



# Fife Centre *for* Equalities

Working with partners to make Fife a fairer place to live, work and study

## Embracing Differences

A practical guide to identifying potential conflicts when designing, delivering services as well as addressing the needs and values of a diverse workforce.



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## About Fife Centre for Equalities

Fife Centre for Equalities (FCE), funded by Fife Council, started in 2014 with the vision to inspire and enable everyone we work with to take action that makes Fife a more equal, fairer place to live, work and study. FCE’s mission is to develop a harmonised approach to build a collective voice to champion equality, diversity, inclusion and social justice. Our values are to work with honesty, integrity, respect and transparency, and strive to demonstrate a fully inclusive approach in everything we do. We want everyone we work with to share these values in the belief that they will help make Fife a fairer and more equal place.

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## Introduction

Quite often we see news headlines portray competition between different equality groups and their respective rights negatively and omitting any positive stories of resolved or avoided conflict. This leads to many organisations becoming worried about how to manage potential conflicts or competing equality claims when designing or delivering services, on top of addressing the needs and values of a diverse workforce.

These are some of the recent news headlines:

- Transgender woman wins landmark discrimination case forcing ferry firm to remove the words 'ladies' and 'gents' from toilets after she was told to use the disabled loo. (Daily Mail 2016)
- Disability groups hail court's support for wheelchair user on bus. (The Guardian 2017)
- Islamic schools accused of sex discrimination after segregating boys and girls at break time. (The Telegraph 2018)
- Let Ashers bake what it wants – gay people in Northern Ireland like me need marriage equality more than their cakes. (Independent 2018)

This Guidance aims to give you a better understanding of equality law and some practical advice on how avoid or address individuals' concern and keep in mind the rights of others.

## Legal Requirements

Equality law affects everyone from people who run your organisation, including staff and volunteers if you have them, to people who access your services or come along to your events.

The Equality Act came into force from October 2010 and provided a modern, single legal framework with clear, streamlined law to more effectively tackle disadvantage and discrimination.

It does not matter whether you give the service for free (for example, giving someone information about your paid-for services) or if you charge for it. It does not matter if you are set up as a sole trader, a partnership, a limited company or any other legal structure. The size of your business does not matter either. Equality law applies to you.



## Equality Act 2010 and what the law says

The Equality Act is a law which protects people from discrimination, harassment and victimisation. It outlaws discrimination or unfair treatment on the basis of certain personal characteristics or protected characteristics which are:

**Age** – a person or persons belonging to a particular age group. An age group includes people of the same age and people of a particular range of ages.

**Disability** – a person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities. **Note** sensory impairment comes under physical impairment under the act.

**Sex** – being a man or a woman.

**Marriage or civil partnership** – a union between a man and woman or same sex couple.

**Pregnancy and maternity** – this includes treating a woman unfavourably because she is breastfeeding.

**Race** – refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

**Religion or belief** – religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

**Sexual orientation** – whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

**Gender reassignment** – a person proposing to undergo, are undergoing, or have undergone a process or part of a process for reassigning their sex. This does not have to include medical treatments.

There is also protection against discrimination where someone is **perceived** to have one of the protected characteristics or where they **are associated with** someone who has a protected characteristic.

In addition, to make sure that disabled people are able to use your services as far as is reasonable to the same standard as non-disabled people, you must make reasonable adjustments.



## Reasonable adjustments to remove barriers for disabled people



As a service provider, you cannot wait until a disabled person wants to use your services but must think in advance about what people with a range of **impairments** might reasonably need, such as people who have a visual impairment, a hearing impairment, a mobility impairment or a learning disability.

You should be familiar with the reasonable adjustments duty which was first introduced under the Disability Discrimination Act 1995. The reasonable adjustments duty under the Equality Act operates slightly differently but the objective is the same: to avoid as far as possible by reasonable means the disadvantage which a disabled person experiences because of their disability.

You are required to take reasonable steps to:

Avoid substantial disadvantage where a provision, criterion or practice puts disabled person at a substantial disadvantage. This might include changes to the physical features of your premises for people who have a mobility impairment or a visual impairment, and thinking about how you (and your staff, if you have any) communicate with people. You could provide an auxiliary aid where without one, disabled individuals would be put at a substantial disadvantage.

***The adjustments that are reasonable to expect from organisations depend on the circumstances. Here are a few things you could do at low cost:***

- ✓ ***Install a simple doorbell next to the door and put a typed notice in the window next to the bell saying 'if you require assistance, please ring this bell'***
- ✓ ***Make the entrance to the building a different colour to assist customers with a visual impairment.***
- ✓ ***Move display units or other obstacles at the entrances of buildings which otherwise stop wheelchair users entering.***

## Equality Act's exceptions

There are some exceptions to the general rules of equality law, when people's protected characteristics may be relevant to the goods, facilities or services you provide. For businesses, these are:

- Services for particular groups
- Services provided for people with a particular protected characteristic.
- Services for persons of particular age groups.
- Separate services for men and women or single-sex services.
- Where health and safety considerations apply to pregnant women.



There are limited and specific situations in which you can provide (or refuse to provide) all or some of your services to people based on a protected characteristic. These exceptions apply to any organisation which meets the strict tests. For example, Women's Aid.

As well as these exceptions, equality law almost always allows you to treat disabled people more favourably than non-disabled people. The aim of the law in allowing this is to remove barriers that disabled people would otherwise face to accessing services.

## What is discrimination, harassment and victimisation?

Discrimination has 2 categories – Direct and Indirect

### Direct

In almost all circumstances is unlawful. For example, not to employ someone etc. because of a protected characteristic (e.g. religion or belief).

### Indirect

This type of discrimination is usually less obvious than direct discrimination and can often be unintended.

**Note. Indirect Discrimination** – this occurs when an organisation's practices, policies or procedures have the effect of disadvantaging people e.g. having a minimum height requirement for a job where height is not relevant to carry out the role. This could discriminate disproportionately against women (and some minority ethnic groups) as they are generally shorter than men.

## Situations in which people are protected from discrimination

Under the Equality Act people are protected from discrimination:

- when people are in the workplace
- when people use public services like healthcare (for example, visiting the doctor or local hospital) or education (for example, at school or college)
- when people use businesses and other organisations that provide services and goods (like shops, restaurants, and cinemas)
- when people use transport
- when people join a club or association (for example, a local tennis club)
- when people have contact with public bodies like local council or government departments



## Can discrimination be allowed?

A service or employer can allow discrimination if it is a **“proportionate means of achieving a legitimate aim”** or if **there is a fair balance between service user or employee and employer’s needs**. The aim must be a real, objective consideration, and not in itself discriminatory (for example, ensuring health and safety or the need to make a profit).

Ms E, claimed her employer, British Airways, had been in breach of her right to practise her religious beliefs by failing to permit her to wear a visible cross at work. BA argued it was contrary to their uniform policy. The ECHR disagreed and confirmed that Ms E had been discriminated against.

VS

Ms C, a nurse, complained that the uniform policy which prevented her from wearing a cross was an act of discrimination. The Court disagreed. It held that the hospital had made the decision that wearing a cross was contrary to the interests of health and safety for both the nurse and the patients and not simply a matter of uniform.

The cases about are nearly identical cases but have different outcomes, as BA did not have a proportionate means of achieving a legitimate aim or valid reason not to let Ms E wear her cross, unlike the hospital decision based on health and safety of the nurse and patients and not only uniform policy.

## Harassment

### Harassment

Defined as ‘unwanted conduct’ and must be related to a relevant protected characteristic.

- spoken or written abuse
- offensive emails
- tweets or comments on social media
- images and graffiti
- physical gestures
- violating a person’s dignity
- banter that is offensive to you



## Victimisation

### Victimisation

When someone is treated unfairly for complaining about discrimination.

- A protected act is:
  - making a claim or complaint of discrimination (under the Equality Act)
  - helping someone else to make a claim by giving evidence or information
  - making an allegation that you or someone else has breached the Equality Act
  - doing anything else in connection with the Equality Act

## Duties and responsibilities under the Act

The broad purpose of the equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities or;

- Government departments
- Service providers
- Employers
- Education providers (Schools, FHE colleges and Universities)
- Providers of public functions
- Associations and membership bodies
- Transport providers

This public sector equality duty means that public bodies have due regard to the need to:

- ✓ Eliminate discrimination
- ✓ Advance equality of opportunity
- ✓ Foster good relations between different people when carrying out activities.

It means equality considerations need to be reflected into the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review. One of the most useful ways to make sure equality considerations are reflected is by assessing the impact of your policies and practice or undertake an Equality Impact Assessment.

Compliance with the general equality duty is not only a legal obligation, it also makes good sense.



## Equality Impact Assessment

Assessing impact is an effective way of improving policy development and service delivery, making sure that you consider the needs of your employees and clients, identify steps to eliminate existing/potential barriers, advance equality and deliver favourable outcomes for all.

Assessing impact provides a mechanism to build equality considerations into policy and decision making, providing a clear and structured way to consider evidence about the needs of people with different protected characteristics. This process will also add transparency to how you demonstrate to your stakeholders that diversity and inclusion are integral to your organisation.

Equality impact assessment may not be useful to every existing policy or function within your organisation. You may wish to select the policies based on relevance and proportionality. However, it is good practice that an assessment is routinely carried out for new or revised policies and practices.

Teenage boys wear skirts to school to protest against 'no shorts' policy. During a heatwave, teenage boys had asked their teachers if they could swap their long trousers for shorts. They were told no as shorts weren't permitted under the school's uniform policy, when they protested that the girls were allowed bare legs. (Guardian 2017)

Had an assessment been done when setting the school uniform policy, the issue of indirect sex discrimination could have been avoided. Many schools have adopted a gender-neutral uniform policy which eradicates any form of discrimination based on sex or gender reassignment

## The benefits of meeting legal obligations

- *Any organisation that is able to provide services to meet the diverse needs of its users should find that it delivers services that are more appropriate to the user, increasing satisfaction with services*
- *A workforce that has a supportive working environment is more productive and can be more representative of the community it serves*
- *Organisations and groups can draw on a broader range of talent*
- *It should also result in better informed decision-making and policy development.*



## When Rights Conflict

**The challenge is when either individuals or groups have different beliefs, ideas, values and philosophies but have the same rights!**

People from different backgrounds are being asked to work together or come together to access services or attend events so it is inevitable that conflict or difficult situations can arise. It's important to be clear about what is a genuine conflict that had arisen from a firmly held teaching or belief, and the more general case of someone expressing a discriminatory attitude.

When rights appear to conflict, managers and staff must be very clear about what the law protects and what it doesn't protect.

### Consider these scenarios

1. A practice nurse in a health centre is not willing to give sex education leaflets to a young woman on the grounds of their religion's position on these issues.
2. A service user is abusive towards a worker whom he perceives to be gay or lesbian.

Scenario 1. Involves a conflict of legislated rights and a means must be found to satisfy the legitimate rights of both parties.

Scenario 2. There is no conflict between rights; the matter is clearly about unacceptable discriminatory behaviour and the required course of action is clear.

Whatever the circumstances, managers or staff must be prepared to deal with these potential conflicts of rights in **a consistent, firm and confident manner**. However, there is a necessary difference to the approach where the issue arises from a potential conflict of the rights rather than simply the exercise of a prejudice or discrimination on the part of one party.

This means **clear ground rules** are needed, and a logic that's simple enough to explain to all concerned. The essential difference is that in instances where a conflict of two people's legal rights are concerned a solution must be found, through compromise, which satisfies the rights of both parties.

With any conflict to resolve, managers should be able to concentrate on respecting and upholding those rights in an unfettered way. i.e. If someone or something is discriminatory towards a person's rights then the law is clear that that is wrong.



## Impinging on other's rights

In some instances, difficulties can arise when someone's belief or values impinge on another person's rights, or when an employee's actions, because of a belief, have a negative effect or impact on another person's rights.

The best way to explain this is to use the example of the scenario 1, where an NHS employee refused to provide sex education leaflets to a young girl on the ground of religious beliefs.

In this case a conflict is likely to arise when the individual's passive observance of their religion took on an active status and resulted in the individual accessing the service being denied treatment. That's when you may find that their actions begin to impinge on others.

In this case the employee may not use their religion or belief as a mandate to deny treatment to someone else, refuse to work with them, or impose their belief on another individual. Any of these are most likely to impinge on the other individual's rights, which must be balanced.

Of course, the activity may still be alright so long as the result is not discriminatory towards the other person or is perceived by them as harassment.

The challenge in a multicultural society is to be able to live together in harmony in spite of the fact that we all have such different backgrounds and beliefs.

Primary school staff were seeing a potential conflict between the rights of children to explore their own identities (culture, gender etc) and the rights of their parents to shape and direct their children's upbringing. A parent was concerned that their daughter had been eating ham sandwiches (because she had swapped her sandwiches with a classmate). This was seen by the parent as being against her religion, however the child in question had expressed a desire to try ham to see what it tasted like (age equality related rights of the child vs. religion or belief equality related rights of the parent). (Equality and Human Rights Commission 2019)

What was done? The headmaster advised teachers to talk to parents to make them aware that there are some values which teachers cannot guarantee to protect while in school. Teachers can try to be sensitive to particular concerns that parents have (e.g. their child not eating food that is against their religion). However, the school could not be held responsible if pupils wanted to do otherwise.



## Tips for reducing or managing conflicting rights

The most effective way to reduce the possibility of individual and group rights coming into conflict is to be **prepared in advance and have clear, robust systems and processes in place** to deal with matters. It is important that competing equality claims are identified, addressed and managed as early as possible in order to prevent them escalating.

1. Put in place an **equality impact assessment system** so that in any given situation an initial assessment can be made of the equalities implications and review these regularly.
2. Have **clear discipline, grievance and dispute procedures** for dealing with conflict and ensure that managers are trained to confidently handle situations, focussing on roles and responsibilities and not personalities and beliefs.
3. **Make sure managers and staff know how to behave** so that they do not discriminate against people because of a protected characteristic or belief.
4. Take time to **team build and raise cultural awareness** and trust between colleagues. This approach will help to foster good relations.
5. Set out **clear statements in advance regarding the expectations and requirements** of the job in question. Include circumstances where employees might be exempted from particular tasks or functions on the grounds of religion, belief, sexual orientation or any other equality consideration.
6. **Training your staff and volunteers** ensuring that everyone is aware of the consequences if their behaviour or actions breach terms and conditions.
7. **Adopt a strong equality statement.** Make sure it is on display for staff and service users, and that staff know how explain to service users, the boundaries between their privately held beliefs and what service providers can respond to.
8. **Think in advance about how you will respond to issues of conflict**, and have established clear guidelines, for example, between acceptable expressions of faith and unacceptable discrimination.
9. **Use internal consultation or third-party mediators if required** in order to stop conflict escalating.
10. **Undertake an equality audit** regularly to make sure that people with protected characteristics are not disadvantaged or the organisation is not favouring one protected characteristic over the other.