

Making the most of the Equality Act 2010



Summary

The Children's Rights Alliance for England (CRAE) knows that children and young people often experience discrimination and are treated unfairly. The Equality Act 2010 is a very important new law that can be used to challenge children and young people's experiences of inequality and discrimination.

We have written this guide to give you more information about the Equality Act 2010 and to explain what you can do if you think it is not being followed properly.

This guide covers:

- What is the Equality Act 2010?
- How does the Equality Act 2010 protect children and young people?
- What can I do if I think the Act is not being followed?
- Where can I find out more and get help?

This guide only gives general information. For advice about your own situation, you should talk to a lawyer. There is information at the end of this guide about how you can find a lawyer or get legal advice by telephone or email.

What is the Equality Act 2010?

The Equality Act 2010 is a new law that brings together **discrimination laws** in Britain. Most of the Act is now in force though some bits have not yet been introduced – the *Equality Matters for Children* part of our website will keep you up-to-date (contact details at end).

The Equality Act 2010 is a great development because, before it, there were different levels of protection for different groups of people. For example, there were very strong laws relating to race, sex and disability discrimination but much weaker laws relating to age, sexual orientation and religion and belief.

IMPORTANT

- **Disability covers many things including HIV, scarring as well as things that can affect our abilities to move around, think, speak, hear and see**
- **Race includes some groups that are also religious groups like Sikh people and Jewish people**
- **Religion and belief covers all religious groups, for example, those who are Christian, Muslim, Jewish and those who hold non-religious beliefs**
- **Sexual orientation includes straight people, gay people and bisexual people.**

The Equality Act 2010 aims to give people belonging to different groups similar levels of protection from discrimination. **However**, the Act does not give children and young people exactly the same protection from age discrimination as adults.

There are nine groups of “protected characteristics” in the Equality Act 2010. These are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

We all belong to more than one of these groups. For example, we all have an age and we are all either male or female.

How does the Equality Act 2010 protect children and young people?

1. Protection from discrimination

The Equality Act 2010 protects children and young people from discrimination, harassment and victimisation:

- When you apply for, or have, a job
- When you use, or try to use, public services
- When you use, or try to use, private services (including membership clubs, transport and housing)
- In your education and training.

You are **only protected from age discrimination in employment not** in schools or, if you are under 18, when using (or trying to use) services.

There are some other differences in the levels of protection that children and young people have under the Equality Act 2010 – see next page.

Discrimination is treatment of a person or group which affects them unfairly because of something about them, like their age, disability, gender, race and religion or beliefs. There are two types of discrimination: direct and indirect.

Direct discrimination is where a person or organisation treats one person less well because they belong to a particular group. In deciding whether the treatment is discrimination, the way the person has been treated will be compared to how people in another group are treated.

DIRECT DISCRIMINATION EXAMPLE

In a case against Birmingham City Council a court decided that the Council had discriminated against girls. This was because it had provided more grammar school places for boys, in boys' schools, than it had provided for girls in girls' schools.

Indirect discrimination is where a general rule disadvantages someone from a particular group.

INDIRECT DISCRIMINATION EXAMPLE

A girl called Sarika Angel Watkins-Singh brought a case against her school because it had a rule that said students were not allowed to wear any jewellery. Although this rule applied to all the children at the school, it was especially unfair to Sarika because she is a Sikh girl and is required to wear the Kara (the Sikh bangle).

The court decided that the rule did discriminate against Sarika and it was no excuse for the school to say that other children could not wear jewellery either or that it was important to stop children wearing the Kara for health and safety reasons.

Harassment is behaviour that aims to make, or makes, a person feel that their dignity has been attacked. It can also be behaviour that creates a humiliating, embarrassing or offensive environment.

HARRASSMENT EXAMPLE

A teacher constantly picks on a disabled student and makes fun of the way he speaks in class. This student could make a complaint under the Equality Act 2010 on the basis that he is being harassed because of his disability.

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As a child or young person, you do **not** have protection from harassment in education **if this relates to your religion or beliefs, your sexual orientation or gender reassignment**. However, if you believe you have been treated unfairly because of any of these factors, you could use other parts of the Equality Act 2010 to challenge your treatment. (You may also have protection under the Human Rights Act).

Victimisation is when a person is treated badly because they have made a complaint or supported somebody else to make a complaint under the Equality Act 2010.

VICTIMISATION EXAMPLE

A 16 year-old Black female made a complaint against her employer when she felt she had been unlawfully discriminated against at work because of her race. If her employer threatened or punished her in some way for making the complaint, this would be classed as victimisation.

You also have protection from victimisation if your parents or brothers and sisters have made a complaint under the Equality Act 2010 in relation to education.

VICTIMISATION EXAMPLE

A complaint is made by a female student about discrimination in school related to her religious beliefs. The student's brother must not be victimised because of his sister's complaint.

Discrimination because of association and perception

The Equality Act 2010 gives you protection from discrimination if you are treated unfairly because you are believed to be from, or have connections with someone from, a particular group.

DISCRIMINATION BECAUSE OF ASSOCIATION OR PERCEPTION EXAMPLE

A woman called Sharon Coleman went to the European Court of Justice because she believed she had been discriminated against by her employers for taking time off work to care for her disabled son. The European Court of Justice agreed that she had been discriminated against because of being a carer - that is, because of her link to, or association with, a disabled child. This kind of treatment is no longer allowed under the Equality Act 2010.

CHILDREN AND YOUNG PEOPLE AND AGE DISCRIMINATION

The Equality 2010 Act only gives adults (over 18s) full legal protection from unlawful age discrimination. **Children and young people are excluded from this new protection. However, you can still bring claims based on other characteristics such as disability, race, sex etc.**

CRAE has been campaigning for many years to get under 18s protection from age discrimination. Find out more here:

<http://www.crae.org.uk/protecting/age-discrimination.html>

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Children and young people **do** have protection from age discrimination in employment. However, employers can still pay workers who are aged 17 and below lower amounts than adult workers based on the differences in the minimum wage for young people.

2. Being treated equally by public bodies

The Equality Act 2010 brought in a new law to make sure public bodies (like schools, the NHS, young offender institutions, social services, the police and libraries) make decisions and run services in a way that is fair and does not discriminate and brings about equality between different groups. This is called the **Public Sector Equality Duty**.

A **duty** is something that has to be followed by law. The **Public Sector Equality Duty** requires public bodies and most organisations that receive public money (paid by government or councils from our taxes) to consider three things when they are making decisions about employing staff, planning and running services and making policies:

1. Getting rid of unlawful discrimination, harassment and victimisation
2. Making sure that people from different groups* are treated fairly and have equal chances to use services and that there is more equality between groups
3. Making sure that people from different groups* get on well together.

* Different groups are the groups of people who have "protected characteristics" – see top right hand box on page 2.

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The **Public Sector Equality Duty** applies to all of the nine groups of protected characteristics. Children and young people are covered in relation to age in all settings **except** schools and children's homes.

This is a new duty but there were duties like this before the Equality Act 2010. The courts made it

clear in lots of cases that a public body would be breaking the law if it did not think carefully about the steps it should be taking to: get rid of discrimination; make things more equal between different groups; and make sure that different groups get on well together.

PUBLIC SECTOR EQUALITY DUTY EXAMPLES

Public Sector Equality Duty and Race and Religion

In Sarika's case (above), when the school introduced the rule they did not think about how it would affect different groups of students, including Sikh students; and they did not think about that when telling Sarika she could not wear the Kara. The court decided that, because of this, the jewellery rule that stopped Sarika wearing the Kara was also against the law.

Public Sector Equality Duty and Race

In another case, a court removed new powers which allowed staff in child prisons to use force on children to make them follow instructions. The court said this went against children's human rights and also that nobody had checked whether these new powers would have an unfair effect on Black children. (There is more chance of Black children being locked up even though they do not commit more crimes than white children).

Public Sector Equality Duty and Sexual Orientation

An adult couple complained that they might not be accepted as foster carers because they had religious beliefs that meant they did not think being gay was right; and if they looked after children who were gay then they might try and change them. The court said that the council was allowed to ask about their attitudes towards gay people because it is important that gay children, and children who are unsure about whether or not they are gay, or who may have gay parents, are properly looked after in foster care and are not made to feel uncomfortable or bad.

Public Sector Equality Duty and Age

16 and 17 year-olds are sometimes unable to access mental health services because they fall between children's services and adult services. Under the Public Sector Equality Duty, the managers of mental health services would have to try and end this inequality.

3. Equality for disabled children and young people

The Equality Act 2010 gives extra protection from discrimination to disabled children and young people:

- Public and private services (including schools and leisure facilities) and employers have to take action to ensure young disabled people have the same access as people who are not disabled. This might include ramps, accessible lifts and toilets, automatic doors and making information available in large writing or Braille. This is called making "reasonable adjustments"
- Schools will have to provide equipment and assistance to disabled students. This could include things like computer equipment or providing a support worker to assist a child or young person carry out a task. **This bit of the Equality Act 2010 has not yet come into force.**

DISABILITY DISCRIMINATION EXAMPLE

Anthony Ford-Shubrook brought a case against a sixth form college he wanted to go to but was refused on health and safety grounds because he is a wheelchair user.

Anthony said he would be able to get into the classroom on the first floor of the college by using a special stair-climbing wheelchair. The college said that would be too dangerous for him and other young people going to the college.

The court said that was discrimination against Anthony because he should be able to attend the college in his wheelchair. It made the sixth form college give Anthony a place.

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What can I do if I think the Act is not being followed?

There are lots of things you can do if you think that the Equality Act 2010 has not been followed properly.

Your options will be different according to what happened to you and the reasons you believe you were discriminated against.

No matter what happened to you, you can tell someone about it

Talk to someone

If you think that you have been discriminated against it might be helpful to talk to someone and explain what has happened. This could be your mum or dad, another person in your family, a teacher, or someone else that you trust and who may be able to help you. Sometimes it helps just to talk things over with a friend. It is usually helpful to **make suggestions** about how things could be improved, though you are not responsible for changing someone else's behaviour.

Make a complaint

If talking to someone has not solved the problem, you might want to make a complaint. Most organisations have a complaints procedure and will tell you how to use it. You might want to get advice from a lawyer or an organisation that works on equality and discrimination issues to help you with this.

Mediation

A good way of trying to solve a problem is through using mediation. This is where another person helps you express your feelings and you get the chance to discuss these with the person or organisation that you believe is treating you unfairly. Unfortunately, mediation is not always available for children and young people – the information at the end of this guide will help you find out more.

Taking a case to court

If things cannot be sorted through talking and making suggestions, you may need to consider legal action to protect your rights.

Discrimination in employment

If you think you have been discriminated against unfairly when you were applying for a job, or in your job, you have to make a claim within **three months** of complaining about the treatment. Your case will be heard in an **employment tribunal**.

Other discrimination cases

If you want to make a complaint about discrimination in another setting (not employment) you have to make a claim within **six months** of the treatment you are complaining of. Your case will be heard in the **county court**.

Public Sector Equality Duty

If you believe a public body has not followed the Public Sector Equality Duty, you may be able to ask a court to review this (this is called a judicial review). You have to act quite quickly if you want to do this because the time limit is **three months** for this kind of legal action.

Human rights

Discrimination can sometimes be challenged on human rights grounds. Contact us for more information – see next page.

Where can I find out more and get help?

More information

Visit the *Equality Matters for Children* part of our website: www.crae.org.uk/equalitymattersforchildren

The Equality and Human Rights Commission has published guidance on the Equality Act 2010: <http://www.equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/>

The Government Equalities Office has published some short guides: http://www.equalities.gov.uk/equality_act_2010/equality_act_2010_what_do_i_n.aspx

The Government Equalities Office has published guidance about making complaints under the Act: http://www.equalities.gov.uk/news/equality_act_2010_forms_for_ob.aspx

Legal advice

- For advice about equality law and your human rights, contact our You've got the Right advice service – Telephone 0800 32 88 759 (no charge except from a mobile; textphone users dial 18001 first) 3.30pm to 5.30pm on Tuesdays, Wednesdays and Thursdays; email advice@crae.org.uk
- Equality and Human Rights Commission's helpline (England) – Telephone 0845 604 6610 (textphone 0845 604 6620) 8am to 6pm every weekday; email info@equalityhumanrights.com

You've got the Right

Advice for children on human rights and equality law in England

You've got the Right receives funding from the Equality and Human Rights Commission

This guide was written with assistance from Karon Monaghan QC from Matrix Chambers.

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