



Violence against women, women only services and the Equality Act 2010

Equality of opportunity and diversity are vital to ensure a fair, just and democratic society. To achieve full equality in practice, it has long been recognised that different groups may require different treatment because they are differently situated. Equal treatment, without consideration of people's different characteristics, can perpetuate disadvantage, as not everyone starts from the same position. Equality legislation, as well as protecting individuals from discrimination and promoting diversity, benefits society as a whole as research has shown that progress towards equality leads to economic growth.¹

What is equality?

Equality is often incorrectly defined or understood as treating everyone the same regardless of their race, gender, disability, immigration status or religion etc. Equality should, however, be understood as creating equality for all and this does not mean treating people in exactly the same way. It means treating individuals or groups of people differently in order to treat them equally.

The importance of equality legislation is to create a level playing field to ensure that, as far as possible, people are not disadvantaged by circumstances beyond their control, for example, the fact that they are a woman who has experienced rape. The purpose is to achieve a fairer society and equality of outcome for a range of different individuals.

Whilst progress has been made, misconceptions about the impact of equality legislation have detracted from achievements made as some decision makers continue to believe that everyone starts from the same position. This view ignores the fact that women continue to be at a disadvantage, are unable to enjoy equality with men, continue to receive lower pay than men, experience violence and abuse, and are grossly underrepresented in parliament and other senior roles in society.

What is diversity?

¹ See http://ec.europa.eu/justice/newsroom/gender-equality/news/20120416_en.htm

References to diversity are references to peoples' many and varied differences.

The importance of diversity is recognising and taking account of people's different backgrounds, ethnicity, gender, knowledge, skills and experiences, and encouraging and using those differences to create a productive and effective society.

Violence against women as an equality issue

Violence against women is an equality issue. Violence against women is a cause and consequence of women's oppression. [The United Nations Convention for the Elimination of all Forms of Violence Against Women](#) defines gender-based violence to be violence that is directed against a woman because she is a woman or that affects women disproportionately and declares it to be "a form of discrimination against women that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men". Gender based violence (male perpetrated violence against women) has been recognised as a human rights issue, an equality issue and as discrimination against women. Gender based violence is any act of violence directed at a woman because she is a woman or which disproportionately impacts on women. Violence against women includes, but is not limited to, physical, sexual or psychological violence within the family or community.

The Government's cross-governmental strategy – [A Call to End Violence Against Women and Girls](#) sets out that it is the role of all public bodies including the police, NHS and local authorities to work together to meet the needs of their local communities to support women who have experienced violence, protect against violence, ensure that perpetrators of violence are brought to justice and to take steps to prevent violence happening in the future.

Prevalence of Violence Against Women and Girls in the UK

- In 2012 1.2 million women in the UK experienced domestic abuse, 60,000 were raped
- On average 2 women a week are killed by their current or former partner
- An incident of domestic violence is reported to the police every minute
- 1 in 4 women will be the victim of domestic violence in their life time-many of these on a number of occasions.

History of equality legislation

Equality law is relatively new. Until the 1960s the law of the UK reflected discriminatory attitudes rather than seeking to protect individuals from discrimination. The law in England and Wales (common law and statute) was developed by white middle aged, middle or upper class males and, consequently, it favoured this group of people and protected their position. Employers, landlords and managers could legally carry on their business according to any prejudice they happened to hold. For example, until the

1970s women could be legally dismissed from their jobs when they got married or when they became pregnant and women were unable to get a mortgage in their own right and could only secure a mortgage if they had a male guarantor.

In the 1960s and 1970s the reforming labour Governments introduced laws to protect certain groups from adverse discrimination. The laws came from the approaches taken by the American Government and the Civil Rights Acts of 1964 and 1968 and from European law – the European Economic Community (now the EU) which required the UK Government to maintain the principle that men and women should receive equal pay at work in 1970. The UK anti-discrimination law related initially to equal pay between men and women (Equal Pay Act 1970) to sex (the Sex Discrimination Act 1975) and race (Race Relations Act 1976). Disability discrimination was not outlawed until 1996 (the Disability Discrimination Act 1995), and the Civil Partnership Act 2005 provided largely equal treatment of same sex couples to married opposite sex couples. For a full time line of equality legislation in England and Wales see [Equality Timeline](#)

Today's equality legislation – the Equality Act 2010

The key piece of legislation which governs equality and discrimination in England and Wales is the [Equality Act 2010](#). The Equality Act 2010 came into force in October 2010. Preceding the Equality Act 2010 there were separate pieces of legislation for different equality strands for example the Disability Discrimination Act 1995 and the Sex Discrimination Act 1975 and 1986. All equality strands are now included in the Equality Act 2010. The Act includes all those characteristics on which it is unlawful to discriminate and establishes a single approach to discrimination, with some exceptions.

The Equality Act consolidated all “**protected characteristics**” in one piece of legislation. The purpose of this is to have a uniform approach to all protected characteristics and address inconsistencies in the discrimination framework.

There are separate chapters in the Equality Act 2010 dealing with each of the **protected characteristics**:

- **Age** – People of all ages are covered with some exceptions. People who fall within the same age group share the same protected characteristic.
- **Disability** – People who have a disability or had a disability in the past share this protected characteristic
- **Gender Re-assignment** – this covers people who are proposing to undergo or have undergone gender reassignment
- **Marriage and civil partnership**- this covers people who are married or in a civil partnership
- **Race**- this includes colour, nationality, ethnic or national origin, a racial group is a group of persons defined by reference to race.
- **Religion or belief** – this includes any religion and people with a lack of religious belief
- **Sex** – this refers to the 2 specific gender groups –women and men

- **Sexual Orientation** – this means a persons sexual orientation towards persons of the same sex, the opposite sex or both sexes
- **Pregnancy and maternity** – this protects women from discrimination regarding their pregnancy or maternity and includes breast feeding

Direct and indirect discrimination

- **Direct discrimination:** is when someone is treated differently as a result of a protected characteristic that they have or are thought to have.
- **Indirect discrimination:** where there is a condition, a rule or policy that applies to everyone but particularly disadvantages people who have a particular protected characteristic.

The Equality Act 2010 prohibits unlawful direct and indirect discrimination. Formal equality protects against **direct discrimination** (treating someone less favorably because they are a woman or from a particular racial group). **Formal equality** means treating people in the same way regardless of whether they have a protected characteristic or not. Prohibiting **indirect discrimination** is aimed at bringing about a **substantive** result – equality of outcome – a fairer society and reversing oppressive structures. Practices which appear neutral, and treat people the same, can have a disproportionately adverse effect on people with a particular protected characteristic. Indirect discrimination is unlawful unless it can be shown to be a proportionate means of achieving a legitimate aim.

The Public Sector Equality Duty

The [Equality Act 2010](#) includes a public sector equality duty, the purpose of this is to ensure that the public sector delivers fair and efficient public services and takes account of the **protected characteristics**. Section 149 of the Equality Act - the Public Sector Equality Duty - requires public bodies to have “due regard” to “advance” equality of opportunity. This means public bodies must ensure that their policies (policies include all their functions, commissioning and service provision) do not have a negative impact on people with a particular protected characteristic and also requires that they consider how to advance equality of opportunity rather than simply ensuring that policy does not have a negative impact on individuals with a particular characteristic.

The public sector equality duty requires public sector bodies when introducing a new policy to consider how they can meet the following objectives:

- a) eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
- b) advance equality of opportunity between persons from different groups;

- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Which bodies does the public sector equality duty apply to?

The PSED applies to the full range of public sector organisations, including the Government and Government departments, (e.g. the Ministry of Justice), the armed forces, local councils, the NHS, the Police. A full list of the bodies is at Schedule 19 of the Equality Act 2010 see: [Schedule 19 EA 2010](#)

What does this mean for violence against women organisations?

There is a positive duty on all public bodies to have due regard to specific equality aims including alleviating discrimination of women. This means public sector bodies should consider the impact of decisions and funding of services “substantively” and it is not enough to just note that there will be no negative impact, as there is a requirement, under the equality duty, to consider whether positive improvements can be made.

The ECHR have confirmed that the public sector Equality Duty does not mean that single sex services should be cut, have funding withdrawn or that any new services should not be funded. Neither does it mean that services should necessarily be provided on the same scale for both men and women. For example, because women make up the majority of victims of domestic violence and rape it is not appropriate for a local council to fund or provide refuge services on an equal basis for men and for women, as set out in the example above. Further information on this can be found on the [Equality and Human Rights Commission](#).

Equality impact assessment

The Equality Act 2010 requires public bodies to carry out an equality analysis and impact assessment(s) (written reports) to meet the public sector equality duty, and ensure that they have a solid evidence base on the impact on protected characteristics to inform their policy in all of their functions. By reviewing the equality impact a policy will have, this allows public bodies to have a clear picture of equalities data and to target their services accordingly. This means they can target policies and services to those who need them, for example, provision of support for women experiencing gender based violence.

An equality impact assessment (EIA) is a tool that helps public bodies to make sure their policies and the way they carry out their functions achieve their goals and do not discriminate against particular groups. Policy essentially includes everything the body does. EIA are crucial for enabling “due regard” and the production of the EIA is a way that a public body can evidence that they have paid due regard. The EIA should identify whether there will be any negative consequences of the policy and must also identify opportunities to promote equality. If anything amounts to unlawful

discrimination they must be removed. For more information see http://www.equalityhumanrights.com/uploaded_files/eia-guidance.pdf

Due regard – means they have a duty to have regard to the needs of different classes of people, unfortunately the act does not require public sector bodies to take specific action but it does require public bodies to consider their consequences and make decisions based on what they consider the impact will be. If public bodies fail to have due regard the policy can be challenged and quashed.

Challenging a public sector body

- Write a letter to the public sector body setting out why you believe the public body has failed to comply with its public sector equality duty.
- Contact the Equality and Human Rights Commission (EHRC). The EHRC uses a range of strategies to ensure compliance with the equality duty see <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/monitoring-and-enforcement/>
- Judicial review – this is a procedure by which a person who has been affected by a particular decision, action or failure to act of a public authority may make an application to the High Court, which may provide a remedy if it decides that the authority has acted unlawfully. Judicial review is concerned not with the merits of the decision, but whether the public body has acted lawfully. For more information see <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/monitoring-and-enforcement/judicial-review/>

Women only services

The Equality and Human Rights Commission set out that under the Equality Act 2010 women only services are lawful in specified circumstances. Single sex services in certain situations, for example, refuges for women who have experienced domestic violence, are vital to ensure the alleviation of discrimination. It is, therefore, a requirement for public bodies to fund women only services in certain situations, to discharge their duties under the Equality Act. This should ensure an efficient use of funds, as funds are not wasted on the provision of equal services for both genders when the need is not there.

The Equality and Human Rights Commission provides this useful explanation of when single sex services are lawful:

“The Act provides that the prohibition of sex discrimination does not apply where services are provided exclusively to one sex, as long as to do so is a proportionate means of achieving a legitimate aim, and at least one of the conditions set out below applies:

- Only people of that sex need the service. For example, post-natal exercise classes can be provided to women only, since only women need the service.

- Where the service is also provided jointly for both sexes, an additional service exclusively for one sex will be lawful if the joint provision would not be sufficiently effective. For example, a new fathers' support group is provided by a health authority as there is insufficient attendance by men at the new parents support group.
- If a service was provided for men and women jointly it would not be as effective and the level of need for the services makes it not reasonably practicable to provide separate services for each sex. For example, a women-only support unit for women who have experienced domestic or sexual violence can be set up, even if there is no parallel men-only unit because of insufficient demand.
- The service is provided at a hospital or other place where users need special care, supervision or attention. For example, single-sex wards in hospitals and nursing homes and single-sex facilities in mental health facilities.
- The service is for, or is likely to be used by, more than one person at the same time and a woman might reasonably object to the presence of a man (or vice versa). For example, separate male and female changing rooms or any service involving intimate personal health or hygiene.
- The service is likely to involve physical contact between the service user and another person and that other person might reasonably object if the user is of the opposite sex. For example, sports sessions involving a high degree of physical contact such as judo or self-defence classes.”²

The introduction of the public sector equality duty has not changed and public sector bodies should be minded that if a single sex service exists and it fulfils the exception it complies with the Act and is lawful provided that one of the above conditions is met, and that such provision is a proportionate means of achieving a legitimate aim. For example, a primary care trust contracting with a voluntary sector organisation to provide counseling for women who have had a mastectomy.

Genuine occupational requirements

Schedule 9 of the Equality Act 2010 contains a number of exceptions that allow direct discrimination in certain circumstances to be deemed lawful. In particular, there are circumstances when a person from a particular protected characteristic is required to do a particular job. It must be an occupational requirement and a proportional means of achieving a legitimate aim. For example, a Rape crisis centre can, given the context of the work, make being a woman a requirement of the job as it serves the legitimate aim of ensuring that women who use the service feel comfortable relating their experiences of sexual violence.

Successful challenge under equality legislation

² See <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/faqs-on-the-equality-duty/>

R (Kaur) v London Borough of Ealing [2008] EWHC 2062 (Admin) – the need to impact assess before making a decision.

Southall Black Sisters is a not-for-profit organisation set up to meet the needs of black (Asian and African-Caribbean) and minority ethnic women and the focus of their work is challenging domestic and gender based violence. In June 2007, Ealing Council announced proposals to move away from funding particular organisations (such as SBS), towards commissioning generic services for domestic violence for people of all races, genders etc. At the time SBS were the only specialist provider of domestic violence services to black and minority women in Ealing. Despite concerns raised during consultation that plans had not been equality impact assessed, and that commissioning could disadvantage grassroots community initiatives, Ealing decided to press ahead with its proposals.

During discussions about criteria for commissioning domestic violence services, SBS had highlighted the adverse impact the criteria could have on pre-existing domestic violence services provided to women from ethnic minority communities, and so an equality impact assessment should be carried out.

Ealing carried out belated impact assessments on proposals before deciding to proceed with the existing domestic violence services commissioning criteria, resulting in two SBS service users launching a judicial review of the decision. Ultimately, Ealing conceded these submissions and withdrew from the case.

However, in an oral judgment, Lord Justice Moses reiterated the importance of undertaking an equality impact assessment, and also the importance of carrying out an impact assessment before policy formulation.

In his written judgment, Lord Justice Moses stated that Ealing Council had made fundamental errors when deciding to cut funding to SBS in favour of one generic service on domestic violence for the borough. He stated that the Council had acted unlawfully in a number of critical ways: It failed to carry out a full racial equality impact assessment before fixing on the policy of a generic service on domestic violence; It failed to consider measures to avoid the adverse impact that its policy would have on black and minority women as pointed out by SBS; It failed to appreciate that there is serious under-reporting of domestic violence amongst black and minority women; It misconstrued the Race Relations Act – in particular the need for positive action and the right to retain a name which announces the specialist nature of the organisation and it misconstrued the principle of cohesion by assuming that funding specialist projects will undercut cohesion.

USEFUL RESOURCES AND CONTACTS

The Equality and Human Rights Commission

Fawcett Society

Rights of Women

Women's Resource Centre

Blackstone's Guide to The Equality Act 2010

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/faqs-on-the-equality-duty/>

<http://www.thompsons.law.co.uk/ltxt/127-case-law-public-sector-equality-duty.htm>

<http://www.tuc.org.uk/equality/tuc-20159-f0.pdf>

<http://www.fawcettsociety.org.uk/wp-content/uploads/2013/04/Fawett-submission-to-Review-of-the-Public-Sector-Equality-Duty-April-2013.pdf>

Equality legislation is complex and subject to change. We have provided a very basic overview of the Equality Act 2010. Please note that the law set out in this briefing are as they stood at the date of publication. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this briefing. This briefing is designed to give general information only.

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