

At a glance 41

Personalisation briefing



April 2011

Implications of the Equality Act 2010

Key messages

- The Equality Act 2010 applies to everyone who provides a service to the public, whether or not a charge is made for that service. It covers statutory, private, voluntary and community sector organisations.
- Everyone has the right to be treated with dignity and respect. The Equality Act 2010 prohibits discrimination on named grounds. These are called 'protected characteristics'.
- The relevant protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- Discrimination on grounds of age when accessing goods and services is not currently protected. It is expected to be protected from April 2012.
- The Equality Act 2010 also applies to employment. People who use direct payments will need separate advice to ensure that unlawful discrimination does not occur when they employ personal assistants or other staff.
- The Equality Act 2010 prohibits not only direct discrimination but also indirect discrimination, harassment or victimisation.
- The Equality Act 2010 requires public bodies and those carrying out public functions to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different equality groups. This is called the public sector equality duty.

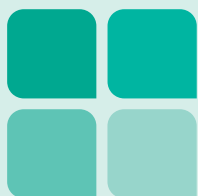
This At a glance briefing examines the implications of the Equality Act 2010 for personalised adult social care. The Equality Act 2010 provides a legal framework which can support personalisation in adult social care. They are both about ensuring individuals receive services that are respectful, effective and accessible. It is essential that care providers from all sectors understand the implications for them.

Personalisation means thinking about care and support services in an entirely different way. This means starting with the person as an individual with strengths, characteristics, preferences and aspirations and putting them at the centre of the process of identifying their needs and making choices about how and when they are supported to live their lives. It requires a significant transformation of adult social care so that all systems, processes, staff and services are geared up to put people first.

The traditional service-led approach has often meant that people have not received the right help at the right time and have been unable to shape the kind of support they need. Personalisation is about giving people much more choice and control over their lives in all social care settings and is far wider than simply giving personal budgets to people eligible for council funding. Personalisation means addressing the needs and aspirations of whole communities to ensure everyone has access to the right information, advice and advocacy to make good decisions about the support they need. It means ensuring that everyone has a wider choice in how their needs are met and can access universal services such as transport, leisure and education, housing, health and opportunities for employment.

Introduction

The Equality Act 2010 replaces the previous anti-discrimination laws with a single Equality Act. It simplifies the law, removing inconsistencies and making it



Personalisation briefing: Implications of the Equality Act 2010

easier for people to understand and comply with it. It also strengthens the law in important ways to help tackle discrimination and inequality. Most of the Act came into force on 1 October 2010. The new public sector equality duty comes into force on 6 April 2011.

This At a glance briefing deals first with access to goods and services and secondly with the new public sector equality duty.

Discrimination in access to goods and services

Who has responsibilities?

The Act applies to everyone who provides a service to the public, or a section of the public. It also applies to anyone who sells goods or provides services or facilities. For example, it will cover all social care services, community centres, information, advocacy and advice agencies, sports clubs, internet based services, or residential care homes and services run by voluntary organisations. It applies to all services, whether or not a charge is made for the services.

Who is protected?

People who have a 'protected characteristic' are protected from discrimination. The ones covered here are disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. People are also protected if they experience discrimination because they are perceived to have one of these characteristics or are associated with someone who has a protected characteristic.

Note: protection from age discrimination in service provision has not yet been introduced and so it has not been covered in this At a glance. It would, however, be good practice to ensure that unjustified discrimination on grounds of age does not occur. Protection is expected to be introduced in April 2012. Age is covered by the new public sector equality duty which is explained later in this briefing.

What the law prohibits

Direct discrimination

Direct discrimination occurs when a person is treated less favourably than another person because of a protected characteristic.

Example:

A care home always gives smaller portions of food to women living in the care home and larger portions to men because they believe men have bigger appetites. This is irrespective of individual needs or preferences. This is direct discrimination against the women living in the care home, on grounds of sex.

Discrimination by association

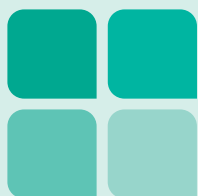
Discrimination by association occurs when a person is treated less favourably because they are linked, or associated, with a person who has a protected characteristic.

Example:

Jane is not allowed into her local library with her son because he is disabled. This is discrimination against her by association.

Discrimination by perception

Discrimination by perception happens when a person is discriminated against because they are thought to have a particular protected characteristic or are treated as if they do. People are protected from this sort of discrimination even if someone who discriminates knows that the other person does not have the particular characteristic.



Personalisation briefing: Implications of the Equality Act 2010

Example:

Samantha, who is heterosexual, has a number of lesbian friends. She mentions to her home carer that she is going to a civil partnership ceremony next weekend. The new carer believes that Samantha is a lesbian because of her friends so refuses to prepare a meal for two people and refuses to change the sheets on Samantha's bed. This is discrimination by perception.

Indirect discrimination

Indirect discrimination happens when there is a rule, a policy or even a practice that applies generally but which particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if it can be shown that the rule, policy or practice is intended to meet a legitimate objective in a fair, balanced and reasonable way. If this can be shown it will be lawful. Before introducing a new rule or policy, commissioners and service providers should think about whether there is a way to meet their objectives which would not have a discriminatory effect or which is less likely to disadvantage people who have a protected characteristic.

Example:

Jamal is a practicing Muslim living in an ethnically and religiously mixed care home. During Ramadan he asks to have his evening meal after sunset. He is told that this is not possible during the summer because it would mean having supper too late for the other residents.

This will be indirect discrimination if the care home cannot show a good reason (or justification) for their refusal. If the kitchen is closed it may be justifiable to offer him a cold meal which could be served after sunset so that there would be no indirect discrimination.

Remember that a lack of financial resources alone is unlikely to be a sufficient justification.

Harassment - disability, gender re-assignment, race, or sex

Harassment means unwanted behaviour related to a protected characteristic which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Example:

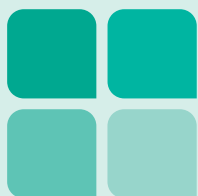
Jack attends a day centre for adults with learning difficulties. One of the members of staff makes fun of him by mimicking him because of his disability. This would be harassment because of his disability.

Harassment – religion or belief or sexual orientation

At the moment there is no specific prohibition on harassment related to sexual orientation or religion or belief. However, if you harass a person because of their sexual orientation or their religion or belief and consequently treat them less favourably than you would treat someone else, a court would count this as direct discrimination which is unlawful.

Example:

Bob and Chris, a gay male couple, visit their local lunch club regularly. Recently a new helper has been taken on. This new helper keeps asking them about their sex life and she offers to pray for them to be cured. This will be harassment that amounts to direct discrimination.



Personalisation briefing: Implications of the Equality Act 2010

Victimisation

Victimisation occurs when a service provider treats someone badly because they have made or supported a complaint related to the Equality Act, or a service provider thinks that they may make or support a complaint. A person is not protected from victimisation if they have maliciously made or supported an untrue complaint.

Example:

Sandy, a male to female transsexual, wants to join a group at a mental health day service. One member of staff says that Sandy cannot join the group because they think others in the group would not be comfortable having a transgender person there. Parminder is a group member and overhears and she complains to the management committee. She is told at the next meeting that the staff do not think she is suited to the group and they will find her an alternative.

Disability discrimination

The law recognises that sometimes specific provision needs to be put in place for disabled people in order to put them on a more equal footing with other people. So there are two additional forms of discrimination protection that apply only to disabled people. These are called 'discrimination arising from a disability' and 'discrimination because of a failure to make reasonable adjustments'.

Discrimination arising from disability

Discrimination arising from disability occurs when a disabled person is treated unfavourably because of something connected with their disability and the unfavourable treatment cannot be justified.

Discrimination arising from disability is different from direct discrimination. Direct discrimination occurs when a service provider treats someone

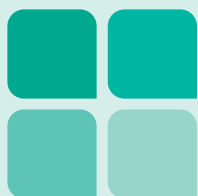
less favourably because of the disability itself. In the case of discrimination arising from disability, the question is whether the disabled person has been treated unfavourably because of something connected with their disability.

Treatment can be justified if it can be shown that it is intended to meet a legitimate objective in a fair, balanced and reasonable way. If this can be shown it will be lawful. Service providers must therefore strike a careful balance between the negative impact of a decision on the disabled person and any lawful reasons for applying it. It is important to understand the need to apply this flexible approach when it is clear that a rule or practice disadvantages a disabled person.

Also, discrimination arising from disability will not be unlawful if the service provider can show it did not know, or could not be reasonably expected to know, that the person was disabled. This means that service providers should take reasonable steps to find out whether someone is disabled, though care should be taken to ensure that any enquiries do not infringe the disabled person's privacy or dignity.

Example:

Danni, a wheelchair user, has an appointment to see her social worker. The doors in the interview rooms at social services are not wide enough for Danni to get into the room in her wheelchair, so her social worker sees her in a corner of the reception area. Consequently their conversation is overheard by others in the reception area and she has no privacy. This will be less favourable treatment connected to her disability. Unless the council can show that this treatment was justifiable it will have discriminated against Danni for a reason connected to her disability.



Personalisation briefing: Implications of the Equality Act 2010

Discrimination because of a failure to make reasonable adjustments for a disabled person

Service providers are required to make changes, where needed, to improve their services for disabled customers or potential customers. These are called 'reasonable adjustments'. This means that they must make reasonable changes to the way that things are done, to the built environment and to provide extra aids and services whenever disabled customers or potential customers would otherwise be at a substantial disadvantage compared with non-disabled people.

What is reasonable will depend on all the circumstances including the cost of the adjustment, the potential benefit that it could bring to other customers, the resources of the organisation and how practical the changes are.

Example:

Julie is setting up a group therapy session for young adults. In deciding where to hold the session she checks out which building she could use which has step-free access, accessible toilets and induction loops. She also contacts the potential participants to ask if they have any other disability-related requirements such as a sign language interpreter or information in alternative formats. This will ensure that all reasonable adjustments have been made.

Positive action

Some people with protected characteristics are disadvantaged or under-represented in some areas of life, or have particular needs linked to that characteristic. They may need extra help or encouragement if they are to have the same chances as everyone else. Service providers may now take proportionate steps to help people overcome their disadvantages or to meet their needs.

Note :

- there is no requirement to take positive action – it is always optional
- there is no restriction on treating disabled people more favourably than non-disabled people – this is always permissible
- however it may now be necessary for public sector organisations to take positive steps to ensure compliance with the new equality duty as in the following example:

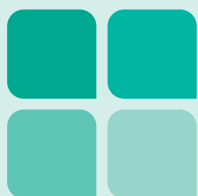
Example:

A care home catering for an ethnically mixed group of older people notices that the Bengali people living in the home do not attend most of the community events. Having asked some of the Bengali older people what they would like, the home decides to set up a specific session for them once a fortnight when they use one of the lounges to watch Bengali films.

New integrated equality duty for public authorities

What is the equality duty?

The equality duty is a duty on all public bodies and others carrying out public functions. It requires public bodies to take account of equality, discrimination and good relations between protected groups in the way that they make policy, deliver services, buy goods and services and employ people. Its purpose is to embed equality considerations into the day to day work of public authorities in order to counter discrimination and inequality at every level and to remove institutional discrimination. It consists of a general duty as well as some specific duties which set out how to comply with the general duty. The general duty is the most important part of the framework because it makes clear the goals



Personalisation briefing: Implications of the Equality Act 2010

to which public authorities must have due regard in carrying out their functions.

The equality duty covers age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Who does it apply to?

The general duty applies to public bodies in Great Britain and to other organisations when they are carrying out public functions. The specific duties apply to most public bodies and they are slightly different in England, Scotland and Wales. The general duty also applies to voluntary or private organisations if they are carrying out public functions on behalf of public bodies – for example if a private care home receives local authority funding for some people living there, the general duty will apply to the services provided to people funded by the local authority.

General duty

The general duty has three aims. Public bodies in all their operations must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between people from different (equality) groups
- foster good relations between people from different (equality) groups.

The phrase 'having due regard' means that a public body must consciously consider the three aims of the general duty in all its decision making, including:

- the way it operates as an employer
- the way that it develops, evaluates and reviews its policies
- how it designs, delivers and evaluates its services
- how it commissions and procures services from others.

In advancing equality of opportunity public bodies will need to consider:

- removing or minimising disadvantages experienced by people because of their protected characteristics
- meeting the needs of people with protected characteristics
- encouraging people with protected characteristics to participate in public life.

The requirement to 'advance equality of opportunity' is stronger than the previous duties which only required the 'promotion of equality'.

Fostering good relations means tackling prejudice and promoting understanding between people from different groups.

Sometimes complying with the general equality duty may involve treating one group more favourably than others. For example, it will be possible to use the positive action provisions to provide a service which is appropriate for a particular group.

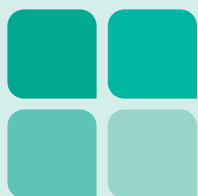
Additionally, public bodies must take account of disabled peoples' impairments or health conditions even when that involves treating disabled people more favourably than others.

Specific duties

The general duty is underpinned by specific duties which set out in more detail what a public authority need to do in order to comply with the general duty. These will apply to most of the public bodies that have to comply with the general duty and they are listed in the regulations. These public authorities must prepare and publish their equality objective/s at least every four years starting not later than 6 April 2012 and publish information to demonstrate its compliance with the general duty at least annually starting not later than 31 December 2011.

Implementing the equality duty

Public bodies, such as health authorities and care providers, must therefore ensure that people at every level in the organisation understand the



Personalisation briefing: Implications of the Equality Act 2010

What do service providers need to do now?

Organisations that already have good equality procedures in place will not need to take much further action. However, it will be wise to:

- Inform their staff and managers of the new provisions.
- Review their equality policies and make sure that they cover all relevant protected characteristics.
- Consider whether their staff or managers need any further training.
- They may also wish to consider whether there are any groups that are not as well represented among people who use the service as they should be. If so consider whether there are any steps that they could take to encourage them to use the organisation more. This could include specific outreach activities and service user and carer participation initiatives.

equality duty and how it works. They must actively consider equality in all the aspects of their work.

also produces a range of material providing practical guidance on how to comply with the law.
www.equalityhumanrights.com
Telephone: 0845 604 6610.

Further information

The Equality and Human Rights Commission is the Independent statutory body established to help eliminate discrimination, and reduce inequality. It has issued a Statutory Code of Practice explaining in more detail the law in relation to service provision and discrimination and it will be issuing a Statutory Code of Practice on the new public equality duty. It

The Care Quality Commission and Equality and Human Rights Commission are producing some joint guidance for CQC inspectors on equality and human rights. This guidance will be relevant to social care services carrying out activities regulated under the Health and Social Care Act 2008 and will be available from www.cqc.org.uk It will be available in Summer 2011.

SCIE's At a glance summaries have been developed to help you understand as quickly and easily as possible the important messages and practice advice in SCIE's reports and guides. These summaries will give you an overview of the messages or help direct you to parts of the guide that you may find most useful. You can also use them as training resources in teams or with individuals.

We want to ensure that our resources meet your needs and we would welcome your feedback on this summary. Please send comments to info@scie.org.uk, or write to Publications at the address below.

**Social Care
Institute for Excellence**
Goldings House
2 Hay's Lane
London SE1 2HB

tel: 020 7089 6840
fax: 020 7089 6841
textphone: 020 7089 6893
www.scie.org.uk