

# Equality Act 2010

Everyone involved in the provision of health and social care has a responsibility to avoid discriminating against patients and colleagues. This responsibility is enshrined in law under the Equality Act 2010 ("the Act").

In a drive to reform and harmonise equality law, the Act brought together around 116 pieces of equalities legislation into one single Act, with the aim of legally protecting people from discrimination in the workplace and in wider society. In a health and social care context, it not only protects patients but also employees from unfair treatment in the workplace.

The Act protects individuals from being treated unfairly as a result of any characteristics that are protected under the legislation. The 'protected characteristics' are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex or sexual orientation.

Discrimination can be categorised into two forms. Direct discrimination occurs when an individual is treated less favourably than others because of a protected characteristic. Indirect discrimination occurs when a provision, criterion or practice appears to treat everyone the same, but places those who have a protected characteristic at a particular disadvantage compared to those without that characteristic. Direct discrimination can occur by association, i.e. where the individual does not personally have the protected characteristic, but they are treated less favourably than others because of a protected characteristic of a friend, spouse, partner, parent or another person with whom they are associated. Direct discrimination by perception can also occur when a person is discriminated against because they are thought to have a particular protected characteristic, when in fact they do not.

The Act also offers protection against harassment (unwanted behaviour linked to a protected characteristic that violates someone's dignity or creates an offensive environment for them) and victimisation (treating someone unfairly because they've complained about discrimination or harassment).

## **Professional responsibilities**

The legal principles laid down in the Act are reflected in professional guidance for doctors and dentists.

In *Good Medical Practice*, the GMC states:

*"You must not unfairly discriminate against patients or colleagues by allowing your personal views to affect your professional relationships or the treatment you provide or arrange. You should challenge colleagues if their behaviour does not comply with this guidance, and follow the guidance in paragraph 25c [which requires prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised] if the behaviour amounts to abuse or denial of a patient's or colleague's rights."*

The GMC guidance on "*Leadership and Management for All Doctors*" requires registrants to promote a working environment free from unfair discrimination, bullying and harassment, bearing in mind that colleagues and patients come from diverse backgrounds. It also provides that: "*You must tackle discrimination where it arises and encourage your colleagues to do the same. You must treat your colleagues fairly and with respect. You must not bully or harass them or unfairly discriminate against them. You should challenge the behaviour of colleagues who do not meet this standard.*" Doctors are generally obliged to follow and keep up to date with any employing organisation's policies on employment, equality and diversity. Doctors with extra responsibilities (such as GP partners) must make sure that their organisation's policies are up to date and reflect the law.

The GDC's Standards for the Dental Team provides that:

- "You must treat patients fairly, as individuals and without discrimination" on grounds of the protected characteristics outlined in the Equality Act.
- "You must also ensure that you do not discriminate against patients or groups of patients for any other reasons such as nationality, special needs, health, lifestyle or any other consideration."
- "You must treat colleagues fairly and with respect, in all situations and all forms of interaction and communication. You must not bully, harass, or unfairly discriminate against them."

In line with the requirements of the Act, both the GMC and GDC require registrants to consider and respond to the needs of disabled patients, where necessary making reasonable adjustments to allow such patients to receive care which meets their needs.

## **Remedies**

Healthcare providers who discriminate against a patient or employee could be subject to claims for compensation before a court or employment tribunal.

While such claims can, in theory, be brought against individual members of staff, it is more common for the employing organisation (with the deepest pockets) to be targeted. The Act provides that anything done by a person in the course of his/her employment is to be treated as having also been done by the employer, who will be liable for those actions, regardless of whether they are done with the employer's knowledge or approval.

In any proceedings taken against the employer, however, it is a defence for the employer to show that it took all reasonable steps to prevent the discrimination. This underlines the importance of employers having a clear policy in place to outline the expectations on employees in relation to obligations under the Act, which can also be referenced in employees' contracts of employment. Such a policy should be supported by relevant staff training and should clearly outline how the employer will deal with any complaints made / grievances raised under the procedure. Any non-compliance with the policy should be subject to appropriate disciplinary action and regular review of the policy should be undertaken to reflect any incidents arising, in order to prevent something similar happening in future.

In the employment context, the protections afforded by the Act extend to applicants for employment, as well as actual employees. It is also worth bearing in mind that in successful claims before the employment tribunal, there is no upper limit on the amount of compensation that can be awarded in discrimination cases.

Public Authorities (defined to include NHS trusts, clinical commissioning groups, and health boards) are subject to an additional 'public sector equality duty' under the Act. This requires them, in carrying out their functions, to have due regard to the need to achieve the objectives set out in the Equality Act to:

- a) Eliminate discrimination, harassment and victimisation;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it
- c) Foster good relations between persons who share a relevant protected characteristic and those who do not share it.

Such bodies are required to publish equality objectives and information to demonstrate their compliance with this duty.

## **Common pitfalls**

- *Indirect discrimination.* This can happen when there are rules or arrangements that apply to a group of employees but in practice those are less fair to a certain protected characteristic. An example of this would be restricting access of a service to patients who do not have English as their first language because it is an inconvenience to arrange a translator.
- *Disclosing protected characteristics to third parties when not clinically appropriate.* An example of this would be in referring a transgender patient for a knee problem and including their past gender history within this referral.
- *Discrimination in staff recruitment.* In recruiting new staff members you must treat individual candidates fairly and assess them purely on their ability to perform the job advertised, based on their skills, qualifications and experience. Do not make assumptions about an individual's lifestyle based on their appearance or characteristics, and exercise caution in using social media as part of any recruitment process.

## Key points

- Discrimination against individuals because of a protected characteristic is prohibited under the Equality Act 2010.
- Be sure to comply with relevant regulatory guidance.
- Undergo training to keep up your knowledge and skills in equality issues.
- Ensure your place of work has a clear and visible policy that states discrimination of any kind will not be tolerated.
- Train all staff in equal opportunities and ensure they know how to escalate issues involving unfair treatment.
- Take into consideration how your organisation can make adjustments to allow access for disabled patients or staff.

## Further guidance

- The Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15>
- GOV.UK. *Equality Act 2010: guidance*: [www.gov.uk/guidance/equality-act-2010-guidance](http://www.gov.uk/guidance/equality-act-2010-guidance)
- GMC. Good Medical Practice – Maintaining trust: <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/good-medical-practice/domain-4---maintaining-trust#paragraph-56>
- GMC. "*Leadership and Management for All Doctors*": <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/leadership-and-management-for-all-doctors>
- GDC. Standards for the Dental Team: [https://www.gdc-uk.org/docs/default-source/standards-for-the-dental-team/standards-printer-friendly-colour.pdf?sfvrsn=98cffb88\\_2](https://www.gdc-uk.org/docs/default-source/standards-for-the-dental-team/standards-printer-friendly-colour.pdf?sfvrsn=98cffb88_2)