and Gender Reassignment (or Transgender).

The information in this factsheet is applicable across the whole UK and is correct at the time of publishing.

If you need more detailed advice or representation, it is often best to find a local service. Age UK Advice can give you contact details for a local Age UK or you can contact one of the independent organisations listed in the Useful organisations section.

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# 1 Introduction

The *Equality Act 2010* ('the Act') came into force on 1 October 2010 and combines almost all UK anti-discrimination laws into one single law, expanding the coverage and content of some of those laws.

One of the most important aims of the Act is to consolidate and update the Public Sector Equality Duty – a duty for public bodies to have due regard to the need to consider and apply fairness and equality in carrying out their functions, especially in making decisions or policies.

The Duty is designed to reduce bureaucracy and red tape involved in public bodies exercising their functions. The Government believes this helps them meet an objective of promoting fairness and equality in the exercise of those functions.

## Note

**Equality** is used to describe the treatment of people in certain categories, who may have or be seen to face a disadvantage not faced by the rest of the population. The categories are described in the Act as '*protected categories*' because it seeks to protect people seen to be at a disadvantage from discrimination.

**Discrimination** refers to treatment of a person within a category which is less favourable than the treatment of others in another category or the rest of the population in general. Anti-discrimination laws make discrimination unlawful against people in protected categories and to define those protected categories.

## 1.1 The protected categories

Protected categories in the Act are: Age, Disability, Race, Sex, Religion, Sexual Orientation, Marriage and Civil Partnership, Pregnancy and Maternity, and Gender Reassignment (or Transgender).

## 1.2 Why is it important to me?

No-one should be treated less favourably or experience discrimination because of their age, or disability, or other protected characteristics such as race, gender, or sexuality. Public bodies are bound by the laws and rules described in this factsheet when they provide you with services and in your everyday dealings with them.

It describes the broad principles of how the Act works and provides information on how you can challenge discrimination and bad practice if it happens to you. In general, if you can challenge a public body decision through a statutory route, it is best to do this also to protect your rights of appeal.

## 2 What is the Public Sector Equality Duty?

The Act expanded the scope of the Public Sector Equality Duty. It imposes a duty on public bodies to have due regard to the need for the application of fairness and equality in their policies and decision-making.

Section 149(1) of the Act defines what the Public Sector Equality Duty means in terms of general and specific duties.

### 2.1 General duties

The Act introduced a general duty on the public sector. In the exercise of its functions, a public authority must have due regard to the need to:

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

An aim of these duties is to encourage public bodies to consider how they can positively contribute to the advancement of equality and good relations. They require equality considerations to be reflected in the design of policies and the delivery of services, including internal policies and reviews of those policies.

In government guidelines, further considerations for public bodies exercising the duty are highlighted:

- **Knowledge:** Persons in public bodies responsible for making policies or making decisions should be familiar with the requirements of the Public Sector Equality Duty.
- **Timeliness:** A public body making a decision or policy must consider the Equality Duty before making the decision or policy and not afterwards.
- **Real consideration:** A public body must properly and genuinely consider equality when making decisions or policy.

There are exceptions to the general duties but these are narrow and relate to the discharge by public bodies of their functions in limited circumstances related to children, immigration matters, the discharge of a judicial function as well as Parliament and the Regional Assemblies.

### 2.2 Specific duties

There are specific duties that give public bodies responsibilities to:

- prepare and publish objectives, which they believe necessary to achieve the general duties, in a format easily understandable to the public
- publish their compliance with the general duties

- publish one or more objective it thinks necessary to further any of aims of the general equality duty. The objectives must be specific and measurable and revisited every four years
- publish evidence and analysis of the impact of its compliance measures on protected persons (including employees) and evidence of engagement with persons with an interest in promoting this duty
- publish the information on compliance with the general duties, at regular intervals of, at most, 12 months from the previous.

### 3 Who does this duty apply to?

The duty applies to all public bodies, i.e. local or national Government bodies and others carrying out a public function, as well as private bodies carrying out public functions.

#### 3.1 Public bodies

Public bodies are national and local Government bodies carrying out functions for the public. They include:

- Government departments e.g. DWP, HM Revenue and Customs etc
- Local authorities
- NHS bodies e.g. hospitals
- Transport and educational bodies
- The police
- Other bodies carrying out public functions on behalf of the above.

The list of bodies is not exhaustive – the complete list is in Schedule 19 of the Act. There is provision for additional bodies specific to Wales (Part 2) and Scotland (Part 3). See [www.legislation.gov.uk/ukpga/2010/15/schedule/19](http://www.legislation.gov.uk/ukpga/2010/15/schedule/19)

#### 3.2 Private bodies carrying out public functions

A private organisation is considered to carry out a public function if the service provided is partially or fully funded by the Government. For example private company running a local authority housing benefit service is carrying out a public function and are subject to the Duty.

A private body is exercising a public function if it is:

- publicly funded, e.g. a GP's surgery under the NHS
- carrying out duties that the law says should be carried out by a public body (e.g. public utilities)
- carrying out duties in place of Government and/or working closely with Government in carrying out its duties (e.g. a private security company overseeing a detention centre).

## 4 The Public Sector Equality Duty and older people

Before the *Equality Act 2010*, public bodies were only compelled to consider disability, race and sex in making policies or decisions but the Equality Act extends these to include age, as well as others.

### 4.1 How the duty applies to older people

Equality protection was extended to include age and in particular the duty of public bodies to consider people in the age category. Older people have the full protection previously accorded to other categories.

The Public Sector Equality Duty as it relates to older people is in addition to rights under other parts of the Equality Act, such as equality in employment, goods and services, etc. This means you can:

- require public bodies to have due consideration to age equality in making policies and decisions
- challenge a decision or policy of a public body, if it fails to consider the impact of the decision on older persons (either by not carrying out an EIA or not considering the results of the EIA).

The Public Sector Equality Duty gives older people (the age category) the right to have their interest considered by a public body when decisions are made, using all the facilities available under the Act and supporting regulations, as well as other existing judicial and legal means.

## 5 Equality and Human Rights Commission (EHRC)

The EHRC is responsible for enforcing the provisions of the Act on behalf of anyone subject to the protected categories. The EHRC has power to monitor compliance with, and to enforce, the Public Sector Equality Duty on behalf of Individuals or organisations.

The EHRC carries out its compliance function by:

- gathering intelligence on the duties (i.e. assessing information, research, collation of best practice and compiling evidence of progress on compliance)
- advice, information, promotion (i.e. producing information and advising the public and public bodies on the details and effect of the duty)
- assisting and supporting partners (i.e. working with public bodies, unions, voluntary organisations and others in ensuring compliance).

The EHRC publishes guidance on the Public Sector Equality Duty which details how public bodies can comply and can be found on their website: [www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance](http://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance)

## 6 Equality impact assessment

Before the Act, public bodies had a legal responsibility to comply with Disability, Race and Gender Equality duties in making policies or carrying out functions by carrying out an '*equality impact assessment*' (EIA).

An EIA assesses how policies and decisions of a public body are likely to affect or have affected people in protected categories, looking for ways to promote equality and remove negative aspects that may be discriminatory. It has to be far-reaching and comprehensive, analysing the potential of the policy to give rise to discrimination.

Under the Act, public bodies no longer have a legal duty to carry out an EIA, but most continue to do so. This is likely to continue to be seen as good practice in compliance with the Public Sector Equality Duty. If a public body carries out an EIA, it must be done effectively and comprehensively. Due regard must be had to information contained if a decision is made or a policy devised to which the EIA applies.

Although public bodies no longer have a legal duty to carry out an EIA, an individual or organisation who believes a public body has not carried out an EIA before making a policy or decision can apply for judicial review of the policy or decision if it is likely to result in discrimination.

## 7 How can I challenge discrimination?

The EHRC has power to enforce compliance with the Duty as follows.

### 7.1 Enforcing the duty without going to court

If an individual or organisation (other than the EHRC) believes a public body is in breach of the duty, there must be a formal complaint using the public body's complaints or reporting procedure. All avenues to resolving the matter must be exhausted before court proceedings can be filed.

Courts have a duty to ensure all peaceful means of resolving problems are exhausted before litigation. Court proceedings can involve considerable legal expense and complex legal processes and an unsuccessful party is often liable to pay the costs of the other side. It is always important you pursue all means of resolving a claim to try to avoid the need to resort to litigation.

### 7.2 How to do this yourself

If a public body makes a policy or decision that has a negative effect on older people (or any other category you belong to), you should:

- Write to them using their complaints procedure asking if they have given due consideration to the impact of the decision on older people.

- When you receive a response, consider whether there has been proper consideration of the impact of the decision on older people. Seek advice from a Citizens Advice or a solicitor (who may charge you).
- If you are unhappy with the response or there is no response from the public body, refer your complaint with a covering letter to the EHRC.

### Note

You have a right to compel the public body to comply with the duty as long as it is seen to have failed to consider the interest of the protected category you belong to.

## 7.3 What the EHRC can do

The EHRC assess your complaint and if it is seen to be substantial, it can take up the complaint under its own procedures.

**Compliance notices:** The EHRC assess the public body's compliance with the general and/or specific duties and issues a compliance notice if there has been a breach of either duty. It may enter into an agreement requiring the body to take certain steps to comply with the duty and not issue a compliance notice.

**Judicial review:** A person whose rights have been affected by a breach of duty can apply for judicial review to the High Court.

An application for judicial review has to meet certain requirements:

- the application must be made within three months of the date of the action complained of
- the person or organisation making the complaint must be directly affected by the action challenged or act for someone whose rights have been affected, e.g. someone with a Lasting Power of Attorney
- the action challenged must be an exercise of a public duty.

If an application for judicial review is successful, the Court can make one or more orders, depending on the nature of the application:

- reverse an action taken by the public body
- prevent the public body from taking, or compel it to take the action, in breach of the public duty.

Any proceedings for enforcement of the Public Sector Equality Duty must be in public law. This means it has to be through judicial review in the High Court. You cannot bring an action against a public body for breach of an individual contract, e.g. you cannot use the Duty to sue your council for failing to pay you for gardening services rendered.



The EHRC has specific powers to make an application for judicial review where a public body has breached the general and/or specific duties of the Duty. The EHRC can intervene in judicial review claims filed by individuals and organisations to help to clarify the law. In this context its role is neutral.

It is possible for private individuals and organisations to take judicial review proceedings without legal representation. However, these proceedings are very complex and there can be significant costs attached to taking action. Always seek professional advice from a specialist adviser.

### Note

Consider your claim very carefully and get advice on its potential for success. If there are other routes to challenge a decision, it is best to try these before thinking about applying for a judicial review.

## 8 How the Public Sector duty has been applied

The following legal decisions help illustrate how public bodies should take action to comply with the Public Sector Equality Duty. They provide guidance as to the correct approach to be taken.

### Case 1

*(AA and others) v Sandwell Metropolitan Borough Council CO/633/2014*

Sandwell Council decided to introduce minimum residency requirements for anyone seeking to claim Council Tax Reduction (CTR) in their area. Three women took the council to court on various grounds, including that the council had failed to comply with its Public Sector Equality Duty under section 149 of the Act.

The court found against the council, stating in their decision:

*94. Section 149 was undoubtedly engaged: indeed, that was well-recognised by the Council, in the way in which it conducted an EIA at various stages before the residence requirement was tabled. However, there is simply no evidence that the Council conducted any assessment at all of the race or gender impact of the residence requirement at or before it adopted the 2013-14 CTR Scheme; and scant evidence that it did so prior to the 2014-15 Scheme.*

*I do not consider that the evidence that there is (e.g. with regard to feedback towards the end of 2013, from wherever it came) is sufficient to show that the Council grappled at all with the effects of the requirement on those with the identified protected characteristics.*

95. *On the evidence, I cannot but find that the Council was in breach of its section 149 duty. That duty is important; and, had the Council been rigorous in satisfying its obligation to have due regard to the relevant characteristics, then, again, it may not have proceeded with the unlawful course that it followed.*

## Case 2

*Aaron Hunt v North Somerset Council [2012] EWHC 1928 (Admin)*

The local authority was faced with significant cuts to funding. During a review, they identified there might be a need to consider making substantial financial savings in respect of providing youth services.

The authority decided to *'review youth service provision through promoting non-[council] funded positive activities, supporting transfer of responsibility to towns/parish councils and community groups or closing youth centres as a last resort ([ensuring] targeted youth support will continue for the most vulnerable)'*. Specific budget reductions were set.

The Claimant argued that in approving budget reductions, the authority had failed to comply with its duty to have regard to section 149. The judge disagreed and held the evidence showed council members did have due regard to the public sector equality duties when they reached their decision to approve the revenue budget.

The relevant equality impact assessment identified the budget proposals which had a high impact on service-users; it dealt explicitly and in detail with the impact of the reduction in the youth-service budget; it referred explicitly to the impact on a number of the protected characteristics itemised in section 149. It set out information on which it based its conclusions and steps to be taken to minimise or mitigate that impact.

## Case 3

*R v Secretary of State for Education (2011) EWHC 217 – Admin (The Building Schools for the Future Judicial Review)*

Six local authorities applied for judicial review of the Government's decision to scrap the building of schools in their areas. Their application for judicial review was successful as the Court decided the Government had failed to consult the councils before making the decision and failed to consider the equality impact of this decision.

## Case 4

*R (Rahman) v Birmingham City Council (2011) EWHC 944 (Admin)*

Birmingham City Council decided to restrict care provision to those with critical needs. Local users challenged this on the ground that the Council had failed to consider race and disability equality impacts. The Court accepted this and decided the decision was unlawful.

## Case 5

*R (Chavda) v London Borough of Harrow (2008) 100 BMLR 27*

The London Borough of Harrow decided to make cuts to its social care services, restricting them to people with critical needs. Their EIA showed it would affect disabled people particularly but this was not brought to the attention of the councillors making the decision. An application for judicial review was filed by users of the care services in the Borough. The Court decided that as the Council had not considered the disability equality duty and its decision was unlawful.

## 9 Human rights in the UK

Human rights in the UK are found in the *Human Rights Act 1998*, based on the *European Convention of Human Rights*. They include:

- the right to life
- the right not to be subjected to torture, inhuman or degrading treatment
- the right to liberty
- the right to a fair trial
- the right to respect for and freedom from interference with privacy and family life
- the right to marriage and family
- the right to freedom from discrimination.

These rights are important and affect everyone, including older people, in their daily life. If your human rights have been breached, you can apply for a judicial review of the decision, policy or action complained of.

### 9.1 Human rights impact assessment

Human rights impact assessments (HRIAs), like EIAs, analyse how a policy affects people's human rights. The difference is EIAs focus on protected categories of people, while HRIAs focus on how policies affect people generally, but with reference to specific rights. It is good practice for a public body to have an HRIA policy alongside an EIA.

#### Note

Human rights procedures are not part of the Public Sector Equality Duty. Human rights are guaranteed as basic rights that people are entitled to. Equality ensures all categories of people are treated equally and given the same rights: so they often go together.

## Useful organisations

### **British Institute of Human Rights (BIHR)**

[www.bihar.org.uk](http://www.bihar.org.uk)

Telephone 020 7882 5850

In conjunction with Age UK BIHR has produced a guide called Older People and Human rights – a guide for older people, which can be downloaded from their website.

### **Citizens Advice**

England or Wales go to [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Northern Ireland go to [www.citizensadvice.co.uk](http://www.citizensadvice.co.uk)

Scotland go to [www.cas.org.uk](http://www.cas.org.uk)

In England telephone 0344 411 1444

In Wales telephone 0344 477 2020

In Scotland telephone 0808 800 9060

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

### **Equality Advisory Support Service**

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Telephone helpline 0808 800 0082 Mon-Fri 9am-8pm, Sat 10am-2pm

Funded by the Equality and Human Rights Commission, the EASS Helpline provides information and advice about the *Equality Act 2010*.

### **Equality and Human Rights Commission (EHRC)**

[www.equalityhumanrights.com/en](http://www.equalityhumanrights.com/en)

Independent statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain.

### **Government Equalities Office (GEO)**

[www.gov.uk/government/organisations/government-equalities-office](http://www.gov.uk/government/organisations/government-equalities-office)

Telephone 0370 000 2288

GEO is responsible for the Government's overall strategy on equality issues and has a public enquiry line providing information on Equality and Human Rights issues.

### **Liberty**

[www.liberty-human-rights.org.uk/](http://www.liberty-human-rights.org.uk/)

Telephone Advice Line 0845 123 2307

A non-profit-making organisation protecting and promoting civil liberties and human rights.

**Local Government Association**

[www.local.gov.uk/home](http://www.local.gov.uk/home)

Telephone 020 7664 3000

Local Government Association supports improvement and innovation in local government through networks, online resources and support from councillors and officer peers.

**Older People's Commissioner for Wales**

[www.olderpeoplewales.com/en/Home.aspx](http://www.olderpeoplewales.com/en/Home.aspx)

Telephone 02920 445030

The Older People's Commissioner for Wales is an independent voice and champion for older people across Wales, standing up and speaking out on their behalf.

**Ombudsman Association**

[www.ombudsmanassociation.org/index.php](http://www.ombudsmanassociation.org/index.php)

Ombudsmen deal with complaints from the public about certain public bodies and private services. Their services are free of charge.

## Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

### Age UK Advice

[www.ageuk.org.uk](http://www.ageuk.org.uk)

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

### In Wales contact

#### Age Cymru

[www.agecymru.org.uk](http://www.agecymru.org.uk)

0800 022 3444

### In Northern Ireland, contact

#### Age NI

[www.ageni.org](http://www.ageni.org)

0808 808 7575

### In Scotland, contact Age Scotland by calling

#### Silver Line Scotland

[www.agescotland.org.uk](http://www.agescotland.org.uk)

0800 470 8090

(This is a partnership between The Silver Line and Age Scotland)

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### Next update August 2017

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