

A glossary of key terms in equality law

This glossary has been compiled by the Equality and Diversity Forum to support voluntary and community sector (VCS) organisations when they use the Equality Act 2010 and the Public Sector Equality Duty in their work. It does not constitute legal guidance but is intended as a helpful introduction to some of the key terms you will come across when thinking about how equality legislation can support your users.

Discrimination means less favourable treatment because of someone's protected characteristics (including where a person is wrongly assumed to have a particular characteristic or is treated as if they do). Discrimination can be direct or indirect. Indirect discrimination is when a provision, criterion or practice is applied in a way that creates disadvantage for a person with a protected characteristic as compared to those who do not share that 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.

Due regard is the level of consideration that must be given by a public body to the three objectives set out in the Equality Duty. Case law has indicated that public bodies should consider the things set out in the Equality Duty with rigour and with an open mind. Phrases such as 'consciously consider', 'active consideration' or 'open-minded and rigorous consideration' may be used to refer to the process of a public body having due regard.

Equality Impact Assessment (EIA) is a formal structured approach to assessing the impact of proposed policies or practices on people with different protected characteristics. The courts have confirmed that there is no legal requirement for public bodies to carry out formal EIAs. Compliance with the Equality Duty involves giving open-minded and rigorous consideration to the three aims of the Equality Duty as part of the process of decision-making. This entails understanding the potential effects of the organisation's activities on different people, but there is no prescribed process for doing this. Nevertheless in order to comply with the general Equality Duty, public authorities must gather information about who is going to be affected by a decision, policy or practice; ensure that they have sufficient information; consider the nature, extent and duration of any adverse impact and if there is a greater negative impact on one protected group compared to another then they must consider whether the adverse impact can be reduced, removed,

mitigated or justified. Many people think that this information is most easily collected within an Equality Impact Assessment but it is not necessary to have such a document if this information is collected and recorded in some other way and is made available to those seeking to understand how a decision has been reached.

Equality of opportunity means everyone having an equal opportunity to achieve their full potential, free from any artificial barriers, such as prejudice or a failure to respond to specific needs or failure to tackle entrenched disadvantage. It does not mean that everyone has to be treated the same. To have due regard to the need to advance equality of opportunity, public bodies will have to consider the need to:

- remove or minimise disadvantages experienced by people because of their protected characteristics;
- take steps to meet the needs of people with protected characteristics; and
- encourage people with protected characteristics to participate in public life.

Fostering good relations means tackling prejudice and promoting understanding between different protected groups as well as between members of protected groups and other people.

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

Protected characteristics are the personal characteristics of people that are protected from discrimination in the Equality Act 2010, namely, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The 'relevant' protected characteristics for the purposes of the Equality Duty are slightly more limited, they are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Equality Duty also applies to the protected characteristic of marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination (and not to advance equality or opportunity or foster good relations).

Public body(ies) means, broadly, public organisations such as central government departments, local councils, NHS Trusts, council maintained schools, academies, colleges of further education and universities, police services and fire services. It also includes specific named public organisations such as the Health and Safety Executive, HM Chief Inspector of Prisons and Transport for London. The Equality Act 2010 refers to all these as 'public authorities'. A list of public authorities subject to the Equality Duty can be found in Schedule 19 to The Equality Act 2010; and the

public authorities subject to the specific duties can be found in Schedules 1 and 2 to The Equality Act 2010 (Specific Duties) Regulations 2011. Note that in some cases organisations which are not public authorities can also be subject to the Equality Duty, if they are exercising public functions. See definition below.

Public function the term 'public function' has a very particular meaning in the context of the Equality Duty. It refers to things that a public body or someone acting on its behalf does when delivering a public service or carrying out activities that are public in their nature. An activity is public in nature if it is something that a private individual or organisation would not normally do, such as arresting or imprisoning someone. Other examples include policing, prison services, public healthcare, government policymaking, local council planning services, awarding funding and licensing. Activities may be public functions if, for example:

- public funds are used to provide the service;
- the organisation is exercising powers given by law;
- it is imposed on people; or
- it is a substitute for something that central or local government would otherwise provide.

Ultimately, the decision as to whether a function is a public function is for the courts.

Where a private or voluntary organisation is carrying out public functions, the Equality Duty only applies to that particular function, and not to all the organisation's other activities.

Public Sector Equality Duty (just called Equality Duty in this leaflet) is the duty set out at Section 149 of the Equality Act 2010. It applies to public bodies listed in Schedule 19 to that Act and other organisations that perform public functions, when they exercise those functions. It requires such bodies, when they make decisions about how to exercise their functions, to have due regard to the need to eliminate discrimination; advance equality of opportunity and foster good relations between people with different protected characteristics. They should have due regard to these aims when they make decisions about such issues as their policies, the way they deliver or buy in goods and services, and how they employ people.

Specific duties are the duties that apply to certain listed public bodies and are designed to help public bodies perform the Equality Duty better. The specific duties are different in England, Scotland and Wales. This leaflet only covers the English specific duties which are set out in The Equality Act 2010 (Specific Duties) Regulations 2011. These regulations require listed public bodies to be transparent about how they are performing the Equality Duty by publishing information

demonstrating their compliance with the Equality Duty annually, and by preparing and publishing specific and measurable equality objectives at least every four years. The specific duties apply to the bodies listed in Schedules 1 and 2 to those regulations.

Victimisation means treating a person badly because they have made or supported a complaint about discrimination or harassment or because they are thought to have done one of these things.

The information in this leaflet is provided as general guidance for VCS organisations and does not constitute legal advice.

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Equality and Diversity Forum

Tavis House, 1-6 Tavistock Square London WC1H 9NA

Tel + 44 (0) 20 303 31454, email info@edf.org.uk, website www.edf.org.uk

Registered charity number 1135357 and company number 06464749